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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean Hoefer Toal, Chief Justice (Ret.) and Acting Circuit Court Judge
Case No. 2020-CP-40-04385

Appellate Case No. 2023-000252

Southern Insulation, Inc., through its Receiver, Peter D. Protopapas, ... Respondent,
vs.

OneBeacon Insurance Group, Ltd. (f/k/a White Mountains Insurance Group, Ltd., f/k/a CGU Insurance Company, f/k/a Commercial Union Corporation, f/k/a General Accident Insurance Company of America); OneBeacon Insurance Group LLC (n/k/a Intact Insurance Group USA LLC); R.V. Chandler & Associates, Inc.; Chandler Rental Properties, Inc.; Thomas S. Chandler; Jean B. Ownbey, as Trustee of the Thomas S. Chandler, Sr. Living Trust u/d 4/06/06; Gene N. Norville; the South Carolina Property and Casualty Insurance Guaranty Association; Trebuchet US Holdings, Inc.; Trebuchet Investments Limited; Trebuchet Group Holdings Limited (f/k/a Armour Group Holdings Limited); Brad S. Huntington, individually; and John C. Williams, individually, Defendants,

Of which OneBeacon Insurance Group, Ltd. (f/k/a White Mountains Insurance Group, Ltd., f/k/a CGU Insurance Company, f/k/a Commercial Union Corporation, f/k/a General Accident Insurance Company of America); OneBeacon Insurance Group LLC (n/k/a Intact Insurance Group USA LLC); Trebuchet US Holdings, Inc.; Trebuchet Investments Limited; Trebuchet Group Holdings Limited (f/k/a Armour Group Holdings Limited); Brad S. Huntington, individually; and John C. Williams, individually, are the Appellants.

**APPELLANTS INTACT INSURANCE GROUP USA HOLDINGS INC.
AND INTACT INSURANCE GROUP USA LLC'S
RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL**

Appellants Intact Insurance Group USA Holdings Inc. (sued as OneBeacon Insurance Group, Ltd. (f/k/a White Mountains Insurance Group, Ltd., f/k/a CGU Insurance Company, f/k/a Commercial Union Corporation, f/k/a General Accident Insurance Company of America)) and

Intact Insurance Group USA LLC (“Intact LLC,” sued as OneBeacon Insurance Group LLC) (collectively, “Intact”) submit this return to the Motion to Dismiss Appeal filed by Respondent Southern Insulation, Inc., through its Receiver, Peter D. Protopapas, and respectfully request that this Honorable Court follow the binding precedent set forth by the South Carolina Supreme Court in *Williams v. Northwestern Security Life Ins. Co.*, 307 S.C. 462, 415 S.E.2d 809 (1992) and deny Respondent’s Motion to Dismiss Appeal.

FACTUAL AND PROCEDURAL BACKGROUND

This is an action by the Receiver of Southern Insulation, Inc. (“Southern”), a company that is alleged to have exposed its employees and customers to asbestos-containing products prior to its dissolution in 1991. Second Amended Complaint (“SAC”) ¶¶ 1, 24.¹ Southern alleges that at some point it was insured by a Pennsylvania company now known as Bedivere Insurance Company (“Bedivere”). SAC ¶ 27, 29.

Bedivere was at one time known as OneBeacon Insurance Company and was a subsidiary of OneBeacon Insurance Group LLC, which was later re-named Intact LLC. See SAC ¶¶ 4, 29. On February 8, 2013, Defendant Trebuchet US Holdings, Inc. filed with the Insurance Department of the Commonwealth of Pennsylvania a “Form A” seeking permission to purchase Bedivere from Intact LLC. See *Crosby Valve, LLC v. Department of Ins.*, 131 A.3d 1087, 1089-90 (Pa. Commw. Ct. 2016). After public notice and comment and extensive regulatory review, the Pennsylvania Insurance Commissioner approved the sale on December 23, 2014. See *id.*; see also SAC ¶ 39.

More than six years later, on March 11, 2021, Bedivere entered liquidation proceedings. SAC ¶ 57. The Bedivere Order of Liquidation in the Commonwealth Court of Pennsylvania (the

¹ A copy of the SAC is appended as **Exhibit 1**.

“Liquidation Order”²) vests in the Liquidator title to all assets, including rights of action, belonging to Bedivere, asserts in the Commonwealth Court exclusive jurisdiction over all determinations as to whether assets belong to Bedivere or another party, and asserts exclusive jurisdiction over all determinations of the amount and validity of the claims against Bedivere. Liquidation Order ¶ 4. The Liquidation Order also enjoins the commencement or continuation of any action against Bedivere or its assets absent written consent of the Liquidator, and further enjoins all persons claiming secured, priority, or preferred interests in property or assets of Bedivere from taking any steps to exercise such rights. Liquidation Order ¶¶ 13-14.

In the SAC,³ Southern claims that Intact stripped Bedivere of its assets before selling Bedivere to Trebuchet in 2014, leading to Bedivere’s demise in 2021. SAC ¶¶ 35-38. Southern specifically claims that it seeks assets of Bedivere (that it alleges Intact acquired and retained), and that Intact and Bedivere were alter egos, constituting a single business enterprise. SAC ¶¶ 126, 154, 178, 182-83.

Intact moved to dismiss Respondent’s Second Amended Complaint based on the Liquidation Order entered against Bedivere Insurance Company, S.C. Code Ann. § 38-27-430, and Rule 12(b). See Intact’s Notice of Motion and Motion to Dismiss at 1.⁴ The circuit court heard

² A copy of the Liquidation Order is attached hereto. See **Exhibit 2** (Intact’s Memorandum in Support of its Motion to Dismiss) at **Exhibit A**. The Court may consider the Liquidation Order because the Liquidation Order is acknowledged in the SAC (¶ 57). See *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). Alternatively, the Court may take judicial notice of the Liquidation Order. See Rule 201, SCRE; *S.C. Dep’t of Soc. Servs. v. Janice C.*, 383 S.C. 221, 227, 678 S.E.2d 463, 467 (Ct. App. 2009).

³ In its First Amended Complaint, Southern added Bedivere as a defendant. See **Exhibit 2** (Intact’s Memorandum in Support of its Motion to Dismiss) at **Exhibit B**. After the Commonwealth Court entered the Liquidation Order, Southern dismissed Bedivere, averring that Southern had filed a claim in the liquidation proceedings in Pennsylvania. See **Exhibit 2** (Intact’s Memorandum in Support of its Motion to Dismiss) at **Exhibit C**. Neither Intact entity was named as a party in either Respondent’s original Complaint or in its First Amended Complaint. Cf. **Exhibit 1** (first pleading that named the Intact entities as defendants).

⁴ A copy of Intact’s Notice of Motion and Motion to Dismiss is appended as **Exhibit 3**.

argument on Intact’s motion to dismiss on January 27, 2023, orally denied the motion from the bench, and signed and filed a Form 4 order denying Intact’s motion and that of the Trebuchet defendants on February 7, 2023 (the “Order”).⁵ This appeal followed.

DISCUSSION

Southern argues that this appeal should be dismissed because the Order is neither final nor an order from which appeal may be taken under S.C. Code Ann. § 14-3-330. To the contrary, Intact appeals an order refusing an injunction under S.C. Code Ann. § 14-3-330(4). In *Williams, supra*, the South Carolina Supreme Court rejected the same argument made here by Southern, that the trial court’s refusal to enforce a sister state’s Order of Liquidation for an insurance company was not immediately appealable. 307 S.C. at 463-64, 415 S.E.2d at 809-10. There, a North Carolina state court entered a liquidation order for defendant Northwestern Security Life Insurance Company (“Northwestern”). *Id.* at 463, 415 S.E.2d at 809. Williams sued Northwestern and others, and Northwestern moved to dismiss under S.C. Code Ann. § 38-27-430(a) and the injunction in the North Carolina liquidation order. *Id.* The trial court denied Northwestern’s motion to dismiss, and Northwestern filed an interlocutory appeal. *Id.*

Williams argued that the denial of the motion to dismiss was not immediately appealable. *Id.* at 463, 415 S.E.2d at 809-10. The Supreme Court reviewed both Williams’ and Northwestern’s arguments and held that the trial court’s denial of a motion to dismiss based on the injunction was immediately appealable:

Northwestern argues that under section 14–3–330(4) the denial of its motion is immediately appealable. Under this subsection, this Court has appellate jurisdiction over orders “granting, continuing, modifying, or refusing an injunction.” S.C. Code Ann. § 14–3–330(4) (1976) (emphasis added). Northwestern argues that when the trial judge denied its motion to dismiss, the injunction in effect was refused thereby

⁵ A copy of the Order is appended as **Exhibit 4**.

bringing the order within the parameters of subsection (4). Under these facts, we agree.

Holding that this order is immediately appealable, we now address whether the trial judge erred in denying Northwestern's motion.

Id. at 464, 415 S.E.2d at 810; *see also* 24 S.C. Jur. *Rules of Civil Procedure* § 12.2 (“if a motion to dismiss is based on an injunction issued by the court of another state, then the denial will be immediately appealable under the clear terms of section 14-3-330(4)”) (citing *Williams*, 307 S.C. at 464, 415 S.E.2d at 810); Jean Hoefer Toal, et al., *Appellate Practice in South Carolina* at Ch. 8, Section V, ¶ 9 (3rd ed. 2016) (“Where the trial judge denies a motion to dismiss, which has the effect of refusing an injunction, the order is appealable under section 14-3-330(4).”) (citing *Williams*, 307 S.C. at 464, 415 S.E.2d at 810).⁶

Just as in *Williams*, here Intact moved to dismiss under S.C. Code Ann. § 38-27-430 and an order of liquidation of an insurer entered by a sister state under that state’s Insurer Rehabilitation and Liquidation Act. The trial court denied Intact’s motion to dismiss, thereby refusing an injunction. This appeal falls squarely within S.C. Code Ann. § 14-3-330(4).

Southern may contend that this case is distinguishable from *Williams* because Southern sues former affiliates of Bedivere, rather than Bedivere itself. That contention goes to the merits of the appeal, rather than to whether the appeal falls under § 14-3-330(4).

Furthermore, courts have held that similar injunction orders bar proceedings against entities alleged to have caused insurers to become insolvent. *See, e.g., Brooklyn Union Gas Company v. Century Indemnity Company*, No. 403087/2002, 2005 N.Y. Slip Op. 30325 at *6-7

⁶ *Williams* ultimately held that the trial court erred in failing to dismiss the case against Northwestern in light of the North Carolina liquidation order and injunction under S.C. Code Ann. § 38-27-430(a). *Williams*, 307 S.C. at 465, 415 S.E.2d at 810.

(N.Y. Sup. Ct. Jan. 10, 2005)⁷ (dismissing policyholder’s claims against third party who allegedly caused insurer to become insolvent because allowing the plaintiff’s claim to proceed “would undermine the very stay that was instituted by the court ordering the liquidation” and thus the principles of reciprocity imposed by state law); *Consolidated Edison Company v. American Home Insurance Company*, No. 600527/01, Slip Op. at 2, 2005 N.Y. Misc. LEXIS 8439 *1 (N.Y. Sup. Ct. Mar. 29, 2005)⁸ (dismissing claim that third party was “legally responsible for [insolvent insurer’s] coverage obligations to plaintiff” because affording “full faith and credit,” to foreign liquidation order foreclosed plaintiff’s claim); *Argon Fin. Group v. Marro*, 897 F. Supp. 568 (D.D.C. 1995); *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791, 795, 797 (Tex. 1992); see also *Garrou v. Shovelton*, 439 P.3d 65 (Col. Ct. App. 2019) (reversing and remanding for entry of a stay of a medical malpractice claim against the defendant nurse anesthetist following entry of a South Carolina liquidation order for the defendant’s insurer that contained an injunction, and holding that court must give full faith and credit to any injunction order in liquidation proceedings); *Antinopoulos v. DS Contractors, Inc.*, No. 01-CP-10-632, 2003 WL 25465662 (S.C.Com.Pl.) (Trial Order) (staying proceedings against insured in light of New Hampshire Order of Liquidation and S.C. Code Ann. § 38-27-430(a)).

Moreover, Southern pleads that it seeks assets that belong to Bedivere: “OneBeacon [Intact] stripped assets of *OneBeacon Insurance Company*, later named Bedivere” SAC ¶ 124 (emphasis added); see also, *id.* ¶¶ 154, 158. The Liquidation Order is much broader than a simple injunction against suits naming Bedivere as a defendant; it vests in the Liquidator in Pennsylvania

⁷ A copy of *Brooklyn Union Gas Company v. Century Indemnity Company* is available at https://www.nycourts.gov/reporter/pdfs/2005/2005_30325.pdf.

⁸ A copy of *Consolidated Edison Company v. American Home Insurance Company* is also available at https://decisions.courts.state.ny.us/fcas/fcas_docs/2005mar/300600527200122sciv.pdf.

title to all assets, including rights of action, of Bedivere. Liquidation Order ¶ 4. The Liquidation Order also asserted jurisdiction in the Commonwealth Court “over all determinations as to whether assets belong to Bedivere or to another party.” *Id.* The Liquidation Order expressly enjoins parties from “taking any steps whatsoever to ... exercise purported rights in or against any property or assets of Bedivere” except as provided by Pennsylvania statute. *Id.* ¶ 14. Courts have held that such liquidation orders from sister states bar others, such as Southern, from bringing similar claims. *See, e.g., A.P.I., Inc. v. Home Ins. Co.*, 706 F. Supp. 2d 926, 937, 939 (D. Minn. 2010) (dismissing claims because the liquidation order “vest[ed] the Liquidator with exclusive authority” to pursue such claims and prohibited plaintiffs from “recover[ing] damages relating to Home’s res, which the Liquidator has sole authority to protect and manage.”); *Boedeker v. Rogers*, 746 N.E.2d 625, 635-36 (Ohio App. Ct. 2000); *Corcoran v. Frank B. Hall & Co., Inc.*, 545 N.Y.S.2d 278, 284-85 (1st Dept. 1989) (liquidator had exclusive standing to assert claims for fraudulent transfers and other common law remedies against holding company where such claims were on behalf of the insurance company, its creditors and policyholders).

Southern acknowledges that it is prohibited from suing Bedivere. *See* Southern Insulation’s Joint Response to the Motions to Dismiss at 35 (“Southern is prohibited from directly litigating against Potomac, due to the automatic stay in place resulting from Potomac’s liquidation”).⁹ But in contending that Intact and Bedivere were alter egos and constituted a single business enterprise, SAC ¶¶ 175-83, Southern alleges that in the eyes of the law, its claims *are against Bedivere*, because the corporate distinction between Bedivere and Intact must be disregarded. *See, e.g.,* Southern’s Joint Response to the Motions to Dismiss at 23–24 n.10, 26, 34 (under single

⁹ A copy of the Joint Response is appended as **Exhibit 5**.

enterprise theory, courts regard multiple corporations as the same enterprise) (citing *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 652-53, 817 S.E.2d 273, 279 (2018), among others).

CONCLUSION

Because the Order constitutes an order refusing an injunction under S.C. Code Ann. § 14-3-330(4), as set forth in *Williams, supra*, Intact respectfully requests that this Court deny Respondent's motion to dismiss the appeal.

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**ATTORNEYS FOR APPELLANTS INTACT
INSURANCE GROUP USA HOLDINGS INC.
AND INTACT INSURANCE GROUP USA LLC**

March 6, 2023

EXHIBIT 1

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

SOUTHERN INSULATION, INC., through
its Receiver, Peter D. Protopapas,

Case Number: 2020-CP-40-04385

Plaintiff,

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

vs.

ONEBEACON INSURANCE GROUP, LTD.
(f/k/a White Mountains Insurance Group,
Ltd., f/k/a CGU Insurance Company, f/k/a
Commercial Union Corporation, f/k/a General
Accident Insurance Company of America);
ONEBEACON INSURANCE GROUP LLC
(n/k/a Intact Insurance Group USA LLC);
R.V. CHANDLER & ASSOCIATES, INC.;
CHANDLER RENTAL PROPERTIES, INC.;
THOMAS S. CHANDLER; JEAN B.
OWNBEY, as Trustee of the Thomas S.
Chandler, Sr. Living Trust u/d 4/06/06;
GENE N. NORVILLE; the SOUTH
CAROLINA PROPERTY AND CASUALTY
INSURANCE GUARANTY
ASSOCIATION; TREBUCHET US
HOLDINGS, INC.; TREBUCHET
INVESTMENTS LIMITED; TREBUCHET
GROUP HOLDINGS LIMITED (f/k/a
Armour Group Holdings Limited); BRAD S.
HUNTINGTON, individually; and JOHN C.
WILLIAMS, individually.

SECOND AMENDED
SUMMONS AND COMPLAINT

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Second Amended Complaint upon the Plaintiff at 807 Gervais Street, Suite 301

Columbia, South Carolina 29204 within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Second Amended Complaint within this time, judgment by default may be entered against you for the relief demanded in the Second Amended Complaint.

Respectfully Submitted,

s/ Matthew Richardson

Matthew Richardson

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February 18, 2022

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Southern Insulation, Inc.***

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

SOUTHERN INSULATION, INC., through
its Receiver, Peter D. Protopapas,

Case Number: 2020-CP-40-04385

Plaintiff,

In Re:

Asbestos Personal Injury Litigation
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vs.

ONEBEACON INSURANCE GROUP, LTD.
(f/k/a White Mountains Insurance Group,
Ltd., f/k/a CGU Insurance Company, f/k/a
Commercial Union Corporation, f/k/a General
Accident Insurance Company of America);
ONEBEACON INSURANCE GROUP LLC
(n/k/a Intact Insurance Group USA, LLC);
R.V. CHANDLER & ASSOCIATES, INC.;
CHANDLER RENTAL PROPERTIES, INC.;
THOMAS S. CHANDLER; JEAN B.
OWNBEY, as Trustee of the Thomas S.
Chandler, Sr. Living Trust u/d 4/06/06;
GENE N. NORVILLE; THE SOUTH
CAROLINA PROPERTY AND CASUALTY
INSURANCE GUARANTY
ASSOCIATION; TREBUCHET US
HOLDINGS, INC.; TREBUCHET
INVESTMENTS LIMITED; TREBUCHET
GROUP HOLDINGS LIMITED (f/k/a
Armour Group Holdings Limited); BRAD S.
HUNTINGTON, individually; and JOHN C.
WILLIAMS, individually.

Defendants.

SECOND AMENDED COMPLAINT

Pursuant to Rule 15(a) and (d), SCRCPP, and with consent of all existing Defendants,
Plaintiff Southern Insulation, Inc. ("Southern"), by and through its Receiver Peter D. Protopapas

(the “Receiver”) (collectively “Plaintiff”), files this Second Amended Complaint against the above-named defendants as follows:

THE PARTIES

1. Peter D. Protopapas was appointed as Southern’s Receiver, by Order of the Honorable Jean H. Toal of the Fifth Judicial Circuit, see *Hopper v. Air & Liquid Sys. Corp. et al.*, C.A. No. 2019-CP-40-00076; in the South Carolina Court of Common Pleas (“Receivership Order”). The Receiver’s primary place of business is in Richland County, South Carolina.

2. Southern was incorporated under the laws of South Carolina and had its principal place of business in South Carolina. Southern was administratively dissolved on or about December 5, 1991.

3. OneBeacon Insurance Group, Ltd., formerly known as White Mountains Insurance Group, Ltd., formerly known as CGU Insurance Company, formerly known as Commercial Union Corporation, formerly known as General Accident Insurance Company of America (“OneBeacon Group Parent”), is a limited liability company organized under the laws of Bermuda with its principal place of business in Plymouth, Minnesota.

4. OneBeacon Insurance Group LLC (“OneBeacon Insurance Group”), now known as Intact Insurance Group USA LLC (under the brand Intact Insurance Specialty Solutions), is a limited liability company organized under the laws of Delaware with its principal place of business in Plymouth, Minnesota. OneBeacon has a South Carolina registered agent, namely Corporation Service Company, located at 508 Meeting Street, Columbia, South Carolina, 29169.

5. OneBeacon Insurance Group is a subsidiary of OneBeacon Group Parent (collectively “OneBeacon”).

6. R.V. Chandler & Associates, Inc. is incorporated under the laws of South Carolina with its principal place of business in South Carolina.

7. Chandler Rental Properties, Inc., formerly known as R.V. Chandler & Co., Inc., is incorporated under the laws of South Carolina with its principal place of business in South Carolina and a registered agent who is a natural person in Greenville, South Carolina.

8. Thomas S. Chandler is a citizen and resident of Greenville County, South Carolina.

9. Jean B. Ownbey, as Trustee of the Thomas S. Chandler, Sr. Living Trust u/d 4/06/06, is a citizen and resident of Greenville County, South Carolina.

10. Gene N. Norville is a citizen and resident of Greenville County, South Carolina.

11. Upon information and belief, R.V. Chandler & Associates, Inc.; Chandler Rental Properties, Inc.; Thomas S. Chandler; Jean B. Ownbey, as Trustee of the Thomas S. Chandler, Sr. Living Trust u/d 4/06/06; and Gene N. Norville are successors-in-interest and/or are otherwise liable for the acts and omissions of R.V. Chandler & Sons, Inc. These parties are collectively the “Chandler Defendants.”¹

12. The South Carolina Property and Casualty Insurance Guaranty Association (the “Guaranty Association”) is an unincorporated legal entity organized under the laws of South Carolina and is in Columbia, South Carolina.

13. Trebuchet US Holdings, Inc. (“Trebuchet US”) is a business corporation incorporated under the laws of Delaware with its principal place of business in Philadelphia, Pennsylvania. It is a wholly owned subsidiary of Trebuchet Investments Limited.

¹ Correll Insurance Group, LLC, a former party to this action, was dismissed after reaching a settlement with the Receiver, and assigned to the Receiver its right to recover against the Chandler Defendants in connection with the crossclaims and third-party claims Correll Insurance Group had asserted in this action against the Chandler Defendants.

14. Trebuchet Investments Limited (“Trebuchet Investments”), which is organized under the laws of Bermuda, is a wholly owned subsidiary of Trebuchet Group Holdings Limited.

15. Trebuchet Group Holdings Limited (“Trebuchet Group”), which is organized under the laws of Bermuda, is, upon information and belief, the parent or ultimate parent company of Trebuchet Investments, Trebuchet US, and Bedivere Insurance Company, among others. It was formerly known as Armour Group Holdings Limited. Trebuchet US, Trebuchet Investments, and Trebuchet Group when referenced collectively with Defendants Huntington and Williams below are the “Trebuchet Defendants.”

16. Brad S. Huntington (“Huntington”) is an individual who, upon information and belief, is domiciled and has his primary business address in Philadelphia, Pennsylvania.

17. John C. Williams (“Williams”) is an individual who, upon information and belief, is domiciled and has his primary business address in Philadelphia, Pennsylvania.

JURISDICTION AND VENUE

18. This Court has exclusive jurisdiction over this suit because this Court appointed the Receiver for Southern, a South Carolina corporation, and “all of its property wherever located,” S.C. Code Ann. 33-14-320(a), in Richland County, South Carolina, and all parties and issues raised in this suit are within this Court’s subject matter jurisdiction.

19. Defendants are subject to the jurisdiction of this Court pursuant to due process and the South Carolina Long-Arm Statute, including S.C. Code. Ann. § 36-2-803 in that Defendants:

- (1) are residents of this State;
- (2) transacted business in this State;
- (3) committed tortious acts in whole or in part in this State;

- (4) caused injury in this State while regularly doing or soliciting business or while engaging in a persistent course of conduct or deriving substantial revenue from goods or services used in South Carolina;
- (5) contracted to supply services in this State; and/or
- (6) contracted to insure persons, property, or risk located within this State at the time of contracting.

20. Because the insurance policies at issue were intended to cover losses occurring in South Carolina and losses occurred here in Richland County where the Receiver was appointed and is located, venue is proper in this Court; see S.C. Code Ann. § 15-7-70.

21. Venue is also proper because this Court is the Receivership Court with cases pending and new filings anticipated in this Court. Pursuant to the Order of the Supreme Court of South Carolina, Order Number 2019-05-28-02, the Honorable Jean H. Toal has jurisdiction in all judicial circuits in this State to dispose of all pretrial matters and motions, as well as trials, arising out of asbestos and asbestosis litigation filed within the state court system. Thus, the Honorable Jean H. Toal has jurisdiction over and has been assigned this matter.

GENERAL ALLEGATIONS

- 22. Southern was incorporated in South Carolina on or about April 27, 1967.
- 23. Southern was administratively dissolved on or about December 5, 1991.
- 24. Southern is alleged to have exposed throughout its period of operations numerous employees, clients, and other third parties to asbestos-containing products, materials, and/or equipment in connection with the installation, repair, replacement, removal, and/or disturbance of thermal insulation materials.

25. The people allegedly exposed to or harmed by asbestos by Southern's conduct ("Asbestos Claimants") claim that they or others whom they represent have suffered bodily injury that took place from 1967 through 1991 and thereafter continued and progressed.

26. The Asbestos Claimants have asserted numerous lawsuits, many of which are pending in this Court, against Southern "Asbestos Suits").

Policies Issued to Southern

27. Potomac Insurance Company ("Potomac")² and other insurance companies issued general liability and/or manufacturers and contractors policies to Southern while Southern was in business.

28. These policies (collectively, "Insurance Policies") provide defense and indemnity coverage for the Asbestos Suits.

29. Potomac changed its corporate name several times over the years and in 2014 was known as OneBeacon Insurance Company. It was a direct or indirect wholly owned subsidiary of OneBeacon until December 23, 2014, at which time it became a wholly owned subsidiary of Trebuchet US. In 2015, OneBeacon Insurance Company changed its corporate name to Bedivere Insurance Company.

30. Upon information and belief, R.V. Chandler & Sons, Inc. acted as an agent or broker for Southern, placing insurance covering Southern with one or more of Southern's insurers, including various Insurance Policies. The Chandler Defendants, as successors-in-interest to and/or as individuals or entities otherwise liable for the acts and omissions of R.V. Chandler & Sons, Inc., are liable for the acts and omissions of R.V. Chandler & Sons, Inc.

31. Plaintiff has tendered the Asbestos Suits for defense and coverage.

² See *infra* note 3 for identification of a different Potomac Insurance Company.

32. Most of Southern's insurers have admitted that they insured Southern and have, under a reservation of rights, undertaken their insuring obligations to Southern, including in circumstances where their policies are missing, in whole or in part.

33. Southern also has evidence that establishes the terms of the policies issued by Potomac.

34. Additionally, these policies were issued with standard terms and conditions, and it is the burden of the insurers to prove any limitation to or exclusion of coverage.

OneBeacon's Asset Stripping and Bedivere's Liquidation

35. Upon information and belief, OneBeacon engaged in conduct that caused OneBeacon or its other affiliates to receive substantial and material assets of OneBeacon Insurance Company over time and in return provided inadequate consideration, thereby increasing OneBeacon's assets and enhancing the value of OneBeacon's ownership interest in its other affiliates, while leaving OneBeacon Insurance Company on a path to insolvency and lacking adequate assets to pay the claims of Southern. Upon information and belief, OneBeacon engaged in the same conduct with respect to OneBeacon Insurance Company's subsidiaries and with respect to Potomac II (hereinafter defined), another wholly owned subsidiary of OneBeacon .

36. Upon information and belief, as is set forth more fully below OneBeacon Insurance Company was merely an instrumentality and alter ego of OneBeacon because OneBeacon had effective control of OneBeacon Insurance Company's assets and used them in furtherance of unrelated lines of business of OneBeacon or its other affiliates.

37. Upon information and belief, through a concerted effort that took several months prior to December 23, 2014 to complete, OneBeacon enriched itself and failed to return money or

value to OneBeacon Insurance Company, thus rendering OneBeacon Insurance Company grossly undercapitalized and ultimately insolvent, all at the ultimate expense of Southern.

38. Upon information and belief, through a complex series of transactions, OneBeacon asserted dominion over OneBeacon Insurance Company and usurped its assets. Upon information and belief, OneBeacon treated itself to enormous dividends and systematically stripped OneBeacon Insurance Company of its capital. Specifically, prior to December 23, 2014, capital was transferred from OneBeacon Insurance Company to OneBeacon or its other affiliates. OneBeacon knew that policyholders would continue to file claims on policies issued by Potomac. Nonetheless, OneBeacon proceeded with its and its other affiliates' takeover of OneBeacon Insurance Company's assets and resources. Instead of taking and assuming Southern's asbestos policies or leaving sufficient assets with OneBeacon Insurance Company to pay the certain and expected claims against Southern's asbestos policies, OneBeacon left OneBeacon Insurance Company with such inadequate capitalization that OneBeacon Insurance Company was effectively placed in a position to inevitably become, and now is, insolvent.

39. In addition, on or about December 23, 2014, OneBeacon sold OneBeacon Insurance Company, its two wholly owned runoff insurance companies, and Potomac II to Trebuchet US, which was a direct or indirect wholly owned subsidiary of Trebuchet Investments and Trebuchet Group, in a stock sale transaction (hereinafter the "Transaction").

40. The Transaction changed the corporate parentage of OneBeacon Insurance Company from OneBeacon to the Trebuchet Defendants. Very limited financial statements were made publicly available prior to the Transaction concerning the financial condition of the Trebuchet Defendants, concealing their true financial condition, jeopardizing the stability of OneBeacon Insurance Company, and prejudicing the interests of Southern.

41. Upon information and belief, prior to the Transaction, OneBeacon had knowingly and materially underestimated its and its subsidiaries' long-tail liability exposures for many years. OneBeacon knew or should have known that OneBeacon Insurance Company's reserves would not be adequate to meet future liabilities under Southern's occurrence insurance policies issued by Potomac.

42. Further, prior to the Transaction, OneBeacon falsely claimed the Transaction would be economically neutral for OneBeacon and portrayed the Transaction as providing increased stability for all parties. Instead, the Transaction was economically beneficial to OneBeacon and devastating to Southern.

43. Using self-serving and fundamentally flawed data, OneBeacon's Pre-Transaction projections materially misrepresented the viability of OneBeacon Insurance Company with the intent of removing from OneBeacon and its other affiliates the long-tail liabilities of OneBeacon Insurance Company.

44. Contrary to these representations, OneBeacon knew that the Transaction substituted the Trebuchet Defendants, a weak group of companies with weak balance sheets, for the financially stronger OneBeacon organization, including OneBeacon's ongoing underwriting operations, assets, and income stream. Moreover, as noted above, OneBeacon Insurance Company was made more vulnerable to this discrepancy by OneBeacon's removal of large amounts of assets and capital from OneBeacon Insurance Company before the Transaction.

45. As a result of the Transaction, OneBeacon Insurance Company was removed from the strong and profitable specialty underwriting business of OneBeacon and consigned to the dramatically weaker resources of the Trebuchet Defendants' runoff business, with large amounts

of capital previously supporting the Insurance Policies having been stripped out of OneBeacon Insurance Company by OneBeacon in advance of the Transaction.

46. The Transaction furthered the interests of OneBeacon and its shareholders at the expense of honoring commitments to Southern under discontinued lines of comprehensive general liability business.

47. OneBeacon knew that OneBeacon Insurance Company had substantial outstanding obligations, which would come due in subsequent years, in the form of claims from its policyholders, such as Southern, on policies written in previous years. Because of OneBeacon's misconduct, OneBeacon Insurance Company has not had the resources needed to pay these certain and expected claims.

48. Despite its knowledge of OneBeacon Insurance Company's long-tail liability exposure and the weak financial position of the Trebuchet Defendants' runoff business, OneBeacon misrepresented to the public and insurance regulators that the Transaction was in the interest of OneBeacon Insurance Company and its policyholders and that OneBeacon Insurance Company and the other then-acquired companies would each maintain adequate capitalization as a member of the Trebuchet Defendants group to cover its existing and potential future liabilities.

49. Upon information and belief, but for OneBeacon's misrepresentations, the Pennsylvania Insurance Commission would not have approved the Transaction and OneBeacon Insurance Company would have remained adequately capitalized and supported as a OneBeacon subsidiary.

50. Upon information and belief, the foregoing actions of OneBeacon were designed or actually intended by OneBeacon to hinder, delay and/or defraud OneBeacon Insurance Company's creditors, including and especially policyholders like Southern.

51. The obvious and direct consequence of the foregoing actions of OneBeacon was that OneBeacon Insurance Company's creditors would not be able to claim against significant assets previously owned and transferred to OneBeacon and its other affiliates by OneBeacon Insurance Company, that OneBeacon Insurance Company was left with a minimal asset base against which creditors of OneBeacon Insurance Company could recover in the future, and that OneBeacon Insurance Company's creditors were and have been hindered and/or delayed.

52. OneBeacon believed or reasonably should have believed that, after the Transaction, OneBeacon Insurance Company would incur debts beyond its ability to pay as they became due.

53. By effectuating the Transaction and the pre-Transaction transfers, OneBeacon fraudulently caused OneBeacon Insurance Company's assets to be transferred for the benefit of OneBeacon and its other affiliates, without the receipt by OneBeacon Insurance Company of reasonably equivalent value in exchange.

54. By effectuating the Transaction and the pre-Transaction transfers, OneBeacon engaged in a fraudulent transfer of assets, or caused a fraudulent transfer of assets to occur, because the assets were transferred to insiders.

55. On February 9, 2015, OneBeacon Insurance Company changed its corporate name to Bedivere Insurance Company ("Bedivere").

56. On December 9, 2020, Bedivere merged with three affiliated companies, namely the Employers' Fire Insurance Company ("EFIC"), Lamorak Insurance Company ("Lamorak"), and Potomac Insurance Company ("Potomac II").³

57. On March 11, 2021, the Pennsylvania Commonwealth Court approved an order of liquidation for Bedivere, recognizing that Bedivere's financial liabilities exceeded its assets.

³ This Potomac Insurance Company –not to be confused with the issuer of Southern's insurance policies – was incorporated in 1995 and, upon information and belief, has been an affiliate of OneBeacon since its inception.

58. Bedivere's liquidation was both the natural and intended result of the Transaction and the prior asset transfers described above, delaying and defrauding Southern and its asbestos claimants.

59. OneBeacon's conduct caused Bedivere to become insolvent and placed into liquidation. As a result, Bedivere is inadequately capitalized and unable to pay Southern the money legally obligated to be paid under the Insurance Policies. Accordingly, OneBeacon is ultimately responsible for these losses and the real-party-in-interest under Potomac's Insurance Policies and thus is liable for Potomac's obligations to Southern.

Trebuchet's Asset Stripping and the 2020 Merger

60. Upon information and belief, Huntington and Williams were at all material times subsequent to December 23, 2014 the sole ultimate controlling persons of Trebuchet Group, its wholly owned subsidiary, Trebuchet Investments, its wholly owned subsidiary, Trebuchet US, and its wholly owned subsidiaries, including Bedivere.

61. Upon information and belief, until December 9, 2020, EFIC and Lamorak were wholly owned subsidiaries of Bedivere Insurance Company.

62. Upon information and belief, Huntington and Williams were, therefore, the sole ultimate controlling persons of EFIC and Lamorak.

63. Upon information and belief, as is set forth more fully below, each of Trebuchet US, Bedivere, EFIC and Lamorak was merely an instrumentality and alter ego of defendants Huntington, Williams, Trebuchet Investments, and Trebuchet Group, in that Huntington, Williams, Trebuchet Investments, and Trebuchet Group had and exercised effective control of the assets and liabilities of Trebuchet US, Bedivere, EFIC, and Lamorak and used them in furtherance of unrelated lines of business and/or for personal gain.

64. Upon information and belief, Huntington and Williams established Trebuchet US in 2012 for the sole purpose of the acquisition of OneBeacon Insurance Company, Potomac II, EFIC, and Lamorak (then known as OneBeacon America Insurance Company).

65. Upon information and belief, on October 1, 2020, Huntington and Williams filed an initial request (“Application”) with the Pennsylvania Department of Insurance for approval to merge EFIC, Lamorak, and Potomac II with and into Bedivere Insurance Company, with Bedivere Insurance Company being the survivor (the “Merger”).

66. The Pennsylvania Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1921, P.L. 682 as amended, 40 P.S. §§991.1401 *et seq.*, provides that all mergers or other acquisitions of control of domestic insurers must be filed with the Pennsylvania Department of Insurance for approval or disapproval.

67. Upon information and belief, the Application filed by Huntington and Williams was exempt from certain requirements under the law, such as a public hearing, because the Merger did not have the effect of changing or influencing the control of a domestic insurer. 40 P.S. §§991.1402(g). This is because Huntington and Williams controlled all entities concerned, both before and after the Merger.

68. The Pennsylvania Department of Insurance published notice in the *Pennsylvania Bulletin* that the Application for the Merger was submitted by Huntington and Williams.

69. Upon information and belief, Huntington and Williams planned to merge Bedivere, EFIC, Lamorak, and Potomac II as early as August 2020.

70. Upon information and belief, the Agreement and Plan of Merger (“Merger Agreement”) was adopted by the boards of directors of Bedivere and Potomac II on August 6,

2020, and the Merger Agreement was approved by Trebuchet US, the sole shareholder of Bedivere and Potomac II, on the same day.

71. Upon information and belief, upon the effective date of the Merger, EFIC, Lamorak, and Potomac II transferred to Bedivere, and Bedivere acquired, all the assets of EFIC, Lamorak and Potomac II and Bedivere assumed and thereby incurred all the debts, obligations, and other liabilities of EFIC, Lamorak, and Potomac II.

72. Upon information and belief, but for these actions of Huntington, Williams, and Trebuchet US, the Merger would not have occurred.

73. Upon information and belief, one significant motivation for the Merger was, among others, the enormous liability and obligation facing Lamorak from asbestos and environmental claims arising in the matter of *Olin Corporation v. Lamorak Insurance Company*, Case No. 1:84-cv-01968-JSR, in the Southern District of New York.

74. Upon information and belief, Huntington and Williams knew that Bedivere, EFIC, Lamorak, and Potomac II were grossly undercapitalized and ill-prepared to pay claims of Southern and other insured companies, like Olin Corporation.

75. Upon information and belief, on December 4, 2020, the Insurance Commissioner of Pennsylvania approved the Merger.

76. The Merger occurred on December 9, 2020. As a result of the Merger, the assets of Bedivere became subject to the liabilities and obligations of EFIC, Lamorak, and Potomac II, including but not limited to Lamorak's liability to Olin Corporation.

77. On February 4, 2021, the United States District Court for the Southern District of New York entered an Opinion and Order in the *Olin Corporation v. Lamorak Insurance Company*

case, granting judgment against Lamorak in the principal amount of \$25,177,789.00 plus prejudgment interest.

78. Subsequently, on February 12, 2021, the court entered judgment against Lamorak for \$49,346,803, reflecting the sum of the principal amount of the judgment plus prejudgment interest of \$24,169,014.

79. On February 25, 2021, the Board of Directors of Bedivere unanimously consented to, and Huntington and Williams through their control of Trebuchet US, as the sole shareholder of Bedivere, consented to the entry of an Order of Liquidation for Bedivere. On that date, Bedivere executed a Consent to Entry of Order of Liquidation for Bedivere. On or around March 2, 2021, the Insurance Commissioner of the Commonwealth of Pennsylvania filed a Petition for Liquidation of Bedivere in the Commonwealth Court of Pennsylvania.

80. On March 11, 2021, the Liquidation of Bedivere was ordered.

81. By effectuating the Merger, the Trebuchet Defendants made Bedivere's assets subject to the liabilities and obligations of EFIC, Lamorak, and Potomac II, to the detriment of Southern.

82. By effectuating the Merger, the Trebuchet Defendants fraudulently caused Bedivere to incur obligations for the benefit of other subsidiaries of the Trebuchet Defendants, without the receipt by Bedivere of reasonably equivalent value in exchange.

83. By effectuating the Merger, the Trebuchet Defendants caused a fraudulent incurrence of obligations to occur because one or more of EFIC, Lamorak, and Potomac II was insolvent.

84. By effectuating the Merger, the Trebuchet Defendants engaged in a fraudulent incurrence of obligations, or caused a fraudulent incurrence of obligations to occur, because the obligations were transferred and incurred to, from, and among insiders.

85. By effectuating the Merger, the Trebuchet Defendants caused a fraudulent incurrence of obligations to occur, because under South Carolina and/or Pennsylvania law, a merger that occurs within a period of one year before a successful petition for liquidation is fraudulent per se. S.C. Code Ann. § 38-27-450; 40 P.S. § 221.28.

86. The timing of the Merger and subsequent liquidation are such that a factfinder can infer actual fraudulent intent.

87. Upon information and belief, the foregoing actions of the Trebuchet Defendants were designed or intended by the Trebuchet Defendants to hinder, delay and/or defraud Southern as a creditor of Bedivere.

88. The obvious and direct consequence of the foregoing actions of the Trebuchet Defendants was that Potomac policyholders and other creditors would not be able to claim against significant assets previously owned by Bedivere. After the Merger, these assets became subject to liabilities and obligations of other companies affiliated with the Trebuchet Defendants, Bedivere was left with an insufficient asset base against which Southern, as a Potomac policyholder, could recover in the future, and Southern was and has been denied, hindered, and/or delayed in receiving payments and benefits under the Insurance Policies.

89. The Trebuchet Defendants believed or reasonably should have believed that, after the Merger, Bedivere would incur debts beyond its ability to pay as they became due.

90. When viewed in context, the badges of fraud under the fraudulent conveyance statutes of both South Carolina and Pennsylvania are present such that the Merger should be set aside for the benefit of Southern.

Appointment of Receiver

91. On May 7, 2019, the Court appointed the Receiver, giving him the power and authority to fully marshal and administer all assets of Southern, to accept service on behalf of Southern, to engage counsel on behalf of Southern, and to take all steps necessary to protect the interests of Southern, whatever they may be.

92. Since his appointment, the Receiver has expended substantial time and incurred expenses to identify potential assets and responsive policies and to defend asbestos lawsuits in fulfillment of his responsibility as Receiver.

93. The Receiver will continue to expend substantial time and incur expenses on behalf of Southern in the fulfillment of his duties.

Tolling of Statute of Limitations

94. The Receiver has diligently pursued and investigated the claims asserted in this Complaint. Through no fault of his own, the Receiver did not receive notice or learn of the factual basis for his claims against OneBeacon or the Trebuchet Defendants related to the above-described transfers, the Transaction, the Merger, or the injuries suffered until after the March 12, 2021 announcement of Bedivere's liquidation. Consequently, one or more of the following doctrines apply to toll the statute of limitations.

95. ***Discovery Rule Tolling.*** The Receiver did not know or have reason to know about the transfers and Transaction prior to his appointment in May 2019. Moreover, the Receiver did not learn that Bedivere was in liquidation until March 2021. For these reasons, any applicable

statutes of limitation have been tolled by operation of the discovery rule with respect to the Receiver's claims against OneBeacon that arise out of the transfers and Transaction and against the Trebuchet Defendants.

96. ***Fraudulent Concealment Tolling.*** Any applicable statutes of limitation have also been tolled by OneBeacon's and the Trebuchet Defendants' knowing and active fraudulent concealment and denial of the true facts relating to and motives underlying the transfers and Transaction.

97. ***Waiver and Estoppel.*** Based on the foregoing, OneBeacon and the Trebuchet Defendants have waived and should be estopped from relying on any statutes of limitations or laches as a defense in this action.

COUNT I
(Declaratory Judgment Against all Defendants)

98. Each of the allegations in the foregoing paragraphs is incorporated herein as if repeated verbatim.

99. Under the South Carolina Property and Casualty Insurance Guaranty Association Act ("the Act"), the Guaranty Association is obligated to process and pay covered claims against insolvent member insurers. *See* S.C. Code Ann. §§ 38-31-10 to -170.

100. Bedivere is an insolvent member insurer, as those terms are defined in S.C. Code Ann. section 38-31-20.

101. As a result of the Asbestos Suits, Southern has submitted multiple claims to Bedivere that remain unpaid and constitute "covered claims" under S.C. Code Ann. section 38-31-20(8).

102. Due to Bedivere's insolvency and the Guaranty Association's obligations under the Act, the Guaranty Association must take Bedivere's place in processing and paying Southern's relevant claims.

103. Accordingly, Southern seeks a declaration from this Court that the Guaranty Association is obligated to Southern for covered claims owed to Southern under the terms of the Potomac policies.

104. Pursuant to *Jeffcoat v. Morris*, 300 S.C. 526, 389 S.E.2d 159 (Ct. App. 1989), a receiver holds the property by the same right and title as the person for whose property he or she is receiver.

105. Upon information and belief, Southern held an interest in the Insurance Policies, which, therefore, are property of Southern.

106. As the receiver of Southern, the Receiver is entitled to the Insurance Policies, which are believed to be in the possession or control of Defendants or others.

107. Plaintiff has requested copies of the Insurance Policies, but Defendants have failed to provide complete copies of them.

108. Plaintiff seeks a declaration that he is entitled to copies and documentation of all the Insurance Policies and that Defendants must provide him with copies of those policies and documentation of those policies.

109. Plaintiff further seeks a declaration that Defendants have the duty to defend or pay for the defense of Southern in the Asbestos Suits.

110. As to all the Insurance Policies, Plaintiff seeks the following declarations:

- a. The Insurance Policies cover all Asbestos Suits that allege any bodily injury, personal injury, injurious exposure, progression of injury and/or disease, manifestation of illness, or death during any of their policy periods;
- b. The multiple-year policies and the policies that were subject to annual renewal provide for a full separate limit for product liability and completed operations claims and a full per occurrence limit for premises and operations claims separately for each annual period or portion thereof;
- c. Each Asbestos Suit “triggers” all the Insurance Policies with policy periods from the date of first alleged exposure to asbestos up through and including the date of discovery, or “manifestation” of an asbestos-related disease;
- d. Southern may select the policy or policy years to which to assign or allocate each Asbestos Suit-related loss;
- e. In the case of a claimed ambiguity in any Insurance Policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the Insurance Policies, and Defendants bear the burden of proof as to any such ambiguity;
- f. The burden of proving any limitation or exclusion to coverage is on Defendants;
- g. Defense costs for the Asbestos Suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the Insurance Policies;
- h. The duty to pay or reimburse defense costs is triggered by the allegations of an Asbestos Suit complaint asserted against Southern;

- i. If any allegation or cause of action in the Asbestos Suits is actually or potentially covered under the Insurance Policies, Defendants must defend or reimburse in full the costs of defending against all allegations and causes of action contained in such complaint;
- j. Each Insurance Policy is required to pay or reimburse all sums that Southern becomes legally obligated or reasonably required to pay as damages by reason of the Asbestos Suits, unless there is an unambiguous exclusion or limitation that applies to the applicable suit or there is no bodily injury or allegation thereof during the period of any such Insurance Policy;
- k. The Asbestos Suits that allege exposure to asbestos for which Southern is alleged to be liable, during Southern's operations, including Southern's construction, installation, maintenance, or removal activities, are subject only to the "per occurrence" limits of the Insurance Policies, and not subject to "aggregate" limits, if any, of the Insurance Policies;
- l. Any aggregate limit on coverage in any of the Insurance Policies is a limitation on coverage, and thus Defendants have the burden to prove, based on the evidence, any assertion that any particular Asbestos Suit is subject to the aggregate limits in the Insurance Policies, if any;
- m. Southern's insurers have the burden to prove, based on the evidence, that any particular Asbestos Suit is either a "products" claim or a "completed operations" claim, as those terms are defined in the Insurance Policies, to subject the claim to the appropriate aggregate limits in the Insurance Policies, if any;

n. The “completed operations hazard” described in the Insurance Policies, and the corresponding aggregate limits of liability, apply *only* when a plaintiff is exposed to asbestos products *after* Southern completed its installation or removal operations or work at a particular jobsite;

o. The asbestos insulation contracting, or “operations,” claims against Southern have resulted from multiple “occurrences” under the Insurance Policies, thus entitling Plaintiff to multiple “per occurrence” limits of liability to satisfy its asbestos liabilities; and

p. While product liability or completed operations losses are subject to allocation on a “time on the risk” pro rata allocation method, “operations” claims are allocated on an “all sums” basis, and, in either case, considering its non-operating defunct status, no claim of Plaintiff may be reduced as part of any “time-on-the-risk” allocation scheme.

111. Further, Plaintiff seeks a declaration that if the Insurance Policies were not issued to protect Southern, then the Chandler Defendants and/or the Guaranty Association are responsible for the defense and indemnification of Southern for the relevant years.

112. For each of the Insurance Policies that are missing or incomplete, Plaintiff respectfully requests the Court to declare the essential terms and conditions for each such policy and its coverage afforded to Southern, specifically for the Asbestos Suits.

113. An actual and justiciable controversy exists between Plaintiff and Defendants concerning Defendants’ obligations under the Insurance Policies and as alleged herein.

114. Judicial declarations are necessary and appropriate at this time, and under the circumstances alleged above, so that Plaintiff may ascertain its rights under the Insurance Policies.

COUNT II
(Negligent Failure to Procure Insurance Against the Chandler Defendants)

115. Each of the allegations in the foregoing paragraphs is incorporated herein as if repeated verbatim.

116. The Chandler Defendants had a duty to exercise reasonable skill, care, and diligence to procure appropriate insurance coverage for Southern.

117. Upon information and belief, the Chandler Defendants breached their duty to Southern by failing to place insurance to protect Southern from liability for claims arising from its anticipated business activities and those of its contractors.

118. Upon information and belief, the Chandler Defendants' breaches of these duties of care include but are not limited to failing to adhere to the applicable standard of care in placing insurance; failing to procure sufficient and appropriate coverage; and in such other and further particulars as may be revealed in discovery and established at trial.

119. The Chandler Defendants had an obligation to maintain records concerning the Insurance Policies and failed to do so.

120. Plaintiff did not discover that the Chandler Defendants failed to obtain insurance for it and/or failed to maintain records concerning the Insurance Policies until in or about May 2019, when the Chandler Defendants failed to provide copies of the Insurance Policies to Plaintiff upon request.

121. As a direct and proximate result of the Chandler Defendants' negligent actions and breaches of duties, Plaintiff has been injured and is entitled to recover damages including, but not limited to actual damages, punitive damages, prejudgment interest, attorneys' fees, the costs of this action, and such other and further relief as the Court deems just and proper. The Chandler

Defendants are further responsible for all damages flowing from the lack of insurance benefits that Plaintiff would have otherwise received if coverage had been appropriately produced.

COUNT III
(Common Law Fraudulent Conveyance and Violation of the Statute of Elizabeth, S.C. Code Ann. § 27-23-10, *et seq.*, and/or 12 Pa. C.S.A. §§ 5101 *et seq.*, Against OneBeacon Defendants)

122. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

123. Southern has tendered asbestos claims that remain unpaid to the insurers under the Insurance Policies.

124. OneBeacon stripped assets of OneBeacon Insurance Company, later named Bedivere, including its subsidiaries, leaving Southern's Insurance Policies without the financial support needed to pay the claims of Southern.

125. The transfer of assets from Bedivere to OneBeacon or its other affiliates occurred before and after Bedivere incurred a substantial debt of foreseeable asbestos claims in excess of the reserves allocated for claims.

126. Upon information and belief, these assets were assets of Bedivere within the meaning of S.C. Code Ann. §27-23-10 *et seq.* and/or 12 Pa. C.S.A. §§ 5101 *et seq.*

127. Upon information and belief, OneBeacon caused Bedivere to transfer valuable assets to OneBeacon or its other affiliates.

128. As a former direct or indirect owner controlling Bedivere, OneBeacon had a close relationship with Bedivere such that it is an insider within the meaning of S.C. Code Ann. §27-23-10 *et seq.* and/or 12 Pa. C.S.A. §§ 5101 *et seq.*

129. Bedivere's liquidation is uncontroverted evidence that Bedivere is unable to satisfy its obligations to Southern, and that liquidation resulted from OneBeacon's dominion and control of Bedivere through the transfers of assets to OneBeacon or its other affiliates, as described above.

130. In exchange for the transfers to OneBeacon or its other affiliates, OneBeacon Insurance Company did not receive reasonably equivalent value. OneBeacon effectuated the transfers over time with the express purpose of OneBeacon or its other affiliates taking Bedivere's assets and leaving with Bedivere the policy liabilities. The result of these transfers was Bedivere's inability to pay claims of Southern.

131. Upon information and belief, the foregoing actions of OneBeacon were designed or actually intended by OneBeacon to hinder, delay and/or defraud creditors of Bedivere

132. When Bedivere was made to transfer assets to OneBeacon or OneBeacon's other affiliates for less than reasonably equivalent value, OneBeacon knew or should have known the transfers would cause the assets of Bedivere's operations to be unreasonably small and inadequate for and in relation to the business of Bedivere and to satisfy its insurance contract obligations.

133. When OneBeacon caused OneBeacon Insurance Company to transfer assets to OneBeacon or its other affiliates for less than reasonably equivalent value, OneBeacon intended for OneBeacon Insurance Company to incur, believed it would incur, or reasonably should have believed that it would incur debts far beyond its ability to pay as those debts became due.

134. As a direct result of the transfers, and other misconduct by OneBeacon described above, Bedivere became insolvent and lacks the assets necessary to pay Southern's claims. These claims are not subject to a bona fide dispute.

135. Because OneBeacon caused OneBeacon Insurance Company to transfer assets to OneBeacon or its other affiliates for less than reasonably equivalent value and did so while

knowing (or while it reasonably should have known) that the assets of OneBeacon Insurance Company (and later Bedivere) ultimately would be insufficient to satisfy Bedivere's debts or to pay policyholder claims that were reasonably expected to be accrued into the future, the Bedivere transfers to OneBeacon or its other affiliates are fraudulent and voidable.

136. The fraudulent transfer of assets by OneBeacon Insurance Company, including its subsidiaries, to OneBeacon or its other affiliates has damaged Southern by making it impossible for Bedivere to satisfy its obligations to Southern under the policies issued by Potomac. Consequently, Southern is entitled, at least, to the following equitable relief against defendant OneBeacon:

- a. an attachment, or other provisional or post-trial remedy, against the assets fraudulently transferred from OneBeacon Insurance Company to OneBeacon or its other affiliates, such that a portion of these assets may be used to satisfy Bedivere's obligations to Southern;
- b. an order requiring OneBeacon to pay Bedivere's obligations to Southern;
- c. an order that OneBeacon is estopped from asserting certain defenses to its fraudulent conduct, including the timeliness of such claims by Southern, given the concealment of facts relating to the transfers; and
- d. any other remedies available to Southern as a matter of statutory or common law resulting from the fraudulent transfers described herein.

137. Alternatively, because OneBeacon caused OneBeacon Insurance Company's transfers that defrauded Southern and its Asbestos Claimants, the transfers should be deemed void under South Carolina Code section 27-23-10(A) and/or 12 Pa. C.S.A. §§ 5101 *et seq.*; and the transferred assets needed to satisfy the Insurance Policy obligations to Southern should be ordered

to be paid by OneBeacon and its applicable affiliates to Southern for its asbestos claims, costs, and liabilities, and for the benefit of Southern's creditors.

COUNT IV
(Common Law Fraudulent Conveyance and Violation of the Statute of Elizabeth,
S.C. Code Ann. § 27-23-10 *et seq.*, and/or 12 Pa. C.S.A. §§ 5101 *et seq.*, Against the
Trebuchet Defendants)

138. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

139. Southern has tendered asbestos claims that remain unpaid to the insurers under the Insurance Policies.

140. The Trebuchet Defendants caused the assets of Bedivere, through the Merger, to become subject to the liabilities and obligations of EFIC, Lamorak, and Potomac II, leaving Southern's Insurance Policies without the financial support needed to pay the claims of Southern. By subjecting Bedivere's assets to the liabilities and obligations of EFIC, Lamorak, and Potomac II, the Trebuchet Defendants caused Bedivere to incur obligations of companies controlled by the Trebuchet Defendants without receiving in return equivalent value.

141. The Merger occurred before and after Bedivere incurred a substantial debt of foreseeable asbestos claims in excess of the reserves allocated for claims.

142. Upon information and belief, the assets of Bedivere were assets within the meaning of S.C. Code Ann. §27-23-10 *et seq.* and/or 12 Pa. C.S.A. §§ 5101 *et seq.*

143. As a direct or indirect owner controlling Bedivere and the merged companies, each of the Trebuchet Defendants has a close relationship with Bedivere and the merged companies such that it is an insider within the meaning of S.C. Code Ann. §27-23-10 *et seq.* and/or 12 Pa. C.S.A. §§ 5101 *et seq.*

144. Bedivere's liquidation is uncontroverted evidence that Bedivere is unable to satisfy its obligations to Southern, and that liquidation resulted from the dominion and control by the Trebuchet Defendants of Bedivere and the merged companies through the incurrence of obligations, as described above.

145. In exchange for the incurrence of obligations described above, Bedivere did not receive reasonably equivalent value. Upon information and belief, the Trebuchet Defendants effectuated the Merger with the express purpose of subjecting Bedivere's assets to the liabilities and obligations of EFIC, Lamorak, and Potomac II, without Bedivere receiving equivalent value. The result of the Merger was Bedivere's inability to pay claims of Southern.

146. Upon information and belief, the foregoing actions of the Trebuchet Defendants were designed or actually intended by the Trebuchet Defendants to hinder, delay and/or defraud creditors of Bedivere.

147. When the Merger caused Bedivere to incur obligations of the merged companies for less than a reasonably equivalent value, the Trebuchet Defendants knew or should have known that the Merger would cause the assets of Bedivere's operations to be unreasonably small and inadequate for and in relation to its business and to satisfy its insurance contract obligations for policies issued by Potomac.

148. When the Trebuchet Defendants caused Bedivere to incur obligations of the merged companies for less than a reasonably equivalent value, the Trebuchet Defendants intended for Bedivere to incur, believed it would incur, or reasonably should have believed that it would incur debts far beyond its ability to pay as those debts became due.

149. As a direct result of the incurrence of obligations and other misconduct by the Trebuchet Defendants described above, Bedivere is insolvent and lacks the assets necessary to pay policyholder claims. These claims are not subject to a bona fide dispute.

150. Because the Trebuchet Defendants caused Bedivere to incur obligations of the merged companies for less than reasonably equivalent value, and they did so while knowing (or while they should have known) Bedivere's assets ultimately would be insufficient to satisfy its debts or to pay policyholder claims that were reasonably expected to be accrued into the future, the Bedivere incurrence of obligations effectuated by the Merger is fraudulent and voidable.

151. The fraudulent incurrence by Bedivere of obligations of the merged companies has damaged Southern by making it impossible for Bedivere to satisfy its obligations. Consequently, Southern is entitled, at least, to the following equitable relief against the Trebuchet Defendants:

- a. an attachment, or other provisional or post-trial remedy, against the assets owned by Bedivere prior to the Merger, such that a portion of these assets may be used to satisfy the Insurance Policy obligations to Southern;
- b. an order requiring the Trebuchet Defendants to pay the Insurance Policy obligations to Southern; and
- c. any other remedies available to Southern as a matter of statutory or common law resulting from the fraudulent incurrence of obligations described herein.

152. Alternatively, because the Trebuchet Defendants caused the Merger to occur, which caused EFIC's, Lamorak's, and Potomac II's assets to be transferred to Bedivere, and Bedivere to incur all of the obligations of EFIC, Lamorak, and Potomac II, and as a result thereof caused Bedivere's incurrence of obligations that defrauded Southern and its Asbestos Claimants, the incurrence of obligations should be deemed void under South Carolina Code section 27-23-10(A)

and/or 12 Pa. C.S.A. §§ 5101 *et seq.*; and the assets needed to satisfy the Insurance Policy obligations to Southern should be ordered to be paid to Southern for its asbestos claims, costs, and liabilities, for the benefit of its creditors.

COUNT V
(Unjust Enrichment Against OneBeacon Defendants)

153. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

154. Upon information and belief, in executing the transfers from OneBeacon Insurance Company, OneBeacon and/or its other affiliates acquired and retained substantial assets of OneBeacon Insurance Company and the benefits drawn therefrom to the detriment of Southern.

155. OneBeacon and/or its other affiliates realized substantial value by their acquisition of OneBeacon Insurance Company's assets and, given the nature of the transactions as described herein, it would be inequitable for OneBeacon and/or its other affiliates to retain the benefit of that value.

156. Southern is entitled to restitution and compensation in the form of the defense and indemnification funds to which it is owed under the Insurance Policies and which Southern would have received rightly but for the inequitable transfers described above.

COUNT VI
(Civil Conspiracy Against OneBeacon Defendants)

157. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

158. By executing the fraudulent Transaction and the transfers from OneBeacon Insurance Company, OneBeacon Group Parent and OneBeacon Insurance Group:

- a. agreed to and did, in fact, act in concert with the intent of stripping OneBeacon Insurance Company of assets needed to compensate its claimants and policyholders; and
- b. did strip OneBeacon Insurance Company of its assets, resulting in Bedivere's ultimate liquidation.

159. The transfers and liquidation greatly harmed Southern and its Asbestos Claimants. Specifically, Southern is unable to provide the defense and indemnification it is obligated to provide, and it is damaged by not having the benefit of the Insurance Policies purchased by and issued to Southern.

COUNT VII
(Civil Conspiracy Against the Trebuchet Defendants)

160. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

161. By executing the Merger, Trebuchet Defendants:

- a. agreed to and did, in fact, act in concert with the intent of causing Bedivere to incur liabilities without receiving equivalent value, thereby impairing Bedivere's ability to compensate its claimants and policyholders; and
- b. did encumber Bedivere with liabilities, resulting in Bedivere's ultimate liquidation.

162. The Merger and liquidation greatly harmed Southern and its Asbestos Claimants. Specifically, Southern is unable to provide the defense and indemnification it is obligated to provide, and it is damaged by not having the benefit of the Insurance Policies purchased by and issued to Southern.

COUNT VIII
(Negligence Against OneBeacon Defendants)

163. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

164. OneBeacon owed OneBeacon Insurance Company's policyholders, including Southern, duties to act with reasonable diligence and care in applying for, advocating for, and ultimately executing the Transaction and related transfers.

165. OneBeacon breached its duties by unreasonably:

- a. siphoning money from OneBeacon Insurance Company to OneBeacon or its other affiliates, leaving OneBeacon Insurance Company grossly undercapitalized with depleted reserves;
- b. reviewing and evaluating OneBeacon Insurance Company's existing and future liabilities at the time of the Transaction and the ability to cover its liabilities following the Transaction;
- c. contracting for, accepting, and advancing an inadequate and incorrect risk analysis of OneBeacon Insurance Company's future liabilities and financial position;
- d. providing false or misleading information to the public and Pennsylvania Insurance Commission regarding OneBeacon Insurance Company's liabilities and the financial strength of OneBeacon Insurance Company and the Trebuchet Defendants' runoff business;
- e. transferring OneBeacon Insurance Company to the Trebuchet Defendants, companies with insufficient assets to support OneBeacon Insurance Company,

leaving OneBeacon Insurance Company with insurance liabilities that were not funded or supported by sufficient assets.

166. Southern was greatly harmed as a direct and proximate result of OneBeacon's negligence, which ultimately caused Bedivere's liquidation and inability to provide Southern the defense and indemnification it was obligated to provide under the Insurance Policies Potomac issued to Southern.

COUNT IX
(Negligence Against the Trebuchet Defendants)

167. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

168. The Trebuchet Defendants owed Bedivere's policyholders, including Southern, duties to act with reasonable diligence and care in applying for, advocating for, and ultimately executing the Merger and related transfers.

169. The Trebuchet Defendants breached their duties by unreasonably:

- a. causing Bedivere to incur liabilities without receiving equivalent value, leaving Bedivere grossly undercapitalized with depleted reserves;
- b. reviewing and evaluating Bedivere's existing and future liabilities at the time of the Merger and the ability to cover its liabilities following the Merger;
- c. providing inadequate information to the public and Pennsylvania Insurance Commission regarding Bedivere's liabilities and suppressing information about the Merger to the public and to policyholders;
- d. causing the transfer of liabilities to Bedivere, which was insufficiently capitalized to support the liabilities of the merged companies, leaving Bedivere with insurance liabilities that were not funded or supported by sufficient assets.

170. Southern was greatly harmed as a direct and proximate result of the Trebuchet Defendants' negligence, which ultimately caused Bedivere's liquidation and inability to provide Southern the defense and indemnification it was obligated to provide under the Insurance Policies Potomac issued to Southern.

COUNT X
(Constructive Trust Against OneBeacon Defendants)

171. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

172. The Receiver is informed and believes that OneBeacon and/or its other affiliates has wrongly appropriated and held funds and assets which were intended for the benefit of Potomac's policyholders, including Southern.

173. OneBeacon and/or its other affiliates acquired these funds and assets through OneBeacon's fraud, bad faith, abuse of confidence, and/or violation of fiduciary duty; and as a result, it would be inequitable for OneBeacon and/or its other affiliates to retain those funds and assets.

174. Accordingly, the Receiver asks this Court to exercise its equitable powers and impose a constructive trust upon such funds and assets for the benefit of Southern.

COUNT XI
(Alter Ego and/or Single Business Enterprise Liability Against OneBeacon and Trebuchet Defendants)

175. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

176. Through its siphoning of OneBeacon Insurance Company's and Bedivere's funds and assets, the Transaction, and/or the Merger; each of OneBeacon (prior to December 23, 2014) and the Trebuchet Defendants (after December 23, 2014) exercised total dominion and control

over OneBeacon Insurance Company and Bedivere. OneBeacon Insurance Company and Bedivere were unable to act in their own interests and in the interests of their policyholders and, through this dominion and control by OneBeacon and/or the Trebuchet Defendants, functioned solely to further the interests of OneBeacon and OneBeacon's shareholders (prior to December 23, 2014) and the Trebuchet Defendants (after December 23, 2014).

177. OneBeacon's siphoning of OneBeacon Insurance Company's funds and assets, the Transaction and the Merger were each a blatant demonstration of OneBeacon's and/or the Trebuchet Defendants' complete control over OneBeacon Insurance Company and Bedivere and their assets, the abuse of which led to Bedivere's insolvency. As a result, Southern and its asbestos claimants are without recourse.

178. The siphoning of assets from and the complete exercise of dominion and control over OneBeacon Insurance Company and Bedivere, through and beyond the Transaction and Merger, were easily done by OneBeacon and Trebuchet Defendants because, upon information and belief, the OneBeacon companies and the Trebuchet Defendants' companies operated as single business enterprises, to the detriment of Southern, as a policyholder. Upon information and belief, OneBeacon, Trebuchet Defendants, and their affiliates acted to leverage the amalgamation of their respective corporate interests, including but not limited to shared officers, directors, policy development, underwriting, marketing, policy administration, loss settlement, personnel, purchasing, accounting, data processing, and facilities management. Upon information and belief, funds were transferred among OneBeacon and its affiliates and among the Trebuchet Defendants and their affiliates without obtaining proper collateralization. The singular structure, finance, and operation demonstrates that the companies within OneBeacon and its affiliates and within the Trebuchet Defendants and their affiliates were not operated as separate entities.

179. The complete control over OneBeacon Insurance Company and Bedivere by OneBeacon and Trebuchet Defendants was leveraged to achieve inequitable results from a grossly undercapitalized insurer driven to insolvency. OneBeacon and the Trebuchet Defendants abused their corporate forms to move assets away from creditors, avoid regulatory scrutiny, and enrich OneBeacon, the Trebuchet Defendants, and their other affiliates, all in violation of public policy. Such abuse of the corporate form warrants disregarding corporate entities where justice requires protection of the rights of policyholders and creditors, like Southern.

180. The retention of OneBeacon's and the Trebuchet Defendants' corporate entities separate from OneBeacon Insurance Company's and Bedivere's corporate identities was an injustice to Southern and its asbestos claimants. OneBeacon's siphoning of funds and assets, the Transaction, and the Merger, which resulted in Bedivere's ultimate liquidation and inability to meet its obligations to its policyholders, are each also against the public policy of South Carolina.

181. OneBeacon and the Trebuchet Defendants (as the case may be) divested themselves or their affiliates of liabilities in transferring and/or diluting assets of OneBeacon Insurance Company and Bedivere—and in so doing, sought to defraud, justify wrong, and defeat public policy. Because insurance companies cannot be allowed through a corporate shell to hide from the normal consequences of doing business, fundamental unfairness would result from recognition of OneBeacon Insurance Company and Bedivere as separate corporate entities from OneBeacon and the Trebuchet Defendants.

182. Accordingly, Southern requests a finding that OneBeacon and the Trebuchet Defendants are the alter egos of OneBeacon Insurance Company and Bedivere for purposes of the Insurance Policies for Southern and that OneBeacon and the Trebuchet Defendants are, therefore,

liable and obligated to perform and pay under the obligations of those Insurance Policies to Southern and for the benefit of Southern for Asbestos Claimants.

183. Southern further requests a finding that OneBeacon and the Trebuchet Defendants, respectively, operated as a single business enterprise to achieve an unjust result such that this court may disregard corporate distinctions among OneBeacon and its affiliates and among the Trebuchet Defendants and their affiliates; and that all are, therefore, liable and obligated to perform and pay under the obligations of those Insurance Policies to Southern and for the benefit of Southern for Asbestos Claimants.

COUNT XII
(Declaratory Judgment Against Defendants for Compensation of Receiver)

184. Each of the allegations in the foregoing paragraphs is incorporated herein as if repeated verbatim.

185. An actual and justiciable controversy exists between Southern and Defendants concerning Southern's rights and obligations under the Insurance Policies from Potomac with respect to the Receiver.

186. Judicial declarations are necessary and appropriate at this time, under the circumstances alleged above, so that the Receiver may ascertain his rights to compensation for his efforts in fulfilling his duties under the Receivership Order.

187. Pursuant to section 15-65-100 of the South Carolina Code, the Receiver shall be allowed such commissions as may be fixed by the Court appointing the Receiver.

188. Pursuant to the Supreme Court of South Carolina's ruling in *Ex Parte Simons*, 289 S.C. 1, 344 S.E.2d 151 (1986), a receiver's fee is based on the value of the receiver's services and at the appointing Court's discretion.

189. Southern has no assets, aside from its Insurance Policies, with which to compensate the Receiver for his services.

190. The Receiver has dedicated, and will continue to dedicate, a substantial amount of time and incur substantial expenses in the fulfillment of his duties.

191. The primary beneficiaries of the time and expenses the Receiver has put towards this case are the Asbestos Claimants.

192. The Asbestos Claimants have had, and will continue to have, claims processed and suits defended that otherwise would not have been processed or defended but for the diligent work of the Receiver.

193. For example, the Asbestos Claimants have a representative of Southern, namely the Receiver, to whom to direct their efforts and process their claims.

194. Plaintiff respectfully requests this Court to declare that Defendants must fairly compensate the Receiver.

195. If that is not possible, Plaintiff requests that this Court declare which Defendants are responsible for compensating the Receiver for the substantial time, effort, and expenses he has put towards his responsibility as Receiver in this case.

COUNT XIII
(Breach of Contract and Implied Covenant of Good Faith and Fair Dealing Against
OneBeacon and the Trebuchet Defendants)

196. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

197. The general liability and/or manufacturers and contractors policies Potomac issued to Southern were mutually binding contracts of insurance that established an insurer-insured relationship between the parties.

198. OneBeacon and the Trebuchet Defendants are bound by the terms of these insurance contracts as OneBeacon Insurance Company's and Bedivere's alter egos.

199. Due to its liquidation, Bedivere now cannot fulfill contractual obligations to pay Southern the benefits it is due under the Insurance Policies issued to Southern.

200. Bedivere's inability to pay is the direct result of OneBeacon's and/or the Trebuchet Defendants' transfers of OneBeacon Insurance Company's and/or Bedivere's assets and capital and/or incurrence of obligations by Bedivere prior to and as part of the Transaction and/or the Merger, which transfers were unreasonable and made in bad faith.

201. The transfers of assets and capital and the incurrence of obligations also breached the implied covenant of good faith and fair dealing inherent in the Insurance Policies with Southern; namely, that Southern's insurer would act in good faith to remain adequately capitalized and not deliberately or fraudulently seek to avoid its future obligations to its policyholders.

202. OneBeacon and the Trebuchet Defendants, as OneBeacon Insurance Company's and Bedivere's alter egos, are liable to Southern for the breach of contract and breach of the implied covenant of good faith and fair dealing.

203. OneBeacon's and the Trebuchet Defendants' breaches, directly and as the alter egos of OneBeacon Insurance Company and Bedivere, harmed Southern by preventing fulfillment of the defense and indemnification obligations under the Insurance Policies issued to Southern.

COUNT XIV
(Accounting Against OneBeacon and Trebuchet Defendants)

204. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

205. In order to fully reveal the extent to which OneBeacon siphoned funds from OneBeacon Insurance Company prior to the Transaction, acted as the alter ego with dominion and

control over OneBeacon Insurance Company, and caused the damages described above; the Receiver asks this Court to require OneBeacon to provide the Receiver with a complete and accurate accounting of all transfers of value, whether monetary or otherwise, from OneBeacon Insurance Company and its subsidiaries to OneBeacon or its other affiliates.

206. In order to fully reveal the extent to which the Trebuchet Defendants caused the dilution of Bedivere's assets and incurrence by Bedivere of obligations, caused the Merger, acted as the alter ego with dominion and control over Bedivere, and caused the damages described above, the Receiver asks this Court to require the Trebuchet Defendants to provide the Receiver with a complete and accurate accounting of all transfers of value, whether monetary or otherwise, from Bedivere and incurrence by Bedivere of obligations to or for the benefit of the Trebuchet Defendants or their affiliates and of all dilution of assets of Bedivere.

COUNT XV
(Tortious Interference with Contractual Relations Against OneBeacon and the Trebuchet Defendants)

207. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

208. The Insurance Policies issued for the benefit and protection of Southern created a contractual relationship between Potomac and Southern.

209. Potomac's contractual obligations under the Insurance Policies included defending and indemnifying Southern for losses covered by the policies.

210. OneBeacon and the Trebuchet Defendants knew that Potomac had contractual obligations to Southern.

211. OneBeacon and the Trebuchet Defendants knew that by improperly siphoning assets out of OneBeacon Insurance Company and Bedivere and/or incurrence by Bedivere of

obligations for OneBeacon's and/or the Trebuchet Defendants' own benefit and the benefit of its shareholders, OneBeacon Insurance Company and Bedivere would be unable to meet their obligations to Potomac's policyholders. OneBeacon and the Trebuchet Defendants did so nonetheless, thereby causing and procuring Bedivere's ultimate breach of Potomac's policies that were protective of Southern and its Asbestos Claimants.

212. OneBeacon's and the Trebuchet Defendants' intentional conduct was unjustified and resulted in significant harm to Southern, including Southern's inability to realize the benefit of Bedivere's defense and indemnification obligations under its Insurance Policies. OneBeacon and the Trebuchet Defendants are thus liable for all damages caused by the tortious interference with these contracts.

COUNT XVI
(Right to Indemnification as to Chandler Defendants)

213. Each of the allegations in the foregoing paragraphs is incorporated as if repeated verbatim herein.

214. Pursuant to a settlement agreement with the Receiver, Correll Insurance Group, LLC assigned to the Receiver all its rights to recover against the Chandler Defendants in connection with the crossclaims and third-party claims Correll Insurance Group had asserted in this action against the Chandler Defendants.

215. The crossclaims and third-party claims asserted by Correll Insurance Group in its filing with this Court on June 30, 2021 and assigned to the Receiver on August 13, 2021 are hereby incorporated by reference and re-alleged as if written verbatim here against the Chandler Defendants.

216. Upon information and belief, pursuant to an Asset Purchase Agreement dated April 30, 2010 between a predecessor by merger to Correll Insurance Group and the Chandler

Defendants, the Chandler Defendants are required, jointly and severally, to defend and indemnify Correll Insurance Group against any and all losses, claims, suits, expenses, costs, reasonable attorneys' fees, witness' fees, investigation fees, court reporters' fees, and other out-of-pocket expenses resulting from or arising from the Chandler Defendants' business activities prior to the Effective Date of the Asset Purchase Agreement.

217. The claims asserted by Plaintiff against Correll Insurance Group in this action arose from the Chandler Defendants' business activities prior to the Effective Date of the Asset Purchase Agreement. As a result of such claims, Correll Insurance Group incurred losses, expenses, costs, reasonable attorneys' fees and other out-of-pocket expenses, which the Chandler Defendants are required to pay under the Asset Purchase Agreement to the Receiver as Correll Insurance Group's assignee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief requested herein and award it actual damages, consequential, special, and punitive damages, along with attorneys' fees and costs, pre-judgment interest, post-judgment interest, and all other relief the Court deems just and proper.

Respectfully submitted,

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February 18, 2022

EXHIBIT 2

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Southern Insulation, Inc., through its
Receiver, Peter D. Protopapas,

Case No.: 2020-CP-40-04385

Plaintiff,

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

vs.

OneBeacon Insurance Group, Ltd. (f/k/a
White Mountains Insurance Group, Ltd., f/k/a
CGU Insurance Company, f/k/a Commercial
Union Corporation, f/k/a General Accident
Insurance Company of America); OneBeacon
Insurance Group LLC (n/k/a Intact Insurance
Group USA LLC); R.V. Chandler &
Associates, Inc.; Chandler Rental Properties,
Inc.; Thomas S. Chandler; Jean B. Ownbey, as
Trustee of the Thomas S. Chandler, Sr. Living
Trust u/d 4/06/06; Gene N. Norville; the
South Carolina Property and Casualty
Insurance Guaranty Association; Trebuchet
US Holdings, Inc.; Trebuchet Investments
Limited; Trebuchet Group Holdings Limited
(f/k/a Armour Group Holdings Limited); Brad
S. Huntington, individually; and John C.
Williams, individually,

**INTACT INSURANCE GROUP USA
HOLDINGS INC. AND
INTACT INSURANCE GROUP USA
LLC'S MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

Defendants.

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I. INTRODUCTION

Plaintiff's Second Amended Complaint, filed without leave of the Court, purports to assert claims against two affiliated holding companies, Intact Insurance Group USA Holdings Inc. (incorrectly sued herein as OneBeacon Insurance Group, Ltd.) ("Intact Inc.")¹ and Intact Insurance Group USA LLC (incorrectly sued herein as OneBeacon Insurance Group LLC) ("Intact LLC") (collectively "Movants"), to recover the assets of, and satisfy the contractual obligations of, Bedivere Insurance Company ("Bedivere"), an insurer alleged to have issued insurance policies to Southern Insulation, Inc. ("Southern") prior to 1991. Bedivere, a former affiliate of Movants, was acquired by an unaffiliated third party in 2014 in an arms-length transaction. The acquisition was the subject of extensive regulatory review and was ultimately approved in an order of the Pennsylvania Insurance Commissioner (the "Approval Order") that expressly considered and rejected all of the assertions related to the Bedivere transaction that Plaintiff makes in the Second Amended Complaint.² The Approval Order was affirmed by the Pennsylvania Commonwealth Court following an appeal by policyholders making the same assertions as Plaintiff makes now.

More than six years after Bedivere was acquired, and following various unfavorable verdicts and other post-acquisition developments referenced in the Second Amended Complaint, Bedivere was placed into liquidation in 2021 pursuant to an order of the Pennsylvania Commonwealth Court (the "Liquidation Order"). Among other things, the Liquidation Order enjoined all litigation directed against Bedivere or claiming entitlement to Bedivere's assets. Plaintiff previously sued Bedivere in this action for the same relief it now seeks from Movants but

¹ The various "fka" designations in the caption are incorrect; Intact Inc. was formerly known as OneBeacon Insurance Group Holdings, Ltd. a Delaware corporation, and OneBeacon Insurance Group Ltd., a Bermuda corporation, but has not been known by any other names.

² At the time of its sale, Bedivere was known as One Beacon Insurance Company. For consistency, Bedivere is referred to by its current name throughout this Brief.

dismissed Bedivere, and for the first time asserted claims against Movants, after the Liquidation Order was entered. Plaintiff is simultaneously pursuing a claim in the Bedivere liquidation.

Plaintiff's claims against Movants are inherently implausible. The claims against Movants all turn on the allegation that prior to the sale of Bedivere, Movants "stripped" Bedivere of assets such that Bedivere was inadequately capitalized to meet its future claims obligations following Trebuchet's acquisition. The insurance industry is highly regulated and financial transactions among affiliated companies are subject to extensive regulatory oversight and, in many cases, prior approval. The acquisition of Bedivere was the subject of an exhaustive multi-year regulatory review that, as described in the Approval Order, included a ground-up review of Bedivere's reserve adequacy and financial condition by an independent actuarial firm retained at the direction of the Commissioner and then by a second independent actuarial firm retained directly by the Commissioner to review the work of the first independent actuarial firm. As a condition of approval, the Commissioner required substantial additional capital contributions to Bedivere to strengthen its financial condition. Not surprisingly, notwithstanding the voluminous information about the Bedivere acquisition that is publicly available, the Second Amended Complaint is bereft of detail and all of Plaintiff's claims against Movants rest on conclusory, boilerplate allegations, most made on "information and belief".

Plaintiff's claims against movants are also without basis in law and contrary to well-established legal principles. No court has ever awarded policyholders of an insolvent insurance company relief of the type Plaintiff seeks here. The attempt to force non-insurer corporate holding entities to assume the insurance claims obligations of a former corporate affiliate ignores the bedrock principle of corporate law that corporations are not liable for the contractual obligations of former corporate affiliates. The claims against Movants are nothing more than a blatant attempt

to end-run the extensive statutory process for liquidating insolvent insurers and an impermissible collateral attack on the Approval Order seven years after it was entered.

Even taking the allegations of the Second Amended Complaint as true for purposes of the present Motion, the claims against Movants must be dismissed because:

1. The Court is required by statute and controlling South Carolina Supreme Court authority to give full faith and credit to the injunction contained in the Liquidation Order and to dismiss the claims against Movants to ensure an orderly and equitable distribution of Bedivere's assets;
2. Bedivere, which is the only party entitled to bring the claims asserted by Plaintiff, is a necessary and indispensable party which cannot be joined;
3. Plaintiff's claims are contrary to well-established precedent in South Carolina and elsewhere recognizing the conclusive nature of the determinations in the Approval Order rejecting the claims asserted by Plaintiff;
4. The Complaint fails to aver facts sufficient to assert personal jurisdiction over Movants;
5. The claims against Movants are time-barred; and
6. The Second Amended Complaint fails to state a claim against Movants, including failing to plead fraud with sufficient particularity.

II. STATEMENT OF FACTS

This is an action by the Receiver of Southern, a company that is alleged to have exposed its employees and customers to asbestos-containing products prior to its dissolution in 1991. Second Amended Complaint ("SAC") ¶¶ 1, 2, 22-26. Southern alleges that it was insured by Bedivere, and that it "has evidence that establishes the terms" of the Bedivere policies but does not allege when the policies were in force or what the terms or limits of those policies were. SAC ¶¶ 27, 29, 33. In relevant part, Southern seeks to recover defense costs and indemnity insurance

benefits allegedly due under the Bedivere policies for Southern's alleged liability in lawsuits brought by asbestos claimants, again without any specific averment of the scope of the underlying liabilities or the insurance coverage allegedly applicable to those liabilities. SAC ¶¶ 26, 31, 59, 101, 109-10.³

Movants are affiliated holding companies.⁴ Prior to December 23, 2014, Intact LLC owned Bedivere. SAC ¶ 29. In December 2014, Trebuchet US acquired Bedivere in an arms-length transaction that was, as discussed below, subject to extensive prior review and approval by the Pennsylvania Commissioner. SAC ¶ 49. On March 11, 2021, more than six years after Bedivere was sold to Trebuchet, the Commonwealth Court of Pennsylvania ordered that Bedivere be liquidated pursuant to Pennsylvania's statutory scheme for resolving claims against insolvent insurers. SAC ¶¶ 29, 55, 57, 79, 80. A true and correct copy of the Liquidation Order is attached hereto as Exhibit A.⁵

Plaintiff sued Bedivere in its First Amended Complaint seeking the same relief from Bedivere as it now seeks from Movants. Following entry of the Liquidation Order, Plaintiff dismissed Bedivere and, without obtaining leave of Court, filed a Second Amended Complaint, naming

³ Inconsistently, Southern is also suing its former insurance broker and seeks a declaration that "if the Insurance Policies were not issued to protect Southern, then the Chandler Defendants . . . are responsible for the defense and indemnification of Southern." SAC ¶ 111.

⁴ Intact LLC is an indirect subsidiary of Intact Inc. SAC ¶ 5.

⁵ The Court may consider the Liquidation Order in reviewing this Motion to Dismiss because the Liquidation Order is acknowledged in the Second Amended Complaint (¶ 57) and there is no dispute as to its authenticity. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). Alternatively, the Court may take judicial notice of the Approval Order as a publicly-available order the accuracy of which "may be ascertained by reference to readily available sources of indisputable reliability." S.C.R. Evid. 201; *S.C. Dep't of Soc. Servs. v. Janice C.*, 383 S.C. 221, 227, 678 S.E.2d 463, 467 (Ct. App. 2009).

Movants as defendants for the first time.⁶ The claims against Movants are based on boilerplate allegations that Movants “stripped” Bedivere of assets such that following Trebuchet’s acquisition, Bedivere was inadequately capitalized to meet its future claims obligations. *See, e.g.*, SAC ¶¶ 35, 37, 38, 41–54.

Bedivere and its insurance company subsidiaries were Pennsylvania-domiciled insurers and any change in ownership had to be approved by the Commissioner. Approval Order, ¶¶ 8–11⁷; 40 P.S. §§ 991.1401 et seq. The allegations that Plaintiff now seeks to relitigate were all considered and rejected by the Commissioner following a multi-year review of the proposed acquisition. The Commissioner’s review included repeated public notice of the proposed acquisition and multiple opportunities for policyholders and other interested persons to comment. The Commissioner’s review began in February 2013, almost two years before the acquisition was ultimately approved, when Trebuchet filed a Form A application seeking approval of its acquisition of Bedivere. Approval Order, ¶ 1.

The Approval Order was appealed by a number of Bedivere policyholders similarly situated to Southern. The Pennsylvania Commonwealth Court affirmed the Approval Order, holding that “[t]he Department is the public’s and policyholders’ representative and charged with evaluating the risks and consequences of the transaction,” that “this transaction required the Department to conduct a statistical and economic analysis well within its expertise,” and that the public notice, public comment and informational hearing process followed by the Department complied with

⁶ For the Court’s convenience, copies of Southern’s First Amended Complaint and Motion to Dismiss Defendant Bedivere are attached hereto as Exhibits B and C, respectively.

⁷ The Approval Order is a matter of public record available at <https://www.insurance.pa.gov/Companies/IndustryActivity/Documents/ONEBEACON%20CUMULATIVE%20LOG/146.pdf>. For the Court’s convenience, a copy of the Approval Order is attached as Exhibit D. The Court may consider the Approval Order for the reasons set forth in footnote 6 above.

policyholders' due process rights. *Crosby Valve, LLC v. Dep't of Ins.*, 131 A.3d 1087, 1096 (Pa. Commw. Ct. 2016).

III. ARGUMENT

A. *The Claims Against Movants Are Barred By The Liquidation Order*

Statutory provisions relating to the resolution of claims against insolvent insurers in both Pennsylvania and South Carolina are intended to ensure equitable apportionment among creditors of an insolvent insurance company and to lessen the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process. *See* 40 P.S. § 221.1, S.C. Code. Ann. § 38-27-30. To achieve those objectives, both states preclude litigation against an insolvent insurer and empower the liquidator of an insolvent insurer to pursue litigation on behalf of creditors and policyholders. *See* 40 P.S. § 221.23 (liquidator authorized to pursue “any action which may exist on behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person.”); 40 P.S. § 221.26(a) (precluding litigation against an insolvent insurer); S.C. Code Ann. § 38-27-400 (powers of liquidator); S.C. Code Ann. § 38-27-430 (prohibiting new litigation). Critically, both Pennsylvania and South Carolina expressly acknowledge the crucial role of comity and reciprocity to any successful liquidation process. Compare 40 P.S. § 221.55 (“The domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this Commonwealth.”); S.C. Code Ann. § 38-27-930 (“The domiciliary liquidator of an insurer domiciled in a reciprocal state is...vested by operation of law with the title to all of the assets, property, contracts and rights of action, agents' balances, and all of the books, accounts, and other records of the insurer located in this State.”).

Plaintiff's claims against Movants represent an impermissible attempt to subvert the process for an orderly and equitable resolution of an insolvent insurer's obligations. All of Plaintiff's claims are derivative of Bedivere's rights and are common to Bedivere's policyholders. Plaintiff, who has filed a claim in the Bedivere liquidation, nonetheless seeks to recover for the same claim outside of the liquidation. Plaintiff's claims threaten the integrity of the liquidation process itself and must be dismissed.

1. The Court Must Give Full Faith And Credit To The Injunction In The Liquidation Order and Dismiss The Claims Against Movants

The Liquidation Order enjoins all persons, including Southern, from "*taking any steps whatsoever to transfer, sell, assign, encumber, attach, dispose of, or exercise, purported rights in or against any property or assets of Bedivere.*" Liquidation Order ¶ 14 (emphasis added). Here, in addition to asserting causes of action that have been exclusively assigned to the Bedivere Liquidator, Plaintiff is explicitly asserting claims to recover Bedivere's assets in violation of the injunction in the Liquidation Order.

Consistent with the objective of ensuring the interstate comity necessary for an equitable and orderly resolution of an insolvent insurer's obligations, South Carolina requires that the Court give full faith and credit to the injunction in the Liquidation Order and dismiss the claims against Movants. S.C. Code Ann. § 38–27–430(a) (1989) provides in relevant part:

Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this State, no action at law or equity may be brought against the insurer or liquidator, whether in this State or elsewhere; nor may any existing actions be maintained or further presented after issuance of the order. **The courts of this State shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when the injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states....** (emphasis added).

This clear statutory directive requires that the Court dismiss claims of the type brought by Plaintiff. *Williams v. Northwestern Security Life Ins. Co.*, 307 S.C. 462, 465, 415 S.E.2d 809, 810 (1992) (reversing order denying a motion to dismiss; “[I]f another state under corresponding provisions issues a liquidation order, South Carolina must give full faith and credit to an injunction contained within that order.”). Decisions from other jurisdictions are in accord. *See, e.g., Brooklyn Union Gas Company v. Century Indemnity Company*, No. 403087/2002, 2005 N.Y. Slip Op. 30325 at *6-7 (N.Y. Sup. Ct. Jan. 10, 2005) (dismissing policyholder’s claims against third party who allegedly caused insurer to become insolvent because allowing the plaintiff’s claim to proceed “would undermine the very stay that was instituted by the court ordering the liquidation” and thus the principles of reciprocity imposed by state law); *Consolidated Edison Company v. American Home Insurance Company*, No. 600527/01, Slip Op. at 2 (N.Y. Sup. Ct. Mar. 29, 2005) (dismissing claim that third party was “legally responsible for [insolvent insurer’s] coverage obligations to plaintiff” because affording “full faith and credit,” to foreign liquidation order foreclosed plaintiff’s claim); *Argon Fin. Group v. Marro*, 897 F. Supp. 568 (D.D.C. 1995) (granting motion to dismiss claims against a third party by creditor of insolvent insurer for breach of fiduciary duty, tortious interference with contract and civil rights violation on the grounds of full faith and credit to injunction in liquidation order and the exclusive jurisdiction of the liquidation court); *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791, 795, 797 (Tex. 1992) (giving full faith and credit to injunction in liquidation order issued by Vermont court and collecting cases); *see also Garrou v. Shovelton*, 439 P.3d 65 (Col. Ct. App. 2019) (reversing and remanding for entry of a stay of a medical malpractice claim against the defendant nurse anesthetist following entry of a South Carolina liquidation order for the defendant’s insurer that contained an injunction, and holding that court must give full faith and credit to any injunction order in liquidation proceedings).

2. The Claims Against Movants Must Be Dismissed Because They May Only Be Brought By The Bedivere Liquidator

Consistent with the statutory scheme for insurer insolvency described above, the Liquidation Order (1) vests the Commonwealth Court with *in rem* jurisdiction over all of Bedivere's assets, including those Plaintiff seeks to recover, "*wherever they may be located and regardless of whether they are held in the name of Bedivere or in any other name*"; (2) assigns to the Bedivere Liquidator "title to *all property, assets, contracts and rights of action* (assets) of Bedivere *of whatever nature and wherever located, whether held directly or indirectly*, as of the date of filing of the Petition for Liquidation" thereby depriving Southern of standing to bring claims of the type alleged against Movants⁸; and (3) vests the Pennsylvania Commonwealth Court with "*exclusive jurisdiction over all determinations as to whether assets belong to Bedivere or to another party; exclusive jurisdiction over all determinations of the validity and amounts of claims against Bedivere; and exclusive jurisdiction over the determination of the priority of all claims against Bedivere.*" Liquidation Order ¶¶ 2, 3, 4 (emphasis added).

Plaintiff has submitted to the exclusive jurisdiction of the Pennsylvania Commonwealth Court by filing a claim in the liquidation proceedings.⁹ The claims against Movants in the Second Amended Complaint, however, are an explicit attempt by Plaintiff to claim against Bedivere's

⁸ The Bedivere Liquidator has authority to "continue to prosecute and to institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this Commonwealth or elsewhere, and to abandon the prosecution of claims he deems unprofitable to pursue further", to "prosecute any action which may exist in behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person" and to "exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder or member, including any power to avoid any transfer or lien that may be given by the general law." 40 Pa. Stat. Ann. § 221.23 (12), (13), (19). These powers and the role of the Bedivere Liquidator under Pennsylvania law are comparable to the power and authority of insurance company liquidators under South Carolina law. *See* S.C. Code Ann. §§ 38-27-370, 38-27-400.

⁹ *See* Exhibit C, Motion to Dismiss Defendant Bedivere.

assets outside of the Liquidation. *See, e.g.*, SAC ¶ 136(a) (“Southern is entitled, at least, to . . . an attachment . . . against the assets fraudulently transferred from OneBeacon Insurance Company”); SAC ¶ 137 (“the transferred assets needed to satisfy the Insurance Policy obligations to Southern should be ordered to be paid . . . to Southern”); SAC ¶ 174 (Southern requests that the Court “impose a constructive trust . . . for the benefit of Southern” upon funds and assets “appropriated” from Bedivere).

Although courts applying South Carolina law have not had occasion to consider the issue, courts in many other jurisdictions have consistently affirmed that the liquidator of an insolvent insurance company has the exclusive authority to bring claims of the type that Southern asserts against Movants or to decide that such claims should not be pursued. *See, e.g., A.P.I., Inc. v. Home Ins. Co.*, 706 F. Supp. 2d 926, 937, 939 (D. Minn. 2010) (dismissing claims by asbestos trust for alleged mismanagement and misappropriation because the liquidation order “vest[ed] the Liquidator with exclusive authority” to pursue such claims and prohibited plaintiffs from “recover[ing] damages relating to Home’s res, which the Liquidator has sole authority to protect and manage.”); *Boedeker v. Rogers*, 746 N.E.2d 625, 635-36 (Ohio App. Ct. 2000) (“the duly appointed liquidator, under the supervision of the liquidation court, must have the exclusive authority to prosecute or abandon the insurer’s legal claims, including those brought derivatively on behalf of the insurer” and “[t]he obvious intent of such a statutory scheme is to give the liquidator sole authority to prosecute or abandon all legal rights of action that inure to the benefit of the insurer, including legal claims of the insurer’s creditors, members, policyholders or shareholders who look to the insurer for satisfaction.”); *Corcoran v. Frank B. Hall & Co., Inc.*, 545 N.Y.S.2d 278, 284-85 (1st Dept. 1989) (liquidator had exclusive standing to assert claims for fraudulent transfers and other common law remedies against holding company where such claims

were on behalf of the insurance company, its creditors and policyholders); *Four Star Ins. Agency, Inc. v. Hawaiian Elec. Indus., Inc.*, 974 P.2d 1017, 1025 (Haw. 1999) (Insurance Commissioner, as liquidator of an insolvent insurance company, had the exclusive right to bring claims against the parent of an insolvent insurer on behalf of all creditors and policyholders of the insolvent company, on the basis of allegations that the parent company intentionally undercapitalized the insurer and misled the insurer's creditors, policyholders, and the public; “Given these considerations and considering the statutory scheme of the ISRLA, we hold that the Commissioner has exclusive standing to assert claims arising out of the liquidation or rehabilitation of an insurance company on behalf of not only the insolvent insurer, but also its policyholders, creditors, and all other interested parties.”); *State of California v. Altus Fin.*, 116 P.3d 1175, 1188 (Cal. 2005) (insurance commissioner had exclusive authority to pursue restitutional remedies on behalf of creditors and policyholders of insolvent insurance company); *Matter of Liquidation of Am. Mut. Liab. Ins. Co.*, 632 N.E.2d 1209, 1212-14 (Mass. 1994) (insurance receiver had exclusive authority to bring or compromise the insurer's “chooses in action” as well as common claims of policyholders, claimants, and creditors for the benefit of the insurer's estate); *see also O’Neal v. Quicken Loans, Inc.*, Civ. A. No. 1:15-cv-03712-JMC, 2016 WL 3569402, *3 (D.S.C. June 30, 2016) (granting motion to dismiss and holding that a plaintiff lacked standing to bring a claim because only the bankruptcy trustee had standing to bring claims held by the bankruptcy estate).

Enforcing the Liquidator’s exclusive right to bring, or decide not to pursue, causes of action like those brought by Plaintiff is necessary to avoid a multiplicity of lawsuits, prevent inconsistent and potentially preferential treatment of creditors and protect the integrity of the statutory process for liquidating insurers. *Am. Mut. Liab. Ins. Co.*, 632 N.E.2d at 1214 (“Without the exclusive right in the receiver to settle common claims, resulting litigation could be endless.”); *Boedeker*, 746

N.E.2d at 636; *Corcoran*, 545 N.Y.S.2d at 281-82 (“Public policy and judicial economy are considerations which also impel the conclusion that the Superintendent have such exclusive standing to assert claims on behalf of not only Union, but also its policyholders and its creditors. This would simply further the ‘pre-eminence purpose’ of article 74, i.e., the equitable treatment of all creditors and the avoidance of preferences.”); *Four Star Ins. Agency*, 974 P.2d at 1024 (“[A] flood of claims arising from an insurer's insolvency brought by each creditor of the insolvent insurer would potentially result in an award to one creditor that could be disproportionate to that of another creditor. Under such a system, which encourages creditors to race to the courthouse, it is difficult to imagine how a party faced with the prospect of numerous lawsuits from various creditors would be able to settle the multitude of lawsuits in an orderly and equitable manner. Such a construction of the ISRLA would be inconsistent to its purposes of ensuring the equitable apportionment of losses and minimizing litigation.”); *see also Comm'r of Ins. v. Arcilio*, 561 N.W.2d 412, 418 (Mich. App. Ct. 1997) (same).

Accordingly, Southern's claims against Movants must be dismissed. Only the Bedivere Liquidator has the authority to bring claims of the type alleged or to decide that such claims should not be brought. The Court should strictly enforce the Bedivere Liquidator's exclusive authority in order to allow for the orderly liquidation of Bedivere and to avoid improper preferential treatment of Southern in relation to other Bedivere policyholders.

3. The Claims Against Movants Must Be Dismissed Because Bedivere, A Necessary And Indispensable Party, Cannot Be Joined¹⁰

All of Plaintiff's claims against Movants are predicated on Bedivere's alleged liability to Southern under insurance policies issued by Bedivere to Southern and seek to recover assets that purportedly belong to Bedivere. As set forth above, those are all claims that can only be brought by Bedivere. There can be no doubt that Bedivere is a necessary and indispensable party in this action. *See, e.g., Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct. App. 1989) (holding that party to contract for sale of real property was an indispensable party in an action for accounting relating to that sale); *Gunvor SA v. Kayablian*, 948 F.3d 214, 221 (4th Cir. 2020) (parties to a contract are indispensable parties for claims sounding in contract); *Victoria Select Ins. Co. v. D. Ortiz Co., Inc.*, No. 16-cv-165, 2016 WL 9308330, at *2 (E.D. Va. May 26, 2016) (insurer was an indispensable party to declaratory judgment action addressing its insurance obligations); *Drury Development Corp. v. Foundation Ins. Co.*, 380 S.C. 97, 103-04, 668 S.E.2d 798, 801 (2008) ("South Carolina law is clear that plaintiffs attempting to pierce the corporate veil must state a claim against the corporate entity in order to proceed on a veil piercing theory."). Indeed, as noted

¹⁰ Review of a Rule 12(b)(7) motion for failure to join an indispensable party requires a court to first determine whether a party is indispensable under Rule 19(a). "In order to be an indispensable party, the action must (1) not afford complete relief among those already parties, or (2) impair or impede the absent parties' ability to protect its interest, or (3) leave parties already in the suit subject to substantial risk of incurring multiple or inconsistent obligations by reason of the absent party not being joined." *Stewart v. State Crop Pest Comm'n*, 307 S.C. 133, 139, 414 S.E.2d 121, 125 (1992). If a party is indispensable, then Rule 19(b) "provides the considerations for determining if the suit must be dismissed because an indispensable party cannot be joined." *Id.* In determining "whether in equity and good conscience the action should proceed" where an indispensable party cannot be joined, the factors to be considered include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. SCRCP 19(b).

above, Bedivere was named as a defendant in Southern's First Amended Complaint which sought the same relief as Southern seeks from Movants.

Southern is expressly enjoined from bringing any causes of action against Bedivere in this action. Liquidation Order, ¶¶ 13, 14. Thus, the claims against Movants must be dismissed because Bedivere cannot be joined to this action and because Southern's pursuit of recovery under the Bedivere insurance policies in both the Bedivere Liquidation and in this action creates a risk of inconsistent and inequitable adjudications.

B. The Claims Against Movants Are Barred By The Approval Order

Plaintiff acknowledges that the Pennsylvania Commissioner approved Trebuchet's acquisition of Bedivere. *See* SAC ¶ 49. The Approval Order details the extensive regulatory proceedings that preceded its entry and of the many opportunities for policyholders to be heard on whether or not the acquisition should be approved. As detailed in the Approval Order, a number of policyholders similarly situated to Southern advanced the very same arguments that Plaintiff now seeks to relitigate. Approval Order, ¶ 36(a)-(f).

The Pennsylvania Commissioner required Intact LLC to retain an independent actuarial consultant to evaluate and render a report on the precise issues that Plaintiff now seeks to relitigate. Among other things, that independent actuarial consultant: (1) conducted a ground up review of the adequacy of Bedivere's reserves; and (2) evaluated the potential for failure, defined as Bedivere's inability to pay claims when they were due, following the acquisition if it were approved. Approval Order ¶¶ 28, 122. The Pennsylvania Commissioner retained a different independent actuarial consultant to: (1) review the work of the independent actuary retained by Intact LLC; (2) review the comments and expert reports submitted by various policyholders opposed to the acquisition; and (3) do its own evaluation of the capital and reserve adequacy of

Bedivere and its insurance company subsidiaries at the time of sale. Approval Order ¶¶ 29, 30, 72. The Pennsylvania Commissioner also retained a nationally prominent law firm to advise the Commissioner in matters related to his review of the proposed transaction. Approval Order ¶ 27.

On the basis of the extensive record before him, the Pennsylvania Commissioner made detailed findings of fact and conclusions of law approving the acquisition and addressing all of the objections from policyholders and their retained consultants that Plaintiff now seeks to relitigate. Approval Order ¶¶ 79-140 and Conclusions of Law. As a condition of the approval, the Pennsylvania Commissioner also required substantial capital contributions from Intact LLC and substantial cost reductions from Trebuchet, further strengthening the protections for policyholders. Approval Order ¶¶ 19, 73-76.

As set forth above, policyholders similarly situated to Southern appealed the Approval Order. The Pennsylvania Commonwealth Court affirmed the Approval Order, holding that the matters decided by the Pennsylvania Commissioner were within the scope of his authority to act on behalf of all policyholders and were technical matters well within the scope of his administrative expertise.¹¹ The Commonwealth Court also found that the process followed protected all of the due process rights of policyholders. *Crosby Valve*, 131 A.3d at 1096.

Plaintiff's claims against Movants are an impermissible collateral attack on the Approval Order and should be dismissed. The averments of the Second Amended Complaint are directly contrary to the express findings of the Pennsylvania Commissioner in the Approval Order. For example, the Second Amended Complaint alleges that "through a concerted effort that took several months prior to December 23, 2014 to complete, [Movants] enriched itself and failed to return

¹¹ Pennsylvania statutes require that the acquisition of a Pennsylvania domestic insurer, like Bedivere, be approved by the Pennsylvania Insurance Commissioner. SAC ¶ 66; *see* 40 P.S. § 991.1402. South Carolina has a comparable statutory requirement. S.C. Code Ann. § 38-21-90.

money or value to [Bedivere], thus rendering [Bedivere] grossly undercapitalized.” SAC ¶ 37 The Approval Order, however, provides that prior to the acquisition, Intact LLC will make a \$101 million capital contribution to Bedivere. Order ¶¶ 19, 73.

Similarly, the Second Amended Complaint alleges that “[Intact] left [Bedivere] with such inadequate capitalization that [Bedivere] was effectively placed in a position to inevitably become, and now is, insolvent” and that “[Bedivere’s] reserves would not be adequate to meet future liabilities” SAC ¶¶ 38, 41. The Approval Order, however, contained express findings that:

- “[Bedivere’s] projected success rate at the time of sale, as calculated by independent actuaries, was between 93.4% and 97.3%”;
- Bedivere and its insurance subsidiaries “have reinsurance cover that, in combination with the capitalization which will occur pursuant to the amended terms of the Stock Purchase Agreement, will be adequate to withstand significant economic and other stressors over time.”;
- “The Department has analyzed the adequacy of [Bedivere and its insurance subsidiaries] surplus to satisfy [their] obligations to their policyholders even assuming adverse developments. In its analysis, the Department fully considered whether after the Proposed Transaction [Bedivere and its insurance company subsidiaries] would be able to continue to perform the business in which it is engaged.”; and
- “Based on all relevant facts in the record, including those set forth herein, and based on the collective statutory analysis and conclusion herein, the Department is satisfied that the Proposed Transaction is not likely to be hazardous or prejudicial to the insurance buying public.”

Approval Order ¶¶ 77, 102, 105, 111.

Plaintiff's causes of action, all of which are premised on claims and arguments that were considered and rejected in the Approval Order, are an impermissible collateral attack on that Order. Courts have consistently dismissed civil suits such as this one that are collateral attacks on the decisions of an agency acting within its authority. Although the applicable legal doctrine varies with the circumstances of a particular administrative order, the core concept is the same – other than in the context of a direct appeal of an administrative order, courts will not second guess or award relief contrary to the factual or legal conclusions of administrative agencies acting within the scope of their authority and subject matter expertise. As the South Carolina Supreme Court explained in the context of civil lawsuits claiming damages from premium rates approved by an insurance regulator:

Courts which have adopted the filed rate doctrine have given several reasons for doing so, including: (1) preserving the agency's authority to determine the reasonableness of rates; (2) recognizing the agency's expertise with regard to that industry, whereas courts do not; (3) allowing an action would undermine the regulatory scheme because the statute allows for enforcement by the appropriate state officers; and (4) allowing an action may result in different prices being paid by victorious plaintiffs than non-suing ratepayers, which violates the statutory scheme of uniform rates.

We find the policy reasons behind the filed rate doctrine persuasive. The filed rate doctrine preserves the stability, uniformity, and finality inherent in rates filed with the regulatory agency and what has been determined to be a reasonable rate by that agency.

Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 519, 623 S.E.2d 387, 391-92 (2005) (citations omitted) (reversing lower court's refusal to dismiss affected claims, "the filed rate doctrine stands for the proposition that because an administrative agency is vested with the

authority to determine what rate is just and reasonable, courts should not adjudicate what a reasonable rate might be in a collateral lawsuit.”).¹²

While the filed rate doctrine is not directly applicable here, the policy reasons that the South Carolina Supreme Court found persuasive are completely on point here. Trebuchet’s acquisition of Bedivere was required to be approved by the Pennsylvania Insurance Commissioner, who has the exclusive statutory authority to approve changes in control of insurance companies domiciled in Pennsylvania. The Approval Order considered, and rejected, all of the arguments that form the basis for Plaintiff’s claims against Movants. Recognizing that the Approval Order is dispositive of Plaintiff’s claims “preserves the stability, uniformity and finality inherent in” requests for approval of a change in control “filed with the regulatory agency” and the determination by that agency to approve a change in control. Plaintiff’s claims must be dismissed.¹³

¹² *Accord Fulbright v. Spinnaker Resorts*, 420 S.C. 265, 281, 802 S.E.2d 794, 802 (2017) (noting that the doctrine of primary jurisdiction, which precludes courts from questioning the wisdom of an agency’s lawful decision, reflects “the deference that should be given to an agency tasked by the legislature with administering a particular statutory scheme.”); *Wright v. Marlboro Co. School Dist.*, 317 S.C. 160, 164, 452 S.E.2d 12, 15 (1994) (“Ordinarily, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action.”); *Bennett v. South Carolina Dept. of Corrections*, 305 S.C. 310, 313, 408 S.E.2d 230, 231 (1991) (res judicata and collateral estoppel “bar relitigation of issues which have been decided by or should have been presented to the [administrative agency].”); *Hyde v. S.C. Dep’t of Mental Health*, 314 S.C. 207, 208 n.1, 442 S.E.2d 582, 583 n.1 (1994) (administrative determination of fact would bind courts).

¹³ *See, e.g., Univ. of Tenn. v. Elliott*, 478 U.S. 788, 798-99 (1986) (the Full Faith and Credit Clause of the United States Constitution “compels the States to give preclusive effect to the fact findings of an administrative tribunal in a sister State.”); *Old Dominion Elec. Coop. v. PJM Interconnection, LLC*, 24 F.4th 271, 286–87 (4th Cir. 2022), *cert. denied*, No. 21-1368, 2022 WL 4651441 (U.S. S. Ct. Oct. 03, 2022) (affirming dismissal of claims for breach of contract, unjust enrichment and misrepresentation based on filed rate doctrine, noting the importance of avoiding inconsistent and unequal results); *Layne v. Campbell Cnty. Dep’t of Soc. Servs.*, 939 F.2d 217, 221 (4th Cir. 1991) (affirming dismissal of § 1983 claims. “Since the administrative panel was acting in a judicial capacity, resolving issues of fact properly before it which the parties had an adequate opportunity to litigate, the district court was correct in holding it was precluded from reviewing the panel’s findings of fact, the same as a Virginia court would be precluded.”); *Temporary Services, Inc. v. Am. Int’l Grp., Inc.*, No. 3:08-CV-0271-CMC, 2008 WL 11366365, at *1-121 (D.S.C. July 8, 2008)

C. *Movants Must Be Dismissed for Lack of Personal Jurisdiction*

“The party seeking to invoke personal jurisdiction over a non-resident defendant by using South Carolina's long-arm statute bears the burden of establishing jurisdiction.” *Power Prod. & Servs. Co. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). The standard for determining personal jurisdiction is well established:

Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. Further, the due process requirement mandates the defendant possess sufficient minimum contacts with the forum state such that he could reasonably anticipate being haled into court there. In determining whether due process minimum contacts exist between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice, a two pronged analysis is applied. The court must (1) find that the defendant has the requisite minimum contacts with the forum, without which, the court does not have the “power” to adjudicate the action and (2) find the exercise of jurisdiction is reasonable or fair. If either prong fails, the exercise of personal jurisdiction over the defendant fails to comport with the requirements of due process.

Power Prod., 379 S.C. at 431-32, 665 S.E.2d at 665.

(predicting that, given the scope of and rationale for the filed rate doctrine, South Carolina would not adopt a common-law claim or fraud on the agency exception to the preclusive effect of an administrative agency decision); *Chenard v. Hilton Head Island Dev. Co., LLC*, No. 9:14-CV-3347, 2018 WL 6659561, at *2 (D.S.C. Aug. 24, 2018), vacated in part on other grounds *sub nom. Ross v. Hilton Head Island Dev. Co., LLC*, No. 9:15-CV-2446-BHH, 2019 WL 5872171 (D.S.C. Jan. 3, 2019), and *aff'd sub nom. Fullbright v. Spinnaker Resorts, Inc.*, 771 F. App'x 220 (4th Cir. 2019) (“because the REC has already taken evidence and issued a private order stating its findings of fact about a matter under its jurisdiction, the Court concludes that it would be inappropriate for the Court to ignore the REC's evidentiary findings as South Carolina law does not permit a court to ‘substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact.’ S.C. Code Ann. § 1-23-380(5).”); *McCarthy Fin., Inc. v. Premera*, 347 P.3d 872, 875–76 (Wash. 2015) (dismissing claims because relief requested would necessarily require Court to reevaluate decision of agency and inappropriately usurp the role of the agency); *Grand Lake Marina, Ltd. v. Grand River Dam Auth.*, 177 P.3d 1104, 1108 (Okla. Civ. App. 2007) (Final order from administrative agency determining that applicant complied with applicable requirements precluded court from adjudicating claim of non-compliance; “Generally, application of preclusion principles to final agency adjudicatory decisions is favored unless there is a statutory intent or directive to the contrary.”)

Minimum contacts are established only where a defendant “directed its activities to residents of South Carolina” and “the cause of action arises out of or relates to those activities.” *Id.* at 432, 665 S.E.2d at 665. To evaluate fairness, the Court must consider: “(1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction.” *Id.*

Plaintiff has not met its burden to make a prima facie showing of personal jurisdiction. Movants are not residents of South Carolina. SAC ¶¶ 3, 4. The Second Amended Complaint does not contain a single averment of any conduct by Movants that would establish “minimum contacts” or “fairness” beyond a boilerplate recitation of the elements of the South Carolina long-arm statute. SAC ¶ 19. Boilerplate allegations of that type are not sufficient to establish personal jurisdiction. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012) (affirming order granting motion to dismiss; plaintiff's mere recitation of long-arm statute, without any allegations of jurisdictional facts, was insufficient to establish prima facie showing of personal jurisdiction over nonresident defendants); *Power Prod.*, 379 S.C. at 430, 665 S.E.2d at 664 (affirming dismissal for lack of personal jurisdiction where trial court held that plaintiff's “conclusory allegations fail to establish the contacts necessary to invoke personal jurisdiction over these [Respondents] either generally or specifically.”).

Moreover, while the Second Amended Complaint makes, “on information and belief,” various generalized allegations of wrongdoing by Movants in connection with the 2014 acquisition of Bedivere by Trebuchet, the Second Amended Complaint does not (and could not) allege that any of that conduct occurred in South Carolina. The allegations of the Second Amended

Complaint are thus insufficient to establish a prima facie showing of personal jurisdiction and the claims against Movants must be dismissed.

D. The Claims Against Movants Are Time Barred

The statute of limitation begins to run “when the underlying cause of action reasonably ought to have been discovered.” *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 575, 593 S.E.2d 624, 627 (Ct. App. 2004) “The date on which discovery should have been made is an objective, not subjective question.” *Kreutner v. David*, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). Therefore, the dispositive question is “whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.” *Young v. S.C. Dep’t of Corrections*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); *accord Dean v. Ruscon Corp.*, 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996).¹⁴

The regulatory review and approval process described above were matters of public record with extensive public disclosures sufficient to put policyholders like Southern on notice of claims arising from Trebuchet’s acquisition of Bedivere. Over the multi-year period of the Commissioner’s review, the Pennsylvania Insurance Department published four notices of the proposed acquisition of Bedivere in the *Pennsylvania Bulletin* inviting interested persons to submit comment. Approval Order, ¶¶ 31–34. In addition to these multiple public notices, the Department published on its website more than 3,000 pages of documents related to the proposed sale (Approval Order, ¶¶ 40 – 47) and held a public informational hearing on the proposed acquisition which included presentations on the proposed transaction from the selling and acquiring parties, a

¹⁴ The fact that a Receiver has been appointed for Southern is irrelevant to the running of the limitation period because a receiver’s rights are no greater than those possessed by the insolvent corporation. *In re Am. Slicing Mach. C.*, 125 S.C. 214, 118 S.E. 303, 304 (1923).

description of the work done by the independent consultants retained at the Commissioner's direction, a description of the Commissioner's review process, and an opportunity for interested parties to present comments or objections to the proposed transaction (Approval Order ¶¶ 53-54, 58-63). Forty-five interested persons attended the hearing, including a number of policyholders similarly situated to Southern. Approval Order, ¶¶ 56, 63. The transcript of the public hearing was made publicly available on the Department's website. Approval Order, ¶ 64.

After the hearing, the Department published notice that it was re-opening the comment period which resulted in fourteen additional insureds submitting comments concerning the acquisition of Bedivere. Approval Order, ¶ 67. The Department made many of these documents a part of the public record. Approval Order, ¶ 71.

Thus, at a minimum, by 2014 when the Approval Order was issued, Southern was objectively on notice of the claims Plaintiff belatedly seeks to assert. *See Landmark 501(C)(9) Tr. Agreement For Landmark Group ex rel. Dunlap v. Pierce, Couch, Hendrickson, Baysinger & Green*, 2004-UP-371, 2004 WL 6331249, at *2 (S.C. App. June 17, 2004) (finding that at least one trustee had constructive notice of a claim because the document putting him on notice was a matter of public record and therefore the action was "barred by the statute of limitations"); *Berry v. McLeod*, 328 S.C. 435, 445, 492 S.E.2d 794, 799 (Ct. App. 1997) (publicly filed bond provided sufficient notice to start the limitations period because "an individual on inquiry or constructive notice is held to be on notice of the contents of documents filed in conformity with applicable statutory law, which an inquiry would have revealed."); *Latham v. Matthews*, 662 F. Supp. 2d 441, 450 (D.S.C. 2009) (granting motion to dismiss because lawsuits filed in California triggered statute of limitations even though the lawsuits did not allege the exact same claims the plaintiff in *Latham* allege).

Plaintiff's causes of action for fraudulent conveyance (Count III), unjust enrichment (Count V), civil conspiracy (Count VI), negligence (Count VIII), alter ego (Count XI), breach of contract (Count XIII) and tortious interference (Count XV) are all subject to a three-year statute of limitation. S.C. Code Ann. § 15-3-530(1), (4), (5), (7), (8); *Carr v. Guerard*, 365 S.C. 151, 154 n.5, 616 S.E.2d 429, 430 n.5 (2005) (Statute of Elizabeth); *Paul v. S.C. Dep't of Transp.*, No. 2010-UP-504, 2010 WL 10085799, at *1 (S.C. Ct. App. Nov. 19, 2010) (unpublished) (civil conspiracy); *Maher v. Tietex Corp.*, 331 S.C. 371, 376, 500 S.E.2d 204, 207 (Ct. App. 1998) (breach of contract); *Brown v. Goodman Mfg. Co., L.P.*, No. 1:13-cv-03169-JMC, 2015 WL 1006319, at *7 (D.S.C. March 5, 2015) (unjust enrichment); *Brooks v. GAF Materials Corp.*, 284 F.R.D. 352, 357 (D.S.C. 2012) (negligence); *Wellin v. Wellin*, No. 2:13-cv-1831-DCN, 2014 WL 234216, at *3 (D.S.C. Jan. 22, 2014) (unpublished) ("Under South Carolina law, breach of contract, breach of fiduciary duty, fraud, negligent misrepresentation . . . are governed by a three-year statute of limitations.").

Plaintiff's claims are time barred and must be dismissed. The statute of limitations on Plaintiff's claims expired on December 23, 2017, three years from the entry of the Approval Order and more than four years before Plaintiff filed the Second Amended Complaint. Plaintiff's equitable claims (Counts X (Constructive Trust) and XIV (Accounting)) are similarly barred by the doctrine of laches. *See, e.g., Chambers of S.C., Inc. v. County Council for Lee County*, 315 S.C. 418, 421, 434 S.E.2d 279, 280-81 (1993) (holding that equitable action seeking to void a contract was barred by laches after the plaintiff waited eight months to bring its lawsuit.)

E. The Second Amended Complaint Fails To State A Claim Against Movants¹⁵

1. Plaintiff Has Failed to Plead Fraudulent Conveyance with Particularity and its Claim Should be Dismissed

Count III of the Second Amended Complaint, fraudulent conveyance, should be dismissed because it fails to satisfy the pleading standard under the heightened pleading standards of Federal and South Carolina Rule of Civil Procedure 9(b). Rule 9(b), applicable to any cause of action where fraud is an essential element of the claim, requires that “the facts and circumstances which constitute fraud should be set out clearly.” *Bookhart v. Cent. Elec. Power Co-op.*, 222 S.C. 289, 296, 72 S.E.2d 576, 579 (1952) (affirming demurrer for insufficient factual allegations); *McNair v. Rainsford*, 330 S.C. 332, 358–59, 499 S.E.2d 488, 502 (Ct. App. 1998) (complaint was deficient for failing to meet 9(b) particularity requirement for claim of “breach of contract accompanied by a fraudulent act”); *In re Derivium Cap., LLC*, 380 B.R. 407, 421 (Bankr. D.S.C. 2006) (granting motion to dismiss as to fraudulent conveyance claim).

Plaintiff does not allege a single specific transaction that constitutes an alleged fraudulent conveyance or a single specific asset that is alleged to have been fraudulently conveyed. Instead, the Second Amended Complaint is limited to redundant conclusory allegations. *See, e.g.* SAC ¶¶ 37, 38, 124, 125, 127 and 130. Plaintiff’s failure to allege any specifics is particularly notable in light of the substantial amount of information about the acquisition of Bedivere that was made public in the course of the regulatory review process. Count III of the Second Amended Complaint should be dismissed.

¹⁵ In reviewing a motion to dismiss under Rule 12(b)(6), the Court “may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007); *Fleteau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003).

2. Plaintiff Has Failed to State a Claim for Unjust Enrichment

Count V of the Second Amended Complaint, unjust enrichment, is not supported by factual allegations sufficient to state a claim and should be dismissed. Under South Carolina law, “[o]ne seeking to recover for unjust enrichment must show: ‘(1) a benefit *conferred by the plaintiff* upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value.’” *Chase Home Fin., LLC v. Risher*, 405 S.C. 202, 212, 746 S.E.2d 471, 476 (Ct. App. 2013) (emphasis added). Plaintiff has not alleged that Movants accepted, realized, or retained a benefit from Southern. Count V of the Second Amended Complaint should be dismissed.

3. Plaintiff Has Failed to State a Claim for Constructive Trust

“An action to declare a constructive trust is in equity.” *Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987). When parties seek money damages, a constructive trust is not available: “equitable relief is unnecessary when an adequate remedy for money damages is available at law.” *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 8, 732 S.E.2d 876, 879 (2012) (affirming dismissal of an action for constructive trust where the plaintiff brought claims for damages alongside its claim for constructive trust, and failed to explain the need for the equitable relief.). Here, Plaintiff has requested money damages in its many other counts, seeking damages against Movants under theories of unjust enrichment, SAC ¶ 156; civil conspiracy, SAC ¶¶ 158-59; negligence, SAC ¶¶ 164-66; breach of contract, SAC ¶¶ 197-203; and tortious interference with contractual relations, SAC ¶¶ 208-12. Further, Plaintiff’s prayer for relief omits any mention of its request for constructive trust, asking only for “actual damages, consequential, special, and punitive damages, along with attorneys’ fees and costs, pre-judgment interest, post-judgment interest, and all other relief the Court deems just and proper.” SAC at p. 44. Nowhere

does Plaintiff allege that a constructive trust is necessary, or that there is not an adequate remedy at law. Plaintiff has therefore failed to state a claim for constructive trust, and Count X of the Complaint should be dismissed.

4. Plaintiff Has Failed to State a Claim for an Accounting

An accounting may be had in three situations: (1) to prevent unjust enrichment by disclosing and requiring the relinquishment of profits received as the result of a breach of a confidential or fiduciary duty; (2) in an action involving long and complicated accounts where it would not be practicable for a jury to comprehend the issues and correctly make adjustments; or (3) when there is a need for enhanced discovery. *GSH of Alabama, LLC v. Southstar Fin., LLC*, No. 2:17-CV-02689, 2018 WL 1335189, at *2 (D.S.C. Mar. 15, 2018) (dismissing claim for accounting) (citation omitted). Plaintiff has failed to allege the existence of any of these circumstances. Count XIV should be dismissed.

F. The Second Amended Complaint Is Invalid Because Plaintiff Failed to Obtain Leave of the Court to Amend His Complaint for a Second Time to Join Additional Defendants

The Second Amended Complaint should be dismissed in its entirety. Plaintiff's Amended Complaint – filed in November 2020 – asserted various causes of action against nine defendants. Southern's Second Amended Complaint – filed in February 2022 without leave of the Court – asserted various claims against thirteen different defendants, twelve of which, including Movants, were entirely new parties to the action. Because Plaintiff failed to obtain leave of the court to file a Second Amended Complaint that would include twelve new defendants – including Movants – the claims against Movants should be dismissed. *See Valentine v. James Davis, Paul Davis Sys. of Columbia*, 319 S.C. 169, 172, 460 S.E.2d 218, 219 (Ct. App. 1995) (“Rule 15(a) only permits an existing plaintiff to add, modify, delete, or change claims against an existing defendant.”); *see*

also *O'Rear v. Amer. Family Life Assurance Co. of Columbus, Inc.*, 784 F. Supp. 1561, 1565 (M.D. Fla. 1992) (dismissing with prejudice claims asserted in a fourth amended complaint against a new defendant without leave of the court to add a party).

IV. CONCLUSION

For the foregoing reasons, the claims against Movants should be dismissed.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos

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**ATTORNEYS FOR DEFENDANTS
INTACT INSURANCE GROUP USA
HOLDINGS, INC. AND INTACT
INSURANCE GROUP USA, LLC**

November 30, 2022

EXHIBIT A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jessica K. Altman,
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff

v.

Bedivere Insurance Company,

Respondent

No. 1 BIC 2021

ORDER OF LIQUIDATION

AND NOW, this 11th day of March, 2021, upon consideration of the Petition for Liquidation of Bedivere Insurance Company (Bedivere) filed by Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, and upon the unanimous consent of the Board of Directors of Bedivere and the sole shareholder of Bedivere, Trebuchet US Holdings, Inc., it is hereby ORDERED that:

1. The Petition for Liquidation is GRANTED, and Bedivere is ordered to be liquidated pursuant to Article V of The Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, added by the Act of December 14, 1977, P.L. 280, *as amended*, 40 P.S. §§ 221.1 – .63 (Article V).

2. Insurance Commissioner Jessica K. Altman and her successors in office, if any, are hereby appointed Statutory Liquidator of Bedivere and directed to take possession of Bedivere's property, business and affairs in accordance with Article V and to administer them pursuant to the orders of this Court.

3. The Liquidator is hereby vested with all the powers, rights and duties authorized under Article V and other applicable statutes and regulations.

ASSETS OF THE ESTATE

4. The Liquidator is vested with title to all property, assets, contracts and rights of action (assets) of Bedivere of whatever nature and wherever located, whether held directly or indirectly, as of the date of filing of the Petition for Liquidation. All assets of Bedivere are hereby found to be *in custodia legis* of this Court and this Court asserts jurisdiction as follows: (a) *in rem* jurisdiction over all assets wherever they may be located and regardless of whether they are held in the name of Bedivere or in any other name; (b) exclusive jurisdiction over all determinations as to whether assets belong to Bedivere or to another party; (c) exclusive jurisdiction over all determinations of the validity and amounts of claims against Bedivere; and (d) exclusive jurisdiction over the determination of the priority of all claims against Bedivere.

5. The Liquidator is directed to take possession of all assets that are the property of Bedivere. Specifically, the Liquidator is directed to:

a. Inform all banks, investment bankers, companies, other entities or other persons having in their possession assets which are, or may be, the property of Bedivere, unless otherwise instructed by the Liquidator, to deliver the possession of the same immediately to the Liquidator, and not disburse, convey, transfer, pledge, assign, hypothecate, encumber or in any manner dispose of the same without the prior written consent of, or unless directed in writing by, the Liquidator.

b. Inform all producers and other persons having sold policies of insurance issued by Bedivere to account for and pay all unearned commissions

and all premiums, collected or uncollected, for the benefit of Bedivere directly to the Liquidator within 30 days of notice of this Order and that no producer, reinsurance intermediary or any other person shall disburse or use monies which come into their possession and are owed to, or claimed by, Bedivere for any purpose other than payment to the Liquidator.

c. Inform any premium finance company that has entered into a contract to finance a policy that has been issued by Bedivere to pay any and all premium owed to Bedivere to the Liquidator.

d. Inform all attorneys employed by or retained by Bedivere or performing legal services for Bedivere as of the date of this Order that, within 30 days of notification, they must report to the Liquidator the name, company, claim number (if applicable) and status of each matter they are handling on behalf of Bedivere; the full caption, docket number and name and address of opposing counsel in each case; an accounting of any funds received from or on behalf of Bedivere for any purpose in any capacity; and further, that the Liquidator need not make payment for any unsolicited report.

e. Inform any entity that has custody or control of any data processing equipment and records (including but not limited to source documents, all types of electronically stored information, or other recorded information) relating to Bedivere to transfer custody and control of such documents, in a form readable by the Liquidator, to the Liquidator as of the date of this Order, upon request.

f. Inform any entity furnishing claims processing or data processing services to Bedivere to maintain such services and transfer any such accounts to the Liquidator as of the date of this Order, upon request.

6. Bedivere's directors, officers and employees shall: (a) surrender peaceably to the Liquidator the premises where Bedivere conducts its business; (b) deliver all keys or access codes thereto and to any safe deposit boxes; (c) advise the Liquidator of the combinations and access codes of any safe or safekeeping devices of Bedivere or any password or authorization code or access code required for access to data processing equipment; and (d) deliver and surrender peaceably to the Liquidator all the assets, books, records, files, credit cards, and other property of Bedivere in their possession or control, wherever located, and otherwise advise and cooperate with the Liquidator in identifying and locating any of the foregoing.

7. Bedivere's directors, officers and employees are enjoined from taking any action, without the prior approval of the Liquidator, to transact further business on behalf of Bedivere. They are further enjoined from taking any action that would waste the assets of Bedivere or would interfere with the Liquidator's efforts to wind up the affairs of Bedivere.

CONTINUATION AND CANCELLATION OF POLICIES

8. All Bedivere policies and contracts of insurance, whether issued within this Commonwealth or elsewhere, in effect on the date of this Order will continue in force for the lesser of the following: (1) 30 days from the date of this Order; (2) until the normal expiration of the policy or contract providing insurance coverage; (3) until the insured has replaced the insurance coverage with equivalent insurance with another insurer or otherwise terminated the policy; or (4) until the Liquidator has effected a transfer of the policy obligation to an assuming insurer pursuant to Section 523(8) of Article V, 40 P.S. § 221.23(8).

NOTICE AND PROCEDURE FOR FILING CLAIMS

9. No judgment or order against Bedivere or its insureds entered after the date of filing of the Petition for Liquidation, and no judgment or order against Bedivere or its insureds entered at any time by default or by collusion, will be considered as evidence of liability or of quantum of damages by the Liquidator in evaluating a claim against the estate of Bedivere.

10. In addition to the notice requirements of Section 524 of Article V, 40 P.S. § 221.24, the Liquidator shall publish notice in newspapers of general circulation where Bedivere has its principal places of business that:

- (a) specifies the last day for the filing of claims against the estate of Bedivere;
- (b) explains the procedure by which claims may be submitted to the Liquidator;
- (c) provides the address of the Liquidator's office for the submission of claims; and
- (d) notifies the public of the right to present a claim, or claims, to the Liquidator.

11. Within 30 days of giving notice of the Order of Liquidation, as set forth in Section 524 of Article V, 40 P.S. § 221.24, and of the procedures for filing claims against the estate of Bedivere, the Liquidator shall file a compliance report with the Court stating, in reasonable detail, the date on which and manner by which these notices were given.

DISTRIBUTION OF ESTATE ASSETS

12. Any and all distribution of assets pursuant to Sections 544 and 546 of Article V, 40 P.S. §§ 221.44, 221.46, including those in payment for costs and expenses of estate administration, shall be made under the direction and approval of the Court.

STAY OF LITIGATION

13. Unless the Liquidator consents thereto in writing, no action at law or in equity, including, but not limited to, an arbitration or mediation, the filing of any judgment, attachment, garnishment, lien or levy of execution process against Bedivere or its assets, shall be brought against Bedivere or the Liquidator or against any of their employees, officers or liquidation officers for acts or omissions in their capacity as employees, officers or liquidation officers of Bedivere or the Liquidator, whether in this Commonwealth or elsewhere, nor shall any such existing action be maintained or further prosecuted after the effective date of this Order. All above-enumerated actions currently pending against Bedivere in the courts of the Commonwealth of Pennsylvania or elsewhere are hereby stayed; relief sought in these actions shall be pursued by filing a proof of claim against the estate of Bedivere pursuant to Section 538 of Article V, 40 P.S. § 221.38.

14. All secured creditors or parties, pledges, lienholders, collateral holders or other persons, claiming secured, priority or preferred interests in any property or assets of Bedivere, are hereby enjoined from taking any steps whatsoever to transfer, sell, assign, encumber, attach, dispose of, or exercise, purported rights in or against any property or assets of Bedivere except as provided in Section 543 of Article V, 40 P.S. § 221.43.

15. In recognition of paragraph 10 of the Petition for Liquidation and the representation therein regarding the December 2020 order issued by the Pennsylvania Insurance Department approving the merger of The Employers' Fire Insurance Company (Employers' Fire), Lamorak Insurance Company (formerly OneBeacon American Insurance Company) (Lamorak), and Potomac Insurance

Company (Potomac) with and into Bedivere, all references herein to Bedivere shall include Employers' Fire, Lamorak, and Potomac.

WORKERS' COMPENSATION AND PERSONAL INJURY PROTECTION CLAIMS

16. The Liquidator is authorized for a period of up to 90 days from the date of this Order to advance funds from the estate of Bedivere to pay workers' compensation indemnity and personal injury protection (PIP) claims on behalf of the state guaranty associations, provided that the guaranty association enters into an agreement that such advances shall be treated as a distribution pursuant to Section 536 of Article V, 40 P.S. § 221.36. The Liquidator shall have the discretion to accept such interim assurances as she deems acceptable in lieu of a formal agreement.



P. Kevin Brobson, President Judge

EXHIBIT B

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Southern Insulation, Inc., through its
Receiver, Peter D. Protopapas,

Case Number: 2020-CP-40-04385

Plaintiff,

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

vs.

AMENDED SUMMONS

State Auto Property & Casualty Insurance Company f/k/a Southern Home Insurance Company a/k/a Southern Home Insurance Company, Greer, South Carolina; Stokes-Farnham Insurance Agency, Inc.; Arrowood Indemnity Company, f/k/a Royal Indemnity Company, successor-in-interest to Royal Globe Insurance Company of America; Bedivere Insurance Company, individually and as parent and/or successor-in-interest to Potomac Insurance Company of Illinois; United States Fidelity and Guaranty Company; The Continental Insurance Company; Correll Insurance Group, LLC, individually and as parent and/or successor-in-interest to Chandler Insurance, LLC f/k/a R.V. Chandler & Sons, Inc.; R.V. Chandler & Associates, Inc., as successor-in-interest to R.V. Chandler & Sons, Inc.; David D. Rollins; and Linda J. White, Individually and as Personal Representative of the Estate of Lubert F. White, Jr.

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Amended Complaint upon the subscribers at 1329 Blanding Street, Columbia, South Carolina 29201. Within thirty (30) days after service hereof, exclusive of the day of such service, and if you

fail to answer the Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Complaint.

s/ Brian M. Barnwell
Brian M. Barnwell
SC Bar number 78249
Rikard & Protopapas, LLC
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John B. White, Jr.
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Attorneys for the Receiver for
Southern Insulation, Inc.

This 10th Day of November, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Southern Insulation, Inc., through its Receiver,
Peter D. Protopapas,

Case Number: 2020-CP-40-04385

Plaintiff,

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

vs.

AMENDED COMPLAINT

State Auto Property & Casualty Insurance Company f/k/a Southern Home Insurance Company a/k/a Southern Home Insurance Company, Greer, South Carolina; Stokes-Farnham Insurance Agency, Inc.; Arrowood Indemnity Company, f/k/a Royal Indemnity Company, successor-in-interest to Royal Globe Insurance Company of America; Bedivere Insurance Company, individually and as parent and/or successor-in-interest to Potomac Insurance Company of Illinois; United States Fidelity and Guaranty Company; The Continental Insurance Company; Correll Insurance Group, LLC, individually and as parent and/or successor-in-interest to R.V. Chandler & Sons, Inc.; R.V. Chandler & Associates, Inc., as successor-in-interest to R.V. Chandler & Sons, Inc.; David D. Rollins; and Linda J. White, Individually and as Personal Representative of the Estate of Lubert F. White, Jr.

Defendants.

NOW COMES the Plaintiff Southern Insulation, Inc. (“Southern”) by and through its Receiver, Peter D. Protopapas (the “Receiver”) (collectively “Plaintiff”), pursuant to Rule 15(a), and files this Amended Complaint as a matter of right complaining of the above-named defendants as follows:

THE PARTIES

1. Peter D. Protopapas was appointed as Southern's Receiver on May 7, 2019, by Order of the Honorable Jean H. Toal of the Fifth Judicial Circuit in the case of *Hopper v. Air & Liquid Sys. Corp., et al.*, No. 2016-CP-40-00076, which is pending in the South Carolina Court of Common Pleas (the "Receivership Order"). The Receiver's primary place of business is Richland County, South Carolina.

2. Southern was incorporated under the laws of South Carolina and had its principal place of business in South Carolina. Southern was administratively dissolved on or about December 5, 1991.

3. Defendant State Auto Property & Casualty Insurance Company f/k/a Southern Home Insurance Company a/k/a Southern Home Insurance Company, Greer, South Carolina ("State Auto") was incorporated under the laws of South Carolina on or about January 24, 1950. On or about November 14, 2006, State Auto was re-domesticated under the laws of Iowa and its current principal place of business is located in Iowa. State Auto is an insurance company authorized to transact business in the State of South Carolina.

4. Defendant Stokes-Farnham Insurance Agency, Inc. ("Stokes-Farnham") is incorporated under the laws of South Carolina with its principal place of business in South Carolina.

5. Arrowood Indemnity Company, f/k/a Royal Indemnity Company, successor-in-interest to Royal Globe Insurance Company of America ("Arrowood"), is incorporated under the laws of Delaware with its principal place of business in Mecklenburg County, North Carolina. Arrowood is an insurance company authorized to transact business in the State of South Carolina.

6. Bedivere Insurance Company, individually and as successor-in-interest to Potomac Insurance Company of Illinois (“Bedivere”), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business in the Commonwealth of Pennsylvania. Bedivere is an insurance company authorized to transact business in the State of South Carolina.

7. United States Fidelity and Guaranty Company (“USF&G”) is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in the State of Connecticut. USF&G is an insurance company authorized to transact business in the State of South Carolina.

8. The Continental Insurance Company (“CNA”) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business in the State of Illinois. CNA is an insurance company authorized to transact business in the State of South Carolina.

9. Correll Insurance Group, LLC, individually and as parent and/or successor-in-interest to R.V. Chandler & Sons, Inc., (“Correll”) is a limited liability company whose members, upon information and belief, are all South Carolina citizens, and it has its principal place of business in South Carolina.

10. R.V. Chandler & Associates, Inc., as successor-in-interest to R.V. Chandler & Sons, Inc., is incorporated under the laws of South Carolina with its principal place of business in South Carolina.

11. Upon information and belief, both Correll and R.V. Chandler & Associates are successors-in-interest to R.V. Chandler & Sons, Inc. and are liable for its acts and omissions.

(Collectively Correll and R.V. Chandler & Associates, Inc. may be referred to as the “Chandler Defendants”).

12. State Auto, Arrowood, Bedivere, USF&G, and CNA may be collectively referred to herein as “Southern’s Insurers.”

13. Upon information and belief, Defendant David D. Rollins is a citizen and resident of the State of South Carolina.

14. Upon information and belief, Linda J. White, individually and as personal representative of the Estate of Lubert F. White, Jr. is a citizen and resident of the State of South Carolina.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this suit in as much as this Court appointed the Receiver of Southern, a former South Carolina corporation, and because the issues raised in this suit fall within the Court’s subject matter jurisdiction.

16. The Court has personal jurisdiction over the Defendants.

17. Venue is proper in this Court as it is the Receivership Court with cases pending and new filings anticipated in this Court. Further, on May 28, 2019, pursuant to the Order of the Supreme Court of South Carolina, Order Number 2019-05-28-02, the Honorable Jean H. Toal was appointed to have jurisdiction in all circuits in this State to dispose of all pretrial matters and motions, as well as trials, arising out of asbestos and asbestosis litigation filed within the state court system. Thus, the Honorable Jean H. Toal has jurisdiction over this matter.

FACTUAL BACKGROUND

18. Southern was incorporated in South Carolina on or about April 27, 1967.

19. Southern dissolved by forfeiture on or about December 5, 1991.

20. Throughout its period of operations, Southern is alleged to have exposed numerous employees, clients, and other third-parties to asbestos-containing products, materials, and/or equipment in connection with the installation, repair, replacement, removal and/or disturbance of thermal insulation materials.

21. The people allegedly exposed to asbestos by Southern's conduct, including the individual defendants named herein, (the "Asbestos Claimants") claim that they have suffered bodily injury that took place during the years 1967 to 1991 and thereafter continued and progressed.

22. The Asbestos Claimants have asserted numerous lawsuits, many of which are pending in this Court, against Southern (the "Asbestos Suits").

The State Auto Policy

23. During at least 1979, Joe W. Rochester, d/b/a Rochester's Insulation Company ("Rochester") was a subcontractor for Southern.

24. Upon information and belief, as a subcontractor for Southern, Rochester performed work that exposed the Asbestos Claimants to asbestos-containing materials, resulting in the alleged injuries that are at issue in the Asbestos Suits.

25. According to the South Carolina Secretary of State, Rochester's Insulation Company dissolved on or about March 3, 1986.

26. Upon information and belief, Joe W. Rochester died on or about July 19, 2018.

27. On or about March 16, 1979, Stokes-Farnham issued a Certificate of Insurance to Southern.

28. The Certificate of Insurance states that Southern Home Insurance Company, n/k/a State Auto, issued a comprehensive general liability policy to Rochester, Policy Number GA016528, with an expiration date of August 4, 1979 (the “State Auto Policy”).

29. Upon information and belief, when it issued the Certificate of Insurance, Stokes-Farnham represented and agreed to have Southern named as an additional insured on the State Auto Policy.

30. The Certificate of Insurance is evidence that Southern was named as an additional insured on the State Auto Policy.

31. Because Southern is an additional insured on the State Auto Policy, State Auto has a duty to defend and indemnify Southern in the Asbestos Suits.

32. Upon information and belief, State Auto is in possession of additional policies that name Southern as either an insured or additional insured.

Additional Policies Issued to Southern

33. USF&G, CNA, Bedivere, and Arrowpoint issued general liability and/or manufacturers and contractors policies to Southern.

34. These policies, in varying degrees, provided defense and indemnity coverage for the Asbestos Suits. (Collectively, the State Auto Policy and the policies issued by USF&G, CNA, Bedivere, and Arrowpoint may be referred to as the “Insurance Policies.”)

35. R.V. Chandler & Sons, Inc. acted as an agent for one or more of Southern’s Insurers when they issued the Insurance Policies, and the Chandler Defendants, as successors-in-interest to R.V. Chandler & Sons, Inc., are liable for its acts and omissions.

36. Plaintiff has tendered the Asbestos Suits to USF&G, CNA, Bedivere, and Arrowpoint.

37. CNA, Bedivere, and Arrowood have admitted that they insured Southern and have, under a reservation of rights, undertaken their insuring obligations to Southern, including in circumstances where their policies are missing, in whole or in part.

38. USF&G contends that it has been unable to locate a copy of any liability insurance policy issued to Southern, has denied any obligation to Southern, and has refused to perform any insuring obligations.

39. USF&G takes this position despite being presented with secondary evidence, including several certificates of insurance, which establish the terms of the policies issued by USF&G.

40. Southern also has secondary evidence that establishes the terms of the policies issued by CNA, Bedivere, and Arrowood.

41. Additionally, these policies, as well as the State Auto Policy, were issued with standard terms and conditions, and it is the burden of the insurers to prove any limitation to or exclusion of coverage.

Appointment of Receiver

42. On May 7, 2019, the Court appointed the Receiver, giving him the power and authority to fully administer all assets of Southern, to accept service on behalf of Southern, to engage counsel on behalf of Southern, and to take any and all steps necessary to protect the interests of Southern, whatever they may be.

43. Since his appointment, the Receiver has expended substantial time and incurred expenses to identify potential assets and responsive policies and to defend asbestos lawsuits in fulfillment of his responsibility as Receiver.

44. The Receiver will continue to expend substantial time and incur expenses.

COUNT I
(Declaratory Judgment Against Southern's Insurers, Stokes-Farnham and the Chandler Defendants)

45. Each of the allegations in the foregoing paragraphs are incorporated herein as if repeated verbatim.

46. Pursuant to *Jeffcoat v. Morris*, 300 S.C. 526, 389 S.E.2d 159 (Ct. App. 1989), a receiver holds the property coming into his or her hands by the same right and title as the person for whose property he or she is receiver.

47. Upon information and belief, Southern held an interest in the Insurance Policies. The Insurance Policies, therefore, are property of Southern.

48. As the receiver of Southern, the Receiver is entitled to the Insurance Policies, which are believed to be in the possession of Southern's Insurers, Stokes Farnham, and/or the Chandler Defendants.

49. Plaintiff has requested copies of the Insurance Policies from Southern's Insurers, Stokes Farnham, and the Chandler Defendants, but they have failed to provide complete copies of them.

50. Plaintiff seeks a declaration that he is entitled to copies of all the Insurance Policies and that Southern's Insurers, Stokes Farnham, and/or the Chandler Defendants must provide him with copies of those policies.

51. Plaintiff further seeks a declaration that Southern's Insurers have a duty to defend Southern in the Asbestos Suits.

52. As to all the Insurance Policies, Plaintiff seeks the following declarations:

- a. The Insurance Policies cover all Southern Asbestos Suits that allege any bodily injury, personal injury, injurious exposure, progression of injury and/or disease,

manifestation of illness, or death during any of their policy periods;

- b. The multiple-year policies and policies that were subject to annual renewal provide for a full separate limit for product liability and completed operations claims and a full per occurrence limit for premises and operations claims separately for each annual period or portion thereof;
- c. Each Asbestos Suit “triggers” all the Insurance Policies with policy periods from the date of first alleged exposure to asbestos up through and including the date of discovery, or “manifestation” of an asbestos-related disease;
- d. Southern may select the policy or policy years to which to assign or allocate each Asbestos Suit-related loss;
- e. In the case of a claimed ambiguity in any Insurance Policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the Insurance Policies and Southern’s Insurers bear the burden of proof as to any such ambiguity;
- f. The burden of proving any limitation or exclusion to coverage is on Southern’s Insurers;
- g. Defense costs for the Asbestos Suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the Insurance Policies;
- h. The duty to pay or reimburse defense costs is triggered by the allegations of a complaint asserted against Southern;
- i. If any allegation or cause of action in the Asbestos Suits is actually or potentially covered under the Insurance Policies, Southern’s Insurers must defend or reimburse in full the costs of defending against all of said allegations and causes of action contained in such complaint;

- j. Each Insurance Policy is required to pay or reimburse all sums that Southern becomes legally obligated or reasonably required to pay as damages by reason of the Asbestos Suits, unless there is an unambiguous exclusion or limitation that applies to any such suit or there is no bodily injury or allegation thereof during the period of any such Insurance Policy;
- k. The Asbestos Suits that allege exposure to asbestos for which Southern is alleged to be liable, during Southern's operations, including Southern's construction, installation, maintenance or removal activities, are subject only to the "per occurrence" limits of the Insurance Policies, and not subject to "aggregate" limits, if any, of the Insurance Policies;
- l. Any aggregate limit on coverage in any of the Insurance Policies is a limitation on coverage, and therefore Southern's Insurers have the burden to prove, based on the evidence, any assertion that any particular Asbestos Suit is subject to the aggregate limits in the Insurance Policies, if any;
- m. Southern's Insurers have the burden to prove, based on the evidence, that any particular Asbestos Suit is either a "products" claim or a "completed operations" claim, as those terms are defined in the Insurance Policies, in order to subject the claim to the aggregate limits in the Insurance Policies, if any;
- n. The "completed operations hazard" described in the Insurance Policies, and the corresponding aggregate limits of liability, apply *only* when a plaintiff is exposed to asbestos products *after* Southern completed its installation or removal operations or work at a particular jobsite;

- o. The asbestos insulation contracting, or “operations,” claims against Southern have resulted from multiple “occurrences” under the Insurance Policies, thus entitling Plaintiff to multiple “per occurrence” limits of liability to satisfy its asbestos liabilities; and
- p. While product liability or completed operations losses are subject to allocation on a “time on the risk” pro rata allocation method, “operations” claims are allocated on an “all sums” basis, and, in either case, in light of its non-operating defunct status, no loss may be allocated to Plaintiff as part of any “time-on-the-risk” allocation scheme.

53. Further, Plaintiff seeks a declaration that if Southern’s Insurers did not issue the Insurance Policies to protect Southern, and specifically through Stokes-Farnham and/or the Chandler Defendants, that the Court find that Stokes Farnham and/or the Chandler Defendants are responsible for the defense and indemnification of Southern during those respective years.

54. For each and all of the Insurance Policies that are missing or incomplete, Plaintiff respectfully requests the Court to declare the essential terms and conditions for each such policy and its coverage afforded to Southern, specifically for the Asbestos Suits.

55. An actual and justiciable controversy exists between Plaintiff and Southern’s Insurers, Stokes Farnham, and/or the Chandler Defendants concerning their obligations under the Insurance Policies.

56. Judicial declarations are necessary and appropriate at this time, and under the circumstances alleged above, so that Plaintiff may ascertain its rights under the Insurance Policies. A judicial declaration of Plaintiff’s rights will obviate *seriatim* litigation and a multiplicity of actions that otherwise would result from the actual and justiciable controversy between Plaintiff

and Southern's Insurers concerning their respective rights and obligations under the Insurance Policies.

COUNT II
(Failure to Procure Insurance Against Stokes-Farnham and the Chandler Defendants)

57. Each of the allegations in the foregoing paragraphs are incorporated herein as if repeated verbatim.

58. Stokes-Farnham and the Chandler Defendants had a duty to exercise reasonable skill, care and diligence to procure appropriate insurance coverage for Southern.

59. Stokes-Farnham and the Chandler Defendants breached their duty owed to Southern by failing to place insurance to protect Southern from liability for claims arising from its anticipated business activities and those of its contractors, including Rochester.

60. Upon information and belief, Stokes-Farnham's and the Chandler Defendants' breach of these duties of care include but are not limited to failing to adhere to the applicable standard of care in placing insurance; failing to procure sufficient and appropriate coverage; and in such other and further particulars as may be disclosed in discovery and established at trial.

61. Additionally, Stokes-Farnham breached its duty of care by making misrepresentations to Southern that it was named as an additional insured on the State Auto Policy.

62. Stokes-Farnham and the Chandler Defendants had an obligation to maintain records concerning the Insurance Policies and failed to do so.

63. Plaintiff did not discover that Stokes-Farnham failed to obtain insurance for it and failed to maintain records concerning the Insurance Policies until in or about September 2020 when it failed to provide copies of the Insurance Policies to Plaintiff upon request.

64. Plaintiff did not discover that the Chandler Defendants failed to obtain insurance for it and failed to maintain records concerning the Insurance Policies until in or about May 2019 when it failed to provide copies of the Insurance Policies to Plaintiff upon request.

65. As a direct and proximate result of Stokes-Farnham's and the Chandler Defendants' negligent actions and breaches of duties Plaintiff has been injured and is entitled to recover damages including, but not limited to, actual damages, punitive damages, prejudgment interest, attorney's fees, the costs of this action, and such other and further relief as the Court deems just and proper. Stokes-Farnham and the Chandler Defendants are further responsible for all damages flowing from the lack of insurance benefits that Plaintiff would have otherwise received if coverage had been appropriately produced.

COUNT III
(Negligence/Negligent Misrepresentation Against Stokes-Farnham)

66. Each of the allegations in the foregoing paragraphs are incorporated herein as if repeated verbatim.

67. This cause of action is pled in the alternative if it is determined the Stokes-Farnham failed to have Southern named as an additional insured on the State Auto Policy.

68. When it provided the Certificate of Insurance to Southern, Stokes-Farnham made the material representation to Southern that Rochester was a holder of the State Auto Policy and that Southern was named as an additional insured under the policy.

69. Stokes-Farnham knew that Southern would rely on this representation in hiring Rochester to work as a subcontractor, and it intended for Southern to rely on its representation. Therefore, Stokes-Farnham had and/or assumed a duty to provide accurate information to Southern.

70. Stokes-Farnham had a pecuniary interest in representing to Southern that it was named as an additional insured under the State Auto Policy.

71. Southern did, in fact, rely on Stokes-Farnham's representations about the State-Auto Policy, and Southern was justified in doing so.

72. Stokes-Farnham's representations about the State Auto Policy and who it insured were false, and, therefore, it breached the duty it owed to Southern.

73. Plaintiff did not discover that Stokes-Farnham failed to obtain insurance for it and failed to maintain records concerning the Insurance Policies until in or about September 2020 when it failed to provide copies of the Insurance Policies to Plaintiff upon request.

74. As a direct and proximate result of Stokes-Farnham's negligent actions and breaches of duties Plaintiff has been injured and is entitled to recover damages including, but not limited to, actual damages, punitive damages, prejudgment interest, attorney's fees, the costs of this action, and such other and further relief as the Court deems just and proper. Stokes-Farnham is further responsible for all damages flowing from the lack of insurance benefits that Plaintiff would have otherwise received if coverage had been appropriately produced.

COUNT IV
(Declaratory Judgment Against Southern's Insurers and the Asbestos Claimants)

75. Each of the allegations in the foregoing paragraphs are incorporated herein as if repeated verbatim.

76. An actual and justiciable controversy exists between Plaintiff and Southern's Insurers and the Asbestos Claimants, including the individual defendants named here, concerning their rights and obligations with respect to the Receiver.

77. Judicial declarations are necessary and appropriate at this time, under the circumstances alleged above, so that the Receiver may ascertain his rights to compensation for his efforts in fulfilling his duties under the Receivership Order.

78. Pursuant to S.C. Code Ann. § 15-65-100, the Receiver shall be allowed such commissions as may be fixed by the Court appointing the Receiver.

79. Pursuant to the Supreme Court of South Carolina's ruling in *Ex Parte Simons*, 289 S.C. 1, 344 S.E.2d 151 (1986), a Receiver's fee is based on the value of a receiver's services and at the appointing Court's discretion.

80. Southern has no assets with which to compensate the Receiver for his services, aside from its insurance policies.

81. The Receiver has dedicated and will continue to dedicate a substantial amount of time and incur substantial expenses to fulfill his duties.

82. The primary beneficiaries of the time and expenses Plaintiff has put towards this case are the Asbestos Claimants and Southern's Insurers.

83. The Asbestos Claimants and Southern's Insurers have had, and will continue to have, claims processed and suits defended that otherwise would not have been processed or defended, but for the diligent work of the Receiver.

84. For example, Southern's Insurers and the Asbestos Claimants have a representative of Southern toward whom to direct their efforts and process claims against their responsive policies.

85. Plaintiff respectfully requests this Court to declare that Southern's Insurers and the Asbestos Claimants must fairly compensate the Receiver.

86. If that is not possible, Plaintiff requests that this Court declare which Defendants are responsible for compensating the Receiver for the substantial time, effort, and expenses he put towards his responsibility as Receiver in this case.

COUNT V
(Declaratory Judgment against Individual Defendants)

87. Each of the allegations in the foregoing paragraphs are incorporated as if repeated verbatim herein.

88. Southern seeks a declaration and order that certain rights and interests of the individually named Defendants be limited and curtailed as follows: (1) that any judgment obtained against Southern in the Asbestos Suits be limited to all sums that may be collected from Southern's Insurers individually or collectively; (2) that no form of relief, equitable or monetary, including actual, punitive or exemplary damages, is awardable against the Receiver or the Receiver acting on behalf of Southern pursuant to South Carolina Code §15-65-10; and (3) that any judgment obtained against Southern that is or may be subject to an aggregate limit of any insurance policy or policies issued to Southern must fairly and equitably take into account such other judgments that may be outstanding at the time of such judgment.

COUNT VI
(Breach of Contract Against USF&G)

89. Each of the allegations in the foregoing paragraphs are incorporated as if repeated verbatim herein.

90. Southern was insured by one or more policies of insurance issued by USF&G.

91. Southern provided timely notice to USF&G of the Asbestos Suits.

92. USF&G, unreasonably and without proper cause, has failed to defend Southern in the Southern asbestos suits as required by the policies it issued to Southern.

93. The failure of USF&G to provide a defense to Southern in the Asbestos Suits has caused and will continue to cause harm and damages to Southern.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court grant the declaratory relief requested herein and award it actual damages, punitive damages, attorneys' fees and costs, pre-judgment interest, post-judgment interest, and all other relief the Court deems just and proper.

Respectfully submitted,

s/ Brian M. Barnwell
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 SC Bar number 78249
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Attorneys for the Receiver for
 Southern Insulation, Inc.

This 10th Day of November, 2020

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Southern Insulation, Inc., through its
Receiver, Peter D. Protopapas,

Plaintiff,

vs.

State Auto Property & Casualty
Insurance Company f/k/a Southern Home
Insurance Company a/k/a Southern
Home Insurance Company, Greer, South
Carolina; Stokes-Farnham Insurance
Agency, Inc.; Arrowood Indemnity
Company, f/k/a Royal Indemnity
Company, successor-in-interest to Royal
Globe Insurance Company of America;
Bedivere Insurance Company,
individually and as parent and/or
successor-in-interest to Potomac
Insurance Company of Illinois; United
States Fidelity and Guaranty Company;
The Continental Insurance Company;
Correll Insurance Group, LLC,
individually and as parent and/or
successor-in-interest to Chandler
Insurance, LLC f/k/a R.V. Chandler &
Sons, Inc.; R.V. Chandler & Associates,
Inc., as successor-in-interest to R.V.
Chandler & Sons, Inc.; David D. Rollins;
and Linda J. White, Individually and as
Personal Representative of the Estate of
Lubert F. White, Jr.,

Defendants.

Case Number: 2020-CP-40-04385

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**PLAINTIFF'S MOTION TO
DISMISS DEFENDANT BEDIVERE
INSURANCE COMPANY
PURSUANT TO
RULE 41(a)(2) SCRCF**

The Plaintiff, Southern Insulation, Inc., through its Receiver, Peter D. Protopapas, pursuant to Rule 41(a)(2) SCRCF, respectfully moves for an Order of this Court dismissing without prejudice all pending claims in this action against Bedivere Insurance Company, individually and as parent and/or successor-in-interest to Potomac Insurance Company of Illinois.

On March 11, 2021, the Commonwealth Court of Pennsylvania issued an order of liquidation of Bedivere Insurance Company. (Exh. A). On or about December 29, 2021, Plaintiff filed claims against Bedivere according to the terms of the liquidation order, and for this reason, dismissal of the pending claims against Bedivere is appropriate. Pursuant to Rule 41(a)(2) SCRC, dismissal by court order is not an adjudication on the merits.

For the above reasons, Plaintiff respectfully requests that the Court:

Grant this Motion to Dismiss without prejudice the pending claims in this action against Bedivere Insurance Company, individually and as parent and/or successor-in-interest to Potomac Insurance Company of Illinois; and

Grant that each party shall bear its own costs and attorneys' fees.

Respectfully Submitted,

s/ Matthew Richardson

Matthew Richardson

S.C. Bar No. 15647

Eric B. Amstutz

S.C. Bar No. 363

Jessica Monsell

S.C. Bar No. 105232

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Brian M. Barnwell

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*Attorneys for the Receiver for
Southern Insulation, Inc.*

January 7, 2022

Columbia, South Carolina

EXHIBIT D

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

In Re:	:	Pursuant to Sections 1401, 1402,
	:	and 1403 of the Insurance Holding
Application of Trebuchet US Holdings	:	Companies Act, Article XIV of the
Inc. in Support of the Request for	:	Insurance Company Law of 1921, Act
Approval to Acquire Control of	:	of May 17, 1921, P. L. 682, <u>as</u>
OneBeacon Insurance Company,	:	<u>amended</u> , 40 P.S. §§ 991.1401,
Potomac Insurance Company,	:	991.1402 and 991.1403
OneBeacon America Insurance Company	:	
and The Employers' Fire Insurance	:	
Company	:	Order No. ID-RC-14-17

DECISION AND ORDER

AND NOW, on this 23 day of December 2014, The Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner") hereby makes the following Decision and Order:

Pursuant to Section 1402 of the Insurance Holding Companies Act, Article XIV of the Insurance Company Law of 1921, Act of May 17, 1922, P.L. 682, as amended, 40 P.S. §§ 991.1401 et seq. ("Insurance Holding Companies Act"), and in consideration of the documents, presentations, and reports received, as well as other inquiries and studies as permitted by law, the Commissioner hereby makes the following findings of fact:

FINDINGS OF FACT

1. On February 8, 2013, Armour Group Holdings Limited ("Armour") through its subsidiary, Trebuchet US Holdings, Inc. ("Trebuchet") filed an application to acquire OneBeacon Insurance Company ("OBIC") and Potomac Insurance Company ("Potomac") with The Insurance Department of the Commonwealth of Pennsylvania ("Department") pursuant to the Insurance Holding Companies Act. The Application was amended on June 19, 2014 to reflect, inter alia, address changes for notices and amendments to the Stock Purchase Agreement (defined below). The Application was further amended on June 25, 2014 to include The Employers' Fire Insurance Company ("EFIC") and OneBeacon America Insurance Company ("OBAIC," and together with OBIC, Potomac,

and EFIC, “Domestic Insurers”),¹ and on November 3, 2014 to reflect amended exhibits to the Stock Purchase Agreement. The application, together with its amendments and supporting documentation, are collectively the “Application.”

2. Trebuchet is a foreign insurance holding company organized under the laws of Delaware with its principal place of business located in Hamilton, Bermuda.
3. Trebuchet is a wholly-owned subsidiary of Trebuchet Investments Limited (“Trebuchet Investments”).
4. Trebuchet Investments is an alien corporation organized under the laws of Bermuda with its principal place of business in Hamilton, Bermuda and is a wholly-owned subsidiary of Armour.
5. Armour is an alien insurance holding company organized as an exempt limited liability company under the laws of Bermuda with its principal place of business located in Hamilton, Bermuda. Armour is in the business of owning, controlling, and managing insurance companies in runoff.
6. Brad Huntington (“Mr. Huntington”) is an individual with his principal place of business located in Hamilton, Bermuda. Mr. Huntington currently owns 54.6% of the voting securities of Armour.
7. John Williams (“Mr. Williams”) is an individual with his principal place of business located in Hamilton, Bermuda. Mr. Williams currently owns 36.4% of the voting securities of Armour. Collectively, Armour, Trebuchet, Trebuchet Investments, Mr. Huntington, and Mr. Williams are “the Applicant.”

The Domestic Insurers

8. EFIC is a domestic stock casualty insurance company organized under the laws of Pennsylvania with its statutory home office located in Harrisburg, Pennsylvania.
9. OBAIC is a domestic stock casualty insurance company organized under the laws of Pennsylvania with its statutory home office located in Harrisburg, Pennsylvania.
10. OBIC is a domestic stock casualty insurance company organized under the laws of Pennsylvania with its statutory home office located in Harrisburg, Pennsylvania. OBIC currently directly owns all the issued and outstanding capital stock of EFIC and OBAIC.
11. Potomac is a domestic stock casualty insurance company organized under the laws of Pennsylvania with its statutory home office located in Harrisburg, Pennsylvania.

¹ When the above-captioned Form A proceeding was filed, OBAIC and EFIC were domesticated in the Commonwealth of Massachusetts. On April 2, 2013, the Department received applications from OBAIC and EFIC for approval to redomesticate from Massachusetts to Pennsylvania. On October 4, 2013, the Department approved the applications for approval to redomesticate, subject to certain conditions, and on June 20, 2014, OBAIC and EFIC were redomesticated to Pennsylvania.

12. OBIC and Potomac are wholly-owned subsidiaries of OneBeacon Insurance Group LLC ("OB Group"), a foreign limited liability company organized under the laws of Delaware with its principal place of business located in Minnetonka, Minnesota.
13. OB Group is a subsidiary of OneBeacon Insurance Group, Ltd. ("OB Group Parent"), an alien exempt limited liability company organized under the laws of Bermuda and controlled by White Mountains Insurance Group, Ltd., an alien exempt limited liability company organized under the laws of Bermuda, with its principal place of business located in Hanover, New Hampshire.
14. Atlantic Specialty Insurance Company ("ASIC") is an insurance company domiciled in the state of New York. ASIC is an indirect subsidiary of OB Group.

Description of the Proposed Transaction

15. OB Group, OB Group Parent, Armour, and Trebuchet entered into a Stock Purchase Agreement, dated as of October 17, 2012 (which, together with all amendments received subsequently, is collectively the "Stock Purchase Agreement"), under which Trebuchet would acquire control of the Domestic Insurers (the "Proposed Transaction").
16. As described in the Application and pursuant to the Stock Purchase Agreement, Trebuchet intends to acquire from OB Group all of the issued and outstanding shares of OBIC, consisting of 400,000 shares of common stock and 159,307 shares of treasury stock, and all of the issued and outstanding shares of Potomac, consisting of 1,000,000 shares of common stock (the "Shares").
17. As more fully set forth in the Stock Purchase Agreement, the aggregate purchase price to be paid by Trebuchet at the Closing (as defined in the Stock Purchase Agreement) for the Shares shall be an amount in cash equal to sixty-one million dollars (\$61,000,000), plus accrued accretion thereon from December 31, 2011 to the Closing Date (as defined in the Stock Purchase Agreement), adjusted for changes in the capital and surplus of the Domestic Insurers estimated shortly before the Closing, minus eighteen million five hundred thousand dollars (\$18,500,000). The purchase price to be paid at the Closing is referred to in the Stock Purchase Agreement as the Closing Purchase Price.
18. Pursuant to the Stock Purchase Agreement, if the Closing Purchase Price is a negative number, instead of Trebuchet paying the Closing Purchase Price to OB Group, OB Group is required to contribute to OBIC an amount of Cash Equivalents (as defined in the Stock Purchase Agreement) equal to the absolute value of such negative amount. This contribution is referred to in the Stock Purchase Agreement as the Pre-Closing Seller Contribution.
19. As described more fully *infra* paragraphs 73-74, and pursuant to the Stock Purchase Agreement, OB Group will contribute to the capital of OBIC certain additional amounts to strengthen the Domestic Insurers.

20. As more fully set forth in the Stock Purchase Agreement, the estimated Closing Purchase Price paid at the Closing is adjusted following the Closing to reach a Final Purchase Price (as defined in the Stock Purchase Agreement) based on final, agreed capital and surplus.
21. As described in the Application, Mr. Huntington and Mr. Williams would become the ultimate controlling persons of the Domestic Insurers as a result of the Proposed Transaction.
22. Effective as of the Closing Date, as defined in the Stock Purchase Agreement, OBIC, as cedent, will reinsure certain business to ASIC (or its successor), as reinsurer, under a Retained Business Reinsurance Agreement (as defined in and made an exhibit to the Stock Purchase Agreement), and, effective as of the Closing Date, ASIC (or its successor), will administer such business under a Retained Business Administrative Services Agreement (as defined in and made an exhibit to the Stock Purchase Agreement).
23. Effective as of the Closing Date, as defined in the Stock Purchase Agreement, ASIC (or its successor), as cedent, will reinsure certain business to OBIC, as reinsurer, under a Run-off Business Reinsurance Agreement (as defined in and made an exhibit to the Stock Purchase Agreement), and, effective as of the Closing Date, OBIC will administer such business under a Runoff Business Administrative Services Agreement (as defined in and made an exhibit to the Stock Purchase Agreement).
24. Pursuant to the Stock Purchase Agreement, Armour Risk Services (Bermuda) Limited ("ARS") entered into a Letter of Agreement dated October 17, 2012 ("Consulting Agreement") to provide a broad variety of services, including claims services, commencing on October 17, 2012. ARS has been providing and will continue to provide those services through the Closing Date.
25. Pursuant to the Stock Purchase Agreement, ARS and Armour Risk Management Inc. ("ARM") will enter into a Services Agreement, which is referred to in the Stock Purchase Agreement as an Intercompany Purchaser Agreement, with the Domestic Insurers under which ARS and ARM will provide a variety of services commencing on the Closing Date. ARS and ARM will be paid a management fee equal to actual cost of services rendered plus ten percent. This fee was originally fifteen percent, but the Applicant agreed to reduce the fee to ten percent.

Retention of Consultants and Advisors

26. Section 1402 of the Insurance Holding Companies Act provides that the Department may retain, at the acquiring person's expense, any attorneys, actuaries, accountants, and other experts not otherwise a part of the Department's staff as may be reasonably necessary to assist the Department in reviewing the proposed acquisition of control.

27. The Department retained Drinker Biddle & Reath LLP to act as its legal advisor in connection with matters relating to the Department's examination of Trebuchet's acquisition of control of the Domestic Insurers.
28. At the Department's request, OB Group retained Towers Watson Delaware Inc. ("Towers") in November 2012 to perform a ground-up actuarial analysis of the loss reserves of the Domestic Insurers. Towers' Analysis of Unpaid Loss and LAE as of September 30, 2012, December 31, 2012, and March 31, 2013 was provided in full to the Department on September 9, 2013, and a Summary Report was provided for publication as a supplement to the Form A on September 9, 2013 (together or separately, "Ground-Up Study"). In January 2014, the Department expanded its request, and Towers was further retained by OB Group to perform stochastic modeling of the proposed balance sheet of the Domestic Insurers. Towers' Stochastic Modeling of Run-Off Business Pro-Forma Balance Sheet as of June 30, 2014 was provided in full to the Department, and a Summary Report was provided for publication as a supplement to the Form A, on June 19, 2014 (together or separately, "Stochastic Model").
29. On January 15, 2014, the Department engaged Risk & Regulatory Consulting, LLC ("RRC") to provide actuarial support to the Department in its review of the Application.
30. RRC was engaged to perform certain tasks, including the following:
 - a. Review and analyze the Ground-Up Study prepared by Towers.
 - b. Analyze judgmental scenario modeling completed by the companies on base and worst case projected runoff outcomes.
 - c. Analyze stochastic scenario modeling completed by Towers on projected runoff outcomes under a large number of independent projection scenarios.
 - d. Analyze the seventy-year projections using the success definition as assets available to pay claims, and review proposed financial statements of each Domestic Insurer to determine compliance with applicable capital requirements.
 - e. Review the comments and reports submitted by commenters and experts retained by the commenters.

Department Procedures

Notice and Comments

31. On February 23, 2013, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by the Applicant and such notice invited interested persons to submit comments to the Department regarding the Application for sixty days following the date of the publication ("Comment Period").

32. On May 25, 2013, the Department published notice in the *Pennsylvania Bulletin* that the Comment Period would be re-opened for forty-five days following the date of the publication.
33. On July 26, 2014, the Department published notice in the *Pennsylvania Bulletin* that the Comment Period would be re-opened for an indefinite period of time to afford interested persons ample opportunity to provide written comments.
34. On September 20, 2014, the Department published notice in the *Pennsylvania Bulletin* that the Comment Period would end on October 17, 2014.
35. In response to these published notices, the Department received numerous comments, documents, and other inquiries from, or on behalf of, a variety of persons (“commenters”).
36. The comments fell into the following basic categories:
 - a. Concerns that the Stock Purchase Agreement and other related transaction documents do not make adequate provision for the uncertainty associated with long-tail policies, both in reserving and in capitalization.
 - b. Concerns that there may be an inability by one or more of the Domestic Insurers to timely pay certain claims not captured by the Stochastic Model, including concerns about the definition of failure used by Towers (whether there are assets available to pay claims). In connection with these concerns, commenters suggested that alternative failure definitions could potentially result in both a higher failure rate and earlier failures than indicated by Towers.
 - c. Arguments that, absent a compelling reason, the status quo should be maintained.
 - d. Concerns regarding the financial condition of the Applicant.
 - e. Concerns regarding the claims practices of Excalibur Reinsurance Corporation (“Excalibur”), a reinsurance company controlled by Armour.
 - f. Concerns that elements of the financial analysis had not been subject to adequate review, including concerns based on the confidentiality of certain documents submitted in connection with the Application, the proprietary and undisclosed nature of certain elements of the Stochastic Model, and whether Towers’ model had been stressed enough.
37. All comments were forwarded to the Applicant for response.
38. The Applicant shared comment letters with OB Group and with Towers when it determined that their input would be valuable.

39. The Department reviewed and considered all submissions by commenters, as well as submissions by the Applicant, OB Group, Towers, and RRC.
40. The Department created a website to serve as a public repository of documents related to the Application. As of the date of this Decision and Order, 97 documents, totaling approximately 2,919 pages, have been posted to the website.
41. On July 11, 2013, the Department received a request from Colgate-Palmolive Company ("Colgate") pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-67.3104 ("Right-to-Know Law"), and the Department's Right-to-Know Law Policy for the release of certain documents pertaining to the Application that had been designated confidential.
42. The Department granted in part and denied in part Colgate's request.
43. Colgate appealed the partial denial to the Pennsylvania Office of Open Records.
44. On March 7, 2014, the Office of Open Records granted the appeal in part and denied it in part.
45. The determination of the Office of Open Records was not appealed.
46. All documents that were made public as a part of the Right-to-Know Law request and proceeding were posted to the Department's website and are therefore available to the public and all of the commenters.
47. Upon the request of the Department, the Applicant and OB Group, as applicable, made public certain additional documents that the Applicant and/or OB Group had designated as confidential. These documents also were posted on the Department's website.

Public Informational Hearing

48. Section 1402 of the Insurance Holding Companies Act provides that the Department may exercise its discretion to hold a hearing on whether an application complies with the Insurance Holding Companies Act, unless either the person proposing to make the acquisition or the insurer that is proposed to be acquired requests a hearing within ten days of the filing of the Application.
49. If neither the acquiring party nor the insurer to be acquired timely demands a hearing, the holding of a hearing is solely at the discretion of the Department.
50. Neither the Applicant nor any of the Domestic Insurers requested a hearing on the Application.
51. After consideration of all documents, presentations and reports received, as well as other inquiries and studies as permitted by law, the Department exercised its discretion to hold a public informational hearing on the Application.

52. The Department's decision to hold a public informational hearing was an appropriate exercise of its discretion under section 1402 of the Insurance Holding Companies Act.
53. On June 21, 2014, the Department published notice in the *Pennsylvania Bulletin* that a public informational hearing would be held on July 23, 2014. The published notice advised that the public informational hearing would provide an opportunity for policyholders of any of the Domestic Insurers and other persons to present oral comments relevant to the Application. The notice also stated that, in the alternative, written comments could be submitted to the Department. Notice also was posted on the Department's website. In addition, the Department gave notice of the hearing to all persons who had contacted the Department up to that point in time, and it answered the questions it received about the hearing.
54. On July 23, 2014, the Department held the noticed public informational hearing with regard to the Application as provided for in Section 1402 of the Insurance Holding Companies Act.
55. The public informational hearing was conducted in the same manner as other hearings in Section 1402 proceedings.
56. Approximately 45 persons attended all or part of the public informational hearing, including representatives of the Department, the Applicant, OB Group, the Domestic Insurers, several policyholders of the Domestic Insurers, and others.
57. Deputy Insurance Commissioner Stephen J. Johnson presided over the public informational hearing and received oral comments and written presentation materials.
58. During the public informational hearing, among other things, the Department described its review process.
59. OB Group representatives provided an overview of the Proposed Transaction, the regulatory approvals needed, and the benefits of the Proposed Transaction to the Domestic Insurers and their respective policyholders.
60. Towers representatives provided a summary of the work they performed and the conclusions they reached.
61. A representative of the Applicant discussed the background of Armour and the Applicant's plans for the Domestic Insurers.
62. RRC representatives described the work they were retained to perform and discussed the conclusions they had reached regarding their review of the Towers reports.
63. A number of persons, all of whom had previously submitted written comments, presented their positions regarding the Proposed Transaction of the Domestic Insurers.

64. The public informational hearing was transcribed by a stenographer. The transcript of the public informational hearing is 211 pages and is available on the Department's website.
65. On July 26, 2014, the Department published notice in the *Pennsylvania Bulletin* that the Comment Period would be re-opened for an indefinite period of time to afford persons ample opportunity to provide written comments.
66. On September 20, 2014, the Department published notice in the *Pennsylvania Bulletin* that the Comment Period would end on October 17, 2014. Notice was published in the *Pennsylvania Bulletin* at 44 Pa. Bull. 6056 (September 20, 2014).
67. Additional comments were submitted by Colgate; the Pennsylvania Manufacturers' Association ("PMA"), Associated Industries of Massachusetts, Belden Inc., Crosby Valve, LLC, Invensys, Inc., ITT Corp., Meritor, Inc., PolyOne Corp., the Proctor & Gamble Co., Rockwell Automation, Inc., 3M Co., United Technologies Corp., and the William Powell Co. (when discussed as a group, the "PMA petitioners"); and Olin Corporation ("Olin") in October. Responses were received from the Applicant and OB Group (dated November 3, 2014), and Towers (confidential dated October 31, 2014 and public dated November 2, 2014).
68. Throughout the Application process, the Department reviewed and analyzed the information provided by all sources in connection with the Proposed Transaction.
69. At various times throughout the Application process, the Department requested that the Applicant, OB Group, and/or Towers provide additional information or documentation.
70. As stated above, the Applicant, OB Group, and Towers continued to provide information and documents in support of the Application, up to and including November 3, 2014.
71. Many of these documents have been made a part of the public record. Those that have not been made a part of the public record are confidential by statute or constitute trade secret or otherwise protected material.

Actuarial Analysis

72. On June 20, 2014, RRC provided the Department with two Summary Reports, one reviewing Towers' reserve study and the other reporting its actuarial review of the Stochastic Model. RRC also presented at the public hearing. On October 2, 2014, RRC sent a letter to the Department discussing Towers' response to the points raised at the hearing and in the comments submitted to that point. On December 8, 2014, RRC sent a letter to the Department discussing Towers' Update of Stochastic Modeling dated November 2, 2014. RRC's Summary Reports, October letter, and December letter were posted to the Department's website. RRC's conclusions on Towers' work, which are in the public documents and in RRC's testimony, are as follows:

- a. Towers was independent and acted in accordance with professional standards in its Ground-Up Study and the development and application of the Stochastic Model.
- b. Towers was forthcoming with explanations of its choices and judgments, and based its conclusions on accepted professional standards and methods:
 - i. The choice of Stochastic Model used was reasonable and consistent with professional standards and practices.
 - ii. The judgments as to the data, parameters, and techniques to use in the Stochastic Model were reasonable and consistent with professional standards and practices.
- c. The initial results of the Stochastic Model showed a long-term (in excess of thirty years) failure rate of roughly 12 percent. Nevertheless, due to a combination of additional capitalization; better-than-expected loss development; the passage of time; and, to a lesser extent, the reduction in the management fee, that failure rate was reduced by almost half in Towers' most recent responses (confidential dated October 31, 2014 and public dated November 2, 2014).

Strengthening the Domestic Insurers

- 73. In response to questions from the Department and to address concerns raised by commenters, the Applicant and OB Group strengthened the capital of OBIC by increasing, on two separate occasions, the amount OB Group will contribute to the capital of OBIC, in exchange for Surplus Notes (as defined in the Stock Purchase Agreement). This included a \$20.1 million increase offered by OB Group after review of the comments made prior to and at the public informational hearing. The amount OB Group will contribute to the capital of OBIC is \$101 million.
- 74. To effect these increases, the parties to the Stock Purchase Agreement have agreed that (a) the Required Additional Capital Amount (as defined in the Stock Purchase Agreement) is an amount expected to be in the range of \$140 million to \$150 million, such that the total amount of the Surplus Notes shall be equal to \$101 million; and (b) the amount by which the Required Additional Capital Amount exceeds \$101 million shall be satisfied by the Pre-Closing Seller Contribution. Therefore, on or before the Closing Date, OB Group will contribute to OBIC (i) the Required Additional Capital Amount, which includes the \$101 million described above, and (ii) the Pre-Closing Seller contribution.
- 75. In response to questions from the Department in connection with the exposure by the Domestic Insurers to possible risk associated with owning equity securities, the Applicant and OB Group will reduce the percentage of the assets of the Domestic Insurers invested in equity securities from the initial proposed percentage. These lower percentages, which

were reflected in Towers' Update of Stochastic Modeling dated November 2, 2014, lower the exposure to, and thus the risk of, equity securities.

76. In response to questions from the Department, and as discussed *supra* paragraph 25, the Applicant agreed to reduce the management fee that ARS and ARM will charge under the Services Agreement from actual cost of services rendered plus fifteen percent to actual cost of services rendered plus ten percent.
77. As a result of these and other factors, including the better-than-expected loss development and passage of time, the mid- to long-range success rate, as reflected in Towers' Update of Stochastic Modeling dated November 2, 2014, increased as follows:

	Success Rate (current)	Success Rate (prior)
Years 15-20	97.32%	95.91%
Years 20-25	95.56%	92.48%
Years 25-30	94.59%	90.10%
30+ Years	93.44%	88.28%

Standards for Review

78. Section 1402(f)(1) of the Insurance Holding Companies Act establishes the standards for approval of an application for the acquisition of control of a domestic insurer.

Requirements for Licensure

79. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the requirements for continued licensure of the domestic insurers being acquired, in each case for the line or lines of insurance for which each is presently licensed.
80. The classes of insurance for which an insurance company may be incorporated and become licensed to write are set out in Section 202 of the Insurance Company Law (40 P.S. § 382).
81. The minimum paid up capital stock and paid in surplus required of a stock insurer for each class of insurance is set out in Section 206 of the Insurance Company Law (40 P.S. § 386).
82. In accordance with Section 206 of the Insurance Company Law (40 P.S. § 386), the Domestic Insurers are each required to maintain a minimum paid up capital stock of \$2,350,000 to write the classes of insurance for which they are presently licensed.

83. In accordance with Section 206 of the Insurance Company Law (40 P.S. § 386), the Domestic Insurers are each required to maintain a minimum paid in surplus of \$1,175,000 to write the classes of insurance for which they are presently licensed.
84. Upon completion of the Proposed Transaction, each of the Domestic Insurers will have paid up capital in an amount that will satisfy the minimum required of a casualty insurance company licensed to write the lines of insurance presently held by each of the Domestic Insurers.
85. Upon completion of the Proposed Transaction, each of the Domestic Insurers will have paid in surplus an amount that will satisfy the minimum required of a casualty insurance company licensed to write the lines of insurance presently held by each of the Domestic Insurers.
86. Based on all relevant facts in the record, including those set forth herein, the Department does not find that the Proposed Transaction would render any of the Domestic Insurers unable to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which each is presently licensed.

Competitive Impact

87. The acquisition of control of the Domestic Insurers is subject to review and analysis under Section 1403 of the Insurance Holding Companies Act to determine whether the effect of the acquisition of control would be to substantially lessen competition in insurance in the Commonwealth or tend to create a monopoly in the Commonwealth.
88. As described in the Application, the Domestic Insurers are in runoff and as such have no market share in the Commonwealth of Pennsylvania.
89. In addition, in the Form E submitted in conjunction with the Stock Purchase Agreement, the Applicant certified that neither it nor any of its affiliates writes insurance in Pennsylvania or elsewhere and thus do not have – and have not had in the past five years – any market share in the relevant market in the Commonwealth.
90. Based on all relevant facts in the record, including those set forth herein, the acquisition of control of the Domestic Insurers will not lessen competition in insurance in the Commonwealth or tend to create a monopoly in the Commonwealth because the market share of the Applicant (including its affiliates) and the Domestic Insurers does not exceed the market share levels established in Section 1403.

Financial Condition of the Applicant

91. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the financial condition of the acquiring person(s).

92. The Department has reviewed the financial condition of the Applicant and the financial statements submitted by its principals, Mr. Huntington and Mr. Williams.
93. Based on all relevant facts in the record, including those set forth herein, the Department is satisfied that the financial condition of the Applicant at the Closing Date would not jeopardize the financial stability of any of the Domestic Insurers or prejudice the interest of their respective policyholders.

Plans for the Acquired Insurer

94. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the plans or proposals which the acquiring party has for the insurer to determine whether they are unfair and unreasonable and fail to confer benefit on policyholders of the insurer and are not in the public interest.
95. As more fully set forth in the Application and other information submitted by the Applicant, the Applicant is in the business of owning and operating insurers in runoff.
96. As stated in the Application, the Applicant has no future plans or proposals to liquidate any of the Domestic Insurers, to sell their respective assets, to consolidate or merge any of them with any person or persons, or to make any other material change in the business operations or corporate structure of the Domestic Insurers other than as set forth in the Business Plan attached to the Application.
97. As noted *supra* paragraphs 73-74, on or before the Closing Date, and as part of the Proposed Transaction, OB Group will contribute to OBIC \$101 million of additional capital evidenced by the Surplus Notes, along with the Pre-Closing Seller Contribution.
98. In addition to the reduction of the management fee, *see supra* paragraph 25, the Applicant has discussed specific areas in which it can operate the Domestic Insurers more efficiently than they are currently operated. These areas include savings on office space, statistical reporting, and offsite storage costs and savings through implementation of an integrated claims system, with projected annual savings of \$1.6 million from these initiatives. The Department is satisfied the initiatives are directed at achieving cost savings through consolidation and integration, because each Domestic Insurer will reduce its expenses and thus have additional assets with which to pay claims.
99. The commenters expressed concerns about the management of certain asbestos and environmental liabilities. On June 21, 2013, the Applicant and OB Group provided the Department with a substantive response to averments in the PMA petitioners' petition to intervene and stated, *inter alia*, that Resolute Management, Inc. ("Resolute") has handled most of the Domestic Insurers' asbestos and environmental claims since 2006, and that Resolute will continue in such role and remain subject to contractual obligations to exercise independent judgment and abide by applicable laws. Mr. Huntington reiterated

this assurance during the public informational hearing. Continuing the contractual relationships addresses the concerns of the commenters.

100. In addition, ASIC or its successor will provide services to the Domestic Insurers with respect to the Retained Business (as defined in the Stock Purchase Agreement) pursuant to the Retained Business Administrative Services Agreement, and OBIC will administer the Run-Off Business (as defined in the Stock Purchase Agreement) pursuant to the Run-off Business Administrative Services Agreement. Further, since October 17, 2012, ARS, on OBIC's behalf, has been monitoring runoff performance of the Domestic Insurers' administration of the business that is not reinsured under the reinsurance agreement with National Indemnity Company ("NICO") and monitoring all claims activities. The Applicant will have access to certain of OB Group's services, systems, and equipment for up to eighteen months after closing pursuant to the Transition Services Agreement (as defined in and made an exhibit to the Stock Purchase Agreement).
101. Based on the facts discussed *supra* paragraphs 95-100, and other facts in the record, the Proposed Transaction increases efficiency and preserves continuity.
102. The Domestic Insurers have reinsurance cover that, in combination with the capitalization which will occur pursuant to the amended terms of the Stock Purchase Agreement, will be adequate to withstand significant economic and other stressors over time.
103. Indeed, in response to concerns raised by the Department upon its own analysis and its review of the concerns of the commenters, the Applicant and OB Group (a) provided more current data, and (b) will strengthen the capitalization of OBIC to further insulate against stressors. As a result, the mid- to long-range success rate increased, as discussed *supra* paragraph 77.
104. In its evaluation, the Department also considered Risk-Based Capital ("RBC") requirements for each Domestic Insurer, which are determined through a formula set forth by the National Association of Insurance Commissioners ("NAIC") and incorporated into Pennsylvania law at 40 P.S. § 221.1-A *et seq.* In accordance with the statute, RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are intended solely for use by the Commissioner in monitoring the solvency of insurers and the need for possible corrective action. 40 P.S. § 221.12-A(d). RBC reports (except for publicly available annual statement schedules), RBC plans, and corrective orders are all confidential by law. 40 P.S. §§ 221.12-A(a), (b).
105. The Department has analyzed the adequacy of the Domestic Insurers' surplus to satisfy its obligations to their policyholders even assuming adverse developments. In its analysis, the Department fully considered whether after the Proposed Transaction each Domestic Insurer would be able to continue to perform the business in which it is engaged.
106. Based on all relevant facts in the record, including those set forth herein, the Department has not found that these plans and proposals are unfair or unreasonable and fail to confer benefits on the policyholders of each Domestic Insurer and are not in the public interest.

Management

- 107. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews the competence, experience, and integrity of those persons who will control the operations of the acquired insurers.
- 108. The Department reviewed the biographical affidavits for all directors and executive officers of the Applicant.
- 109. Based on all relevant facts in the record, including those set forth herein, the Department has not found that the competence, experience, and integrity of the Applicant are such that it would not be in the interest of the policyholders of each Domestic Insurer and of the public to permit the Proposed Transaction.

Public Interest

- 110. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews whether the merger, consolidation, or other acquisition of control is likely to be hazardous or prejudicial to the insurance buying public.
- 111. Based on all relevant facts in the record, including those set forth herein, and based on the collective statutory analysis and conclusion herein, the Department is satisfied that the Proposed Transaction is not likely to be hazardous or prejudicial to the insurance buying public.

Compliance with the Laws of the Commonwealth

- 112. When analyzing an application for an acquisition of control under Section 1402 of the Insurance Holding Companies Act, the Department reviews whether the merger, consolidation, or other acquisition of control is not in compliance with the laws of this Commonwealth, including Article VIII-A.
- 113. Based on all relevant facts in the record, including those set forth herein, the Department is satisfied that the acquisition of control complies with the laws of this Commonwealth, including Article VIII-A, Insurance Company Mutual-to-Stock Conversion Act.

Review of the Public Comments

- 114. A number of issues addressed above were raised in comment letters and/or at the public informational hearing.

115. These comments fell into the broad categories discussed *supra* paragraph 36.

Uncertainty Associated with Asbestos and Environmental Risk

116. Charles B. Renfrew, a retired judge representing future asbestos claimants in a bankruptcy case, cites the 2013 Form 10-K of OB Group Parent, which discusses the uncertainty inherent in asbestos and environmental risk and recognizes that such uncertainty limits the OB Group Parent's ability to accurately estimate ultimate liability; as a result, OB Group Parent cannot reasonably presently estimate loss reserve additions and therefore cannot be sure it would have sufficient reserves to satisfy all possible future liabilities. Mr. Renfrew asserts there is a significant risk the Domestic Insurers will not have sufficient assets to pay claims. Mr. Renfrew recommends the Department disapprove the Proposed Transaction unless additional capital is provided. Jonathan Terrell, an expert retained by the PMA petitioners, advances a similar argument.
117. As Mr. Renfrew recognizes, uncertainty preceded the Proposed Transaction and is a characteristic of this type of insurance business, rather than a characteristic of the Proposed Transaction or the Applicant. In addition, there will be additional capital contributed, thus addressing Mr. Renfrew's specific concern.
118. Colgate, through its expert, FTI Consulting, Inc. ("FTI"), in an unsigned report² criticized the age of the data on which Towers relied.
119. As described above, Towers submitted an Updated Stochastic Modeling Summary Report, which updated the data and addressed this concern. In addition, the updated data revealed that claims experience had developed more favorably than anticipated.
120. Although uncertainty is inherent in the industry, PMA petitioners' expert, Jonathan Terrell, cites to two unrelated transactions in which runoff insurers were acquired (Zurich Insurance Group's 1995 acquisition of approximately \$1 billion of Home Insurance Company's renewal business and Arrowpoint Capital Corporation's 2007 purchase of Royal Indemnity Company and Royal Surplus Lines Insurance Company), both of which were approved by other states. According to Mr. Terrell, one entered liquidation eight years later and the other has seen its surplus deteriorate. It appears from Mr. Terrell's comments that he was drawing generalizations from these two transactions involving insurers in runoff and applying those generalizations to other transactions involving insurers in runoff. Runoff transactions, however, are not uncommon. The mere fact that the two acquired companies referred to by Mr. Terrell were in runoff is not enough to infer a valid and accurate projection from the two transactions cited by Mr. Terrell to all other transactions involving insurers in runoff. Nor is it enough to infer a valid and accurate projection to the Proposed Transaction specifically, because each insurer and each transaction has unique characteristics and arises in unique circumstances. Further, with advances in modeling and the application of appropriate prudential safeguards,

² The FTI report dated July 18, 2014 was unsigned. The second (supplemental) report submitted by FTI, dated October 16, 2014, was signed by Alan Kaufman.

comparisons to transactions that occurred seven years ago, let alone two decades ago, do not provide a basis for a fair or reasonable comparison.

The Definition of Failure

121. Colgate's expert, FTI, for example, faults Towers for its definition of failure. FTI uses alternative definitions interchangeably, including inadequate capitalization, which it characterizes as capitalization that will lead to the Department's supervision of the Domestic Insurers, focusing on Potomac. FTI also uses the term "technical insolvency," which it defines as having adequate cash to pay claims but having reserves that predict a cash shortfall. In its supplemental comments, FTI contends that in as little as eight years the Domestic Insurers could recognize their assets would "not be adequate to pay all valid policyholders claims in full."
122. In Towers' Stochastic Model, failure is defined as an exhaustion of assets such that the Domestic Insurers cannot pay claims as they come due. The Department finds the definition of failure to be proper, appropriate, and rational.
123. As shown *supra* paragraph 77, the contribution of additional capital to OBIC, when combined with the updated data and the reduction of the management fee, significantly reduces the ultimate failure rate to roughly 6.5 percent after 30 years and to a lower percentage before that point.³
124. Moreover, in order to determine under what conditions the Domestic Insurers could fail, Towers modeled 10,000 possible scenarios based on research into the industry that Towers has conducted over time.
125. Towers has utilized a sufficiently conservative methodology to project potential failure, and the failure rate after the Applicant and OB Group agreed to add additional capital and lower management fees, which changes were made in response to the comments prior to and at the hearing, is not hazardous nor prejudicial to policyholders or the insurance buying public.
126. In so finding, the Department rejects Jonathan Terrell's criticism of Towers' model as "proprietary," because the fact that Towers guards its data is immaterial to its value in the model.

Preference for Maintaining the Status Quo

127. Many of the commenters criticized aspects of OneBeacon's current and prior management of the Domestic Insurers, including upstream payments and reserving practices. Jonathan Terrell, expert for the PMA petitioners, for example, contends that the "industry" has "historically underestimated" asbestos and environmental exposure and that OB Group has underestimated its own exposures and reserving requirements. He

³ Although commenters agree that additional capital or reinsurance is necessary, they do not agree on the amount.

also states that if one looks backward, there was a larger surplus five years ago than there is today. He also faults OB Group's motives, concluding there should be "some regulatory imperative that necessitated the restructuring." In its supplemental comments, Colgate asks the Department to assess the "status quo" as of December 2009 and to require additional capital or retroactive reinsurance to recreate the surplus that existed as of December 2009.

128. These criticisms are beyond the scope of a Form A proceeding, in which the Department is required to analyze whether specific statutory criteria are satisfied at the time of the Proposed Transaction, and not to analyze events that lawfully occurred years ago. Even if true, the criticisms by the commenters provide more reason for the run off of the Domestic Insurers to be handled by the Applicant, which is a runoff specialist and is subject to the conditions in the transaction documents and this Decision and Order.

The Applicant's Financial Condition

129. Colgate, for example, argues that "[t]he major difference between Potomac and Century is that Century has the benefit of substantial capital that it can obtain from its parent companies which are part of the ACE conglomerate. In contrast, the Proposed Transaction is intended to decouple the Run-Off Companies from OneBeacon's financial resources." It then criticizes the Armour financial information and raised concerns that Armour's fees would "further deplete the already under-capitalized companies." Jonathan Terrell characterizes the transaction the same way.
130. As noted above, the Applicant has reduced its management fee and has provided additional confidential data to the Department that, together, demonstrate the invalidity of these concerns. More important, the distinction Colgate attempts to draw between Potomac and Century rests on two fallacies: (1) that OB Group as a parent company is currently obligated by law to contribute additional funds to, and be accountable for the separate obligations of, its subsidiaries; and (2) that the Applicant faces a risk from future uncertainty that OB Group does not. Jonathan Terrell does the same, suggesting that the financial condition of Armour "cannot compare with the strength and stability of OBIG [OB Group]" and likewise points to the Century/ACE transaction.
131. As discussed above, FTI defines a point at which a state regulator places an insurer under supervision as a threat to "timely payment," and thus focuses on the amount of capital needed by Potomac to be above action level as critical to the transaction. The fact that Potomac has been at or below action level is irrelevant to an assessment of the Applicant and the Proposed Transaction and whether the Proposed Transaction satisfies the Form A statutory criteria.

Excalibur's Practices

132. Travelers was concerned about what it characterized as Excalibur's "slow pay" and "no pay" practices, given that Excalibur also is an affiliate of Armour. Travelers acknowledged that it is not a policyholder; it wrote because it has reinsurance contracts

with OB Group. In its petition to intervene, Colgate raised similar concerns about changing claims administrators.

133. As a matter of law, any person handling claims is subject to the Pennsylvania Unfair Insurance Practices Act, 40 P.S. §§ 1171.1 et seq. and regulations promulgated thereunder, including the Pennsylvania Unfair Claims Settlement Practices regulations, 31 Pa. Code §§ 146.1 et seq. This act prohibits any person from engaging in any trade practice that is an unfair or deceptive act or practice in the business of insurance. Section 1171.5(a)(10) defines a broad range of claims practices as unfair or deceptive, including, inter alia, a failure to attempt in “good faith to effectuate prompt, fair and equitable settlements of claims in which the company’s liability under the policy has become reasonably clear.” Thus, the Unfair Insurance Practices Act is designed to protect against the types of conduct that certain of the commenters expressed concern about. Moreover, the commenters were concerned that a change in claims administrators would result in poor claims administration. However, because Resolute Management will continue as administrator for the NICO claims, and because monitoring of the other claims has already transitioned to the Applicant without incident, the statutory requirements that each Domestic Insurer administer claims in accordance with the Unfair Insurance Practices Act and applicable regulation adequately addresses the concerns of the commenters.

Adequacy of the Review Process

134. Olin, for example, identified 1 Pa. Code §§ 35.27-28⁴ and 31 Pa. Code § 56.1 as requiring additional procedural and substantive protections that it claims it did not receive.
135. Colgate criticized that what it characterized as “many of the key documents bearing on the Proposed Transaction” were not made available to it. In its criticisms, Colgate relies on a report generated by FTI, which was attached to Colgate’s public comment. FTI stated that the reports by Towers and RRC “do not appear to provide the information needed by the [Department] to evaluate whether the acquisition of control . . . will result in adequate confidence that the Run-off Companies will make claim or other payments on a timely basis.” FTI conceded that “a full review of the TW and RRC work might produce very different observations, potentially contradicting the observations in this letter.”
136. Jonathan Terrell cites to the NAIC White Paper on Liability-Based Restructuring as “contemplat[ing] that interested parties should be allowed to present evidence, call witnesses and cross-examine the witnesses of other parties.” The White Paper also suggested that policyholders be given access to “information that may be sensitive and proprietary.”

⁴ It is unclear why Olin cites to 1 Pa. Code §§ 35.27-28. The former is a provision that on its face does not provide any rights or procedural guaranties but merely sets forth the alternate means whereby a person may intervene in agency proceedings. The latter sets forth the criteria a putative intervenor is required to satisfy in order to demonstrate that intervention in proceedings governed by the Pennsylvania Administrative Code is “necessary or appropriate to the administration of the statute under which the proceeding is brought.”

137. The NAIC White Paper, as its title would suggest, is not binding law and did not represent a consensus position of other insurance regulators. In particular, the Commonwealth has, by statute, protected some information that has been submitted in conjunction with the Application, and it has a specific mechanism for seeking information that has been produced to an agency, with specific statutory guidelines about what may and may not be produced. As noted above, one commenter sought information pursuant to the Right-to-Know Law, and that commenter did not appeal the determination as to what was protected. In addition, the Applicant provided access to more information and documents than required by applicable law.
138. In any event, all interested persons were invited to present evidence and call witnesses. Cross-examination of other witnesses would have been inconsistent with the nature of the public hearing, and is not required by statute. Moreover, the comment period remained open from the time of the hearing until October, allowing anyone who desired to challenge any statement made at or comment submitted in conjunction with the hearing.
139. All of the above Findings of Fact are based on the record.
140. If any of the above Findings of Fact are determined to be Conclusions of Law, they shall be incorporated in the Conclusions of Law as if fully set forth therein.

CONCLUSIONS OF LAW

1. Under Section 1402 of the Insurance Holding Companies Act, the Department has jurisdiction to review and approve the change in control of the Domestic Insurers.
2. Under Section 1402 of the Insurance Holding Companies Act, the Department must approve an application for a change of control unless the Department has found that:
 - a. After the merger, consolidation, or other acquisition of control, the domestic insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
 - b. The effect of the merger, consolidation, or other acquisition of control would be to substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein;
 - c. The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interests of its policyholders;
 - d. The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable and fail to confer benefit on policyholders of the insurer and are not in the public interest;
 - e. The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders and of the public to permit the merger, consolidation, or other acquisition of control;
 - f. The merger, consolidation, or other acquisition of control is likely to be hazardous or prejudicial to the insurance buying public; or
 - g. The merger, consolidation, or other acquisition of control is not in compliance with the laws of this Commonwealth, including Article VIII-A, Insurance Company Mutual-to-Stock Conversion Act.
3. Under Section 1402 of the Insurance Holding Companies Act, the Department has not found that any of the above conditions are present with respect to the proposed change of control of the Domestic Insurers.
4. If any of the above Conclusions of Law are determined to be Findings of Fact, they shall be incorporated in the Findings of Fact as if fully set forth therein.

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

In Re:	:	Pursuant to Sections 1401, 1402
	:	and 1403 of the Insurance Holding
Application of Armour Group Holdings	:	Companies Act, Article XIV of the
Limited in Support of the Request for	:	Insurance Company Law of 1921, Act
Approval to Acquire Control of	:	of May 17, 1921, P. L. 682, <u>as</u>
OneBeacon Insurance Company,	:	<u>amended</u> , 40 P.S. §§ 991.1401,
Potomac Insurance Company,	:	991.1402 and 991.1403
OneBeacon America Insurance Company	:	
and The Employers' Fire Insurance	:	
Company	:	Order No. ID-RC-14-17

ORDER

Upon consideration of the foregoing, The Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner") hereby makes the following Order:

The application of Armour Group Holdings Limited ("Armour") through its subsidiary, Trebuchet US Holdings, Inc. ("Trebuchet") and including Trebuchet Investments Limited, Brad Huntington, and John Williams (collectively, "the Applicant") in support of the request for approval to acquire control of OneBeacon Insurance Company, Potomac Insurance Company, OneBeacon America Insurance Company and The Employers' Fire Insurance Company (collectively "the Domestic Insurers"),¹ as set forth in the application, is hereby approved, subject to this Order and the following conditions:

1. All necessary regulatory filings and approvals are obtained prior to the consummation of the proposed transaction.
2. The parties to the Stock Purchase Agreement have agreed that (a) the Required Additional Capital Amount (as defined in the Stock Purchase Agreement) is an amount expected to be in the range of \$140 million to \$150 million, such that the total amount of Surplus Notes (as defined in the Stock Purchase Agreement) shall be equal to \$101 million, and (b) the amount by which the Required Additional Capital Amount exceeds \$101 million shall be satisfied by the Pre-Closing Seller Contribution (as defined in the Stock Purchase Agreement). On or before the Closing Date, OB Group shall contribute to OBIC (i) the Required Additional Capital Amount, which includes the \$101 million described above and (ii) the Pre-Closing Seller Contribution. OB Group shall provide evidence of such contributions satisfactory to the Department.

¹ Capitalized terms in this Order have the same meaning as the defined terms in the Decision.

3. The Applicant will provide a list of all closing documents within five (5) days after the Closing Date and will maintain those documents and make them available to the Department for at least five (5) years from the Closing Date.
4. The Applicant will provide copies of all contracts with third parties relating to the administration and handling of the claims of the Domestic Insurers within thirty (30) days of their execution for at least five (5) years from the Closing Date.
5. Consistent with the responses to the public and at the hearing, the Applicant will assume the contract with Resolute Management, Inc., and will not terminate such contract for a period of at least five years after the Closing Date without the prior written approval of the Department.
6. Each Domestic Insurer shall, and the Applicant shall cause each Domestic Insurer to, maintain and acquire only those assets and classes of assets, and only in the proportions, shown in the Towers Stochastic Model, except upon the prior written approval of the Department.
7. None of the Domestic Insurers shall, and the Applicant shall not cause any Domestic Insurer to, directly or indirectly, engage in any transactions with affiliates or other entities owned or controlled by any officer or director of the Applicant or any Domestic Insurer, without prior written approval of the Department.
8. The Department approves the form of the Surplus Notes attached hereto, and any Surplus Notes issued pursuant to the Stock Purchase Agreement must be in the form attached hereto.
9. None of the Domestic Insurers shall be responsible for, and shall not make any payments or other dividends or distributions to the Applicant in connection with any taxes the Applicant may incur or pay in connection with the Stock Purchase Agreement or the Proposed Transaction.
10. On or before March 31, 2016 and each year thereafter, the Applicant, at its sole cost and expense, shall provide to the Department a two-year financial projection for each of the Domestic Insurers. The form, scope, and content of such projection shall be subject to the prior written approval of the Department.
11. On or before March 31, 2016 and each year thereafter, the Applicant, at its sole cost and expense, shall retain an independent actuary to review and analyze the reserves of each Domestic Insurer, including, without limitation, the adequacy of the reserves for reinsurance uncollectibles. The actuary and the form, scope, and content of the review shall be subject to the prior written approval of the Department. The Department, in its sole discretion, may waive this requirement for a Domestic Insurer in any year during which the Department performs a financial examination of such Domestic Insurer.
12. On or before March 31, 2016 and each year thereafter, the Applicant, at its sole cost and expense, shall provide to the Department a stress test that will demonstrate the adequacy

of assets and ability of each Domestic Insurer to continue to run off its business, and a comparison between such stress test and the Towers Stochastic Model, including a detailed explanation of any material differences. The form, scope, and content of such stress test and comparison shall be subject to the prior written approval of the Department.

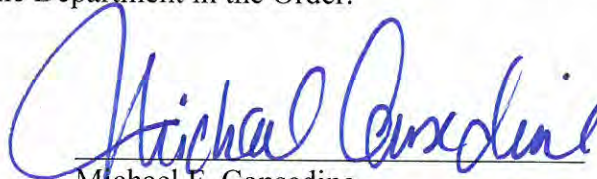
13. On or before May 31, 2015 and each year thereafter, the Applicant and each Domestic Insurer shall meet with the Department to review the operating results of each Domestic Insurer. The Applicant and each Domestic Insurer also will review with the Department any complaints any of them or any of their respective agents or representatives have received and any legal actions related to their respective claims-handling practices. As part of this review, the Applicant or the respective Domestic Insurer, as applicable, will provide information on what actions, including improving claims-handling practices where appropriate, the Applicant or the respective Domestic Insurer is taking in response to the complaint or legal action. The Applicant shall meet with the Department at other times upon reasonable advance notice by the Department.
14. As of June 30 and December 31 of each year, the Applicant shall, and shall cause each Domestic Insurer to, provide to the Department a report setting forth all ceded and assumed reinsurance activity, including activity relating to reinsurance agreements with NICO and Gen Re Corporation. Such reports shall be provided within 60 days of the end of such reporting periods, shall be in form and content acceptable to the Department, and shall contain such detail as will enable the Department to monitor the actual paid claim and outstanding reserve activity on an ongoing basis. No Domestic Insurer shall make any material change or amendment to any reinsurance agreement, related administration agreement, or reinsurance program without the prior written consent of the Department.
15. OBIC shall not, and the Applicant shall not cause OBIC to, directly or indirectly, repay any amounts due under or in respect of either Surplus Note (including repayment of principal or interest) or amend either Surplus Note, without the prior written approval of the Department.
16. None of the Domestic Insurers shall, and the Applicant shall not cause any Domestic Insurer to, directly or indirectly, pay any dividends or other distributions to any person without the prior written approval of the Department.
17. Any amendment to the Services Agreement, including, without limitation, any change to the management fee thereunder, is subject to the prior written approval of the Department.
18. Except as expressly set forth in this paragraph, none of the Domestic Insurers shall, and the Applicant shall not cause any Domestic Insurer to, directly or indirectly (a) make or cause any disbursement, payment, or transfer of assets, except in the normal and ordinary course of business (excluding from the normal and ordinary course any matter described in subpart (b) of this paragraph); and (b) pay, deposit, post, provide, establish, or otherwise arrange for any collateral or other security (i) in connection with any

reinsurance agreement, statute, regulation, or order, or (ii) arising out of or in connection with any dispute, arbitration, litigation, or other proceeding relating to such collateral, security, reinsurance agreement, statute, regulation or order, without the prior written approval of the Department; provided, however, that no prior approval of the Department shall be required for any commutation of a contract of insurance or reinsurance between any Domestic Insurer, on the one hand, and any counterparty to such contract, on the other, when such commutation payment from such Domestic Insurer is at or below the aggregate level of outstanding payment obligations, case reserves, and incurred but not reported (IBNR) reserves carried on the books of such Domestic Insurer at the time of the commutation payment.

19. None of the Domestic Insurers shall, and the Applicant shall not cause any Domestic Insurer to, directly or indirectly, pay, deposit, post, provide, or establish any security or other deposit with any governmental authority, including any insurance regulator, in any jurisdiction without the prior written approval of the Department, except to the extent expressly required by a court order.
20. Any request for release of statutory deposits from any other jurisdiction is subject to the prior written approval of the Department, except to the extent expressly required by law.
21. None of the Domestic Insurers shall, and the Applicant shall not cause any Domestic Insurer to, directly or indirectly, write any new business, including, without limitation, issue, enter into, or renew any contract of insurance or reinsurance, without the prior written approval of the Department.
22. None of the Domestic Insurers shall, and the Applicant shall not cause any Domestic Insurer to, directly or indirectly, cede or assume, under either the Run-off Business Reinsurance Agreement or the Retained Business Reinsurance Agreement, any business other than the business analyzed in the Towers Stochastic Model, in each case without the prior written approval of the Department.
23. None of the Domestic Insurers shall, and the Applicant shall not cause any of the Domestic Insurers to, redomesticate to any jurisdiction without the prior written approval of the Department.
24. None of the Domestic Insurers shall, and the Applicant shall not cause any of the Domestic Insurers to, file an application for voluntary dissolution or otherwise dissolve, institute any action to seek protection from creditors, or otherwise agree to any order of conservation, rehabilitation, liquidation, or similar proceeding, without the prior written approval of the Department.
25. The Department may retain at the reasonable expense of the Applicant and the Domestic Insurers, as determined by the Department, any attorneys, actuaries, accountants, and other experts not otherwise part of the Department's staff as, in the judgment of the Department, may be necessary to assist the Department, regardless whether retained before, on, or after the date of this Decision and Order, in or with respect to:

(a) evaluation and assessment of any submissions, notices given or required to be given, giving rise to, or in connection with this Decision and Order; (b) compliance by any of the Applicant or any of the Domestic Insurers with this Decision and Order; (c) the enforcement, appeal, or any challenge or contest to the enforcement or validity of any part of this Decision and Order, including, without limitation, any condition set forth herein; (d) reviewing and analyzing any submissions or notices by or for the Applicant or any of the Domestic Insurers or auditing and reviewing any books and records of the Applicant or any of the Domestic Insurers; (e) litigation (including any appeals), threatened litigation, inquiries, complaints or investigations regarding, arising from, or related to the Application, the process surrounding the approval of the Application and/or this Decision and Order or its enforcement; and/or (f) responding to any request or action to require public disclosure of information the Applicant, any of the Domestic Insurers, or the Department requests or deems confidential. The obligation of the Applicant and each of the Domestic Insurers shall be joint and several obligations to the Department for all such costs and expenses.

This Order is effective immediately and valid for one (1) year, provided no material changes are made to the transaction prior to consummation. This one-year limitation does not apply to any conditions prescribed by the Department in the Order.



Michael F. Consedine
Insurance Commissioner
Commonwealth of Pennsylvania



FORM OF SELLER PRIORITY SURPLUS NOTE
Number 1

For Value Received, ONEBEACON INSURANCE COMPANY, a Pennsylvania domiciled, property and casualty insurance company located at [●] (the "Company") promises to pay to OneBeacon Insurance Group LLC of [●] (the "Holder") the principal sum of \$[●] (the "Surplus Note"), and to pay interest thereon, from [●] or from the most recent Scheduled Interest Payment Date (as defined below) for which interest has been paid or duly provided for, semi-annually in arrears on March 15 and August 31 in each year and on the date on which this Surplus Note matures, commencing [●] (each, a "Scheduled Interest Payment Date"), at the applicable Stated Rate (as defined below), until the principal hereof is paid or duly provided for. The terms and conditions governing payment of this Surplus Note are as follows:

1. This Surplus Note has been issued in accordance with Section 322.2 of the Insurance Company Law of 1921, as amended by Act 216 of November 30, 2004 (40 P.S. § 445.2).
2. The obligation of the Company to pay the Holder in accordance with the terms and conditions of this Surplus Note is unconditional and absolute. Nothing contained herein is intended to or shall prevent the Holder, in the event of default by the Company under the terms and conditions of this Surplus Note, from exercising all remedies permitted by applicable law, provided that such rights and remedies of the Holder shall at all times remain subject to the terms and conditions hereof.
 - (a) Any payment of principal or interest on this Surplus Note shall be subordinated, whether existing or hereafter incurred or created, to payment of all policyholders, other liabilities of the Company, including all claims and beneficiary claims of all policyholders, and all other classes of creditors other than holders of surplus notes the terms of which expressly state that they are subordinated to this Surplus Note.
 - (b) The annual interest rate on this Surplus Note shall be equal to the applicable Stated Rate.

The "Stated Rate" shall be equal to:

- (i) for each Scheduled Interest Payment Date occurring on or prior to [March 15][August 31], [●]¹, a per annum rate equal to [●]%²;
- (ii) for each Scheduled Interest Payment Date occurring after [March 15][August 31], [●]³ but on or prior to [March 15][August 31], [●]⁴, a per annum rate equal to the sum of (A) (i) [●]%⁵, less (ii) [●]%⁶, plus (iii) 1.0% (such amount, the “Base Rate”), plus (B) Three-Month LIBOR; and
- (iii) for each Scheduled Interest Payment Date occurring after [March 15][August 31], [●]⁷, a per annum rate equal to the sum of (A) the Base Rate, plus (B) (i) 0.50%, multiplied by (ii) the number of consecutive five-year periods (including any partial five-year period) occurring from [March 15][August 31], [●]⁸ to and including such Scheduled Interest Payment Date, plus (C) Three-Month LIBOR.

“Three-Month LIBOR” shall be equal to three-month LIBOR as reported in the Eastern Edition of the Wall Street Journal two Business Days (as defined below) prior to the applicable Scheduled Interest Payment Date.

(c) The Company shall repay this Surplus Note on [●]⁹, subject to all terms and conditions of this Surplus Note and specifically paragraph 2.

(d) Principal or interest on this Surplus Note shall not be a liability nor an expense except to the extent that the payment has been approved by the Insurance Commissioner of the Commonwealth of Pennsylvania (the “Commissioner”). Unapproved interest shall not be represented as an addition to the principal or notional amount and shall not accrue further interest. This Surplus Note shall accrue interest only on the outstanding principal balance and not on accrued but unpaid interest.

¹ **Note to Draft:** First Scheduled Interest Payment Date occurring after the fifth anniversary of the Closing.

² **Note to Draft:** Equal to (x) 4.35% plus (y) the 5-year U.S. treasury rate as reported in the Eastern Edition of the Wall Street Journal two Business Days prior to the Closing.

³ **Note to Draft:** See footnote 1.

⁴ **Note to Draft:** First Scheduled Interest Payment Date occurring after the tenth anniversary of the Closing.

⁵ **Note to Draft:** Rate set forth in clause (i).

⁶ **Note to Draft:** Equal to the 5-year swap rate as reported in the Eastern Edition of the Wall Street Journal two Business Days prior to the Closing.

⁷ **Note to Draft:** See footnote 4.

⁸ **Note to Draft:** See footnote 4.

⁹ **Note to Draft:** Scheduled maturity date to be 5 years following closing.

(e) Any interest payment or principal repayment on this Surplus Note requires prior approval of the Commissioner. The Company shall provide the Commissioner with written notice at least thirty days prior to the intended date of the payment of principal or interest on the Surplus Note.

(f) This Surplus Note is not a liability or claim against the Company or any of its assets, and interest shall be repaid only out of the unassigned surplus of the Company. Payment of principal and interest on this Surplus Note are not guaranteed and such payment is subordinated to claims of all policyholders, creditors and other liabilities of the Company.

(g) Interest on this Surplus Note shall be calculated on the basis of a 360-day year of twelve months of 30 days each.

3. Payments of interest on this Surplus Note will be made, in accordance with the foregoing and subject to applicable laws and regulations, (i) by wire transfer of immediately available funds to an account maintained by the person entitled thereto with a bank if such registered holder gives notice to the Company, not less than 15 days (or such fewer days as the Company may accept at its discretion) prior to the applicable scheduled payment date or maturity date hereof, of the payee's account to which payment is to be made or, (ii) if no such notice is given, by mailing a check on or before the scheduled payment date of such payment to the person entitled thereto at such person's address as provided to the Company. Unless the designation of the payee's account to which payment is to be made is revoked, any such designation made by such holder with respect to this Surplus Note of the payee's account to which payment is to be made shall remain in effect with respect to any future payments with respect to this Surplus Note payable to such holder. In any case where the scheduled payment date or maturity date of this Surplus Note shall be at any place of payment a day on which banking institutions are not carrying out transactions in U.S. dollars or are authorized or obligated by law or executive order to close, then payment of principal or interest need not be made on such date at such place but may be made on the next succeeding day at such place which is not a day on which banking institutions in the applicable jurisdiction are not carrying out transactions in U.S. dollars or are authorized or obligated by law or executive order to close (a "Business Day"), with the same force and effect as if made on the scheduled payment date or maturity date thereof, and no interest shall accrue on the amount of such payment for the period after such date, if such payment is so made.

4. This Surplus Note may be redeemed by the Company, subject to the approval of the Commissioner, in whole or in part, at any time, subject to all the terms and conditions of this Surplus Note and specifically paragraph 2, at a redemption price equal to 100% of the aggregate principal amount plus any accrued and unpaid interest (calculated pursuant to the terms of this Surplus Note) to be redeemed. In addition, subject to all the terms and conditions of this Surplus Note and specifically paragraph 2, the Company shall redeem this Surplus Note in whole or in part on March 15 of each year in an amount, if any, such that, following such prepayment, the Company's "total adjusted capital" (as such term is defined in, and calculated pursuant to, the risk-based capital instructions permitted or prescribed by the insurance laws of the Commonwealth of Pennsylvania) is equal to the product of 2.0 (or such other factor established by the Commissioner) and the Company's "authorized control level RBC" (as such term is defined in, and calculated pursuant to, the risk-based capital instructions permitted or prescribed by the insurance laws of the Commonwealth of Pennsylvania). The Company shall provide the Commissioner with written notice at least thirty days prior to the intended date of the redemption. This Surplus Note shall be canceled upon redemption, whether in whole or in part, and cancellation shall be effective upon approval of the Commissioner. If the redemption is not for full outstanding principal balance, the Company shall issue new surplus notes for the amount of outstanding principal balance and shall contain the same terms as contained in this Surplus Note as approved by the Commissioner.

5. This Surplus Note may be assigned or transferred by the Holder, in whole or in part, at any time, subject to all the terms and conditions of this Surplus Note and specifically paragraph 2, upon approval of the Commissioner and the Board of Directors of the Company. The Holder and the Company shall provide the Commissioner with written notice at least thirty days prior to the intended date of the assignment or transfer. Any such assignment or transfer shall not be effective so as to impose any obligations or liability upon the Company and such assignment or transfer shall be duly registered in the appropriate books of record of the Company. In the event of such assignment or transfer, the Holder shall surrender this Surplus Note to the Company for cancellation and for issuance of a substituted Surplus Note or Surplus Notes identical in form and substance to this Surplus Note, in aggregate principal amounts equal to the assigned or transferred and unassigned or untransferred portions hereof. This Surplus Note is not assignable or transferrable except as set forth in this paragraph 5.

6. No recourse for the payment of the principal of or interest on this Surplus Note, and no recourse under or upon any obligation, covenant or agreement for any claim based on this Surplus Note or otherwise in respect hereof, or on account of the creation of any indebtedness represented hereby, shall be made against any incorporator, member, officer or director, past, present or future, of the Company, or any successor or resulting corporation, either directly or through the Company, or any successor or resulting corporation, whether by virtue of any constitution, statute or rule of law or equity, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that any and all such personal liability, if any, of every such incorporator, member, officer or director is expressly waived and released by the Holder as a condition of, and in consideration of, the issuance of this Surplus Note.

7. For so long as this Surplus Note remains outstanding or any amount remains unpaid on this Surplus Note:

(a) The Company shall use commercially reasonable efforts to obtain the approval of the Commissioner in accordance with Section 322.2 of the Insurance Law for the payment by the Company of interest on and principal of this Surplus Note on the scheduled payment dates, prepayment date or maturity dates thereof, and, in the event any such approval has not been obtained for any such payment or prepayment at or prior to the scheduled payment date, prepayment date or maturity date, as the case may be, to continue to use best efforts to obtain such approval promptly thereafter. Not less than 45 days prior to the scheduled payment date, prepayment date or maturity date (excluding any such maturity date which arises as a result of the obtaining of an order or the granting of approval for the rehabilitation, liquidation, conservation or dissolution of the Company), the Company will seek the approval of the Commissioner to make each payment or prepayment of interest on and principal of this Surplus Note. In addition, the Company shall notify in writing the holder of this Surplus Note no later than five Business Days prior to the scheduled payment date for interest, date for the prepayment of principal or the maturity date for principal in the event that the Commissioner has not then approved the making of any such payment on such scheduled payment date, prepayment date or such maturity date, and thereafter, if such payment or prepayment has been approved by the Commissioner, shall promptly notify in writing the holder of this Surplus Note of such approval.

(b) Until the full principal amount of this Surplus Note and any interest incurred thereon has been paid to the holder hereof, the Company shall not, without the prior written consent of the holder of this Surplus Note:

(i) make any dividend or distribution to holders of its equity interests or purchase or retire any of its equity interests;

(ii) create, assume, incur or have outstanding any indebtedness (including purchase money indebtedness), or become liable, whether as endorser, guarantor, surety or otherwise, for any debt or obligation of any other person;

(iii) cease operations, liquidate, merge, transfer, acquire or consolidate with any entity, or dissolve or transfer or sell assets outside of the ordinary course of business;

(iv) amend its charter or bylaws in a manner that would adversely affect its corporate existence, material rights (charter and statutory) or material franchises; or

(v) write, assume or acquire any new business (including through any reinsurance or under existing treaties) other than pursuant to the fronting requirements set forth in Section 5.23 of that certain Stock Purchase Agreement between OneBeacon Insurance Group LLC, Trebuchet US Holdings, Inc. and the other parties thereto, dated October 17, 2012, as amended from time to time.

8. The Holder, in consideration of the issuance hereof, represents and warrants that it has been furnished with information sufficient to make an informed decision to make the advance represented by this Surplus Note. The Holder, by acceptance of this Surplus Note, acknowledges that this Surplus Note has been acquired in a transaction exempt from the registration requirements of the Securities Act of 1933, as amended, and that the Company is relying, to the extent applicable, upon such representations and warranties.

9. Nothing in this Surplus Note, expressed or implied, shall give or be construed to give any person, firm or corporation, other than the Company and the Holder, any legal or equitable right, remedy or claim under or in respect to this Surplus Note or under any covenant, condition or provision contained herein.

10. In the event of the insolvency, bankruptcy, receivership, rehabilitation, conservatorship, reorganization, readjustment of debt, marshalling of assets and liabilities, or similar proceedings, by or against the Company, or any liquidation or winding up of the Company, whether voluntary or involuntary, this Surplus Note will immediately mature in full without any action on the part of the holder of this Surplus Note, and repayment of the balance of the funds and any accrued interest then due and owing to the Holder shall be subordinate to any policyholder, claimant and beneficiary claims as well as debts owed to all other classes of creditors. Notwithstanding any other provision of this Surplus Note, in no event shall any holder of this Surplus Note be entitled to declare this Surplus Note immediately mature or otherwise be immediately payable.

11. In the event that the Commissioner approves a payment of any interest on or principal of, or any redemption payment with respect to, this Surplus Note, in whole or in part, and the Company fails to pay the full amount of such approved payment on the date such amount is scheduled to be paid, such approved amount will be immediately payable on such date without any action on the part of the holder of this Surplus Note. In the event that the Company fails to perform any of its other obligations hereunder, the holder of this Surplus Note may pursue any available remedy to enforce the performance of any provision of this Surplus Note; provided, however, that such remedy shall in no event include the right to declare this Surplus Note immediately payable, and shall in no circumstances be inconsistent with the provisions of applicable law or the provisions of Section 2. A delay or omission by the holder of this Surplus Note in exercising any right or remedy accruing as a result of the Company's failure to perform its obligations hereunder and the continuation thereof shall not impair such right or remedy or constitute a waiver of or acquiescence in such non-performance by the Company. To the extent permitted by law, no remedy is exclusive of any other remedy and all remedies are cumulative.

12. All notices, requests, claims, demands or other communications under this Surplus Note shall be deemed to have been duly given and made if in writing and (a) at the time personally delivered if served by personal delivery upon the party for whom it is intended, (b) at the time received if delivered by registered or certified mail (postage prepaid, return receipt requested) or by a national courier service (delivery of which is confirmed), or (c) upon confirmation if sent by facsimile; in each case to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

to the Company:

OneBeacon Insurance Company

[•]

Telephone: [•]

Facsimile: [•]

Attention: [•]

to the Holder:

OneBeacon Insurance Group LLC

[•]

Telephone: [•]

Facsimile: [•]

Attention: [•]

13. In the event that any one or more of the provisions contained in this Surplus Note other than the provision of Paragraph 2, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Surplus Note, but this Surplus Note shall be construed as if such invalid or illegal or unenforceable provision had never been contained in this Surplus Note.

14. The covenants, stipulations, promises and agreements contained in this Surplus Note shall bind and inure to the benefit of, and shall be enforceable by the Company and the Holder, and their respective successors and assigns.

15. This Surplus Note shall be governed by and construed in accordance with the domestic laws of the Commonwealth of Pennsylvania without regard to its conflict of laws principles, unless and to the extent preempted by the laws of the United States of America.

16. This Surplus Note represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior written or oral agreements between the parties and shall be modified only by a written amendment of the Company and the Holder upon receipt of prior written consent of the Commissioner.

IN WITNESS HEREOF, the Company, intending to be legally bound, has caused this Surplus Note to be executed and attested to by its duly authorized officers and corporate seal to be impressed this ____ day of _____.

(CORPORATE SEAL) (Company Name)

by: (Company Representative)

Attest to by:

Agreed and Accepted by:

_____ (Holder name)

FORM OF SELLER PARI PASSU SURPLUS NOTE
Number 1

For Value Received, ONEBEACON INSURANCE COMPANY, a Pennsylvania domiciled, property and casualty insurance company located at [●] (the "Company") promises to pay to OneBeacon Insurance Group LLC of [●] (the "Holder") the principal sum of \$[●] (the "Surplus Note"), and to pay interest thereon, from [●] or from the most recent Scheduled Interest Payment Date (as defined below) for which interest has been paid or duly provided for, semi-annually in arrears on March 15 and August 31 in each year and on the date on which this Surplus Note matures, commencing [●] (each, a "Scheduled Interest Payment Date"), at the applicable Stated Rate (as defined below), until the principal hereof is paid or duly provided for. The terms and conditions governing payment of this Surplus Note are as follows:

1. This Surplus Note has been issued in accordance with Section 322.2 of the Insurance Company Law of 1921, as amended by Act 216 of November 30, 2004 (40 P.S. § 445.2).
2. The obligation of the Company to pay the Holder in accordance with the terms and conditions of this Surplus Note is unconditional and absolute. Nothing contained herein is intended to or shall prevent the Holder, in the event of default by the Company under the terms and conditions of this Surplus Note, from exercising all remedies permitted by applicable law, provided that such rights and remedies of the Holder shall at all times remain subject to the terms and conditions hereof.
 - (a) Any payment of principal or interest on this Surplus Note shall be subordinated, whether existing or hereafter incurred or created, to payment of all policyholders, other liabilities of the Company, including all claims and beneficiary claims of all policyholders, and all other classes of creditors and that certain surplus note of the Company issued to the initial holder of this Surplus Note concurrently with this Surplus Note in the principal amount of \$[●].
 - (b) The annual interest rate on this Surplus Note shall be equal to the applicable Stated Rate.

The "Stated Rate" shall be equal to:

- (i) for each Scheduled Interest Payment Date occurring on or prior to [March 15][August 31], [●]¹, a per annum rate equal to [●]%²;
- (ii) for each Scheduled Interest Payment Date occurring after [March 15][August 31], [●]³ but on or prior to [March 15][August 31], [●]⁴, a per annum rate equal to the sum of (A) (i) [●]%⁵, less (ii) [●]%⁶, plus (iii) 1.0% (such amount, the “Base Rate”), plus (B) Three-Month LIBOR; and
- (iii) for each Scheduled Interest Payment Date occurring after [March 15][August 31], [●]⁷, a per annum rate equal to the sum of (A) the Base Rate, plus (B) (i) 0.50%, multiplied by (ii) the number of consecutive five-year periods (including any partial five-year period) occurring from [March 15][August 31], [●]⁸ to and including such Scheduled Interest Payment Date, plus (C) Three-Month LIBOR.

“Three-Month LIBOR” shall be equal to three-month LIBOR as reported in the Eastern Edition of the Wall Street Journal two Business Days (as defined below) prior to the applicable Scheduled Interest Payment Date.

(c) The Company shall repay this Surplus Note on [●]⁹, subject to all terms and conditions of this Surplus Note and specifically paragraph 2.

(d) Principal or interest on this Surplus Note shall not be a liability nor an expense except to the extent that the payment has been approved by the Insurance Commissioner of the Commonwealth of Pennsylvania (the “Commissioner”). Unapproved interest shall not be represented as an addition to the principal or notional amount and shall not accrue further interest. This Surplus Note shall accrue interest only on the outstanding principal balance and not on accrued but unpaid interest.

¹ **Note to Draft:** First Scheduled Interest Payment Date occurring after the fifth anniversary of the Closing.

² **Note to Draft:** Equal to (x) 4.35% plus (y) the 5-year U.S. treasury rate as reported in the Eastern Edition of the Wall Street Journal two Business Days prior to the Closing.

³ **Note to Draft:** See footnote 1.

⁴ **Note to Draft:** First Scheduled Interest Payment Date occurring after the tenth anniversary of the Closing.

⁵ **Note to Draft:** Rate set forth in clause (i).

⁶ **Note to Draft:** Equal to the 5-year swap rate as reported in the Eastern Edition of the Wall Street Journal two Business Days prior to the Closing.

⁷ **Note to Draft:** See footnote 4.

⁸ **Note to Draft:** See footnote 4.

⁹ **Note to Draft:** Scheduled maturity date to be 5 years following closing.

(e) Any interest payment or principal repayment on this Surplus Note requires prior approval of the Commissioner. The Company shall provide the Commissioner with written notice at least thirty days prior to the intended date of the payment of principal or interest on the Surplus Note.

(f) This Surplus Note is not a liability or claim against the Company or any of its assets, and interest shall be repaid only out of the unassigned surplus of the Company. Payment of principal and interest on this Surplus Note are not guaranteed and such payment is subordinated to claims of all policyholders, creditors and other liabilities of the Company.

(g) Interest on this Surplus Note shall be calculated on the basis of a 360-day year of twelve months of 30 days each.

3. Payments of interest on this Surplus Note will be made, in accordance with the foregoing and subject to applicable laws and regulations, (i) by wire transfer of immediately available funds to an account maintained by the person entitled thereto with a bank if such registered holder gives notice to the Company, not less than 15 days (or such fewer days as the Company may accept at its discretion) prior to the applicable scheduled payment date or maturity date hereof, of the payee's account to which payment is to be made or, (ii) if no such notice is given, by mailing a check on or before the scheduled payment date of such payment to the person entitled thereto at such person's address as provided to the Company. Unless the designation of the payee's account to which payment is to be made is revoked, any such designation made by such holder with respect to this Surplus Note of the payee's account to which payment is to be made shall remain in effect with respect to any future payments with respect to this Surplus Note payable to such holder. In any case where the scheduled payment date or maturity date of this Surplus Note shall be at any place of payment a day on which banking institutions are not carrying out transactions in U.S. dollars or are authorized or obligated by law or executive order to close, then payment of principal or interest need not be made on such date at such place but may be made on the next succeeding day at such place which is not a day on which banking institutions in the applicable jurisdiction are not carrying out transactions in U.S. dollars or are authorized or obligated by law or executive order to close (a "Business Day"), with the same force and effect as if made on the scheduled payment date or maturity date thereof, and no interest shall accrue on the amount of such payment for the period after such date, if such payment is so made.

4. This Surplus Note may be redeemed by the Company, subject to the approval of the Commissioner, in whole or in part, at any time, subject to all the terms and conditions of this Surplus Note and specifically paragraph 2, at a redemption price equal to 100% of the aggregate principal amount plus any accrued and unpaid interest (calculated pursuant to the terms of this Surplus Note) to be redeemed. In addition, subject to all the terms and conditions of this Surplus Note and specifically paragraph 2, the Company shall redeem this Surplus Note in whole or in part (a) on March 15 of each year in an amount, if any, such that, following such prepayment and any concurrent dividend or distribution pursuant to paragraph 7(b)(i), the Company's "total adjusted capital" (as such term is defined in, and calculated pursuant to, the risk-based capital instructions permitted or prescribed by the insurance laws of the Commonwealth of Pennsylvania) is equal to the product of 2.0 (or such other factor established by the Commissioner) and the Company's "authorized control level RBC" (as such term is defined in, and calculated pursuant to, the risk-based capital instructions permitted or prescribed by the insurance laws of the Commonwealth of Pennsylvania) or (b) as contemplated by paragraph 7(b)(i). The Company shall provide the Commissioner with written notice at least thirty days prior to the intended date of the redemption. This Surplus Note shall be canceled upon redemption, whether in whole or in part, and cancellation shall be effective upon approval of the Commissioner. If the redemption is not for full outstanding principal balance, the Company shall issue new surplus notes for the amount of outstanding principal balance and shall contain the same terms as contained in this Surplus Note as approved by the Commissioner.

5. This Surplus Note may be assigned or transferred by the Holder, in whole or in part, at any time, subject to all the terms and conditions of this Surplus Note and specifically paragraph 2, upon approval of the Commissioner and the Board of Directors of the Company. The Holder and the Company shall provide the Commissioner with written notice at least thirty days prior to the intended date of the assignment or transfer. Any such assignment or transfer shall not be effective so as to impose any obligations or liability upon the Company and such assignment or transfer shall be duly registered in the appropriate books of record of the Company. In the event of such assignment or transfer, the Holder shall surrender this Surplus Note to the Company for cancellation and for issuance of a substituted Surplus Note or Surplus Notes identical in form and substance to this Surplus Note, in aggregate principal amounts equal to the assigned or transferred and unassigned or untransferred portions hereof. This Surplus Note is not assignable or transferrable except as set forth in this paragraph 5.

6. No recourse for the payment of the principal of or interest on this Surplus Note, and no recourse under or upon any obligation, covenant or agreement for any claim based on this Surplus Note or otherwise in respect hereof, or on account of the creation of any indebtedness represented hereby, shall be made against any incorporator, member, officer or director, past, present or future, of the Company, or any successor or resulting corporation, either directly or through the Company, or any successor or resulting corporation, whether by virtue of any constitution, statute or rule of law or equity, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that any and all such personal liability, if any, of every such incorporator, member, officer or director is expressly waived and released by the Holder as a condition of, and in consideration of, the issuance of this Surplus Note.

7. For so long as this Surplus Note remains outstanding or any amount remains unpaid on this Surplus Note:

(a) The Company shall use commercially reasonable efforts to obtain the approval of the Commissioner in accordance with Section 322.2 of the Insurance Law for the payment by the Company of interest on and principal of this Surplus Note on the scheduled payment dates, prepayment date or maturity dates thereof, and, in the event any such approval has not been obtained for any such payment or prepayment at or prior to the scheduled payment date, prepayment date or maturity date, as the case may be, to continue to use best efforts to obtain such approval promptly thereafter. Not less than 45 days prior to the scheduled payment date, prepayment date or maturity date (excluding any such maturity date which arises as a result of the obtaining of an order or the granting of approval for the rehabilitation, liquidation, conservation or dissolution of the Company), the Company will seek the approval of the Commissioner to make each payment or prepayment of interest on and principal of this Surplus Note. In addition, the Company shall notify in writing the holder of this Surplus Note no later than five Business Days prior to the scheduled payment date for interest, date for the prepayment of principal or the maturity date for principal in the event that the Commissioner has not then approved the making of any such payment on such scheduled payment date, prepayment date or such maturity date, and thereafter, if such payment or prepayment has been approved by the Commissioner, shall promptly notify in writing the holder of this Surplus Note of such approval.

(b) Until the full principal amount of this Surplus Note and any interest incurred thereon has been paid to the holder hereof, the Company shall not, without the prior written consent of the holder of this Surplus Note:

(i) make any dividend or distribution to holders of its equity interests or purchase or retire any of its equity interests, unless, concurrently with such dividend or distribution payment, the principal amount of this Surplus Note shall be prepaid by an amount equal to the amount of such dividend or distribution payment;

(ii) create, assume, incur or have outstanding any indebtedness (including purchase money indebtedness), or become liable, whether as endorser, guarantor, surety or otherwise, for any debt or obligation of any other person;

(iii) cease operations, liquidate, merge, transfer, acquire or consolidate with any entity, or dissolve or transfer or sell assets outside of the ordinary course of business;

(iv) amend its charter or bylaws in a manner that would adversely affect its corporate existence, material rights (charter and statutory) or material franchises; or

(v) write, assume or acquire any new business (including through any reinsurance or under existing treaties) other than pursuant to the fronting requirements set forth in Section 5.23 of that certain Stock Purchase Agreement between OneBeacon Insurance Group LLC, Trebuchet US Holdings, Inc. and the other parties thereto, dated October 17, 2012, as amended from time to time.

8. The Holder, in consideration of the issuance hereof, represents and warrants that it has been furnished with information sufficient to make an informed decision to make the advance represented by this Surplus Note. The Holder, by acceptance of this Surplus Note, acknowledges that this Surplus Note has been acquired in a transaction exempt from the registration requirements of the Securities Act of 1933, as amended, and that the Company is relying, to the extent applicable, upon such representations and warranties.

9. Nothing in this Surplus Note, expressed or implied, shall give or be construed to give any person, firm or corporation, other than the Company and the Holder, any legal or

equitable right, remedy or claim under or in respect to this Surplus Note or under any covenant, condition or provision contained herein.

10. In the event of the insolvency, bankruptcy, receivership, rehabilitation, conservatorship, reorganization, readjustment of debt, marshalling of assets and liabilities, or similar proceedings, by or against the Company, or any liquidation or winding up of the Company, whether voluntary or involuntary, this Surplus Note will immediately mature in full without any action on the part of the holder of this Surplus Note, and repayment of the balance of the funds and any accrued interest then due and owing to the Holder shall be subordinate to any policyholder, claimant and beneficiary claims as well as debts owed to all other classes of creditors. Notwithstanding any other provision of this Surplus Note, in no event shall any holder of this Surplus Note be entitled to declare this Surplus Note immediately mature or otherwise be immediately payable.

11. In the event that the Commissioner approves a payment of any interest on or principal of, or any redemption payment with respect to, this Surplus Note, in whole or in part, and the Company fails to pay the full amount of such approved payment on the date such amount is scheduled to be paid, such approved amount will be immediately payable on such date without any action on the part of the holder of this Surplus Note. In the event that the Company fails to perform any of its other obligations hereunder, the holder of this Surplus Note may pursue any available remedy to enforce the performance of any provision of this Surplus Note; provided, however, that such remedy shall in no event include the right to declare this Surplus Note immediately payable, and shall in no circumstances be inconsistent with the provisions of applicable law or the provisions of Section 2. A delay or omission by the holder of this Surplus Note in exercising any right or remedy accruing as a result of the Company's failure to perform its obligations hereunder and the continuation thereof shall not impair such right or remedy or constitute a waiver of or acquiescence in such non-performance by the Company. To the extent permitted by law, no remedy is exclusive of any other remedy and all remedies are cumulative.

12. All notices, requests, claims, demands or other communications under this Surplus Note shall be deemed to have been duly given and made if in writing and (a) at the time personally delivered if served by personal delivery upon the party for whom it is intended, (b) at the time received if delivered by registered or certified mail (postage prepaid, return receipt requested) or

by a national courier service (delivery of which is confirmed), or (c) upon confirmation if sent by facsimile; in each case to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

to the Company:

OneBeacon Insurance Company

[•]

Telephone: [•]

Facsimile: [•]

Attention: [•]

to the Holder:

OneBeacon Insurance Group LLC

[•]

Telephone: [•]

Facsimile: [•]

Attention: [•]

13. In the event that any one or more of the provisions contained in this Surplus Note other than the provision of Paragraph 2, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Surplus Note, but this Surplus Note shall be construed as if such invalid or illegal or unenforceable provision had never been contained in this Surplus Note.

14. The covenants, stipulations, promises and agreements contained in this Surplus Note shall bind and inure to the benefit of, and shall be enforceable by the Company and the Holder, and their respective successors and assigns.

15. This Surplus Note shall be governed by and construed in accordance with the domestic laws of the Commonwealth of Pennsylvania without regard to its conflict of laws principles, unless and to the extent preempted by the laws of the United States of America.

16. This Surplus Note represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior written or oral agreements between the parties and shall be modified only by a written amendment of the Company and the Holder upon receipt of prior written consent of the Commissioner.

IN WITNESS HEREOF, the Company, intending to be legally bound, has caused this Surplus Note to be executed and attested to by its duly authorized officers and corporate seal to be impressed this ____ day of _____.

(CORPORATE SEAL) (Company Name)

by: (Company Representative)

Attest to by:

Agreed and Accepted by:

_____ (Holder name)

EXHIBIT 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Case No. 2020-CP-40-04385

SOUTHERN INSULATION, INC., through its
Receiver, Peter D. Protopapas,

Plaintiff,

vs.

ONEBEACON INSURANCE GROUP, LTD.
(f/k/a White Mountains Insurance Group, Ltd.,
f/k/a CGU Insurance Company, f/k/a
Commercial Union Corporation, f/k/a General
Accident Insurance Company of America);
ONEBEACON INSURANCE GROUP LLC
(n/k/a Intact Insurance Group USA, LLC); R.V.
CHANDLER & ASSOCIATES, INC.;
CHANDLER RENTAL PROPERTIES, INC.;
THOMAS S. CHANDLER; JEAN B.
OWNBEY, as Trustee of the Thomas S.
Chandler, Sr. Living Trust u/d 4/06/06; GENE
N. NORVILLE; THE SOUTH CAROLINA
PROPERTY AND CASUALTY INSURANCE
GUARANTY ASSOCIATION; TREBUCHET
US HOLDINGS, INC.; TREBUCHET
INVESTMENTS LIMITED; TREBUCHET
GROUP HOLDINGS LIMITED (f/k/a Armour
Group Holdings Limited); BRAD S.
HUNTINGTON, individually; and JOHN C.
WILLIAMS, individually,

Defendants.

**NOTICE OF MOTION AND MOTION TO
DISMISS SECOND AMENDED
COMPLAINT BY DEFENDANTS
INTACT INSURANCE GROUP USA
HOLDINGS, INC. AND INTACT
INSURANCE GROUP USA, LLC**

**TO: ATTORNEYS FOR PLAINTIFF AS RECEIVER FOR SOUTHERN
INSULATION, INC.**

YOU WILL PLEASE TAKE NOTICE that Defendants Intact Insurance Group USA Holdings, Inc. and Intact Insurance Group USA, LLC (“Movants”) hereby move this Court for an order dismissing the claims against them. This motion is made based on the Order of Liquidation entered against Bedivere Insurance Company, S.C. Code Ann. § 38-27-430, and Rule 12(b).

This motion is supported by the pleadings; documents attached to the pleadings and this motion; such other matters as may be properly presented to the Court at the time of a hearing, if any; and the arguments included in the memorandum of law in support of this motion filed contemporaneously herewith.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos

Demetri K. Koutrakos, SC Bar No. 11318

Harry A. Dixon, SC Bar No. 103509

1812 Lincoln Street, Suite #200 (29201)

P. O. Box 1390

Columbia, SC 29202-1390

Telephone: 803-404-6900

Facsimile: 803-404-6902

Email: jimkoutrakos@callisontighe.com

Email: harrydixon@callisontighe.com

**ATTORNEYS FOR DEFENDANTS
INTACT INSURANCE GROUP USA
HOLDINGS INC. (INCORRECTLY
SUED HEREIN AS ONEBEACON
INSURANCE GROUP, LTD.) AND
INTACT INSURANCE GROUP USA LLC
(INCORRECTLY SUED HEREIN AS
ONEBEACON INSURANCE GROUP
LLC)**

November 30, 2022

EXHIBIT 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-40-04385

Southern Insulation, Inc., through its Receiver, Peter D.
Protopapas,

OneBeacon Insurance Group, Ltd. (f/k/a White Mountains Insurance Group, Ltd., f/k/a CGU Insurance Company, f/k/a Commercial Union Corporation, f/k/a General Accident Insurance Company of America); OneBeacon Insurance Group LLC (n/k/a Intact Insurance Group USA LLC); R.V. Chandler & Associates, Inc.; Chandler Rental Properties, Inc.; Thomas S. Chandler; Jean B. Ownbey, as Trustee of the Thomas S. Chandler, Sr. Living Trust u/d 4/06/06; Gene N. Norville; the South Carolina Property and Casualty Insurance Guaranty Association; Trebuchet US Holdings, Inc.; Trebuchet Investments Limited; Trebuchet Group Holdings Limited (f/k/a Armour Group Holdings Limited); Brad S. Huntington, individually; and John C. Williams, individually.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Robert Y. Knowlton

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ ☒ Statement of Judgment by the Court: **Having carefully considered and rejected each of the arguments made by Defendants Trebuchet Investments Limited, Trebuchet Group Holdings Limited (f/k/a Armour Group Holdings Limited), Trebuchet US Holdings, Inc., Brad S. Huntington, John C. Williams (altogether, the "Trebuchet Defendants") and by Defendant OneBeacon Insurance Group, Ltd. (n/k/a Intact Insurance Group USA Holdings Inc.) and Defendant OneBeacon Insurance Group LLC (n/k/a Intact Insurance Group USA LLC) (together with OneBeacon Insurance Group, Ltd., the "OneBeacon Defendants"), in their written motions, in the submitted memoranda in support and in opposition to their motions, and by counsel at the hearing, the Court denies the Trebuchet Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint filed November 30, 2022, and the Court denies the OneBeacon Defendants' Motion to Dismiss Second Amended Complaint filed November 30, 2022.**

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

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CLERK OF COURT

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E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Richland Common Pleas

Case Caption: Southern Insulation Inc , plaintiff, et al vs State Auto Property & Casualty Insurance Company , defendant, et al
Case Number: 2020CP4004385
Type: Order/Form 4

So Ordered

Jean H. Toal

EXHIBIT 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Southern Insulation, Inc., through its
Receiver, Peter D. Protopapas,

Plaintiff,

vs.

OneBeacon Insurance Group, Ltd. (n/k/a Intact
Insurance Group USA Holdings, Inc.);
OneBeacon Insurance Group LLC (n/k/a Intact
Insurance Group USA LLC); R.V. Chandler &
Associates, Inc.; Chandler Rental Properties,
Inc.; Thomas S. Chandler; Jean B. Ownbey, as
Trustee of the Thomas S. Chandler, Sr. Living
Trust u/d 4/06/06; Gene N. Norville; the South
Carolina Property and Casualty Insurance
Guaranty Association; Trebuchet US
Holdings, Inc.; Trebuchet Investments
Limited; Trebuchet Group Holdings Limited;
Brad S. Huntington, individually; and John C.
Williams, individually.

Defendants.

Case Number: 2020-CP-40-04385

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**SOUTHERN INSULATION'S
JOINT RESPONSE
TO THE MOTIONS TO DISMISS**

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INTRODUCTION

This case is about enforcing the remaining insurance coverage for Southern Insulation, Inc. (“Southern”). The Receiver has successfully enforced the Insurance Policies for Southern’s asbestos litigation costs and liabilities, with one exception – those issued by Potomac Insurance Company, which was later known by several different names, including Bedivere Insurance Company. The OneBeacon and Trebuchet Defendants¹ directly caused the loss of Southern’s insurance benefits from the Insurance Policies purchased in South Carolina from Potomac. The OneBeacon and Trebuchet Defendants took Potomac’s assets for themselves, treated Potomac as their alter ego and a single business enterprise affiliate, and cut off the long-tail insurance obligations that caused the losses for which Southern is suing, and Potomac cooperated in this endeavor.

This situation is like other situations encountered by the Court, such as the pending third-party action among the Receiver for Pipe & Boiler Insulation, Inc. and the Arrowpoint defendants in Case No. 2021-CP-40-03484, where the third-party defendants are also stripping assets from one of Pipe & Boiler’s insurance carriers in run-off. Here, however, the situation is worse because the OneBeacon and Trebuchet Defendants have already completed the looting and have forced Southern’s insurer into liquidation. The Court has rightfully allowed the Pipe & Boiler case to survive motions to dismiss and to continue into discovery. Southern should be allowed to do the same.

¹ Unless stated to the contrary, capitalized terms have the definition assigned to them in the Second Amended Complaint (the “Second Am. Compl.”). References in this brief to “OneBeacon” are to the OneBeacon Defendants, collectively, and references to “Trebuchet” are to the Trebuchet Defendants, collectively. References to “Potomac” mean Potomac Insurance Company and include any subsequent names by which it has been known, including “OneBeacon Insurance Company” and “Bedivere Insurance Company.”

The OneBeacon and Trebuchet Defendants have moved to dismiss on various grounds, after their unsuccessful effort to remove the case. But neither the Pennsylvania Liquidation Order for Potomac nor the approval orders permitting the sale of Potomac by OneBeacon to Trebuchet and permitting the Merger of Potomac with financially troubled affiliates prevent Southern from suing the OneBeacon and Trebuchet Defendants for their own bad acts that caused Southern's losses here in South Carolina. In addition, the Second Amended Complaint was timely and properly filed, and pleads facts sufficient to state Southern's causes of action. The Receivership Court is the proper forum and has personal jurisdiction over the OneBeacon and Trebuchet Defendants because they purposefully availed themselves of benefits in South Carolina by looting Southern's insurer and caused losses based on South Carolina insurance policies. Therefore, the motions to dismiss should be denied.

BACKGROUND

Southern was incorporated and operated in South Carolina until it went out of business and then was administratively dissolved in 1991. Second Am. Compl. ¶¶ 2, 22, 23. During Southern's operation, Potomac Insurance Company issued Insurance Policies to Southern to cover losses in South Carolina. The losses covered by the Potomac Insurance Policies included the obligation to defend and indemnify Southern against Asbestos Suits in South Carolina, and asbestos-related losses that have occurred in South Carolina. Second Am. Compl. ¶¶ 20, 27, 28, 31.

Before December 2014, Defendant OneBeacon Insurance Group, LLC, a wholly owned subsidiary of Defendant OneBeacon Insurance Group, Limited, owned Potomac. Second Am. Compl. ¶¶ 3, 4, 5, 39. Southern has alleged that during their ownership of Potomac, the OneBeacon Defendants knowingly and materially underestimated Potomac's long-tail insurance liabilities and took substantial and material assets from Potomac and its subsidiaries without giving adequate

consideration. Second Am. Compl. ¶¶ 35, 38, 41. Southern also alleges that the OneBeacon Defendants treated Potomac as their alter ego, used the assets of Potomac for unrelated lines of business and to benefit themselves and their affiliates, and gave themselves enormous dividends, stripping Potomac of capital. Second Am. Compl. ¶¶ 35, 36, 38. Southern further alleges OneBeacon knew these actions would leave Potomac unable to pay its claims because Potomac had substantial outstanding obligations that would become claims in future years, and these actions ultimately led to the insolvency of Potomac. Second Am. Compl. ¶¶ 38, 41, 47, 57, 59, 80. Southern is informed and believes that Potomac's agents actively participated in OneBeacon's damaging actions.

In December 2014, OneBeacon sold Potomac (then known as OneBeacon Insurance Company), two of Potomac's subsidiaries (EFIC and Lamorak), and another OneBeacon insurance company subsidiary (Potomac II) (collectively, the "Runoff Subsidiaries") to Trebuchet US in the Transaction. Second Am. Compl. ¶¶ 29, 39, 56, 62. Southern alleges that OneBeacon claimed the Transaction was economically neutral for Potomac and would maintain economic stability, and that OneBeacon provided projections which materially misrepresented the viability of Potomac and obscured that Trebuchet was a much weaker company than OneBeacon. Second Am. Compl. ¶¶ 40, 41, 43, 45, 47, 48. Southern also alleges that the Transaction jeopardized Potomac's financial condition even though it was approved by the Pennsylvania Department of Insurance ("Department") because of OneBeacon's misrepresentations. Second Am. Compl. ¶¶ 40, 49.

Although the Department held informational hearings regarding the Transaction, the information that was made publicly available was limited, and only those parties allowed to intervene in the proceeding had access to OneBeacon's confidential documents. *See, Crosby Valve, LLC v. Dep't of Ins.*, 131 A.3d 1087 (Pa. Commw. Ct. 2016) (describing the Transaction

proceeding and affirming denial of Crosby's petition to intervene).² In fact, *Crosby Valve*, cited by OneBeacon in its motion to dismiss ("OneBeacon MTD" 21-22), involved the very Transaction at issue and illustrates the difficulties a reasonable person faced in seeking to ascertain its rights with respect to the Insurance Policies at the time of the Transaction.

Crosby Valve was also an insured and sought to intervene in the hearings related to the Transaction. Crosby Valve sought access to various analyses and projections of the Runoff Subsidiaries and information about Trebuchet's financial capacity, as well as actuarial modeling that had been conducted to assess the adequacy of the Runoff Subsidiaries' reserves. These analyses and projections were contained in documents OneBeacon designated as "confidential" and were provided only to those parties allowed to intervene in the proceedings. *Crosby Valve*, 131 A.3d at 1087. These documents are still confidential, and Southern does not know their exact content.

The hearings on the Transaction took place while Crosby Valve's application to intervene was still pending. The Department stated:

Certain documents submitted to the Department are highly confidential, and the Department has kept them entirely private . . . [T]he documents on the Confidential List are maintained as CONFIDENTIAL. Because they were relied on by the Department in reaching its decision, they will be made available to the Court for in camera review upon request. [But t]hey will not be quoted in publicly filed briefing or at oral argument.

Crosby Valve, 131 A.3d at 1090 n.3 (emphasis added) (quoting the Department's description of

² *Crosby Valve* examined the level of due process owed to Crosby, which depended on whether Pennsylvania's General Rules of Administrative Practice and Procedure or the less protective Pennsylvania Insurance Holding Company Act governed the proceeding. The court found that the less protective Act governed Crosby's due process rights, which meant that Crosby was not allowed to intervene or to access those documents designated by OneBeacon as "confidential."

the certified list of confidential documents of record). Among those confidential documents³ were schedules to Trebuchet's application for the Transaction.⁴ While the Stock Purchase Agreement was filed and made publicly available, some of its schedules were not. One of the publicly available schedules described in very general terms pre-Transaction transfers from Potomac to OneBeacon.⁵

³ Southern offers Exhibits 1 - 3 (referenced below), to illustrate the types of documents OneBeacon filed with the Department in connection with the Transaction but were kept confidential from the insureds and the general public. The Transaction was referenced in the Second Amended Complaint, paragraphs 35, 36, 38-50, 54, 59, and 80. The Court may consider the description by the *Crosby Valve* court of the categories of documents treated as "confidential" in the Transaction approval proceeding and the contents of publicly filed Transaction-related documents, because this Court may take judicial notice of publicly available documents, the authenticity of which may be ascertained by reference to readily available sources of indisputable reliability, and without transforming a motion to dismiss under Rule 12(b)(6) into a motion for summary judgment. *Secy of State for Def. v. Trimble Navigation, Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007) ("In reviewing the dismissal of a complaint under Rule 12(b)(6), an appellate court may properly take judicial notice of matters of public record."); *Glenn v. Bank of Am.*, C.A. No. 6:10-1974-HMH, 2010 WL 3786171, 2010 U.S. Dist. LEXIS 99744, at *7 n.4 (D.S.C. Sept. 22, 2010) ("The court is authorized to take judicial notice of public information such as court documents without transforming a motion to dismiss under Rule 12(b)(6) into a motion for summary judgment."); *see also S.C. Dept of Soc. Servs. v. Janice C.*, 383 S.C. 221, 227, 678 S.E.2d 463, 467 (Ct. App. 2009) ("To be subjected to judicial notice, a fact['s] 'accuracy may be ascertained by reference to readily available sources of indisputable reliability'")(quoting *Bowers v. Bowers*, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (Ct. App. 2002))).

⁴ Form A is a document required to be filed by any party wishing to purchase an insurance company in Pennsylvania. Attached as Exhibit 1 to this Response is an excerpt (pages 12-14) from the Form A filed with the Department of Insurance by Armour Group Holdings Limited (Trebuchet) in connection with the Transaction and publicly available (found at www.insurance.pa.gov/Companies/IndustryActivity/Pages/OneBeacon, Cumulative Log, Item 003). The Defendants here requested confidential treatment for a number of the documents filed. This confidential treatment was also described in *Crosby Valve, LLC v. Dep't of Ins.*, 131 A.3d 1087 (Pa. Commw. Ct. 2016). "The Department's certified list of record is split into two parts. The first part lists and describes 149 documents upon which it relied. The second part lists 29 documents as "confidential – for court review in camera." *Id.* at 1090-91. "The confidential documents include the seller's disclosure schedules to the stock purchase agreement, a business plan, Towers Watson's presentations and reports, Risk & Regulatory Consulting's presentations and reports, and correspondence" *Id.* at 1098.

⁵ See Exhibit 2 to this Response, excerpted from the October 17, 2012 *Stock Purchase Agreement* (the "SPA") filed with the Department in connection with the Transaction, and publicly available (found at www.insurance.pa.gov/Companies/IndustryActivity/Pages/OneBeacon, Cumulative

Crosby Valve was not allowed to intervene or gain access to the confidential documents, and the Transaction was approved.

Crosby Valve then sought judicial review of both its intervention denial and the Approval Order. *Crosby Valve*, 131 A.3d at 1088. It alleged the real purpose of the Transaction was to allow OneBeacon to shed asbestos and other legacy liabilities, and the Runoff Subsidiaries were grossly under-reserved for legacy exposure because OneBeacon had stripped capital out of them before proposing the Transaction. Crosby Valve also alleged that the Transaction would prejudice policyholders by transferring control from OneBeacon, a large, well-capitalized company with profitable underwriting operations, to Trebuchet, a poorly capitalized arbitrageur of runoff businesses that would be unable to raise any capital if the Runoff Subsidiaries' reserves and reinsurance assets could not satisfy their legacy liabilities. *Id.* at 1089. In an effort to investigate these suspicions, Crosby Valve sought "information ... designated as confidential, which the [Department] refused to release." *Id.* In ruling that Crosby Valve's due process rights did not allow it the right to intervene or to access the confidential documents because the Pennsylvania Insurance Holding Company Act's less-stringent due process standard applied to the proceeding,

Log, Item 004, Exhibits at Item 043). *See* Section 5.13(a) of the Seller's Disclosure Schedule to the SPA (pages 74 – 77): Restructuring Steps: § III Contribution of Subsidiaries to be Merged, Capital Contribution, Item H (at pages 75-76) ("Quarterly until Closing ... [Potomac] will declare and pay dividends to its parent company from time to time ..."); § V Transfers of Assets, Rights, Etc., Item A (at page 76) ("Prior to Closing, ... the Acquired Companies will assign to Seller or an Affiliate of Seller ... all licenses, leases and other Contracts not used solely in the Run-Off Businesses ..."); Item C (at page 77) ("Prior to Closing, the Acquired Companies will transfer to Seller or an Affiliate of Seller all assets ... not used solely in the Run-Off Business."); *see also* the "Restructure" exhibit to the SPA, Cumulative Log, Item 062 ("Declaration and payment of the OBIC subsidiaries (OneBeacon America Insurance Company and [EFIC]) [and Potomac] of a dividend to their parent company, OneBeacon Group").

the Court noted that Crosby Valve did, however, retain “its right to any and all judicial remedies relating to the administration of [its] claims.” *Crosby Valve*, 131 A.3d at 1097 (emphasis added).

The information on the Transaction allowed to be public was bullish. The actuaries who testified in support of the Transaction were publicly supportive of Potomac’s chances of post-Transaction success and dismissive of objections by public critics, as shown by the (publicly available) response of OneBeacon’s actuarial firm, Towers Watson, responding to

various questions and comments related to our work . . . as discussed in the Public Hearing in Harrisburg on July 23, 2014... As a general statement, we do not believe that any of the criticisms and comments made by the objectors about our actuarial assumptions, methodologies, judgments, and caveats should be given any credibility . . .”⁶

Id. at 1 (emphasis added). Soon after, in its (publicly available) findings of fact, the Pennsylvania Insurance Commissioner cited Towers Watson’s Update of Stochastic Modeling dated November 2, 2014, which predicted a better-than-expected loss development and mid-to long-range success rate, if the Transaction were allowed, of 97.32% in years 15 through 20 and 93.44% after 30 years.⁷ How unrealistic this prediction would prove to be was obscured by OneBeacon’s designation of information as confidential and the cursory nature of the proceedings. Potomac’s true financial condition did not become apparent until its Merger four years later in 2020, just three months before this lawsuit was filed, and subsequent Liquidation in early 2021. A diligent inquiry at the time of the Transaction would have revealed only the disregarded allegations and rejected requests

⁶ Excerpt (pages 1-4) from August 11, 2014, letter/response of Towers Watson to Steven L. Yerger, Pennsylvania Insurance Department, filed with the Department and publicly available (found at www.insurance.pa.gov/Companies/IndustryActivity/Pages/OneBeacon, Cumulative Log, Item 108), at page 1, which is Exhibit 3 to this Response.

⁷ Decision and Order of the Insurance Commissioner of the Commonwealth of Pennsylvania (filed Dec. 23, 2014) (found at www.insurance.pa.gov/Companies/IndustryActivity/Pages/OneBeacon, Cumulative Log, Item 143) ¶¶ 28, 30 & 77.

to access the confidential information by those seeking to intervene, and would have been overshadowed by overly positive and publicly available reports of OneBeacon's actuaries.

OneBeacon's Transaction with Trebuchet took place in December 2014. Second Am. Compl. ¶¶ 29, 39, 56, 62. Trebuchet US was a subsidiary of Trebuchet Investments, which itself was a subsidiary of Trebuchet Group, a company previously known as Armour Group Holdings Limited. Second Am. Compl. ¶¶ 13, 14, 15. Before, during, and after the Transaction, two individuals—Defendants Huntington and Williams—were the sole ultimate controlling persons of each of Trebuchet Group, Trebuchet Investments, and Trebuchet US. After the Transaction, Huntington and Williams were also the sole ultimate controlling persons of Potomac and the other Runoff Subsidiaries. Second Am. Compl. ¶¶ 16, 17, 60, 62. Southern has alleged Potomac⁸ (known then as Bedivere) and the other Runoff Subsidiaries were the alter egos of Huntington, Williams, and the other Trebuchet Defendants. Second Am. Compl. ¶ 63.

On May 17, 2019, this Court appointed the Receiver, giving him authority to fully marshal and administer Southern's assets and to take all steps necessary to protect the interests of Southern. Second Am. Compl. ¶¶ 1, 91. The Receiver, through no fault of his own, did not receive notice of the factual basis of Southern's claims related to the pre-Transaction transfers, the Transaction, the Merger, or Southern's injuries until after Potomac's Liquidation was announced in March 2021. Second Am. Compl. ¶ 94.

On August 6, 2020, Potomac's Board adopted the Merger Plan, and the Merger Agreement was approved by Trebuchet US, as sole shareholder of Potomac and Potomac II. Second Am. Compl. ¶ 70. On October 1, 2020, Huntington and Williams filed an Application with the

⁸ In 2015, Trebuchet changed the name of OneBeacon Insurance Company to Bedivere Insurance Company. Second Am. Compl. ¶ 29.

Department, seeking approval of the Merger of Potomac with the other Runoff Subsidiaries, pursuant to the Pennsylvania Insurance Holding Companies Act. Second Am. Compl. ¶¶ 65, 66. The Department subsequently published a public notice regarding the Application. Second Am. Compl. ¶ 68. Pursuant to the Merger, Potomac would assume all debts, obligations, and other liabilities of the other Runoff Subsidiaries. Second Am. Compl. ¶¶ 71, 73, 77, 78. Because the Merger would not change or influence the control of a domestic insurer (because of the common ownership of these entities), the application was exempt from due process requirements for a public hearing. Second Am. Compl. ¶ 67. See also the discussion regarding *Crosby Valve, supra* at 4-8. Southern has alleged that Huntington and Williams knew the Runoff Subsidiaries that would be merged into Potomac were grossly undercapitalized and ill-prepared to pay their insurance claims and other liabilities. Second Am. Compl. ¶ 74. Nonetheless, the Merger went forward on December 9, 2020.

Only two months later, Potomac unraveled. On February 12, 2021, a judgment was entered against one of the Runoff Subsidiaries that merged into Potomac for almost \$50 million. Second Am. Compl. ¶ 78. On February 25, 2021, both Trebuchet US, as the sole shareholder of Potomac, and Potomac's Board consented to Potomac's Liquidation, and on March 11, 2021 the Order of Liquidation was entered. Second Am. Compl. ¶¶ 57, 79, 80.

Southern has alleged that by making the Merger, the Trebuchet Defendants caused a fraudulent incurrence of obligations because one or more of the Runoff Subsidiaries was insolvent. Southern also alleges that the timing of the Merger and insolvency were such that a fact-finder could infer fraudulent intent. Second Am. Compl. ¶¶ 83-89. Southern faces many suits brought by Asbestos Claimants for allegedly exposing people to asbestos-containing products, materials, or equipment, and has tendered the Asbestos Suits to Potomac for defense and coverage. However,

because it is insolvent, Potomac cannot defend Southern in the Asbestos Suits or pay meritorious claims. Second Am. Compl. ¶¶ 24, 25, 26, 31, 59.

LEGAL STANDARD FOR MOTIONS TO DISMISS

When considering a motion to dismiss a complaint pursuant to Rule 12(b)(6), SCRCP, the trial court must base its ruling solely on the allegations set forth in the complaint. If the facts and inferences drawn from the allegations in the complaint, viewed in the light most favorable to the plaintiff, would allow relief under any theory, then the motion to dismiss should be denied. *Baird v. Charleston Cnty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999); *see also Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009) (requiring the evidence and all inferences which can reasonably be drawn from the evidence to be viewed in the light most favorable to the nonmoving party).

A motion under Rule 12(b)(6) should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any facts which could be proved at trial in support of its claim. *Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 698 S.E.2d 879 (Ct. App. 2010). “The question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief.” *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112-113, 659, S.E.2d 158, 161 (2008). The court will not sustain the motion if the “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995); *see also Pinder v. Washington*, 2006 S.C. App. Unpub. LEXIS 221, Unpub. Op. No. 2006-UP-311 (Ct. App. July 10, 2006) (dismissal improper because the important query was when the discovery of such acts

occurred or should have occurred, and finding the matter should be more fully developed to make a determination).

Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim, but it is not a vehicle for addressing the underlying merits of the claim. *Doe v. Oconee Mem. Hosp.*, 437 S.C. 574, 581, 878 S.E.2d 920, 925 (Ct. App. 2021). Applying this standard, Southern has asserted viable claims, and the motions to dismiss should be denied.

DISCUSSION

A. Southern's Claims are not Barred by the Liquidation Order Because the Liquidator Cannot Bring Southern's Claims.

Southern suffered harm from wrongs committed in South Carolina because it purchased insurance policies backed by the assets of Potomac. Southern made claims for Asbestos Suits that went unpaid because Potomac became insolvent. This insolvency and Southern's consequent damages were the direct result of actions by OneBeacon and Trebuchet as the "controlling persons" that dominated Potomac through stock ownership. Second Am. Compl. ¶¶ 20, 27, 28, 31. Southern has alleged Potomac was the alter ego of OneBeacon before the Transaction, and of Trebuchet from the Transaction until the Liquidation. Second Am. Compl. ¶¶ 16, 17, 36, 60, 62, 63. Potomac approved the Transaction and the Merger. Second Am. Compl. ¶ 70. Neither OneBeacon nor Trebuchet are innocent parties. Southern is the one party here that did not participate in their bad acts. These facts affect the claims the Liquidator can bring.

1. Southern is bringing a claim for its own damages and is not suing on behalf of Potomac.

Southern is suing for direct harm to itself and is seeking only those damages to which it personally is entitled. It does not concede that Potomac could have brought Southern's claims, but even if Southern's injury were viewed as secondary to the injury suffered by Potomac, Southern's action is *not* derivative. *In re Refco Sec. Litig.*, 2011 U.S. Dist. LEXIS 103129, at **52-53

(S.D.N.Y. July 5, 2011) (claims of creditors suing for damages caused by third parties who aided and abetted the acts of the wrongdoing insiders were not “derivative” like those of shareholders suing for harm to their corporation – “derivative” claims in the *in pari delicto* sense are those claims held by the debtor corporation, where the one suing on the corporation’s behalf is the one stepping into its shoes).

In *Refco*, the creditors were allowed to sue even though their injury was secondary to the party suffering the primary injury (the debtor), and their claims were not derivative. “The case law establishes that the plaintiffs who have been barred by *in pari delicto* [in other cases] are only those who are actually invoking a right to sue for the damages suffered by the [debtor] corporation.” *Refco* at *63 (emphasis added). When *in pari delicto* applies, it “does not cover a plaintiff’s claim for damages that, while indirect, are actually suffered by *both* the [debtor] corporation *and* the [creditor] plaintiff.” *Id.* (emphasis added). The mere fact that Potomac also might have been able to bring a similar claim does not mean that Southern does not have its own cause of action against Trebuchet or OneBeacon or is suing on behalf of Potomac.

Moreover, Southern’s action for damages in no way forecloses the rights of any other similarly entitled parties. They may pursue their own actions. *See* discussion of *Crosby Valve*, *supra* at 4-8 (The Court found Crosby Valve retained “its right to any and all judicial remedies relating to the administration of [its] claims.” *Crosby Valve*, 131 A.3d at 1097). *See also* discussion of the Transaction approval process and effect of the related Approval Order, *infra* at 21-22 (Southern is arguing that the findings of fact are not binding on Southern because Southern was not a party to the proceeding which resulted in those findings, and the Transaction approval hearing was simply a regulatory process).

“A large number of cases hold that if a corporation is barred from suing for harm to the corporation due to *in pari delicto*, those claims can then be brought by creditors of the wrongdoing corporation. The right of creditors to bring their own claims when the [Trustee] is barred is a function of the Wagoner Doctrine.” *Refco* at *57; *see also id.* at *57 n.9 (“[T]he courts have consistently held that the Wagoner Doctrine and *in pari delicto* . . . are ‘substantively identical.’”) As shown below, Potomac is barred by the *in pari delicto* doctrine from suing OneBeacon and Trebuchet for these claims, and Southern may sue for the injury these defendants have caused to Southern.

2. *In pari delicto* bars the Liquidator from bringing Southern’s claims.

a. Southern can bring those claims from which the Liquidator is barred by *in pari delicto*, regardless of the Liquidator’s powers.

In pari delicto is Latin for “in equal fault,” and the doctrine refers to a plaintiff’s participation in the same wrongdoing as the defendant because there is generally no right to indemnity between joint tortfeasors. *Myatt v. RHBT Fin. Corp.*, 370 S.C. 391, 394, 635 S.E.2d 545, 547 (Ct. App. 2006); *Terlecky v. Hurd (In re Dublin Sec.)*, 133 F.3d 377 (6th Cir. 1997); *Black’s Law Dictionary* 794 (7th ed. 1999). A long-standing hurdle in corporate complicity claims is the common-law principal that one wrongdoer cannot sue another wrongdoer for losses incurred as part of their joint bad acts. *Ross v. Bolton*, 904 F.2d 819, 824 (2d Cir. 1990); *Stone v. Freeman*, 82 N.E.2d 571, 578 (N.Y. 1948). It is an affirmative defense that prevents a plaintiff who participated in the same wrongdoing as the defendant from recovering damages from that wrongdoing. *Anderson v. Cordell (In re Infinity Bus. Grp., Inc.)*, 628 B.R. 213, 248, 2021 U.S. Dist. LEXIS 65185, at **73 (D.S.C. Mar. 31, 2021). The Liquidator, as successor to Potomac, is subject to any legal or equitable defenses that could have been raised against Potomac. *See Grayson Consulting, Inc. v. Wachovia Sec., LLC (In re Capital)*, 2008 Bankr. LEXIS 4109, *6

(Bankr. D.S.C. June 10, 2008) (finding that *in pari delicto* is an equitable defense which can be asserted against a plaintiff who shares fault with the defendant). One rationale for applying *in pari delicto* is a policy interest against courts becoming entangled in disputes among bad actors over their ill-gotten gains.

The doctrine is based on agency and equity principles. The debtor corporation is treated as a wrongdoer because the misconduct of its high-level corporate officers is imputed to the corporation under traditional principles of agency law. *Curtis Collins & Holbrook Co. v. United States*, 272 U.S. 215, 222 (1923); *Wright v. BankAmerica Corp.*, 219 F.3d 79, 86 (2d Cir. 2000). The officers of Potomac were its agents, and their knowledge and actions should be imputed to Potomac.⁹ *Anderson v. Cordell (In re Infinity Bus. Grp., Inc.)*, 628 B.R. 213, 254, 2021 U.S. Dist. LEXIS 65185, **89 (D.S.C. Mar. 31, 2021) (“A corporation is responsible for the acts of its authorized agents because the risk of loss from the unauthorized acts of a dishonest agent falls on the principal that selected the agent.”); *In re Refco*, 2011 U.S. Dist. LEXIS 103129, at **53 (“The acts of agents, and the knowledge they acquire while acting within the scope of their authority, are presumptively imputed to their principals. All corporate acts – including fraudulent ones – are subject to the presumption of imputation.” (quoting *Kirschner v. KPMG LLP*, 938 N.E.2d 941, 951 (N.Y. 2010))); *Am. Int’l Grp, Inc. v. Greenberg*, 976 A.2d 872, 886-87 (Del. Ch. 2009) (“Having invested its employees with the authority necessary to engage in the illegal actions at issue, AIG is responsible for those employees’ (mis)use of that power.”) Only if the agent has totally abandoned the principal *and* the principal has received no benefit should the court generally

⁹ Cf. *Terlecky v. Hurd (In Re Dublin Sec.)*, 133 F.3d 377, 379 (6th Cir. 1997) (finding that the officers and directors of the debtor corporation so dominated and controlled it, that the corporation had no separate mind, will or existence of its own, and consequently the officers and directors were the alter egos of the debtor and any malfeasance on their parts was attributable to the debtor itself).

not impute the agent's acts to Potomac. *Anderson v. Cordell*, 628 B.R. at 251; *Kirschner*, 938 N.E.2d at 952. However, whether that has occurred is a question of fact, and thus OneBeacon's and Trebuchet's motions to dismiss should be denied.

Another policy underlying *in pari delicto* is that courts will not help bad actors divide their spoils. Accordingly, a bad actor, like Potomac, would be unable to go after its co-conspirator bad-actor parents, the OneBeacon and Trebuchet Defendants (the third parties with whom Potomac's agents (its officers) collaborated) since Potomac cannot seek contribution from its fellow conspirator. Often in a case involving *in pari delicto* the third parties are external service providers, whereas here, the bad-acting third parties were part of the larger corporate family. In *AIG Consolidated Derivative Litigation, Inc. v. Smith*, 976 A.2d 872 (Del. Ch. 2009), a bad-actor corporation sought contribution from its bad-actor service provider, claiming it had been harmed during the conspiracy and that, although it had engaged in the bad acts, it should not be barred by *in pari delicto* because the service-provider had behaved badly. *Id.* at 877. The court refused to allow one co-conspirator to sue another, even if AIG had suffered harm:

AIG and its corporate constituencies must live with the consequences of having had a corporate governance structure that permitted [management] to enmesh AIG [in bad behavior with the third party] . . . AIG cannot seek to have this court convene a proceeding whereby . . . the court renders a normative and economic judgment about how the spoils and costs of illegal conduct should be shared.

Id. at 895.

Here, the Liquidator, standing in the shoes of Potomac, would be similarly barred, because of the participation by Potomac in the bad acts of OneBeacon, and later, Trebuchet. *See Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114, 118 (2d Cir. 1991) (holding that a trustee was barred from bringing claims against a third party that had joined with the debtor corporation in defrauding its creditors, for the damage to the creditors); *Wright v. BankAmerica Corp.*, 219 F.3d

79, 86 (2d Cir. 2000) (holding that a liquidator was barred by *in pari delicto* because it stood in the shoes of the corporation); *Mediators, Inc. v. Manney (In re Mediators, Inc.)*, 105 F.3d 822 (2d Cir. 1997) (holding that the debtor's claims were barred by *in pari delicto*).

Normally *in pari delicto* arises when a debtor corporation's receiver sues a third party that seeks to assert the doctrine as a defense, alleging in part that the defendant is either not as bad as the debtor/plaintiff, or completely innocent. For a fraudulent conveyance claim, the debtor then typically argues that it is only a receiver and doing its job to follow the money, and that it does not matter that the debtor was a bad-actor before going bankrupt – it should be allowed to proceed. Here, however, Southern is yet another third-party, an innocent third-party that suffered harm from the bad acts of both the badly behaving debtor (Potomac) and the third parties, OneBeacon and Trebuchet, that each were the ultimate controlling persons of Potomac. These Defendants were all *in pari delicto* with Potomac. However, because Potomac is in liquidation, OneBeacon and Trebuchet argue that the Liquidator has the ultimate say over Southern's claims, although the Liquidator has made no move to sue or dismiss any of them.

This is a classical straw-man argument - and if it is honored, the wrongdoers, and no one else, will benefit. Meanwhile, Southern itself is in receivership, and its Receiver is seeking to pursue his mandate to recover Southern's assets so that Southern can respond to meritorious Asbestos Claims. In other words, Southern is the one party that did not participate in the bad acts that brought us here, and Southern has been injured as a result of those acts. Consistent with the principle that “[e]quity eschews mechanical rules; it depends on flexibility,” Southern urges that where there are two persons tasked with recovering the assets of respective debtors, the one who is actively trying to recover for completely innocent asbestos victims, from solvent bad actors that would profit if recovery were mechanically denied, should be the one allowed to proceed.

Holmberg v. Armbrrecht, 327 U.S. 392, 396 (1946). Southern would never get its day in court against these bad actors otherwise. Thus it is asking this Court to deny these motions to dismiss so that Southern can pursue its claims on the merits and after discovery.

The arguments of OneBeacon and Trebuchet depend on the flawed premise that Southern's claims rightfully belong to the Liquidator. However, the Liquidator's powers apply only to the property, contracts, and rights of action of Potomac: "An order . . . shall direct the Liquidator forthwith to take possession of the assets of the insurer and to administer them under the orders of the court. The Liquidator shall be vested by operation of law with the title to all property, contracts and rights of action . . . of the insurer . . ." 40 Pa. Stat. § 221.20 (emphasis added). No matter how broad the grant to the Liquidator, to the extent that *in pari delicto* (or any other doctrine) bars Potomac from bringing Southern's causes of action, they are not property of Potomac and thus do not belong to the Liquidator.

Potomac was *in pari delicto* with OneBeacon and Trebuchet, and if it sued either of them for Southern's claims, *in pari delicto* is a defense that would have been asserted against it. As noted above, to the extent similar creditors of Potomac exist, Southern's efforts do not foreclose their rights. Southern is only seeking to recover its own damages – not that of others and, most assuredly, not those of Potomac. Southern has made sufficient allegations to support its claims, yet the facts remain to be determined at this point, and so OneBeacon's and Trebuchet's motions to dismiss should fail.

- b. Potomac's agents were the same sole actors that allowed third parties (the OneBeacon and Trebuchet Defendants) to dominate Potomac, which further supports that Potomac is barred from bringing Southern's claims by *in pari delicto*.**

Southern has not yet had the opportunity to conduct discovery because shortly after filing the Second Amended Complaint, some of the Trebuchet Defendants removed this action. One

issue that Southern intends to explore in discovery is the extent to which Potomac's officers and directors were "sole actors." Southern is informed and believes that they were, and that they overlapped in identity with the dominant controlling third parties with whom they collaborated (i.e., the OneBeacon and later, the Trebuchet Defendants). Because it is likely that Potomac's agents were "sole actors," it is likely that *in pari delicto* bars the Liquidator, as the representative of Potomac, from bringing claims such as those brought by Southern against the OneBeacon and Trebuchet Defendants. Again, these are questions of fact which deserve a chance to be explored in discovery.

The "sole actor" rule is "an established principle of agency law." *Grayson Consulting, Inc. v. Wachovia Sec., LLC (In re Capital)*, 2008 Bankr. LEXIS 4109, *10 (D.S.C. June 10, 2008). When the agent is a sole actor, a finding of *in pari delicto* is particularly appropriate. *Id.* at *9-10. Under this rule, where an officer/director is a "sole actor" who participated in bad acts, the bad acts will be imputed to the debtor corporation, even where the officer's interests were adverse to the corporation and not for its benefit: "The rationale for this rule is that the sole actor has no one to whom he can impart his knowledge, and no one from whom he can conceal it, and the corporation must bear the responsibility for allowing an agent to act without accountability." *Id.* at *10 (quoting *Official Comm. of Unsecured Creditors v. R.F. Lafferety & Co., Inc.*, 267 F.3d 340, 359 (3d Cir. 2001)). Courts across various jurisdictions apply the rule to impute liability to corporations. *See id.* at *14 ("Although [Plaintiff] urges the Court not to apply the *in pari delicto* defense because it is the successor to the rights of the Trustee, the court cannot ignore the precedent by every Circuit Court that has considered the issue . . ." (collecting cases)); *In re: Dublin Sec.*, 133 F.3d at 380 (affirming an order granting a motion to dismiss because of *in pari delicto* even through the trustee asserted that individuals, who dominated the debtors' business were to blame

for the harm to the debtors); *Sharp Int'l Corp. v. KPMG LLP (In re Sharp Int'l Corp.)*, 278 B.R. 28, 36-37 (Bankr. E.D.N.Y. 2002) (explaining that if there is no innocent decision-maker who could have and would have prevented the fraud, the wrongdoing is imputed to the corporation or principal whether the wrongdoer acted with adverse interest or not); *Grassmuck v. Am. Shorthorn Ass'n*, 402 F.3d 833, 838 (10th Cir. 2005) (where debtor entities were deemed to have participated in the wrongdoing by the sole actor rule, the trustee was barred by *in pari delicto*); *Curtis, Collins & Holbrook Co. v. U.S.*, 262 U.S. 215, 224 (1923) (applying the sole actor rule to impute knowledge to the principal).

Southern has also alleged that before the Transaction Potomac was dominated by and the alter ego of OneBeacon, of which it was a wholly-owned subsidiary. Following the Transaction, Potomac was dominated by and was the alter ego of Trebuchet, which was controlled by two people (Huntington and Williams), who were the sole ultimate controlling persons and alter egos of Potomac, the other Runoff Subsidiaries, Trebuchet Group, Trebuchet Investments, and Trebuchet US. Second Am. Compl. ¶¶ 16, 17, 36, 60, 62, 63.

Potomac was not innocent, and Southern is informed and believes this was in part because its agents allowed Potomac to be dominated by third parties through their ownership interests and alleged desire to strip Potomac of assets and cut off its long-tail insurance obligations, which included its obligation to Southern because of the Insurance Policies. A sole actor cannot go rogue: he knows both sides of the equation. “The sole agent has no one to whom he can impart his knowledge, or from whom he can conceal it, and . . . the corporation must bear the responsibility for allowing an agent to act without accountability.” *McNamara v. PFS (In re Pers. Bus. Ins. Agency)*, 334 F.3d 239, 243 (3d Cir. 2003). The sole actor rule is another reason why *in pari delicto* would bar the Liquidator from bringing Southern’s claims.

c. The Liquidator cannot bring alter ego claims.

In addition to those causes of action to which *in pari delicto* applies, the Liquidator cannot assert alter ego claims .

An alter ego claim is not by itself a cause of action. Rather, it is a doctrine which fastens liability on the individual who uses a corporation merely as an instrumentality . . . , and such liability arises from fraud or injustice perpetrated not on the corporation but on third parties dealing with the corporation.

1 William Meade Fletcher *et al.*, *Cyclopedia on the Law of Private Corporations*, § 41.10, at 615 (1990). “Accordingly, courts apply the *alter ego* theory and disregard a company’s separate identity for the benefit of third parties, *e.g.*, creditors of the corporation, who would suffer an unjust loss or injury unless the . . . parent corporation were held liable for the subsidiary’s debts.” *Spartan Tube & Steel v. Himmelspach (In re RCS Engineered Prods. Co.)*, 102 F.3d 223, 225-26 (6th Cir. 1996).

The general rule is that the corporate veil is pierced only for third parties, like Southern, and never for the benefit of the corporation. 18 Am. Jur. 2d *Corporations* § 46 (1985). The Fourth Circuit Court of Appeals has explained:

When substantial ownership of all the stock of a corporation in a single individual is combined with other factors clearly supporting disregard of the corporate fiction on grounds of fundamental equity and fairness, courts have experienced little difficulty and have shown no hesitancy in applying what is described as the alter ego . . . theory in order to cast aside the corporate shield and to fasten liability on the individual stockholder.

De Witt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 681, 685 (4th Cir. 1976).

In the Second Amended Complaint, Southern alleges that OneBeacon, and later the Trebuchet Defendants were controlling persons who dominated Potomac and collaborated with Potomac’s agents to commit the bad acts alleged in the Second Amended Complaint. Factors supporting alter ego liability include gross undercapitalization and a dominant stockholder’s siphoning of corporate funds. Southern has alleged alter ego, undercapitalization, siphoning of

funds, dominant shareholders, and funds used to pay for other lines of business. Second Am. Compl. ¶¶ 35, 36, 38, 40, 41, 49, 82-83, 124, 125, 127, 130, 133, 176-81. The Liquidator could not bring claims on behalf of Potomac to the extent those claims would be based on alter ego liability because the doctrine is for the benefit of third parties, like Southern, and not for the subservient entity, like Potomac.

A corollary of alter ego is that a court may also lift the corporate veil to “impose personal liability” and “to find the principals liable” if there has been a fraud. *Nat’l City Bank of Minneapolis v. Lapides (In re Transcolor Corp.)*, 296 B.R. 343, 370 (Bankr. D. Md. 2003); *Lumax Indus., Inc. v. Aultman*, 669 A.2d 893, 895 (Pa. 1995) (holding that a court will not hesitate to treat as identical the corporation and the individuals owning all of its stocks ... whenever justice and public policy demand and when the rights of innocent parties are not prejudiced ... nor the theory of corporate entity made useless.”). The Second Amended Complaint makes prima facie allegations as to the alter ego liability of Potomac’s principals as well, and the Liquidator cannot displace Southern as the plaintiff for any of the alter ego claims Southern has asserted against OneBeacon or Trebuchet.

B. The Approval Order does not foreclose Southern’s Right to Sue Because Southern Retained all Judicial Remedies Related to its Claims, and Southern is not Challenging the Department’s Approval of Potomac’s Change in Control.

OneBeacon incorrectly argues that the claims against it were disposed of in the Transaction approval proceeding before the Pennsylvania Department of Insurance, and that Southern has thereby failed to state a claim against it. OneBeacon MTD, 13. OneBeacon also incorrectly contends that by bringing this action Southern is contesting the Department’s approval of Potomac’s change in control from OneBeacon to Trebuchet, but this is not true.

Rather, Southern is arguing that the Approval Order’s findings of fact are *not binding* on Southern because Southern was not a party to the proceeding which resulted in those findings. The

Approval Order cannot shield the OneBeacon Defendants from their wrongful conduct which caused harm to Southern and its Asbestos Claimants. The Transaction was subject only to the Pennsylvania Insurance Holding Company Act, which required Trebuchet to file a Form A application with the Pennsylvania Department of Insurance but did not allow parties to intervene unless they were parties to the Transaction. Review under the Act was simply “a regulatory act.” *Crosby Valve*, 131 A.3d at 1096. In addressing Crosby Valve’s motion to intervene, the Commonwealth Court of Pennsylvania noted:

[Crosby Valve] assert[s] that [it possesses] a direct interest because at some future point the Runoff Subsidiaries under Armour’s control may run out of money to pay the long-tail claims or may attempt to slow-pay claims because of alleged poor capitalization. These assertions are simply speculative and do not constitute a direct or immediate interest. Approval of the proposed transaction will not result in a *per se* injury to Petitioners. The proposed transaction involves the property rights of OneBeacon and Armour’s right to acquire property in a market transaction. Petitioners’ contract rights are subsidiary to the rights of the parties to the transaction. Petitioners’ contract rights are not affected or diminished in any direct way by the proposed transaction. Petitioners also retain their right to any and all judicial remedies relating to the administration of their claims.

Id. at 1097 (emphasis added) (footnote omitted). Therefore, according to the Pennsylvania Commonwealth Court, in a case involving the very same Transaction as here, the contract rights of Crosby Valve and similarly situated parties (*e.g.*, Southern) were not affected or diminished and they retained their rights to “any and all judicial remedies relating to administration of their claims.” Southern is simply pursuing judicial remedies related to its contract rights under its Insurance Policies and the administration of its claims, despite OneBeacon’s claim that the Transaction approval process prevents Southern from doing just that. *Id.*

C. The OneBeacon and Trebuchet Defendants are Subject to the Personal Jurisdiction of the South Carolina Courts.

When a defendant seeks dismissal for lack of personal jurisdiction under Rule 12(b)(2), SCRCP, “the plaintiff has the burden of showing jurisdiction is properly asserted; however, the law is well-settled that at the pre-trial stage only a prima facie showing is required.” *Brown v. Inv. Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996). “Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.” *Id.* (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1351 (Supp. 1995)). Additionally, “[t]here is no ‘other evidence’ requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993).

As this Court has recognized: “Personal Jurisdiction can properly be asserted over a corporation not physically present in the forum state if another with sufficient minimum contacts is acting as its alter ego.” *Hagan v. Armstrong Int’l*, 2020 S.C. C.P. LEXIS 862, *5–6 (Ct. Comm. Pl. June 29, 2020) (quoting *In re N.D. Pers. Inj. Asbestos Lit.*, 737 F. Supp. 1087, 1094 (D.N.D. 1990)). Similarly, the single business enterprise theory may be used to confer jurisdiction over the Defendants. *See Duong v. N. Am. Transp. Servs. LLC*, C.A. No. 2:19-cv-00029-DCN, 2019 U.S. Dist. LEXIS 241092, at *48–49 (D.S.C. Sep. 25, 2019) (“[A]pplying the single business enterprise theory of piercing the corporate veil would impute [one company’s] jurisdictional contacts onto [other related entities] so that the court could exercise jurisdiction over those entities.”).¹⁰ Here,

¹⁰ Defendants argue that the single business enterprise theory is only relevant to establishing liability and cannot be used to confer personal jurisdiction over a defendant. Trebuchet MTD, 17 n.6. In doing so, they cite to *Toney v. SSC Sumter E. Operating Co.*, C.A. No. 3:19-3226-JFA, 2020 U.S. Dist. LEXIS 260830, at *17 (D.S.C. Apr. 29, 2020), which relies—without any discussion—on *Wright v. Waste Pro USA Inc.*, C.A. No. 2:17-cv-02654, 2019 U.S. Dist. LEXIS 124175, at *4 (D.S.C. July 25, 2019). However, the *Wright* court’s review of the issue was limited

the exercise of personal jurisdiction over these Defendants is proper because they were the alter egos of and part of a single business enterprise with Potomac.

1. Specific personal jurisdiction clearly exists for Southern’s insurer and for the OneBeacon and Trebuchet Defendants as controlling persons using Potomac as an alter ego and single business enterprise affiliate.

As Southern’s insurer, Potomac transacted business in South Carolina and insured risks located within the state. *See* Second Am. Compl. ¶¶ 27–29; S.C. Code Ann. § 36-2-803(A) (“A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s: (1) transacting any business in this State . . . [or] (6) contracting to insure any person, property, or risk located within this State at the time of contracting”). This conduct not only satisfies South Carolina’s long-arm statute but also establishes the

to cases brought under the Fair Labor Standards Act (FLSA), and its refusal to apply the single business enterprise theory to its personal jurisdiction analysis should not foreclose this court from doing so in this action. *See id.* at *39 (“The court has researched this issue extensively and has found only one *FLSA* case in which a court exercised personal jurisdiction over out of state subsidiaries based on a [joint employer or single integrated enterprise] theory.” (emphasis added)); *id.* at *40-41 (“The court agrees with the reasoning of these cases”).

The Trebuchet Defendants’ position also ignores *Duong* and other instances where courts have exercised personal jurisdiction by applying the single business enterprise theory. *See Duong*, 2019 U.S. Dist. LEXIS 241092 at *48 (finding the single business enterprise theory adopted by the Supreme Court of South Carolina “could be used to obtain personal jurisdiction”); *see also Richards Grp., Inc. v. Brock*, C.A. No. 3:06-CV-0799-D, 2007 U.S. Dist. LEXIS 16023, at *22-23 (N.D. Tex. Mar. 7, 2007) (“[T]he court holds that BMPI, as a component of a single business enterprise that includes Brock Music, has sufficient minimum contacts with the state of Texas to support the exercise of personal jurisdiction over it.”). Furthermore, the Trebuchet Defendants offer no cogent reason why the alter ego theory may be used to confer personal jurisdiction while the single business enterprise theory may not, despite both being equitable theories for disregarding the corporate form to avoid injustice. *See Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 656 n.7, 817 S.E.2d 273, 281 n.7 (2018) (describing the single business enterprise as an “equitable veil-piercing remedy”); *id.* at 655, 817 S.E.2d at 281 (“As with other methods of piercing the corporate form that have previously been recognized in South Carolina, equitable principles govern the application of the single business enterprise remedy”); *cf. Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101 n.1, 668 S.E.2d 798, 800 n.1 (2008) (“[T]he alter ego doctrine is merely a means of piercing the corporate veil.” (citing 18 C.J.S. *Corporations* § 23 (2008))).

requisite contact with South Carolina to satisfy Due Process. *See Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005) (“Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process.”); *id.* (“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.”); *see also, e.g., McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957) (“It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State.”); *Ross v. Am. Income Life Ins. Co.*, 232 S.C. 433, 438-39, 102 S.E.2d 743, 745 (1958) (holding that a single insurance policy mailed to an individual in this state was a sufficient contact to warrant the exercise of jurisdiction without violating Due Process). Notably, these Defendants do not, and could not, argue that Potomac is not subject to personal jurisdiction in this Court—and for good reason because such jurisdiction no doubt exists.

2. The OneBeacon and Trebuchet Defendants are the alter ego and single business enterprise affiliate of Southern’s insurer.

a. Southern has clearly alleged the OneBeacon and Trebuchet Defendants are the alter ego and single business enterprise affiliate of Southern’s insurer.

“An alter-ego theory requires a showing of (1) total domination and control of one entity by another and (2) inequitable consequences caused thereby.” *Oskin v. Johnson*, 400 S.C. 390, 400, 735 S.E.2d 459, 465 (2012). “Control may be shown where the subservient entity manifests no separate interest of its own and functions solely to achieve the goals of the dominant entity.” *Id.* Similarly, “a party seeking to impose the existence of a single business enterprise must show both (1) the intertwining of the operations of the entities and (2) evidence of ‘bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions.”

Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. IMK Dev. Co., LLC, 435 S.C. 109, 125, 866 S.E.2d 542, 551 (2021) (quoting *Pertuis*, 423 S.C. at 655, 817 S.E.2d at 281).

Southern's Second Amended Complaint makes a prima facie showing that OneBeacon is both the alter ego of and part of a single business enterprise with Potomac. Southern alleges that OneBeacon:

- “[T]reated [themselves], before the December 23, 2014 sale of Potomac (which was then known as OneBeacon Insurance Company) to Trebuchet US, to enormous dividends and systematically stripped OneBeacon Insurance Company of its capital,” leaving it “with such inadequate capitalization that OneBeacon Insurance Company was effectively placed in a position to inevitably become, and now is, insolvent,” Second Am. Compl. ¶ 38; *see also id.* ¶¶ 124–30;
- “[H]ad effective control of OneBeacon Insurance Company’s assets and used them in furtherance of unrelated lines of business,” *id.* ¶ 36;
- “[E]nriched [themselves] and failed to return money or value to OneBeacon Insurance Company, thus rendering OneBeacon Insurance Company grossly undercapitalized and ultimately insolvent,” *id.* ¶ 37;
- “[F]raudulently caused OneBeacon Insurance Company’s assets to be transferred for the benefit of OneBeacon and its other affiliates, without the receipt by OneBeacon Insurance Company of reasonably equivalent value in exchange,” *id.* ¶ 53;
- “[E]ffectuated the transfers over time with the express purpose of OneBeacon or its other affiliates taking Potomac’s assets and leaving Potomac with the policy liabilities,” *id.* ¶ 130;
- “[K]nowingly and materially underestimated its and its subsidiaries’ long-tail liability exposures for many years” and “knew or should have known that OneBeacon Insurance Company’s reserves would not be adequate to meet future liabilities,” including claims from policyholders such as Southern *id.* ¶ 41, 47; *see also id.* ¶ 132;
- “[M]aterially misrepresented the viability of OneBeacon Insurance Company with the intent of removing from OneBeacon and its other

affiliates the long-tail liabilities of OneBeacon Insurance Company,” *id.* ¶ 43;

- In selling Potomac to Trebuchet US, “furthered the interests of OneBeacon and its shareholders at the expense of honoring commitments to Southern under discontinued lines of comprehensive general liability business,” *id.* ¶ 46;
- “[M]isrepresented to the public and insurance regulators that the [December 2014 sale] was in the interest of OneBeacon Insurance Company and its policyholders and that OneBeacon Insurance Company and the other then-acquired companies would each maintain adequate capitalization as a member of the Trebuchet Defendants group to cover its existing and potential future liabilities,” *id.* ¶ 48;
- Through their asset-stripping scheme and the December 2014 sale, “intended . . . to hinder, delay, and/or defraud OneBeacon Insurance Company’s creditors, including and especially policyholders like Southern,” and intentionally caused Potomac’s liquidation, *id.* ¶ 50, 57–59; *see also id.* ¶ 131;
- Did not operate Potomac as a separate entity, but instead “acted to leverage the amalgamation of their respective corporate interests, including but not limited to shared officers, directors, policy development, underwriting, marketing, policy administration, loss settlement, personnel, purchasing, accounting, data processing, and facilities management,” *id.* ¶ 178; and
- “[A]bused their corporate forms to move assets away from creditors, avoid regulatory scrutiny, and enrich” themselves, *id.* ¶ 179.

Southern also alleged that as a result of the OneBeacon Defendants’ conduct, Potomac was unable to act in its own interests and in the interests of its policyholders “and, through this dominion and control by OneBeacon . . . Defendants, functioned solely to further the interests of OneBeacon and OneBeacon shareholders.” *Id.* ¶ 176.

These allegations, which again must be taken as true at this stage of the litigation, *see Brown*, 323 S.C. at 399, 475 S.E.2d at 756, demonstrate that before its sale of Potomac, OneBeacon asserted total control over Potomac and inequitably used the insurer to benefit itself at the expense

of Southern and its Asbestos Claimants. Because OneBeacon controlled Potomac, Potomac could not preserve its own assets and ensure that it fulfilled its obligations as an insurer—and instead, the OneBeacon Defendants used Potomac to enrich themselves. Accordingly, the Second Amended Complaint adequately alleges OneBeacon and Potomac are alter egos of one another. Similarly, the Second Amended Complaint also adequately alleges OneBeacon fraudulently and unjustly intertwined its operations with those of Potomac such that all entities involved must be viewed as a single business enterprise.

OneBeacon should not be allowed to hide its financial machinations behind corporate structures and benefit from such conduct while Southern is left without the benefits it is rightfully owed under its insurance contracts. As this Court has observed: “The entire point of the alter-ego doctrine is that a defunct, dissolved, or undercapitalized entity is responsible for causing injury. But because that entity is dominated or controlled by others and exercises no control of itself, others are then liable.” *Hagan*, 2020 S.C. C.P. LEXIS 862, at *14; *see also Mid-S. Mgmt. Co. v. Sherwood Dev. Corp.*, 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct. App. 2007) (observing that courts will disregard separate corporate personhood if “the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy” (quoting *Sturkie v. Sifly*, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984))).

Similarly, Southern’s Second Amended Complaint makes a *prima facie* showing that, with respect to the post-Transaction period, the Trebuchet Defendants are the alter ego of, and are part of a single business enterprise with, Potomac. Southern alleges that:

- Defendants Brad Huntington and John Williams were “the sole ultimate controlling persons of” the Trebuchet Defendants and Potomac after the December 2014 sale of Potomac (then known as OneBeacon Insurance Company) to Trebuchet US, Second Am. Compl. ¶ 60;

- Huntington, Williams, and the foreign Trebuchet Defendants “had and exercised effective control of the assets and liabilities of Trebuchet US, [Potomac], EFIC, and Lamorak and used them in furtherance of unrelated lines of business and/or for personal gain,” *id.* ¶ 63;
- Huntington and Williams orchestrated the Merger of Potomac with other insurers EFIC, Lamorak, and Potomac II, resulting in Potomac’s acquiring the other insurers’ assets, debts, obligations, and liabilities, *id.* ¶¶ 64–72, 75–76;
- “[O]ne significant motivation for the Merger was, among others, the enormous liability and obligation facing Lamorak from asbestos and environmental claims arising in” asbestos litigation, *id.* ¶ 73;
- Huntington and Williams “knew that Potomac, EFIC, Lamorak, and Potomac II were grossly undercapitalized and ill-prepared to pay claims of Southern and other insured companies,” *id.* ¶ 74;
- Less than two months after the Merger, Lamorak incurred a judgment of over \$49 million—Huntington and Williams, through their control of Trebuchet US (Potomac’s sole shareholder), approved Potomac’s liquidation less than two weeks later, and the liquidation was ordered a couple of weeks after the approval, *id.* ¶¶ 77–80;
- By carrying out the Merger, the Trebuchet Defendants fraudulently caused Potomac to assume the liabilities of the other merged insurers without receiving just compensation, which led to Potomac’s liquidation and harmed Southern, *id.* ¶¶ 81–86;
- “Upon information and belief, the foregoing actions of the Trebuchet Defendants were designed or intended by the Trebuchet Defendants to hinder, delay and/or defraud Southern,” *id.* ¶ 87;
- As a result of the Merger and subsequent liquidation, Southern and other Potomac insureds have been denied the benefits of their insurance policies, *id.* ¶ 88; and
- “The Trebuchet Defendants believed or reasonably should have believed that, after the Merger, [Potomac] would incur debts beyond its ability to pay as they became due,” *id.* ¶ 89.

These allegations, which again must be taken as true at this stage of the litigation, demonstrate that, after the December 2014 purchase of Potomac, the Trebuchet Defendants asserted total control over Potomac and inequitably used the insurer to benefit themselves at the expense of Potomac’s policyholders and other creditors. Because the Trebuchet Defendants controlled Potomac, Potomac could not act to preserve its own assets and ensure that it met its obligations as an insurer—instead, it was used as a cushion against the Lamorak judgment and otherwise “in furtherance of unrelated lines of business and/or for personal gain.” Second Am. Compl. ¶ 63.

The Trebuchet Defendants’ contention that the allegations in the Second Amended Complaint do not support an alter ego or single business enterprise finding is incorrect.¹¹ Southern’s allegations make a *prima facie* showing that the Trebuchet Defendants are subject to this Court’s jurisdiction through both the alter ego and single business enterprise theories due to their control of Potomac and the inequitable consequences. Nothing more is required to defeat dismissal at this stage of the litigation. *See Brown*, 323 S.C. at 399, 475 S.E.2d at 756 (“[T]he plaintiff has the burden of showing jurisdiction is properly asserted; however, the law is well-settled that at the pre-trial stage only a *prima facie* showing is required.”); *Patton v. Miller*, 420 S.C. 471, 492, 804 S.E.2d 252, 263 (2017) (emphasizing that in South Carolina “we operate under

¹¹ The cases the Trebuchet Defendants cite in footnote five of their motion to dismiss are distinguishable from the instant case, as the plaintiffs in those cases made no allegations to support an alter ego or other equitable theory of piercing the corporate veil; unlike here, where Southern makes sufficient factual allegations of a clear course of conduct by the Trebuchet Defendants and that support both alter ego and single business enterprise theories. *See, e.g., SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 423 (4th Cir. 2015) (noting the plaintiff “alleged *no facts* suggesting the kind of unity of interests that we usually require a party to plead before permitting them to advance an alter ego theory” (emphasis added)); *Fancy That! Bistro & Catering, LLC v. Sentinel Ins. Co.*, C.A. No. 3:20-cv-2382-BHH, 2021 U.S. Dist. LEXIS 197621, at *3 (D.S.C. Oct. 13, 2021) (noting the complaint “does not include *any* factual allegations designed to show that corporate separateness should be disregarded” (emphasis added)).

the far more flexible notice pleading provisions of the Rules of Civil Procedure”); *Hagan*, 2020 S.C. C.P. LEXIS 862, at *7 (“The alter ego test for personal jurisdiction is less stringent than that for liability.”).

b. The Trebuchet Defendants incorrectly attempt to impose additional requirements on Southern’s alter ego and single business enterprise claims for jurisdictional purposes.

The Trebuchet Defendants also seek to impose a number of new elements and unnecessary requirements on Southern’s alter ego and single business enterprise claims for jurisdictional purposes. For example, they argue Southern must demonstrate: (1) “the subsidiary functions as the agent or mere department of the parent,” Trebuchet MTD, 11 (quoting *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 511, 563 S.E.2d 352, 358 (Ct. App. 2002)); (2) the Trebuchet Defendants were “aware of the plaintiff’s claim against the corporation,” Trebuchet MTD, 11, 13 (quoting *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 192, 463 S.E.2d 641, 644 (Ct. App. 1995)); and (3) “the Trebuchet Defendants ignored corporate formalities,” Trebuchet MTD, 12 n.7.

For one thing, the Trebuchet Defendants’ position reflects an erroneous conflation of the several related, but distinct, equitable theories (and the necessary elements to invoke such theories) that allow a court to disregard the corporate form. *See Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101 n.1, 668 S.E.2d 798, 800 n.1 (2008) (“Although often used interchangeably, the terms ‘alter ego’ and ‘piercing the corporate veil’ are not one and the same. Whereas ‘alter ego’ describes a theory of procedural relief, ‘piercing the corporate veil’ refers to the relief itself. In other words, ‘[t]he alter ego doctrine is merely a means of piercing the corporate veil.’” (citation omitted) (quoting 18 C.J.S. *Corporations* § 23 (2008))).

In addition, failure to observe corporate formalities is one of eight factors¹² to pierce the corporate veil. *See Sturkie v. Sifly*, 280 S.C. 453, 459, 313 S.E.2d 316, 319 (Ct. App. 1984) (observing the plaintiffs sought “to pierce the corporate veil and impose personal liability on the respondents”). Moreover, the *Sturkie* test is only one method of piercing the corporate veil and is separate from alter ego or single business enterprise. Even under that test, the failure to observe corporate formalities is not a necessary element. *See Dumas*, 320 S.C. at 192, 463 S.E.2d at 644 (“The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all.”); *Hunting v. Elders*, 359 S.C. 217, 225, 597 S.E.2d 803, 807 (Ct. App. 2004) (“The *Sturkie* factors which now have less importance include the failure to observe corporate formalities . . .”). Accordingly, demonstrating a failure to observe corporate formalities is unnecessary for Southern to maintain its alter ego and single business enterprise claims. *See, e.g., Mid-S. Mgmt. Co.*, 374 S.C. at 598, 649 S.E.2d at 140 (including the failure to observe corporate formalities in its “piercing the corporate veil” analysis but not in its analysis of alter ego, or single business enterprise, or amalgamation of interest, each of which was conducted independently); *Walbeck v. I’On Co., LLC*, 426 S.C. 494, 528, 827 S.E.2d 348, 366 (Ct. App.

¹² *See Mid-S. Mgmt. Co. v. Sherwood Dev. Corp.*, 374 S.C. 588, 597-98, 649 S.E.2d 135, 140-41 (Ct. App. 2007) (“Our courts have outlined a two-prong test to determine whether a corporate veil should be pierced. The first part of the test requires an eight-factor analysis and looks to observance of the corporate formalities by the dominant shareholders. The second part requires that there be an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of the individuals. In determining whether the corporate formalities were observed under the first prong of the *Sturkie* test, the courts consider eight factors: (1) whether the corporation was grossly undercapitalized; (2) failure to observe corporate formalities; (3) non-payment of dividends; (4) insolvency of the debtor corporation at the time; (5) siphoning of funds of the corporation by the dominant stockholder; (6) non-functioning of other officers or directors; (7) absence of corporate records; and (8) the fact that the corporation was merely a facade for the operations of the dominant stockholder. . . . Under the second prong of the *Sturkie* test, the party seeking to pierce the corporate veil must prove injustice or fundamental unfairness if the corporate veil is not pierced.” (citations omitted)).

2018) (“The single business enterprise theory does not require a showing of the corporate defendants’ failure to observe corporate formalities.”).

Similarly, the Court of Appeals in *Builder Mart*, which the Trebuchet Defendants cite in their motion, relied on a general agency theory to confer personal jurisdiction and did not discuss either the alter ego or the single business enterprise theory.¹³ See *Builder Mart*, 349 S.C. at 511, 563 S.E.2d at 358 (“Appellant must show that the subsidiary functions as the agent or mere department of the parent”); *id.* at 513, 563 S.E.2d at 359 (“Appellants have failed to carry their prima facie burden of proof of establishing an agency relationship between the parent and subsidiary sufficient under the minimum contacts analysis.”).¹⁴ The analysis of agency in *Builder Mart* is further inapposite because (1) it addressed whether the court could exercise general personal jurisdiction over an out-of-state company, whereas Southern asserts that specific personal jurisdiction over the Trebuchet Defendants is appropriate here; and (2) it relied on the actions of a subsidiary company to confer jurisdiction over a parent company, but here Southern’s claims based on alter ego and single business enterprise are based on the Trebuchet Defendants’ domination and control of their subsidiary. See *id.* at 510–13, 563 S.E.2d at 357–59.

¹³ There are at least four separate avenues for piercing the corporate veil: (1) the *Sturkie* test, (2) the *Builder Mart* agency theory, (3) alter ego, as outlined in *Oskin*, and (4) single business enterprise, as outlined in *Stoneledge*. While related to one another as equitable methods of disregarding the corporate form, each theory is appropriately invoked in its own relevant context and, as a result, has distinct requirements.

¹⁴ *Builder Mart* also enumerated different factors than those listed in *Sturkie*. See *Bulder Mart*, 349 S.C. at 511, 563 S.E.2d at 358 (“In making this determination, the courts look at four factors: (1) common ownership, (2) financial independence, (3) degree of selection of executive personnel and failure to observe corporate formalities, and (4) the degree of control over marketing and operational policies.”).

The Trebuchet Defendants are also wrong in arguing that Southern must allege they were aware of Southern's claims against Potomac and acted in a self-serving manner in disregard of those claims to prevail. Trebuchet MTD, 13. This requirement is a part of the *Sturkie* test which, as noted above, does not govern Southern's alter ego or single business enterprise claims. *See Sturkie*, 280 S.C. at 459, 313 S.E.2d at 319.

Again, although the *Sturkie* factors may be relevant in another context to show inequity, they are unnecessary here. However, even if these were necessary elements, Southern has alleged the Trebuchet Defendants knew or should have known that their actions would result in Potomac's undercapitalization and inability to meet its obligations to its policyholders, but they still used the company for their own benefit at the expense of Potomac's creditors. *See, e.g.*, Second Am. Compl. ¶ 74 (alleging Defendants Huntington and Williams "knew that Potomac, EFIC, Lamorak, and Potomac II were grossly undercapitalized and ill-prepared to pay claims of Southern and other insured companies"); *id.* ¶ 87 ("Upon information and belief, the foregoing actions of the Trebuchet Defendants were designed or intended by the Trebuchet Defendants to hinder, delay and/or defraud Southern as a creditor of Potomac."); *id.* ¶ 89 ("The Trebuchet Defendants believed or reasonably should have believed that, after the Merger, Potomac would incur debts beyond its ability to pay as they became due."). And Southern's allegations satisfy the corresponding alter ego requirement of "inequitable consequences," *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465, and the single business enterprise requirement of "bad faith, abuse, fraud, wrongdoing, or injustice," *Stoneledge*, 435 S.C. at 125, 866 S.E.2d at 551 (quoting *Pertuis*, 423 S.C. at 655, 817 S.E.2d at 281).

c. Potomac is not a necessary party for Southern to maintain its alter ego and single business enterprise claims against the OneBeacon and Trebuchet Defendants, or for jurisdictional purposes.

Citing *Drury*, the Trebuchet Defendants next incorrectly argue that Southern cannot maintain its alter ego and single business enterprise claims for jurisdictional purposes because Potomac is not a defendant here. Trebuchet MTD, 14. But the rule laid out in *Drury* is one of substance, not procedure—that a plaintiff must present facts sufficient to impose liability on a corporate entity (Potomac, here) before using that entity as the basis for an alter ego claim against another corporate entity. *See Drury*, 380 S.C. at 103, 668 S.E.2d at 802 (holding that a plaintiff must plead facts sufficient to support a viable corporate liability claim). *Drury* does not stand for the rigid and formalistic proposition that Potomac must also be a defendant for Southern to seek relief against the OneBeacon and Trebuchet Defendants.

Here, the Second Amended Complaint alleges that Potomac is liable to Southern for the defense and indemnity obligations provided by the insurance policies Potomac issued to Southern. Were Potomac not in liquidation, Southern would undoubtedly have a viable claim “sufficient to survive a motion to dismiss as to [Potomac’s] corporate liability.” *Id.* Yet Southern is prohibited from directly litigating against Potomac, due to the automatic stay in place resulting from Potomac’s liquidation, and requiring Potomac to be a party to this action is precisely the type of futile act the *Drury* court sought to avoid. *See id.* at 102, 668 S.E.2d at 801 (“South Carolina courts have long observed that equity looks beneath rigid rules of law to seek substantial justice, and it is well-settled that equity will not require the doing of a futile task.”).

Drury’s import is not the language the Trebuchet Defendants quote (out of context); instead, it is that unnecessary and futile procedural steps—such as those the Trebuchet Defendants advance here—are unneeded to invoke an equitable veil-piercing claim. *See id.* (rejecting the proposition that “creditors seeking to pierce the corporate veil of an insolvent or unresponsive

corporate defendant would be required to file a *pro forma* action against the corporation before seeking to pierce the corporate veil in a subsequent action”); *id.* (“In applying South Carolina’s veil-piercing doctrine, as all forms of equitable relief, ‘the equities of both sides are to be considered, and each case must be decided on its own particular facts.’” (quoting *Carroll v. Page*, 264 S.C. 345, 349, 215 S.E.2d 203, 205 (1975))). In fact, the *Drury* court warned that its holding “should not be construed to undermine the legislature’s determination that ‘no action at law or equity may be brought against the insurer or liquidator’ once an order of liquidation has been issued.” *Id.* at 103, 668 S.E.2d at 802. The Court explained: “Rather, we set forth the general rule that a judgment against a corporation is not a prerequisite to an alter ego claim.” *Id.* So *Drury* does not require Potomac to be a defendant here for Southern to assert alter ego and single business enterprise claims against the Trebuchet Defendants.

In sum, piercing the corporate veil is equitable relief that a court may award under various theories. *Oskin* and *Stoneledge* lay out two of these, the alter ego and single business enterprise theories, along with their elements, and Southern has alleged sufficient facts to support both theories in the Second Amended Complaint. As a result, the exercise of personal jurisdiction over these moving defendants, as alter ego and single business enterprise affiliates with Southern’s insurer, is appropriate. To hold otherwise would be to leave Southern, a Potomac policy-holder, without judicial remedies, notwithstanding the Defendants’ wrongful conduct. Furthermore, the Trebuchet Defendants should not be allowed to derail Southern’s claims against them by advancing unnecessary requirements for the claims through case law taken out of context.

3. Due Process is not violated by this Court deciding this case against these Defendants.

These Defendants next argue that the exercise of personal jurisdiction over them would violate Due Process. But this argument addresses only the exercise of personal jurisdiction over

these Defendants directly and ignores Southern's alter ego and single business enterprise allegations, which should resolve all objections and satisfy Due Process. As stated above, due process is satisfied because Potomac issued insurance policies to Southern, a South Carolina company, for its operations in South Carolina, insurance policies which cover South Carolina asbestos claims and liability for Southern. Accordingly, a finding that these Defendants are Potomac's alter egos or single business enterprise affiliates would impute Potomac's contacts with South Carolina onto the Defendants, thereby satisfying both South Carolina's long-arm statute and Due Process. *See Hagan*, 2020 S.C.C.P. LEXIS 8620 at *8 (“[W]hen parties are actually alter egos of one another, a ‘jurisdictional objection evaporates’ because ‘the alter egos are treated as one entity.’” (quoting *Wm. Passalacqua Builders v. Resnick Developers S.*, 933 F.2d 131, 142–43 (2d Cir. 1991))); *id.* at *6 (“[C]ourts have ‘consistently acknowledged that it is compatible with due process to exercise personal jurisdiction over . . . an alter ego.” (quoting *Newport News Holdings Corp. v. Virtual City Vision*, 650 F.3d 423, 433 (4th Cir. 2011))).

4. Alternatively, jurisdictional discovery may be ordered to show additional connections among Potomac, the OneBeacon Defendants, and the Trebuchet Defendants.

If the Court is inclined to determine at this stage that the Second Amended Complaint has not made a *prima facie* showing of personal jurisdiction over these Defendants, then dismissal should still not be granted. Instead, Southern respectfully requests that the Court allow it to serve these Defendants with discovery requests related to issues affecting personal jurisdiction. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012) (“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.” (quoting *Moosally v. WW. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004))); *id.* (“When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations

of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007))). Indeed, if the Court determines that the Second Amended Complaint does not make a prima facie showing of jurisdiction, then jurisdictional discovery is warranted because Southern’s assertion of jurisdiction is not frivolous. In that case, discovery would aim to explore, among other things, these Defendants’ corporate structures and management, finances, related operations and actions, influence over Potomac, and motivations for effecting the pre-Transaction transfers, the Transaction, and the Merger – all of which relate to whether personal jurisdiction exists. *See id.* at 151, 723 S.E.2d at 839 (“When [the] plaintiff can show that discovery is necessary in order to meet defendant’s challenge to personal jurisdiction, a court should ordinarily permit discovery on that issue unless plaintiff’s claim appears to be clearly frivolous.” (quoting *Rich v. KIS Cal., Inc.*, 121 F.R.D. 254, 259 (M.D.N.C. 1988))).

D. Southern’s Claims are Not Time-Barred.

OneBeacon alleges that because the Transaction was approved after regulatory review accompanied by public hearings, , Southern’s causes of action accrued in 2014 and the statute of limitations had run in 2017. OneBeacon MTD, 22-23. This argument is misplaced because OneBeacon obscured the existence, nature, and extent of Southern’s injury. Crosby Valve’s experience shows a reasonable person who was not party to the Transaction approval proceeding would have (1) lacked access to OneBeacon’s confidential documents, (2) heard from OneBeacon’s actuaries that the criticisms at the public hearing “should not be given any credibility,” and (3) been told there was a greater than 90% chance that Potomac would experience mid- to long-range success. Before the Merger and Liquidation, it was unclear whether Southern had a cause of action against these Defendants, even though OneBeacon had already put Potomac on a path to insolvency.

Ordinarily, when a defendant invokes the statute of limitations, it must be raised and established as an affirmative defense. *Goodman v. PraxAir, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007) (referring to Rule 8(c), FRCP). When an affirmative defense is presented in a motion to dismiss for failure to state a claim, which necessarily tests the sufficiency of the complaint, the court “generally cannot reach the merits of an affirmative defense.” *Id.* An exception would be “in the relatively rare [circumstance] where all facts necessary to the affirmative defense ‘clearly appear on the face of the complaint.’” *Id.* (alteration in original) (quoting *Richmond, Fredericksburg & Potomac R.R. v. Forst*, 4 F.3d 244, 250 (4th Cir. 1993)). “[G]enerally, an affirmative defense that a complaint is barred by a statute of limitations may not form the basis of Rule 12(b)(6) dismissal unless all of the facts necessary for the defense appear on the face of the complaint.” *Morrison v. George E.B. Holding*, Case No. 7:11-CV-168-BO, 2012 U.S. Dist. LEXIS 47726 at *6 (E.D.N.C. Apr. 4, 2012) (citing *Goodman*, 494 F.3d at 464). Where it is not clear from the face of the complaint whether the statute of limitations has run, dismissal on statute of limitations grounds is inappropriate. *Azima v. Del Rosso*, Case No. 1:20-CV-954, 2021 U.S. Dist. LEXIS 237463, at *8 (M.D.N.C. Aug. 9, 2021).

The question is whether the complaint sets forth *on its face* the necessary facts to conclude that plaintiff’s claims are barred by the statute of limitations. In *Goodman*, the Fourth Circuit explained that while the plaintiff might ultimately have to prove the date of discovery, he

was not obligated to plead discovery of the breach in his complaint when the affirmative defense had yet to be ... asserted by the defendants. [And i]f the defendants wished to dispose of the complaint on its face *before* asserting their affirmative defense, on the ground that their affirmative defense was evident in the complaint, they had to show also that the plaintiff’s potential rejoinder to the affirmative defense was foreclosed by the allegations in the complaint. ‘Once a claim has been stated adequately, it may be supported by showing *any set of facts* consistent with the allegations in the complaint.’

Goodman, 494 F.2d 458 at 465-66 (alteration in original) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 563 (2007)). Here, Southern has pled the necessary facts to invoke the Discovery Rule and application of the doctrines of equitable tolling and estoppel, and the point at which Southern's cause of action accrued, based on adjudication of those facts, is a question which must be resolved in Southern's favor at this stage of the proceeding. Therefore, OneBeacon's motion to dismiss based on the statute of limitations should be denied.

1. The discovery rule tolled the statute of limitations.

The statute of limitations begins to run when a cause of action *reasonably* ought to have been discovered. *Dean v. Ruscon Corp.*, 321 S.C. 30, 363, 468 S.E.2d 645, 647 (1996); *see also RWE NuKEM*, 373 S.C. at 195, 644 S.E.2d at 732 (action accrues on the date the injured party discovered or should have discovered, through exercise of reasonable diligence, the cause of action). The date one should have reasonably discovered a cause of action is an "objective, rather than a subjective, question." *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 356, 559 S.E.2d 327, 336 (Ct. App. 2001). The discovery rule tolls the running of the statute of limitations until a person discovers or should know through reasonable diligence that a cause of action arises from the wrongful conduct. *See, e.g., Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E.2d 786, 790 (Ct. App. 1998) ("The exercise of reasonable diligence means that an injured party must act promptly where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point, and not when advice of counsel is sought or a full-blown theory of recovery developed."). The triggering of the limitations period should be determined as a matter of law only where the "evidence is overwhelming that 'a person of common knowledge,' should have known she might have a claim." *Kreutner v. David*, 320 S.C. 283, 286, 465 S.E.2d 88, 90 (1995).

Prior to Potomac's being forced into Liquidation, Southern received conflicting information. Despite some negative public comments at the Transaction hearing, the actuaries supporting the Transaction predicted long-term success for Potomac. The statute of limitations began to run, at the very earliest, on October 1, 2020, which is when notice was published that the Trebuchet Defendants had filed the Agreement and Plan of Merger for approval by the Department. Southern filed its original Complaint just three months later, though the causes of action against OneBeacon and Trebuchet set forth in the Second Amended Complaint were not made evident until the Order of Liquidation in March 2021. It was not until that point that Southern could have known Potomac would likely be unable to honor its Insurance Policy obligations. Whether and when Southern's cause of action accrued is a question of fact, and thus is inappropriate for dismissal at this stage.

Courts must decide when the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. *Young v. South Carolina Dep't of Corr.*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999). In other words, although the standard is objective, the court must first determine the facts to which that standard applies. "If there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause of action the question is one for the jury." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002); *see also Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E. 2d 786, 789 (Ct. App. 1998) (same).

Other courts, including courts in Pennsylvania, have said that while reasonable diligence is an objective test, it is flexible enough to account for the differences between persons and their capacity to meet certain situations and the circumstances confronting them then. *Fine v. Checcio*,

870 A.2d 850, 858 (Pa. 2005); *Nicolaou v. Martin*, 649 Pa. 227, 248-9, 252-3, 195 A.3d 880, 892-93 (2017) (reasonable diligence and the point at which the complaining party should be reasonably aware he has suffered an injury are fact questions for the jury, with the standard being “reasonable diligence” and not “all-vigilance”); *Didomizio v. Jefferson Pulm. Assoc. and Asthma, Allergy & Pulm. Assoc., PC*, 280 A.3d 1039, 1949 (Pa. 2022) (holding that a long history of contradictory information meant the question of when the cause of action accrued was a question for the jury).

2. Equitable tolling applies.

Southern also has alleged that its claims against OneBeacon should be tolled because of OneBeacon’s knowing and fraudulent concealment and denial of facts surrounding its transfer of assets from Potomac to OneBeacon and its affiliates. Second Am. Compl. ¶ 96. “In order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations.” *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) (equitably tolling the statute because of defendant’s obstructive behavior). “[C]ourts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.” *Id.* at 115, 687 S.E.2d at 32 (internal quotation omitted). South Carolina has embraced a flexible standard for equitable tolling, noting that it may be appropriate “in a variety of contexts”:

The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances.

Id. at 116, 687 S.E.2d at 32 (quoting *Hausman v. Hausman*, 199 S.W. 3d 38, 42 (Tex. App. 2006)).

Southern urges the Court to find that OneBeacon’s behavior should cause the equitable tolling of the statute of limitations and reject OneBeacon’s argument that Southern’s claims are untimely.

3. OneBeacon should be equitably estopped from asserting the statute of limitations.

Even when a statute of limitations has run, the doctrine of equitable estoppel precludes a defendant from benefitting from the statute of limitations as a defense if the defendant has acted so as to induce the plaintiff to delay in timely filing a cause of action. *Hooper*, 377 S.C. at 239-40, 659 S.E.2d at 225. The conduct may be either an express representation that the claim will be settled without litigation or actions suggesting that a lawsuit is unnecessary. *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). In this] case, OneBeacon's public pronouncements that Potomac had a high likelihood of long-term success, coupled with its refusal to allow the public to view its confidential projections, would have led a reasonable person to delay filing suit.

The Court should estop OneBeacon from invoking the statute since its actions concealed facts which might reasonably have allowed Southern to discover its cause of action earlier. A defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute was induced by that party's conduct.¹⁵ *RWE NuKem*, 373 S.C. at 198, 644 S.E.2d at 734; *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997). The inducement may consist of conduct that suggests a lawsuit is unneeded. *Id.* By concealing the extent of the liabilities of Potomac and over-selling its post-Transaction success, OneBeacon did just that.

4. Laches is not a bar.

Lastly, OneBeacon asserts Southern is barred by the doctrine of laches and should be unable to claim tolling. OneBeacon MTD, 23. However, laches does not apply. Laches is neglect

¹⁵ Pennsylvania has a similar doctrine of fraudulent concealment. *Checcio*, 870 A.2d at 860 (holding one may not invoke the statute of limitations, if through fraud or concealment, he causes the plaintiff to relax his vigilance or deviate from his right of inquiry into the facts).

for an *unreasonable and unexplained* length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to detrimentally change his position, then equity will ordinarily refuse to enforce those rights. Laches connotes not only an undue lapse of time, but also negligence and opportunity to have acted sooner, as well as detrimental reliance, and is “highly fact-specific.” *Emery v. Smith*, 361 S.C. 207, 215-216, 603 S.E.2d 598, 602 (2007). Whether laches has been established is largely within the discretion of the court, and the burden of proof is on the party asserting laches. *Id.*

“Importantly, delay alone in assertion of a right does not, in and of itself, constitute laches. . . so long as there is . . . no refusal to embrace an opportunity to ascertain facts . . .,” *Id.* Like the statute of limitations, laches is an affirmative defense. *Id.*; *see, Whitehead v. State*, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002) (holding whether a claim is barred by laches is to be determined based on the facts, and delay alone in assertion of a right does not constitute laches); *see also RWE NuKem*, 373 S.C. at 199, 644 S.E.2d at 734 (finding questions as to whether there had been a delay, whether the delay was unreasonable, and whether the moving party had been prejudiced by delay were all questions of fact which warranted denial of summary judgment). Southern was reasonable in seeking to enforce its rights and did not unreasonably delay in doing so. For all these reasons, the Court should decline to find the doctrine of laches applies.

E. Southern’s Second Amended Complaint was Properly Filed under Rule 15, SCRCP.

These Defendants argue this Court should dismiss Southern’s Second Amended Complaint because it was filed “without leave of the Court” and added new parties as defendants. Neither of these assertions warrants dismissal.

First, Rule 15 allows a party to amend a pleading “by leave of court or by written consent of the adverse party.” Rule 15(a), SCRCP. In this case, and as stated in the pleading itself, Southern

obtained consent of the then-active defendants to file the Second Amended Complaint. *See* Second Am. Compl. ¶¶ 3–4 (“Pursuant to Rule 15(a) and (d), SCRCP, *and with consent of all existing Defendants*, Plaintiff . . . files this Second Amended Complaint” (emphasis added)). Thus, leave of this Court was unnecessary.

Second, these Defendants’ citations to authority in support of this argument appear to suggest that new defendants may not ever be added to an existing action through the filing of an amended complaint. If that is the Defendants’ position, it is plainly incorrect. Nothing in Rule 15 prohibits the addition of defendants in an amended pleading and doing so is common practice in South Carolina. *See, e.g., Chastain v. Hiltabidle*, 381 S.C. 508, 513, 673 S.E.2d 826, 828 (Ct. App. 2009) (“An amended complaint added Realtor as a defendant. A second amended complaint added Agent as a defendant.”); *Shaw v. Atl. Coast Life Ins. Co.*, 322 S.C. 139, 140, 470 S.E.2d 382, 383 (Ct. App. 1996) (“Thereafter, the Shaws filed an amended complaint which named the Plan as an additional defendant.”); *Brown v. Cjas*, 2019 S.C.C.P. LEXIS 11039, *2 (Ct. Comm. Pl. Feb. 19, 2019) (“Plaintiff filed its Amended Summons and Complaint on August 15th, 2018, to add [several parties] as Defendants to this matter.”); *id.* at *7 (“[T]he Court finds that Plaintiff, with consent of opposing counsel properly filed the Amended Summons and Amended Complaint . . . pursuant to Rule 15 (a) of the SCRCP.”).

Defendants’ cited cases do not dispute this. The language quoted from *Valentine v. James Davis, Paul Davis Sys. of Columbia*, 319 S.C. 169, 460 S.E.2d 218 (Ct. App. 1995), for example, is taken out of context and not dispositive here. In *Valentine*, the issue under consideration was whether the trial court properly denied a motion to add parties as plaintiffs to a pending action. *See id.* at 170, 460 S.E.2d at 218. The Court of Appeals held that “Rule 15, SCRCP, does not allow an existing plaintiff to add a new plaintiff to the case to assert a claim against the defendant.” *Id.* at

172, 460 S.E.2d at 219. *Valentine* does not hold that Southern could not add new defendants in the Second Amended Complaint. *See Patton v. Miller*, 420 S.C. 471, 495, 804 S.E.2d 252, 264 (2017) (“[T]he [*Valentine*] decision stands *only* for the proposition that Rule 15 does not contemplate adding a new plaintiff to assert a new claim, and thus *Valentine* is inapplicable to this case.” (emphasis added)).

Defendants also cite to *O’Rear v. American Fam. Life Assurance Co.*, 784 F. Supp. 1561 (M.D. Fla. 1992), which is similarly unpersuasive. First, it is neither controlling nor persuasive authority for this Court. Additionally, the basis for dismissal was simply that the plaintiff failed to obtain leave of court to amend its complaint. Nowhere in the opinion is it suggested that the plaintiff obtained consent of the existing defendants for its amendment, and in fact, that alternative avenue for amending a complaint is not discussed at all. Southern obtained written consent for its amendment from all adverse parties in the case at the time, consistent with Rule 15(a), SCRCF. Thus, leave of court was unnecessary, and *O’Rear* does not change that or make any difference.

Southern’s amendment of its complaint conformed to the South Carolina Rules of Civil Procedure, and these Defendants can show no prejudice. *See Patton v. Miller*, 420 S.C. 471, 491, 804 S.E.2d 252, 262-63 (2017) (“The prejudice contemplated in Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim. Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.”). As the *Patton* court further recognized: “The spirit of the Rules is to settle controversies upon their merits rather than to dismiss actions on technical grounds, to permit amendments liberally, and to avoid, if possible, depriving a litigant of a chance to bring a case to trial.” *Id.* at 493, 804 S.E.2d at 263. Accordingly, the Second Amended

Complaint should not be dismissed because potential parties were not asked to consent before Southern filed and served the Second Amended Complaint.

F. Potomac is Not a Necessary Party to this Action.

In addition to incorrectly claiming that Potomac is a necessary party for personal jurisdiction, the Defendants argue Southern's claims against OneBeacon and Trebuchet should be dismissed because Potomac is not a party to this lawsuit. Rule 19, SCRCP provides in relevant part: "A person ... shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action ..."

Dismissal of a case for nonjoinder is a "drastic remedy . . . which should be employed only sparingly." *Perkins v. Bennett*, 2015 U.S. Dist. LEXIS 36405, at *13 (D.S.C. Mar. 24, 2015). Courts are loath to dismiss cases based on nonjoinder of a party, so dismissal will be ordered only when the resulting defect cannot be remedied, and prejudice and inefficiency will result. The Court should consider the practical potential for prejudice in the context of the particular factual setting presented by the case. The burden is on the moving party to show that the person who was not joined is needed for a just adjudication. *Perkins*, 2015 U.S. Dist. LEXIS 36405, at *13-14; *Fitzgibbons v. Atkinson*, 2018 U.S. Dist. LEXIS 138887, at *26 (D.S.C. May 18, 2018).

Courts asked to dismiss an action for failure to join a party are mainly concerned that the plaintiff will be denied an adequate remedy if the current action is dismissed. *Perkins*, 2015 U.S. Dist. LEXIS 36405, at *16; *see also Chadwick v. Arabian Am. Oil Co.*, 656 F. 57, 863 (D. Del. 1987) (explaining that the most important factor is whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder). Joinder is unnecessary where the rights of the non-party will not be impaired if he is not joined as a party defendant. *Robbins v. First Fed. Sav. Bank*, 294 S.C. 219, 223, 363 S.E.2d 418, 421 (Ct. App. 1987).

Here, Potomac cannot be a party to this action because Potomac is in liquidation. As outlined above, Potomac cannot bring these claims against these Defendants. And if Potomac does have any claim, the Liquidator has made no attempt to bring or otherwise shown interest in bringing any of the claims against these Defendants or any of the claims asserted in the Second Amended Complaint. Meanwhile, Southern has suffered, and continues to suffer, losses because of the Asbestos Suits. If the court rules Potomac is a necessary party, Southern may be left without any recourse, and will be prejudiced.

Moreover, one who is injured by the wrongful act of two or more joint tort-feasors has the option to sue one or more of such tort-feasors, either separately or joined as parties in a single action. The plaintiff should have the choice of designating the party who she claims committed the tort alleged in the complaint and should not have to sue someone against whom she makes no claim. *Simon*, 209 S.C. at 138-139, 39 S.E.2d at 211; *Smith v. Tiffany*, 419 S.C. 548, 799 S.E.2d 479 (2017). As joint tort-feasors with Potomac, each of Trebuchet and OneBeacon is severally liable for the entire damage. *See S.C. Dep't of Health & Envtl. Control v. Fed-Serv Indus. Inc.*, 294 S.C. 33, 362 S.E.2d 311 (Ct. App. 1987) (holding that the joint tort-feasor with joint and several liability remains merely a permissive party). Accordingly, Southern should be allowed to choose which parties it sues.

In addition, an absent party's failure to actually claim an interest is sufficient ground to deny a motion under Rule 19. *Wellin v. Wellin*, 2015 U.S. Dist. LEXIS 19488, 2015 WL 628071, at *8 (D.S.C. Feb. 12, 2015); *Fitzgibbons* 22018 U.S. Dist. LEXIS 138887 at 28 (unnamed parties' failure to claim an interest in the litigation disproved the moving defendants' argument that such parties were necessary); *Travelers Cas. & Sur. Co. v. Jeld-Wen Holding, Inc.*, 2022 U.S. Dist. LEXIS 210159, *17 (W.D.N.C. Nov. 21, 2022) (determination that the underlying insurers are not

necessary parties is supported by the fact that the underlying insurers themselves have not attempted to claim an interest in this litigation).

Finally, these Defendants make no attempt to show that, if Potomac were thought to be indispensable but joinder is impossible, the Court could not “determine whether in equity or good conscience the action should proceed among the parties before it.” Rule 19 (a)(2), SCRCPP. For each of these reasons, the Court should find that Potomac is not a necessary party and allow Southern to move forward with its case against the current Defendants.

G. Southern has Stated Facts Sufficient to Constitute its Causes of Action.

1. Southern’s claim for fraudulent transfers is not subject to the heightened pleading standards of Rule 9(b), SCRCPP.

Notwithstanding Defendants’ argument that fraudulent conveyance claims are subject to Rule 9(b)’s enhanced pleading standard, Rule 9(b) does not apply when constructive fraud is alleged. *Air Cargo, Inc. Litig. Trust v. i2 Techs., Inc. (In re Air Cargo, Inc.)*, 401 B.R. 178, 191-192 (D. Md. 2008). In a complaint to avoid a constructively fraudulent conveyance, there is no requirement to prove any misrepresentation or intent to defraud on the part of the transferor. Rather, the complaint must simply allege that the transferee did not receive fair consideration. The Bankruptcy Court for the District of Maryland has explained:

This Court finds persuasive the line of cases that hold that Rule 9(b) does not apply where constructive fraud is alleged. In a complaint to avoid a constructively fraudulent conveyance, there is no requirement to prove any misrepresentation or intent to defraud on the part of the transferor. See *Van-Am.*, 191 F.R.D. at 542. Rather, the complaint must simply allege that the transferee did not receive fair consideration.

Id. at 192 (citation omitted); *see also In re White Metal Rolling & Stamping Co.*, 222 B.R. 417, 428-429 (Bankr. S.D.N.Y. 1998) (“Although tagged with the title ‘fraudulent,’ fraud has nothing to do with the constructive fraudulent transfer claim. It is rather based on the transferor’s financial

condition and the sufficiency of the consideration provided by the transferee.” (internal quotations omitted)).

Nevertheless, Southern has pled specific facts supporting its claims. Even if the standard were that for fraud, which Southern does not admit, pleading of fraud may contain at a minimum the time, place, and nature of the fraudulent conduct. *Grayson Consulting*, 2008 Bankr. LEXIS 4109, at *17. In *High v. Moss*, C/A No. 7:14-cv-03597-GRA, 2015 U.S. Dist. LEXIS 54114 (D.S.C. Apr. 23, 2015), the plaintiff alleged that conveyances had been made for minimal and inadequate consideration; the defendants had been aware of pending suits (e.g., liabilities); and the conveyances were made a short time before commencement of litigation. *Id.* at *2. The federal district court found that these allegations were sufficient to overcome a motion to dismiss for failure to state a claim. *Id.* at *5-7. Although the district court in *High* cited to the *Air Cargo* court’s discussion of “the applicability of Rule 9(b) to constructive fraudulent conveyance claims,” it declined to decide that issue because the parties had not disputed Rule 9(b)’s applicability to the case. *Id.* at *4 n.1.

To the extent Southern has information about its allegations, it has specified the nature and time of the fraudulent conduct, and the general circumstances under which it occurred. For example, as to OneBeacon, Southern has alleged:

- OneBeacon and its affiliates received substantial and material assets of Potomac and its subsidiaries, without giving adequate consideration. Second Am. Compl. ¶ 35;
- Potomac was the alter ego of OneBeacon Insurance Group, LLC, which used its assets for unrelated lines of business and for its other affiliates, *id.* ¶ 36;
- OneBeacon Insurance Group, LLC took enormous dividends and systematically stripped Potomac of its capital before the Transaction and knew that this would leave Potomac insolvent and unable to pay claims / defend Southern, *id.* ¶ 38;
- The Transaction jeopardized and concealed Potomac’s financial condition, which prejudiced Southern, *id.* ¶ 40;

- OneBeacon knowingly and materially underestimated long-tail insurance liabilities for the years prior to 2014 and knew the Transaction would jeopardize Potomac's reserves, *id.* ¶ 41;
- OneBeacon materially misrepresented Potomac's post-Transaction viability when it knew that Trebuchet US was a weak company, *id.* ¶¶ 43, 45, 48;
- OneBeacon knew Potomac had substantial outstanding obligations that would become claims in future years, *id.* ¶ 47;
- OneBeacon's misrepresentations facilitated the Approval Order (¶ 49) and were intended to defraud creditors, including Southern, *id.* ¶ 50;
- OneBeacon knew or should have known that after the Transaction Potomac would incur debts beyond its ability to pay as they became due, *id.* ¶ 52;
- The Transaction and pre-Transaction transfers of capital from Potomac were fraudulent transfers for the benefit of OneBeacon, *id.* ¶¶ 53, 54;
- OneBeacon's conduct caused Southern's losses because of OneBeacon's actions to cut off the long-tail insurance obligations of Potomac, *id.* ¶¶ 57, 59, 80;

And as to Trebuchet, Southern has alleged:

- Before the Merger, at least two of the Runoff Subsidiaries were wholly owned subsidiaries of Potomac, *id.* ¶ 62;
- Potomac, the Runoff Subsidiaries, and Trebuchet US were instrumentalities and alter egos of Huntington, Williams, Trebuchet Investments, and Trebuchet Group because they were all controlled by and operated for the benefit of Huntington and Williams, *id.* ¶ 63);
- Huntington and Williams created Trebuchet US in 2012 with the sole purpose of acquiring and consolidating Potomac and the Runoff Subsidiaries, *id.*, ¶ 64;
- The Board of Potomac approved the Merger, *id.* ¶ 70;
- Trebuchet US was the sole shareholder of Potomac, *id.* ¶ 70;
- Potomac assumed all debt, obligations, and liabilities of the Runoff Subsidiaries as a result of the Merger, *id.* ¶ 71;
- One of the Runoff Subsidiaries faced huge liabilities at the time of the Merger (almost \$50 million just from the *Olin* case), *id.* ¶¶ 73, 77, 78;

- Trebuchet (Huntington and Williams) applied for the Merger on October 1, 2020 and it was approved by the Insurance Commissioner of Pennsylvania just two months later, *id.* ¶¶ 65, 75;
- Potomac's Board then approved liquidation less than three months later on February 25, 2021, and entered liquidation on March 11, 2021, *id.* ¶¶ 79, 80;
- By bringing about the Merger, Trebuchet fraudulently caused Potomac to incur obligations for the benefit of the Trebuchet Defendants, without giving Potomac reasonably equivalent value in exchange — this was a fraudulent conveyance, *id.* ¶¶ 82-84, 86- 89.

Under both Pennsylvania law (40 P.S. § 2221.28) and South Carolina law (S.C. Code § 38-27-450), a merger within one year of a successful petition for liquidation is fraudulent *per se*, and therefore the Merger effectuated by Trebuchet constituted a fraudulent conveyance *per se*. The Pennsylvania Liquidation Act, Art. 3, § 528 (Fraudulent Transfers Prior to Petition), states:

Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for ... liquidation under this article is fraudulent as to the existing and future creditors if made or incurred without fair consideration or, with actual intent to hinder, delay or defraud either existing or future creditors.

(emphasis added). The order for liquidation of Potomac was entered about three months after the Merger—far less than one year. Each of these allegations is as specific as Southern can be without having had the benefit of discovery, and its allegations constitute fraud *per se*—that is to say, the assumption of fraudulent intent.

2. Southern's allegations support a claim for unjust enrichment.

OneBeacon cites *Chase Home Fin., LLC v. Risher*, 405 S.C. 202, 746 S.E.2d 471 (2013), to contend that Southern has not sufficiently pled facts to support a claim for unjust enrichment. OneBeacon argues Southern does not allege benefits conferred by plaintiff on the defendant, realization of the benefits by the defendant, and retention of those benefits by the defendant under

circumstances that make retention inequitable. OneBeacon MTD, 25. However, Southern has pled facts sufficient to state a claim for unjust enrichment; namely:

- OneBeacon knew Potomac faced substantial long-tail liabilities and understated them to engage in the Transaction, along with stripping assets from Potomac prior to the Transaction. Second Amended Compl. ¶¶ 35, 38, 41;
- The Transaction was approved by OneBeacon, *id.* ¶¶ 29, 39, 56, 62;
- Trebuchet engaged in the Merger just months before one of the Runoff Subsidiaries sustained a \$49 Million judgment and entered liquidation, *id.* ¶¶ 71, 73, 77, 78, 80;
- The Merger was approved, and Potomac almost immediately filed for liquidation, *id.* ¶¶ 83 – 89;
- Southern suffered losses from Asbestos Claims because the OneBeacon and Trebuchet Defendants caused Potomac to become insolvent and unable pay insurance benefits, *id.* ¶¶ 24-26, 31, 59.

These allegations support that each of the OneBeacon and Trebuchet Defendants realized benefits from their unjust actions in obtaining benefits from Southern’s insurance premiums paid to Potomac and taking away assets from Southern’s insurer (Potomac), that each of them avoided liabilities, and that they retained those benefits and assets under circumstances that are inequitable.

3. Southern’s allegations support a claim for constructive trust.

OneBeacon argues that Southern cannot seek both money damages and a constructive trust. However, when an identical set of facts entitles the plaintiff to alternative remedies, the plaintiff may plead entitlement to either or both, even if the plaintiff may not recover both. *Baeza v. Robert E. Lee Chrysler, Plymouth, Dodge, Inc.*, 279 S.C. 468, 309 S.E.2d 763 (Ct. App. 1983). “The rule rests on the principle that the plaintiff should have a full opportunity to prove his claim to some form of relief, but should not have double-recovery.” *Id.* at 473. The case OneBeacon cited, *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 732 S.E.2d 876 (2012), involved a plaintiff that sought money damages alongside a constructive trust, but failed to explain why an equitable remedy was warranted. That is not the case here. Southern is only seeking a single recovery and

no more. Southern also has made allegations demonstrating why equity is warranted. Second Am. Compl. ¶¶ 124, 125, 127, 130, 133, 135, 136(a-c), 139-141, 144-148, 150, 152(a-b), 154-56, 172, 173, 179, 180, and 182-83. Southern's claims are not inconsistent. *Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986) (focusing on extreme inconsistency of causes of action in requiring election of remedies, where claims were so inconsistent as to preclude or destroy one another).

4. Southern's allegations support a claim for an accounting.

An accounting is an equitable remedy. *See Cox v. Lunsford*, 272 S.C. 527, 252 S.E.2d 918 (1979). Although an accounting traditionally existed as a remedy where there was a fiduciary relationship, "it is also available in certain circumstances where no confidential or fiduciary duty exists." *ABC Legal Servs., Inc.*, 2015 U.S. Dist. LEXIS 86187, at *4. One of these circumstances is where the action involves "long and complicated accounts" where a jury could not be expected to fully understand the discrepancies and correctly calculate the amount that one party owes another. *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 382 S.E.2d 915, 917 (1999). Southern submits that given the allegations regarding the "long tail" of the Insurance Contracts and the complexities of the Transaction, the Merger, and the attendant transfers of Potomac's assets and assumption of liabilities, a complicated accounting will likely be necessary for a jury to understand discrepancies and correctly calculate damages. Thus, Southern has pled sufficient facts to support the requirement of an accounting.

CONCLUSION

Southern has suffered and continues to suffer harm from the bad acts of the OneBeacon and Trebuchet Defendants. These Defendants directly caused the loss of Southern's insurance benefits from Insurance Policies purchased in South Carolina from Potomac. The OneBeacon and Trebuchet Defendants took Potomac's assets for themselves, treated Potomac as their alter ego,

and cut off the long-tail insurance obligations that caused the losses for which Southern is suing. Neither the Liquidation Order nor the Approval Order for Potomac prevent Southern from suing the OneBeacon and Trebuchet Defendants for their bad acts causing Southern's losses here in South Carolina.

In addition, the Second Amended Complaint was timely and properly filed and pled by stating facts sufficient to state the causes of action. The Receivership Court is the proper forum and has personal jurisdiction over the OneBeacon and Trebuchet Defendants because they purposefully availed themselves of benefits in South Carolina and caused losses based on South Carolina insurance policies. Therefore, the motions to dismiss should be denied.

Respectfully submitted,

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January 23, 2023
Columbia, South Carolina

EXHIBIT 1

(Form A - Statement Regarding the Acquisition of Control Of Or Merger With A
Domestic Insurer – February 7, 2013)

FORM A

**STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR
MERGER WITH A DOMESTIC INSURER**

ONEBEACON INSURANCE COMPANY (PA)

POTOMAC INSURANCE COMPANY (PA)

(Name of Domestic Insurer(s))

by

**ARMOUR GROUP HOLDINGS LIMITED,
through its subsidiary, Trebuchet US Holdings, Inc.**
(Name of Acquiring Person (Applicant))

Filed with the Insurance Department of the Commonwealth of Pennsylvania

Dated: February 7, 2013

Name, title, address and telephone number of individuals to whom notices and correspondence concerning this form should be addressed:

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INTRODUCTION

This Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer (the "Statement") seeks the prior approval of the Insurance Commissioner of the Commonwealth of Pennsylvania pursuant to 40 P.S. §1402(a)(1) for the acquisition of control of OneBeacon Insurance Company ("OBIC") and Potomac Insurance Company ("Potomac"), each a Pennsylvania domiciled insurance company (collectively, the "Acquired Companies"). The Acquired Companies are wholly-owned subsidiaries of OneBeacon Insurance Group LLC ("OneBeacon Group") which is controlled by White Mountains Insurance Group, Ltd.

The direct acquiring party of the Acquired Companies will be Trebuchet US Holdings, Inc., a Delaware corporation ("Trebuchet"), a wholly owned subsidiary of Trebuchet Investments Limited, a Bermuda company ("Trebuchet Investments"), which in turn is a wholly owned subsidiary of Armour Group Holdings Limited, a Bermuda company ("Armour Group"). Armour Group is controlled by voting share ownership by Brad Huntington ("Huntington") and John Williams ("Williams"), each individuals. Collectively, Trebuchet, Trebuchet Investments, Armour Group, Huntington and Williams are referred to herein as the "Applicant."

As set forth in this Statement, the proposed change of control of the Acquired Companies is part of a restructuring undertaken by OneBeacon Group (the "Restructuring") to separate its ongoing specialty insurance business from certain risks currently in run-off ("Run-Off Risks"). Under the Restructuring, such Run-Off Risks will be consolidated into the Acquired Companies for purposes of facilitating an orderly and structured run-off by the Applicant.

Item 1. Insurer and Method of Acquisition

State the name, NAIC code number and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

A. Domestic Insurers

Name and Address	Domicile	NAIC Code Number
OneBeacon Insurance Company (" <u>OBIC</u> ") 150 Royall Street Canton, MA 02021-1030	PA	21970
Potomac Insurance Company (" <u>Potomac</u> ") 150 Royall Street Canton, MA 02021-1030	PA	10238

OneBeacon America Insurance Company and The Employers' Fire Insurance Company, each wholly owned subsidiaries of OBIC, are currently Massachusetts domiciled insurance companies (the "OBIC Subsidiaries"). Prior to, and as a condition of closing of, the Applicant's acquisition of control of the Acquired Companies, Seller (as defined below) is obligated to cause the OBIC Subsidiaries to be redomesticated from Massachusetts to Pennsylvania, subject to regulatory approval. Following the redomestication of the OBIC Subsidiaries to Pennsylvania, the Applicant intends to file an amendment to this Statement to incorporate the OBIC Subsidiaries as

Item 9. Recent Purchases of Voting Securities

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the twelve (12) calendar months preceding the filing of this statement. Include in the description the dates of purchase, the name of the purchasers, and the consideration paid or agreed to be paid therefore.

None.

Item 10. Recent Recommendations to Purchase

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Item 3 during the twelve (12) calendar months preceding the filing of this statement

None.

Item 11. Agreements with Broker-Dealers

Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

None.

Item 12. Financial Statements and Exhibits

- A. Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.*
- B. The financial statements shall include the annual financial statements of the persons identified in Item 2(c) for the preceding five (5) fiscal years (or for such lesser period as the applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of the person's last fiscal year, if that information is available. Statements may be prepared on either an individual basis, or, unless the Commissioner otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.*

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of that person filed with the insurance department of the person's domiciliary state and are in

accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

- C. *If the acquiring person is an individual, the Department may require the filing of Federal income tax returns in lieu of audited financial statements. Any returns filed shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the Department or any other person.*
- D. *File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by this chapter.*

Personal financial statements for the ultimate controlling persons, Brad Huntington and John Williams, are presently on file with the Department. The Applicant requests confidential treatment of those financial statements.

The following is a list of the financial statements and exhibits filed with this statement or under separate cover as set forth below:

Exhibit SPA	Stock Purchase Agreement dated October 17, 2012 by and among Trebuchet, Armour Group, Seller and Seller Parent.
Exhibit SPA-A1	Amendment No. 1 to Stock Purchase Agreement.
Exhibit SCH	Schedules to the SPA. <i>The Applicant is requesting confidential treatment with respect to this information and will be filing it under separate cover.</i>
Exhibit EXS	Exhibits to the SPA. <i>The Applicant is requesting confidential treatment with respect to this information and will be filing it under separate cover.</i>
Exhibit RESTRUCTURE	OneBeacon Group Restructuring.
Exhibit ORG-1	Current organizational chart of the Applicant.
Exhibit ORG-2	Pro forma organizational chart of the Applicant following the Acquisition.
Exhibit BIO	NAIC Biographical Affidavits of the Directors and Executive Officers of Armour Group. <i>The Applicant is requesting confidential treatment with respect to this information and will be filing it under separate cover.</i>

Exhibit D&O	Current directors and officers of the Applicant.
Exhibit PLAN	Business Plan for Acquired Companies. <i>The Applicant is requesting confidential treatment with respect to this information and will be filing it under separate cover.</i>
Exhibit A-2007	Unaudited financial statement of Armour Group for 2007. <i>The Applicant is requesting confidential treatment with respect to this information and will be filing it under separate cover.</i>
Exhibit A-2008	Unaudited financial statement of Armour Group for 2008. <i>The Applicant is requesting confidential treatment with respect to this information and will be filing it under separate cover.</i>
Exhibit A-2009	Unaudited financial statement of Armour Group for 2009. <i>The Applicant is requesting confidential treatment with respect to this information and will be filing it under separate cover.</i>
Exhibit A-2010	Unaudited financial statement of Armour Group for 2010. <i>The Applicant is requesting confidential treatment with respect to this information and will be filing it under separate cover.</i>
Exhibit A-2011	Unaudited financial statement of Armour Group for 2011. <i>The Applicant is requesting confidential treatment with respect to this information and will be filing it under separate cover.</i>
Exhibit E	Form E, Pre-Acquisition Notification Statement of the Potential Competitive Impact of a Proposed Merger or Acquisition. <i>The Applicant is requesting confidential treatment with respect to this information and will be filing it under separate cover.</i>

Item 13. Agreement to Enterprise Risk Requirements

(a) The Applicant agrees to provide the annual enterprise risk report specified in 40 P.S. § 991.1404(k.1) as long as control exists.

(b) The Applicant acknowledges that it and all subsidiaries within its control in the Applicant's insurance holding company system will provide information to the Pennsylvania Commissioner of Insurance upon request as necessary to evaluate enterprise risk to the Acquired PA Companies.

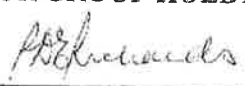
Item 14. Signature and Certification:

SIGNATURE

Pursuant to the requirements of Section 1402 of the act, **Armour Group Holdings Limited** has caused this application to be duly signed on its behalf in the City of HAMILTON in the Country of Bermuda on the 7th day of February, 2013.

ARMOUR GROUP HOLDINGS LIMITED

BY


 Pauline Richards

Attest:


 NATHANIEL A. TURNER
 Commissioner of Oaths & Notary Public
 Attridge-Stirling & Woloniecki
 Hamilton, Bermuda
CERTIFICATION

The undersigned deposes and says that she has duly executed the attached application dated February 7, 2013 for and on behalf of **Armour Group Holdings Limited**; that she is the Chief Operating Officer of such company and that she is authorized to execute and file such instrument. Deponent further says that she is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of her knowledge, information and belief.


 Pauline Richards


EXHIBIT 2

(Stock Purchase Agreement – October 17, 2012)

EXECUTION COPY

STOCK PURCHASE AGREEMENT
BY AND AMONG
ONEBEACON INSURANCE GROUP LLC,
ONEBEACON INSURANCE GROUP, LTD.,
TREBUCHET US HOLDINGS, INC.
AND
ARMOUR GROUP HOLDINGS LIMITED

DATED AS OF OCTOBER 17, 2012

of Seller or its Affiliates in respect of the Acquired Companies regardless of whether the events underlying such claim arose or were first discovered prior to or following the Closing.

Section 5.11 Release of Guarantees. Prior to the Closing, Seller and Purchaser shall cooperate and shall use their respective commercially reasonable efforts to, effective as of the Closing, (a) terminate or cause to be terminated, or cause Purchaser or one of its Affiliates to be substituted in all respects for Seller and any of its Affiliates (other than the Acquired Companies) (collectively, the “Released Parties”) in respect of all liabilities and obligations of the Released Parties under any guarantee of or relating to liabilities or obligations (including under any Material Contract, Contract or letter of credit) of the Acquired Companies and listed in Section 5.11 of the Seller Disclosure Schedule (collectively, the “Guarantees”), and (b) cause Purchaser or one of its Affiliates to have surety bonds (and any necessary collateral, indemnity or other agreements associated therewith) issued on behalf of Purchaser or one of its Affiliates in replacement of all surety bonds (and all collateral, indemnity and other agreements associated therewith) issued on behalf of the Released Parties for the benefit of the Acquired Companies and listed in Section 5.11 of the Disclosure Schedule (collectively, the “Surety Bonds”). In the case of the failure to do so by the Closing, then, Seller and Purchaser shall continue to cooperate and use their respective commercially reasonable efforts as described in the preceding sentence, and Purchaser shall (i) indemnify the Released Parties for any and all liabilities or obligations arising from such Guarantees and Surety Bonds and (ii) not permit the Acquired Companies or their Affiliates to (A) renew or extend the term of or (B) increase its obligations under, or transfer to another third party, any Material Contract, Contract or letter of credit or other liability or obligation for which any Released Party is or would reasonably be expected to be liable under such Guarantee or Surety Bond. To the extent that any Released Party has performance obligations under any such Guarantee or Surety Bond, Purchaser shall use its commercially reasonable efforts to (I) fully perform or cause to be fully performed such obligations on behalf of such Released Party or (II) otherwise take such action as reasonably requested by Seller so as to place such Released Party in the same position as if Purchaser, and not such Released Party, had performed or were performing such obligations.

Section 5.12 Notification of Certain Matters. Seller, on the one hand, and Purchaser, on the other hand, shall give prompt notice to the other of the occurrence, or failure to occur, of any event or the existence of any condition that has resulted in or would reasonably be expected to result in the failure of any of the conditions set forth in Sections 6.2(a) and 6.2(b) or Sections 6.3(a) and 6.3(b), respectively; *provided, however*, that the delivery of notice pursuant to this Section 5.12 shall not be deemed to amend or modify this Agreement or any Schedule hereto or limit or otherwise affect the remedies available hereunder to the other Party.

Section 5.13 Restructuring.

(a) Seller shall, and shall cause its Affiliates (including the Acquired Companies) to use commercially reasonable efforts to, prior to the Closing Date, take any and all actions necessary or incidental to effect the Restructuring described in Section 5.13(a) of the Seller Disclosure Schedule.

(b) Following the Closing Date, Purchaser and Seller shall cooperate with each other (and Purchaser shall cause its Subsidiaries to cooperate) in order to fully effectuate any part of

the Restructuring not previously completed. Neither party shall be required by this Section 5.13 to take any action that would unreasonably interfere with the conduct of its business or unreasonably disrupt its normal operations (or, in the case of Purchaser, including those of the Acquired Companies).

Section 5.14 Run-Off Business Consulting Engagement Agreement. As of the date of this Agreement, Purchaser and Seller shall, subject to applicable Law, execute and deliver the Run-Off Business Consulting Engagement Agreement.

Section 5.15 Investment Assets.

(a) Prior to the Closing, Seller shall use commercially reasonable efforts to cause each of the Acquired Companies (other than OneBeacon Insurance) to sell, transfer or exchange all of their investment assets, other than those on deposit with Governmental Authorities, for Cash Equivalents, it being agreed that Seller shall have no obligation to cause any of the Acquired Companies to sell investment assets pursuant to this Section 5.15 at a price below the price that an unaffiliated and willing purchaser would pay and an unaffiliated and willing seller would accept, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. Prior to the Closing and subject to Section 5.15, Seller shall use commercially reasonable efforts to cause OneBeacon Insurance's investment assets to consist of Acceptable Investments, other than those on deposit with Governmental Authorities; *provided, however*, that Purchaser may, upon written notice (the "Investment Notice") (which notice may be in the form of electronic mail or facsimile) delivered to Seller no later than 9:00 a.m., NYCT, six (6) Business Days prior to the Closing Date (the "Notification Date"), request that Seller cause OneBeacon Insurance to hold at the Closing a portfolio consisting of Cash Equivalents and up to \$100 million fair market value (based on then current market price) of other Acceptable Investments (the "Maximum Investment Notice Amount") as specified in the Investment Notice; *provided further* that any such Investment Notice shall include the specific name, requested par amount, CUSIP and stated final maturity date of each of such non-cash Acceptable Investments requested by Purchaser, the aggregate par amount of all such non-cash Acceptable Investments (not to exceed the Maximum Investment Notice Amount) and Purchaser's preferred order of priority of purchase of such Acceptable Investments. The failure by Purchaser to deliver the Investment Notice by the applicable time set forth in this Section 5.15(a) shall be deemed to be a waiver of the right of Purchaser to deliver such notice.

(b) After the execution of this Agreement and prior to Closing, to the extent that any investment asset of an Acquired Company (other than OneBeacon Insurance) on deposit with a Governmental Authority shall mature, be prepaid or redeemed or otherwise converted to cash, Seller shall cause such Acquired Company following delivery of cash payable on or with respect to such maturity, purchase, redemption or conversion to cause such cash to remain on deposit with the applicable Governmental Authority or, if required by applicable Law, to invest such cash in investment assets with maturities of the greater of (i) thirty (30) days or less and (ii) the minimum tenor required by the applicable Governmental Authority; *provided*, that such investments comply with applicable Law. If Purchaser delivers to Seller a written notice as to investment of maturing deposited investment assets of OneBeacon Insurance (the "Deposited Investments Notice"), then, to the extent that any investment asset of OneBeacon Insurance on deposit with a Governmental Authority shall mature, be prepaid or redeemed or otherwise

Section 5.13(a): Restructuring Steps

	Step	Completed as of Date of Agreement (Y/N)	Closing Condition
I.	Sales of AutoOne and PGIC		
A.	Sale of all of the capital stock of AutoOne Insurance Company and AutoOne Select Insurance Company by OneBeacon Insurance to Interboro Holdings, Inc.	Y	
B.	Sale of all of the capital stock of Pennsylvania General Insurance Company by OneBeacon Insurance Group LLC to Northern American Casualty Company.	Y	
II.	Intercompany Reinsurance Transactions		
A.	The existing (as of 9.30.12) proportional reinsurance (pooling) agreement between OneBeacon Insurance and each of the remaining pool participants (ASIC, Homeland of NY ("HONY"), OneBeacon America, Employers' Fire and Northern Assurance) will be terminated.	N	**
B.	The existing reinsurance agreements between OneBeacon Insurance and each of Homeland Insurance Company of Delaware ("HODE") and OBI National Insurance Company ("OBIN") will be terminated.	N	**
C.	Concurrently with completion of Step II.A., OneBeacon Insurance will enter into the following reinsurance agreements pursuant to which 100% of the Retained Business will be reinsured by ASIC (such that all liabilities associated with the Retained Business will be ceded to, and all reserves associated with the Retained Business will be transferred to, ASIC) and 100% of Run-Off Business would be reinsured by OneBeacon Insurance (such that all liabilities associated with the Run-Off Business will be ceded to, and all reserves associated with the Run-Off Business will be transferred to, OneBeacon Insurance): - Between OneBeacon Insurance (as reinsurer) and each of Employers' Fire, OneBeacon America and Northern Assurance (each, as a ceding company); - Between OneBeacon Insurance (as reinsurer) and ASIC (as ceding company); - Between ASIC (as reinsurer) and OneBeacon Insurance (as a ceding company); and - Between ASIC (as reinsurer) and HONY (as a	N	**

	ceding company).		
D.	Concurrently with completion of Step II.B., ASIC will enter into reinsurance agreements with each of HODE and OBIN, which reinsurance agreements will replace those terminated in Step II.B.	N	
III.	Contribution of Subsidiaries to be Merged; Capital Redistribution		
A.	Concurrently with or following completion of Step II, OneBeacon Insurance will acquire 100% of the equity of Houston General from Houston General Insurance Exchange.	N	**
B.	Concurrently with or following completion of Step II, Seller will contribute 100% of the capital stock of Camden Fire to OneBeacon Insurance, unless the capital stock of Camden Fire has theretofore been sold or transferred.	N	**
C.	Concurrently with or following completion of Step II, OneBeacon Insurance will contribute 100% of the capital stock of Northern Assurance to OneBeacon America.	N	**
D.	Concurrently with or following completion of Step II, OneBeacon Insurance will contribute (i) cash and investments to ASIC, including contribution of 100% of the capital stock of each of OneBeacon Specialty Insurance Company ("OBSIC"), HODE and OBIN to ASIC and (ii) subject to obtaining requisite third party consents the real property located at 150 Royall Street, Canton MA to ASIC.	N	
E.	Concurrently with or following the completion of Step II, HONY will acquire all of the capital stock of OneBeacon Select Insurance Company ("OBSEL") from OneBeacon Insurance.	N	**
F.	Concurrently with the other steps in III above, Seller shall cause each of the Acquired Companies not merged into OneBeacon Insurance (other than OneBeacon Insurance and Potomac Insurance) to declare and pay a dividend to its parent company in an amount that exceeds all capital in excess of pro forma statutory minimum surplus, as determined by Seller in good faith in accordance with regulatory requirements (after giving effect to the withdrawal of any licenses Seller deems unnecessary (as permitted pursuant to Section 5.2 of the Agreement)) and securities on deposit not for the benefit of policyholders.	N	**
H.	Quarterly until Closing, each of ASIC and OneBeacon Insurance will declare and pay dividends to its parent	N	

	company from time to time with amounts being determined after giving consideration to operating earnings, reductions in required capital based on the release of reserves over the preceding quarter and changes in capital required to support the Retained Business.		
IV.	Mergers		
A.	Following the completion of Steps II and III, Northern Assurance and OneBeacon Midwest (provided that OneBeacon Midwest has not theretofore been sold or transferred to a third party) will merge with and into OneBeacon America. This may be effected either by merging OneBeacon Midwest with Northern Assurance and then Northern Assurance with OneBeacon America or by merging Northern Assurance with OneBeacon America and then OneBeacon Midwest with OneBeacon America.	N	**
B.	Following the completion of Steps II and III, Houston General, Camden Fire (provided that OneBeacon Insurance then owns Camden Fire) and Traders & General will merge with and into OneBeacon Insurance.	N	**
V.	Distribution of OBSIC (and / or ASIC) and OBSEL (and / or HONY) to Seller		
A.	Prior to Closing, OneBeacon Insurance declare and pay an extraordinary dividend to Seller in an amount equal to its capital in excess of its Target Statutory Capital. Pursuant to such dividend, OneBeacon Insurance will distribute to Seller (i) the capital stock of OBSIC (or in the event that ASIC has not theretofore been merged with and into OBSIC, the capital stock of ASIC) and (ii) the capital stock of OBSEL (or in the event that HONY has not theretofore been merged with and into OBSEL, the capital stock of HONY).	N	**
VI.	Transfers of Assets, Rights, Etc.		
A.	Prior to Closing, subject to obtaining requisite third party consents, the Acquired Companies will assign to Seller or an Affiliate of Seller (other than an Acquired Company) all licenses, leases and other Contracts not used solely in the Run-Off Business and Seller or such Affiliate(s) will assume the same from the Acquired Companies.	N	*
B.	Prior to Closing, subject to obtaining requisite third party consents, the Seller and Seller's Affiliates (other than the Acquired Companies) will assign to the OneBeacon Insurance all licenses, leases and other Contracts used solely in the Run-Off Business and	N	*

	OneBeacon Insurance will assume the same from Seller and such Affiliates of Seller.		
C.	Prior to Closing, the Acquired Companies will transfer to Seller or an Affiliate of Seller (other than the Acquired Companies) all assets (other than Cash Equivalents and Investment Assets) not used solely in the Run-Off Business.	N	*
D.	Prior to Closing, Seller and Seller's Affiliates (other than the Acquired Companies) will transfer to the Acquired Companies all assets (other than Cash Equivalents and Investment Assets) used solely in the Run-Off Business.	N	*

* Indicates that step must be completed in all material respects as a condition to Closing pursuant to Section 6.1(c) of the Agreement.

** Indicates that step must be completed as a condition to Closing pursuant to Section 6.1(c) of the Agreement.

EXHIBIT: RESTRUCTURE

In the fall of 2012, OneBeacon Group initiated a restructuring effort for various reasons including rationalizing its legal entity structure and facilitating a separation of its on-going specialty business from its run-off business. Certain required regulatory approvals were obtained and a number of related transactions were concluded by year end 2012.

The following are those Ancillary Transactions related to the Restructuring that have not yet been effected:

- Declaration and payment by the OBIC Subsidiaries (OneBeacon America Insurance Company and The Employers' Fire Insurance Company) of a dividend to their parent company, OBIC, in an amount that exceeds all capital in excess of pro forma statutory minimum surplus, as determined by OBIC in good faith in accordance with regulatory requirements, and securities on deposit not for the benefit of policyholders.
- Declaration and payment of a dividend by OBIC to its parent company, OneBeacon Group, in the form of the capital stock of ASIC and Homeland Insurance Company of New York (or its successor).
- The assignment by the Acquired Companies and OBIC Subsidiaries to OneBeacon Group (as Seller) or an affiliate of Seller of certain licenses, leases and other contracts not used in the Runoff Business.
- The assignment by OneBeacon Group (as Seller) and its affiliates to OBIC of certain licenses, leases and other contracts used solely in the Runoff Business
- The transfer by the Acquired Companies and the OBIC Subsidiaries, as applicable, to OneBeacon Group (as Seller) or an affiliate of Seller of all assets (other than cash and investment assets) not used solely in the Runoff Business.
- The transfer by OneBeacon Group (as Seller) and Seller's affiliates to the Acquired Companies and the OBIC Subsidiaries, as applicable, of all assets (other than cash and investment assets) used solely in the Runoff Business.
- The mergers of the following affiliates of the Acquired Companies and the OBIC Subsidiaries as described below:

Company	Domicile	Current	Pre-Closing – est. 1Q2013
The Northern Assurance Company of America (“Northern Assurance”)	Massachusetts	Direct Subsidiary of OneBeacon America Insurance Company	Merge with and into OneBeacon America Insurance Company
OneBeacon Midwest Insurance Company (“OneBeacon Midwest”)	Wisconsin	Direct Subsidiary of Northern Assurance	Merge with and into OneBeacon America Insurance Company
Traders & General Insurance Company	Texas	Direct Subsidiary of OneBeacon	Merge with and into OneBeacon

("Traders & General")		Insurance Company	Insurance Company
The Camden Fire Insurance Association ("Camden Fire")	New Jersey	Direct Subsidiary of OneBeacon Insurance Company	Merge with and into OneBeacon Insurance Company
Houston General Insurance Company ("Houston General")	Texas	Direct Subsidiary of OneBeacon Insurance Company	Merge with and into OneBeacon Insurance Company (unless otherwise disposed)

- The redomestication of the OBIC Subsidiaries from Massachusetts to Pennsylvania.

EXHIBIT 3

(Letter of Watson Towers to PA. Insurance Department -August 11, 2014)



August 11, 2014

Mr. Steven L. Yerger
Pennsylvania Insurance Department
Bureau of Company Licensing and Financial Analysis
1345 Strawberry Square
Harrisburg, PA 17130

RECEIVED
Corporate & Financial Regulation

AUG 12 2014

Pennsylvania
Insurance Department

Dear Mr. Yerger:

Towers Watson appreciates the opportunity to respond to various questions and comments related to our work performed for OneBeacon Insurance Group, LLC ("OneBeacon") as discussed in the Public Hearing in Harrisburg on July 23, 2014 and in our reports entitled "Analysis of Unpaid Loss and LAE as of September 30, 2012, December 31, 2012 and March 31, 2012," dated September 9, 2013 (the Reserve Report), and "Stochastic Modeling of Run-Off Business Pro-forma Balance Sheet as of June 30, 2014," dated June 10, 2014 (the Stochastic Model Report). The questions and comments that we are responding to are related to the public comments made at the Public Hearing as well as certain written materials provided to the Department which are in the public domain. While we have attempted to be as thorough and exhaustive as possible in our response, please let us know if there are additional questions or clarifications that would be helpful.

The body of this letter highlights our responses in a summary fashion to what we consider key or common themes raised by the objectors and commentators. The appendix contains point by point detailed responses to comments made during the Public Hearing as well as objections and related materials submitted to the Department in writing.

Qualifications of Objectors

As a general statement, we do not believe that any of the criticisms and comments made by the objectors about our actuarial assumptions, methodologies, judgments, and caveats should be given any credibility, as they were either not being made by qualified actuaries (e.g. Mr. Terrell's report), or contained in a report that was not signed by a qualified actuary (e.g. the FTI Consulting report).

In particular, we question Mr. Terrell referring to himself as an expert on many of the issues that he has commented on. We will leave it to the disciplinary bodies of any professional organizations that Mr. Terrell is a member of to determine whether he has violated any professional standards by referring to himself as an "expert" in actuarial issues without having any actuarial designation. We would point out, however, that if Mr. Terrell were an actuary then the various mischaracterizations and speculations in his report would require us, in accordance with Precept 13 of the Code of Professional Conduct of the American Academy of Actuaries, to refer the situation to the Actuarial Board of Counseling and Discipline. Two specific examples of causes for referral for violation of that Code contained in Mr. Terrell's report are as follows:

- Mr. Terrell states: "While I would certainly concede that there are many combinations of inputs that could lead to success for the first 30 years, to come up with a >90% success rates for entities as

thinly capitalized as the proposed runoff companies, and that are subject to the pronounced uncertainties already discussed defies credulity and is indicative of a flawed and unrealistic calibration of their stochastic model." While this may be Mr. Terrell's opinion, he offers no evidence of or reference to any analysis having been performed to support it.

- The report also reads: "So while RRC at least has been engaged by the Department on behalf of policyholders-i.e. unlike Towers Watson it owes no fealty to OBIG..." The insinuation that Towers Watson's independence has been compromised because OneBeacon pays its fees is baseless and unprofessional.

Scope of Towers Watson's work

The scope of Towers Watson's work in the stochastic modeling report has been clearly spelled out in both the report and in the public testimony. Towers Watson's scope was to estimate the probability that the invested assets on the proposed opening balance sheet would be sufficient to fund all of the obligations of the run-off business, including claim payments and associated expenses, and to answer the Department's questions about the analysis. Specifically, our scope did not include:

- Estimates of the frequency and timing of "technical insolvencies," defined as situations in which surplus is less than 0. This work would by necessity involve assumptions as to how the management of the run-off company would set reserves for the business many years into the future (in 10,000 different potential scenarios).
- Commentary as to whether the observed success rates are acceptable or desirable. We have not been engaged, nor are we necessarily qualified, to render such an opinion which we regard as being within the purview of the regulators.
- Assessments or characterizations of the adequacy or reasonability of OneBeacon's held reserves. The stochastic model was based on Towers Watson's projections, and therefore OneBeacon's held reserves do not impact the results.
- Assessments as to the capital adequacy of the beginning balance sheet, based on RBC results or any other metrics (e.g. ORSA requirements).

We would also point out that none of the commentators have suggested a different approach to fulfill the scope of our engagement. FTI Consulting mentioned that stress testing and sensitivity testing should have been performed, but these approaches do not answer the question posed by the Pennsylvania Insurance Department ("PID"), which is how likely it is for the assets to be sufficient to run off the claims liabilities and associated expenses. Further, the fact that these tests are required for an ORSA submission is not relevant to our engagement.

Reliances and Limitations in Towers Watson's Reports

Several of the commentators allege that the reliances and limitations in Towers Watson's reports should undermine the credibility of the reports. The reliances and limitations are required based on actuarial standard of practice (ASOP) 41, and are key to allow the reader to fully understand the scope of the actuarial work and place the findings and observations in the appropriate context.

Mr. Terrell mischaracterizes reliance on OneBeacon data without audit or verification as reliance on OneBeacon's analysis, which is clearly not the case. Towers Watson's reliance on OneBeacon as to the accuracy of the data is consistent with ASOP 23. In contrast to Mr. Terrell's baseless assertion and as clearly explained in our reports, Towers Watson did not rely on OneBeacon's projections, as Mr. Terrell stated.

Towers Watson's summary reports do not and are not intended to contain the full documentation of our analyses; rather to highlight and summarize the observations and findings as well as conveying important context. The relevant documentation is contained in our full reports, which have been made available to the PID and RRC and are in compliance with the ASOPs regarding documentation of actuarial workproduct.

Uncertainty

All of the elements brought up by the commentators about uncertainty with respect to future conditions (e.g. medical inflation, uncertainty with respect to A&E losses, equity returns) were considered in Towers Watson's stochastic model, as clearly explained in our reports. The real question is whether the uncertainty is being quantified in a reasonable way.

FTI has indicated that Towers Watson did not include parameter uncertainty in its stochastic analysis. This is not true, as we stated in both the Stochastic Model Report and in our testimony, Towers Watson has considered both process and parameter risk.

Some of the objectors, such as Mr. Stockman and Mr. Terrell, appear to suggest that uncertainty is unidirectional, i.e. estimates only deteriorate and they do not improve. This assertion is contradicted by many facts, for example:

- AM Best pollution cost estimates in 1995 were \$225 billion of ultimate losses for the industry; their most recent projection is \$42 billion of ultimate losses.
- The property and casualty industry reserves have developed favorably since 2004.

Asbestos Methodology

As regards the estimation of asbestos reserves, some of the commentators quoted statements made in a Towers Watson Insights article entitled "Summary of US Property & Casualty Insurers' Asbestos Claim Reserves at Year-End 2012" and valuation model issues raised by a Mealey's Asbestos Bankruptcy Report Commentary entitled "A Third Wave in Asbestos Liabilities Lies Ahead: Actuarial Models Are Systematically Underestimating Exposures". Both articles highlighted weaknesses of certain methods and assumptions and commentators cited points in the articles as arguments against the Towers Watson analysis. However, as our testimony describes in detail (hearing transcript pages 39-44), those weaknesses and biased methodologies have all been addressed in our analysis; therefore, the criticisms raised are baseless.

Provisions for Yet to Emerge Other Mass Torts

The question of "known unknowns" (i.e. new emerging mass torts) not being reflected is brought up by several objectors. Clearly, an explicit provision for "unknowns" is impossible to determine; as such, Towers Watson estimates include an implicit provision for those, as was explained in our testimony (hearing transcript page 46).

Investment Risk

Many of the commentators take issue with the yield assumptions in the Reserve report. Per our testimony (hearing transcript page 48), these assumptions are not relevant to the output of the stochastic report because in the stochastic analysis we model a distribution of potential investment returns as well as distributions of other key variables.

TOWERS WATSON 

Mr. Steven L. Yarger
August 11, 2014

Commentators also seem to take issue with investments in equities as being high risk. The risk associated with equity returns (i.e. the volatility) is reflected in the stochastic modeling, and therefore is captured appropriately in the estimate of the success rates.

Sincerely,



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Attachment 1: Appendix

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean Hoefer Toal, Chief Justice (Ret.) and Acting Circuit Court Judge
Case No. 2020-CP-40-04385

Appellate Case No. 2023-00252

Southern Insulation, Inc., through its Receiver, Peter D. Protopapas,.....Respondent,

vs.

OneBeacon Insurance Group, Ltd. (f/k/a White Mountains Insurance Group, Ltd., f/k/a CGU Insurance Company, f/k/a Commercial Union Corporation, f/k/a General Accident Insurance Company of America); OneBeacon Insurance Group LLC (n/k/a Intact Insurance Group USA LLC); R.V. Chandler & Associates, Inc.; Chandler Rental Properties, Inc.; Thomas S. Chandler; Jean B. Ownbey, as Trustee of the Thomas S. Chandler, Sr. Living Trust u/d 4/06/06; Gene N. Norville; the South Carolina Property and Casualty Insurance Guaranty Association; Trebuchet US Holdings, Inc.; Trebuchet Investments Limited; Trebuchet Group Holdings Limited (f/k/a Armour Group Holdings Limited); Brad S. Huntington, individually; and John C. Williams, individually, Defendants

Of which OneBeacon Insurance Group, Ltd. (f/k/a White Mountains Insurance Group, Ltd., f/k/a CGU Insurance Company, f/k/a Commercial Union Corporation, f/k/a General Accident Insurance Company of America); OneBeacon Insurance Group LLC (n/k/a Intact Insurance Group USA LLC); Trebuchet US Holdings, Inc.; Trebuchet Investments Limited; Trebuchet Group Holdings Limited (f/k/a Armour Group holdings Limited); Brad S. Huntington, individually; and John C. Williams, are the Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that, on this date, a copy of **Appellants Intact Insurance Group USA Holdings Inc. and Intact Insurance Group USA LLC's Return to Respondent's Motion to Dismiss Appeal** has been served upon counsel listed below via email, as follows:

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March 6, 2023

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Mar 06 2023

SC Court of Appeals

March 6, 2023

VIA EMAIL: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of Court
S. C. Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Southern Insulation, Inc., through its Receiver, Peter D. Protopapas
vs. OneBeacon Insurance Group, Ltd., *et al.*
Appellate Case No. 2023-000252

Dear Ms. Kitchings:

Enclosed herewith please find Appellants Intact Insurance Group USA Holdings Inc. and Intact Insurance Group USA LLC's Return to Respondent's Motion to Dismiss Appeal, together with Proof of Service, in the above-referenced matter.

Kindly file the same and return a clocked-in copy to the undersigned via email.

Please do not hesitate to contact me with any questions.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri “Jim” K. Koutrakos

Demetri “Jim” K. Koutrakos

DKK:ksr

Enclosures

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The Honorable Jenny Abbott Kitchings

March 6, 2023

Page 2

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