GOVERNOR'S OFFICE OF GENERAL COUNSEL

March 2, 2021

Michael F. Krimmel, Chief Clerk
Michael.Krimmel@pacourts.us
Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2100
P.O. Box 69185
Harrisburg, PA 17106-9185

RE: Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania v. Bedivere Insurance Company

Dear Mr. Krimmel:

Enclosed for filing in the above-captioned matter, please find the Petition for Order of Liquidation of Plaintiff, Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania.

Very truly yours,

Jodi A. Frantz
Jodi A. Frantz
Deputy Chief Counsel

Enclosure

cc: Bedivere Insurance Company

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania Plaintiff	:	
v.	:	Docket No.
Bedivere Insurance Company, 1880 JFK Boulevard Suite 801 Philadelphia, PA 19103 Defendant.	:	

PETITION FOR LIQUIDATION

INTRODUCTION

1. By this action, Plaintiff, Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, seeks the entry of an Order of Liquidation of Bedivere Insurance Company ("Defendant Bedivere") and its business and affairs pursuant to Article V of the Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, *as amended*, 40 P.S. §§ 221.1-221.63 (the "Act"), on the grounds of consent to liquidation, insolvency, and risk-based capital level.

JURISDICTION

2. Jurisdiction over this case is founded upon 42 Pa.C.S. § 761(a) and section 504(d) of the Insurance Department Act of 1921, *supra*, 40 P.S. § 221.4(d).

PARTIES

3. Plaintiff is Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, acting in her official capacity ("Commissioner"). Plaintiff has her principal office at 1326 Strawberry Square, Harristown State Office Building No. 1, Harrisburg, Pennsylvania 17120.

4. Plaintiff is charged with the execution of the laws of the Commonwealth of Pennsylvania in relation to insurance for the protection of policyholders, creditors, and the public generally.

5. Defendant Bedivere is a domestic stock property and casualty insurance company that is organized pursuant to the laws of the Commonwealth of Pennsylvania and has its principal place of business at 1880 JFK Boulevard, Suite 801, Philadelphia, Pennsylvania 19103.

6. Defendant Bedivere is part of an insurance holding company system. Trebuchet US Holdings, Inc. ("Trebuchet"), a Delaware company, is the 100% owner and sole shareholder of Bedivere.

7. Defendant Bedivere is authorized to write the lines of business described in 40 P.S. §§ 382(b)(1)-(3) and (c)(1)-(14).

8. Defendant Bedivere is, and at all material times has been, engaged in the lines of insurance described in Paragraph 7, *supra*.

9. Defendant Bedivere is, and at all material times has been, subject to examination by and to the jurisdiction of the Commissioner.

BACKGROUND

10. In December of 2020, the Department issued an order approving the merger of The Employer's Fire Insurance Company, a Pennsylvania domestic stock property insurance company, Lamorak Insurance Company (formerly OneBeacon America Insurance Company) ("Lamorak"), a Pennsylvania domestic stock casualty insurance company, and Potomac Insurance Company, a Pennsylvania domestic stock casualty insurance company with and into Bedivere. The filing was made under Article XIV of The Insurance Company Law of 1921 (40 P.S. §§ 991.1401—991.1413). A true and correct copy of the 2020 Order is attached as Exhibit 1 and incorporated herein by reference.

11. Defendant Bedivere was formerly known as "One Beacon Insurance Company." One Beacon Insurance Company was acquired by Trebuchet, as approved by an Order issued by the Commissioner on December 23, 2014 (ID-RC-14-17).

12. Pursuant to that transaction, certain business of One Beacon Insurance Company, consisting of the run-off of certain property and casualty claims (the

majority of which involved asbestos and environmental liabilities), along with One Beacon Insurance Company's then-existing assets, reserves and capital relating thereto (the "Runoff Business"), was acquired by Trebuchet, a wholly-owned subsidiary of Armour Group Holdings Limited ("Armour").

13. In connection with the acquisition, the Commissioner issued an Order placing certain restrictions on the company's operations. A true and correct copy of Order ID-RC-14-17 is attached as Exhibit 2 and incorporated herein by reference.

14. During the course of the continued run-off, Bedivere's assets and liabilities have reached the point that, taking into account administrative expenses, continued run-off under the supervision of the Commissioner is no longer feasible.

15. On February 4, 2021, the United States District Court for the Southern District of New York entered an Opinion and Order in *Olin Corp. v. Lamorak Insurance Company* (2021 WL 396781) ruling against Lamorak (84-CV-1968) in the principal amount of $25,177,789, plus prejudgment interest. *See* Exhibit 3.

16. Subsequently, on February 12, 2021, the court entered judgment against Lamorak for $49,346,803, reflecting the principal amount adjudicated against Lamorak (as set forth in paragraph 15), plus prejudgment interest of $24,169,014. *See* Exhibit 4. Consequently, the total liability of Lamorak to the Plaintiff is $49,346,803 (subject to Lamorak's right of appeal).

17. As fully detailed below, Bedivere filed its Annual Statement and Risk-based capital report on March 1, 2021, indicating a negative surplus and mandatory control level risk-based capital.

18. Accordingly, the Department requested that Defendant Bedivere consent to liquidation and Defendant Bedivere has agreed.

GROUNDS FOR LIQUIDATION

Consent

19. Paragraphs 1 through 18 above, are incorporated herein by reference.

20. Under 40 P.S. §§ 221.14, 221.19 and 221.20(b), an order of liquidation may be entered upon written consent of the insurer if:

> The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities specified in section 502 [40 P.S. § 221.2 (relating to Persons covered)] requested or consent to rehabilitation under this article.

40 P.S. § 221.14(12) (order of rehabilitation may be issued based upon consent); 40 P.S. § 221.19 (order of liquidation may be issued on the same grounds as order of rehabilitation); 40 P.S. § 221.20(b) (liquidation orders issued pursuant to written consent of the insurer).

21. On February 25, 2021, the Board of Directors of Bedivere unanimously consented to the entry of an Order of Liquidation. A true and correct

copy of the Unanimous Consent of the Board of Directors is attached as Exhibit 5 and incorporated herein by reference.

22. On February 25, 2021, Trebuchet, the sole shareholder of Bedivere consented to entry of an Order of Liquidation. A true and correct copy of the Certificate of the Secretary evidencing the Resolution of Shareholders is attached as Exhibit 6 and incorporated herein by reference.

23. On February 25, 2021, pursuant to the Unanimous Consent of the Board of Directors of Defendant Bedivere and the consent of Trebuchet, Bryan T. Enos, President of Bedivere, executed a Consent to Entry of Order of Liquidation waiving Defendant Bedivere's right to a hearing under 40 P.S. § 221.20(b). A true and correct copy of the Consent to Entry of Order of Liquidation is attached as Exhibit 7 and incorporated herein by reference.

24. The consents of the Board of Directors of Defendant Bedivere and of its sole shareholder, Trebuchet, provide independent and sufficient grounds for entry of an Order of Liquidation. (*See* paragraph 20, *supra*)

Insolvency

25. Paragraphs 1 through 24 above are incorporated herein by reference.

26. Under 40 P.S. §§ 221.14, 221.19 and 221.20(b), an order of liquidation may be entered if the insurer is insolvent. 40 P.S. § 221.14(1) (order of rehabilitation

may be issued based upon insurer's insolvency); 40 P.S. § 221.19 (order of liquidation may be issued on the same grounds as order of rehabilitation).

27. Under Section 503 of Article V, 40 P.S. § 221.3, an insurer is insolvent if its admitted assets do not exceed its liabilities plus the greater of its capital and surplus required by law or its authorized and issued capital stock. 40 P.S. § 221.3.

28. Under 40 P.S. § 386(c), Defendant Bedivere's minimum required capital and surplus is $3,525,000.

29. Under 40 P.S. § 443(a), Defendant Bedivere is required to file annual and quarterly statements of its financial condition with the Commissioner.

30. On or about March 1, 2021, Defendant Bedivere filed its annual financial statement for the year ended December 31, 2020 ("2020 Annual Statement") with the Commissioner. True and correct copies of pages 1-3 of Bedivere's 2020 Annual Statement are attached as Exhibit 8 to this petition and incorporated herein by reference.

31. Defendant Bedivere's officers personally attested that its 2020 Annual Statement was a "full and true statement" of "all of the assets and liabilities and of the condition and affairs" of Bedivere. *See* Exhibit 8, (2020 Annual Statement, p. 1).

32. As of December 31, 2020, Defendant Bedivere's liabilities, plus its authorized and issued capital stock, exceeded its admitted assets by almost $ 282 million:

	2020 Annual Statement
Admitted Assets	$300,973,189
Liabilities	$578,458,453
Authorized and Issued Capital Stock	$4,200,000
Liabilities + Authorized and Issued Capital Stock	$582,658,453
Total Insolvency (line 1 – line 4)	($281,685,264)
(Admitted Assets minus sum of Liabilities and Authorized and Issued Capital Stock)	

33. Under Section 503 of Article V, Defendant Bedivere is statutorily insolvent. *See* 40 P.S. § 221.3 (definition of "insolvency"). As Defendant Bedivere has admitted in its 2020 Annual Statement, its admitted assets do not exceed its liabilities plus its authorized and issued capital stock. Bedivere's insolvency provides an independent and sufficient ground for the entry of an Order for Liquidation. (*See* paragraph 26, *supra*)

Risk-based Capital

34. Paragraphs 1 through X, above, are incorporated herein by reference.

35. Risk-based capital ("RBC") is a tool developed by the National Association of Insurance Commissioners to assist state insurance regulators in

identifying insurers in a weak or deteriorating capital position and to authorize regulatory action based solely on RBC results to avoid or minimize the impact of insolvencies.

36. Under 40 P.S. § 221.2-A, every domestic insurer must submit to the Commissioner a report of its RBC levels, as of the end of the immediately preceding calendar year, on or before March 1 of each year.

37. Under 40 P.S. § 221.9-A(2), the filing of an RBC report that indicates that an insurer's total adjusted capital is less than its mandatory control level RBC provides an independent and sufficient basis for the entry of an order of liquidation. 40 P.S. § 221.1-A (definition of "mandatory control level event"); 40 P.S. § 221.9-A(2)(mandatory control level event "shall be deemed sufficient grounds" for entry of order of rehabilitation under 40 P.S. § 221.14); 40 P.S. § 221.19 (order of liquidation may be issued on same grounds as order of rehabilitation).

38. On or about March 1, 2021, Defendant Bedivere filed an RBC report with the Department for the year ending December 31, 2020. True and correct copies of pages PR001 and PR034 of Bedivere's RBC report are respectively attached as Exhibits 9 and 10 to this petition and are incorporated herein by reference.

39. Defendant Bedivere's 2020 RBC report indicated that its total adjusted capital of ($277,485,264) was less than its mandatory control level RBC of $62,134,019 the occurrence of a mandatory control level event. *See* Exhibit 10.

40. Defendant Bedivere's officers personally represented that its 2020 RBC Report was a "true and fair representation of the company's affairs and has been completed in accordance with the NAIC instructions according to the best of their information, knowledge and belief." *See* Exhibit 9.

41. Defendant Bedivere's filing of its 2020 RBC Report indicating the occurrence of a mandatory control level event provides independent and sufficient grounds for the entry of an Order of Liquidation. *See* 40 P.S. § 221.9-A (insurer at mandatory control level provides sufficient ground for rehabilitation under § 221.14) and 40 P.S. § 221.19 (order of liquidation may be issued on the same grounds as order of rehabilitation).

RELIEF

WHEREFORE, Plaintiff, Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, respectfully requests that this Honorable Court enter the attached Order of Liquidation.

Respectfully submitted,

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Insurance Commissioner of the
Commonwealth of Pennsylvania

DATED: March 2, 2021

EXHIBIT 1

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

In Re:	:	Pursuant to Sections 1401, 1402,
	:	and 1403 of the Insurance
Application of Brad S. Huntington and	:	Holding Companies Act, Article
John C. Williams Requesting Exemption	:	XIV of the Insurance Company
from the Requirements of 40 P.S.	:	Law of 1921, Act of May 17, 1921,
§991.1402 for the Mergers of The	:	P.L. 682, as amended, 40 P.S.
Employers' Fire Insurance Company,	:	§§991.1401, 991.1402, and
Lamorak Insurance Company and	:	991.1403
Potomac Insurance Company with and	:	
into Bedivere Insurance Company	:	Order No. ID-RC-20-20

DECISION AND ORDER

AND NOW, on this __4th__ day of December 2020, Melissa Greiner, Deputy Insurance Commissioner of the Commonwealth of Pennsylvania ("Deputy Commissioner"), hereby makes the following Decision and Order:

Pursuant to the 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 Deputy Commissioner hereby makes the following findings of fact:

FINDINGS OF FACT

Identity of the Parties

1. The Employers' Fire Insurance Company ("EFIC") is a domestic stock property insurance company organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania.

2. Lamorak Insurance Company ("Lamorak") is a domestic stock casualty insurance company organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania.

3. Potomac Insurance Company ("Potomac") is a domestic stock casualty insurance company organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania.

4. Bedivere Insurance Company ("Bedivere") is a domestic stock casualty insurance company organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania. Bedivere currently directly holds 100% of the issued and outstanding stock of EFIC and Lamorak.

5. Trebuchet US Holdings, Inc. ("Trebuchet") is a business corporation organized pursuant to the laws of Delaware with its principal place of business in Philadelphia, Pennsylvania. Trebuchet currently directly holds 100% of the issued and outstanding stock of Bedivere and Potomac.

6. Brad S. Huntington ("Mr. Huntington") is an individual with his primary business address in Philadelphia, Pennsylvania. Mr. Huntington currently indirectly controls approximately 58.54% of the issued and outstanding stock of Trebuchet.

7. John C. Williams ("Mr. Williams") is an individual with his primary business address in Philadelphia, Pennsylvania. Mr. Williams currently indirectly controls approximately 39.02% of the issued and outstanding stock of Trebuchet.

8. Mr. Huntington and Mr. Williams are currently the sole ultimate controlling persons of Bedivere, EFIC, Lamorak and Potomac.

Filing of the Application

9. On October 1, 2020, the Insurance Department of the Commonwealth of Pennsylvania ("Department") received an initial request (which together with all material received subsequently is collectively referenced as "Application") from Mr. Huntington and Mr. Williams for approval to merge EFIC, Lamorak and Potomac with and into Bedivere with Bedivere being the survivor (the "Mergers").

10. The 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. ("Insurance Holding Companies Act"), provides that all mergers or other acquisitions of control of domestic insurers must be filed with the Department for approval or disapproval.

11. The Application was filed pursuant to Section 1402 of the Insurance Holding Companies Act.

12. Section 1402(g) of the Insurance Holding Companies Act provides for the exemption from the requirements of Section 1402(b) if the transaction:

    a. does not have the effect of changing or influencing the control of a domestic insurer, or

    b. is otherwise not comprehended within the purposes of the section.

Department Procedures

13. On October 17, 2020, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by Mr. Huntington and Mr. Williams and such notice invited interested persons to submit comments to the Department regarding the Application for thirty (30) days following the date of the publication ("Comment Period").

14. The Department received no comments regarding the Application during the Comment Period.

The Transaction

15. As described in the Application, an Agreement and Plan of Merger ("Merger Agreement") was adopted by the board of directors of Bedivere and Potomac on August 6, 2020.

16. As described in the Application, the Merger Agreement was approved by Trebuchet, the sole shareholder of Bedivere and Potomac, on August 6, 2020.

17. The Merger Agreement provides for EFIC, Lamorak and Potomac to merge with and into Bedivere, with Bedivere being the surviving corporation in each of the Mergers.

18. As described in the Application, upon the effective date of the Mergers, Bedivere shall acquire all of the assets of EFIC, Lamorak and Potomac and assume all of the debts and other liabilities of EFIC, Lamorak and Potomac.

19. As described in the Application, the articles of incorporation and by-laws of Bedivere in effect immediately prior to the Mergers shall be the articles of incorporation and by-laws of Bedivere upon the effective date of the Mergers.

20. As described in the Application, the members of the board of directors and the officers of Bedivere prior to the Mergers shall be the members of the board of directors and the officers of Bedivere after the Mergers.

21. As described in the Application, each share of EFIC, Lamorak and Potomac common stock issued and outstanding immediately prior to the effective date of the Mergers shall be cancelled and extinguished without consideration.

22. As described in the Application, Trebuchet would continue to own 100% of the issued and outstanding stock of Bedivere upon completion of the Mergers, and there would be no change to the ultimate controlling persons.

23. The Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner") has delegated to the Deputy Commissioner the authority to approve an application that would not have the effect of changing or influencing the control of a domestic insurer.

24. The Deputy Commissioner finds that the transaction described in the Application will not result in a change of control of a Pennsylvania domiciled insurer.

25. 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 mergers of EFIC, Lamorak and Potomac with and into Bedivere.

2. Under Section 1402(g) of the Insurance Holding Companies Act, the Department shall exempt a merger from the requirements of Section 1402 if the merger does not have the effect of changing or influencing the control of a domestic insurer.

3. Pursuant to Section 1402(g) of the Insurance Holding Companies Act, the Deputy Commissioner concludes that the proposed mergers do not change the ultimate controlling persons of the parties to the mergers and, therefore, is exempt from the requirements of the Insurance Holding Companies Act.

4. The Application was properly filed pursuant to and in accordance with Section 1402(g) of the Insurance Holding Companies Act.

5. The Application satisfies the requirements of the Insurance Holding Companies Act.

6. 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
Application of Brad S. Huntington and	:	Holding Companies Act, Article
John C. Williams Requesting Exemption	:	XIV of the Insurance Company
from the Requirements of 40 P.S.	:	Law of 1921, Act of May 17, 1921,
§991.1402 for the Mergers of The	:	P.L. 682, as amended, 40 P.S.
Employers' Fire Insurance Company,	:	§§991.1401, 991.1402, and
Lamorak Insurance Company and	:	991.1403
Potomac Insurance Company with and	:	
into Bedivere Insurance Company	:	Order No. ID-RC-20-20

ORDER

Upon consideration of the foregoing, the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania hereby makes the following Order:

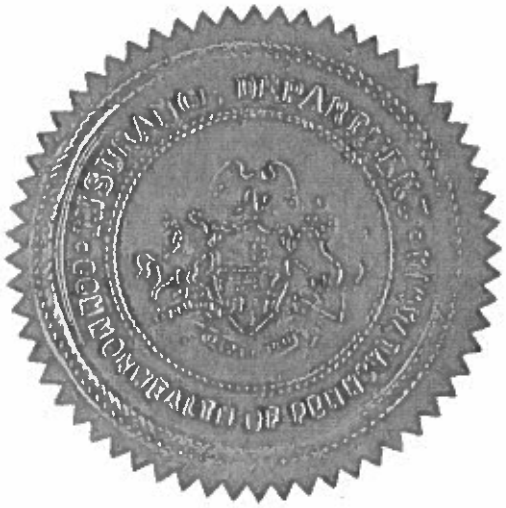
An approving determination for the application of Brad S. Huntington ("Mr. Huntington") and John C. Williams ("Mr. Williams") requesting exemption from the requirements of 40 P.S. §991.1402 for the mergers of The Employers' Fire Insurance Company, Lamorak Insurance Company and Potomac Insurance Company with and into Bedivere Insurance Company, is hereby granted subject to this Order and the following conditions:

1. Mr. Huntington and Mr. Williams shall submit any changes made to the draft Plan of Merger provided with the Application to the Deputy Insurance Commissioner prior to the execution of the changed document.

2. Mr. Huntington and Mr. Williams shall file a copy of the Statement of Merger, as filed with and stamped as received by the Pennsylvania Department of State, with the Deputy Insurance Commissioner within ten (10) days of receipt from the Pennsylvania Department of State.

3. This transaction may be recorded as effective for accounting purposes as of the first day of the calendar quarter in which the merger is consummated.

This Order is effective immediately and valid for one (1) year from the date of signature, provided there are no material changes to the representations provided in the Application.



MELISSA GREINER
Deputy Insurance Commissioner
Office of Corporate and Financial Regulation

EXHIBIT 2

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, as
OneBeacon Insurance Company,	:	amended, 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 report[2] 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,

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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

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[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 §§ 35.27-28[4] 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."

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[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, as
OneBeacon Insurance Company,	:	amended, 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

EXHIBIT 3

On Reconsideration in Part OLIN CORPORATION, Plaintiff, v. LAMORAK INSURANCE COMPANY, Defendant., S.D.N.Y., February 12, 2021

2021 WL 396781
Only the Westlaw citation is currently available.
United States District Court, S.D. New York.

OLIN CORPORATION, Plaintiff,
v.
LAMORAK INSURANCE COMPANY, Defendant.

84-cv-1968 (JSR)
|
Signed 02/04/2021

Attorneys and Law Firms

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OPINION & ORDER

JED S. RAKOFF, U.S.D.J.

*1 This is the latest and, Lord willing, last chapter of a decades-long insurance coverage litigation dispute between plaintiff Olin Corporation ("Olin") and its many insurers. The case has consumed an inordinate amount of time and effort on the part of no fewer than three district judges (two of whom are now deceased, apparently from other causes), not to mention numerous judges of the Court of Appeals.

The remaining dispute concerns the amount of damages to which Olin is entitled from the sole remaining defendant Lamorak Insurance Company ("Lamorak") in connection with the single site -- the Crab Orchard site -- that these two parties largely carved out of a settlement they entered into in 2018 (the "2018 Settlement"). Under the 2018 Settlement, Olin agreed to release its claims against Lamorak as to all but one of the remaining sites in exchange for $120 million. As to the Crab Orchard site, Olin agreed to release its claims for the $1,289,338 Olin had incurred through December 31, 2017, but expressly carved out, as relevant here, (1) costs incurred by Olin on or after January 1, 2018, and (2) any costs "whenever incurred" by General Dynamics Ordnance & Tactical Systems ("GD-OTS"), the successor owner of certain of Olin's Crab Orchard operations (collectively, the "Carve Out Claims"). Olin and Lamorak now cross-move for summary judgment on the Carve Out Claims.

Background

"The background of this interminable litigation has been recounted in countless orders, memoranda, and opinions issued over the past several decades, familiarity with all of which is here, of course, presumed." Olin Corp. v. Lamorak Ins. Co., 332 F. Supp. 3d 818, 829 (S.D.N.Y. 2018).[1] The following facts, undisputed except as otherwise noted, are particularly relevant for present purposes.

I. Factual Background

Olin, a manufacturing company, brought this action over three decades ago seeking insurance coverage for environmental contamination at certain of its manufacturing sites throughout the United States. See Olin Corporation's Counterstatement of Undisputed Material Facts in Opposition to Lamorak Insurance Company's Motion for Summary Judgment ("Olin Counter to Lamorak's MSJ 56.1 Statement"), Dkt. No. 2426, at ¶ 1. Because of the volume of claims and locations involved, the judges who previously presided over this action "chose to address coverage on a site-by-site basis." Olin Corp. v. OneBeacon Am. Ins. Co. ("Olin IV"), 864 F.3d 130 (2d Cir. 2017).

A. The Lamorak Policies

The Second Circuit's prior decisions in this case set forth the general mechanics of Olin's insurance scheme:

> Olin's insurance policies are "occurrence policies," meaning that they are "triggered by occurrence of the property damage during the policy period." Olin Corp. v. Ins. Co. of North America ("Olin I"), 221 F.3d 307, 321 (2d Cir. 2000). "[P]roperty damage occurs as long as contamination continues to increase or spread," and includes not only "contamination ... based on active pollution," but also "the passive migration of contamination into the soil and groundwater." Olin Corp. v. Certain Underwriters at Lloyd's London ("Olin II"), 468 F.3d 120, 131 (2d Cir. 2006). Accordingly, pollution at any individual manufacturing site can trigger coverage under a large number of Olin's policies. Moreover, insurers whose policies contains "Condition C" (discussed below) must indemnify Olin up to the limits of their policies for all property damage that occurred not only during, but also after, the termination of those policies. See Olin Corp. v. American Home Assurance Co. ("Olin III"), 704 F.3d 89, 100 (2d Cir. 2012).

*2 Olin Corp. v. Lamorak Ins. Co., No. 84-cv-1968, 2018 WL 1901634, at *3 (S.D.N.Y. Apr. 18, 2018).

At issue in these motions are five Lamorak insurance policies, which together provide coverage of up to $27 million for each covered occurrence. Lamorak Insurance Company's Response to Olin Corporation's Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment and Lamorak's Counterstatement of Undisputed Material Facts ("Lamorak Counter to Olin's 56.1 Statement"), Dkt. No. 2439, ¶ 34. Each of these policies is an "excess" or "umbrella" policy that attaches at various points, including insurance owed above an underlying primary policy limit of $300,000. Id. ¶ 29. The latest of these policies expired on January 1, 1972. Id. ¶ 33.

Each of the policies contains a "Condition C" clause, which, as discussed below, has already been the subject of extensive litigation. A Condition C clause contains two provisions: (1) a Prior Insurance Provision; and (2) a Continuing Coverage Provision:

> Prior Insurance Provision: It is agreed that if any loss covered hereunder is also covered in whole or in part under any other excess policy issued to the Insured prior to the inception date hereof, the limit of liability hereon ... shall be reduced by any amounts due to the Insured on account of such loss under such prior insurance.
>
> Continuing Coverage Provision: Subject to the foregoing paragraph and to all the other terms and conditions of this Policy in the event that personal injury or property damage arising out of an occurrence covered hereunder is continuing at the time of termination of this Policy, the Company will continue to protect the Insured for liability in respect of such personal injury or property damage without payment of additional premium.

Id. ¶ 43.

B. The Prior Settlements

Starting in 2005, Olin entered into "global settlements" with its primary insurer Insurance Company of North America ("INA"), and with its excess insurers, London Market Insurers ("London"), Continental Casualty Company ("Continental"), General Reinsurance Corporation ("GenRe"), Federal Insurance Company ("Federal Insurance"), Fireman's Fund Insurance Company ("Fireman's Fund"), and Munich Reinsurance America, Inc. ("AmRe") Olin Counter to Lamorak's MSJ 56.1 Statement ¶¶ 3-5. These settlements released these insurers of alleged liabilities as to hundreds of sites, many, but not all, of which liabilities had been the subject of ongoing litigation. Id. By 2011, the only insurer that had not settled was Lamorak. See Olin, 2018 WL 1901634, at *5.

C. The Crab Orchard Site

One of the sites covered under some of these settlement agreements was the Crab Orchard Site, located near Marion, Illinois. Lamorak Counter to Olin's 56.1 Statement ¶ 3. From 1956 to 1996, Olin leased portions of the Crab Orchard site. Id. ¶ 2 There, Olin had two lines of business: explosives manufacturing and ordnance manufacturing. Id. In 1963, Olin sold off its explosives manufacturing business. Id. ¶ 9. In 1996, Olin spun off its ordnance manufacturing business, including the operations at Crab Orchard, to Primex Technologies, Inc. ("Primex"). Lamorak Insurance Company's Response to Olin Corporation's Additional Material Facts in Support of its Opposition to Lamorak's Motion for Summary

Judgment ("Lamorak MSJ Reply 56.1 Statement"), Dkt. No. 2444, ¶ 192. As part of that deal, Primex assumed liabilities arising out of that business, and Olin putatively assigned to Primex its insurance coverage with respect to Olin's historical operations at those sites. Id. ¶¶ 196-197; see also Declaration of Ralph J. Luongo in Support of Lamorak Insurance Company's Motion for Summary Judgment ("Luongo Decl."), Dkt. No. 2404, Ex. HH (the "Spin Agreement"), §§ 1(A)-(b); id., Ex. GG (the "Distribution Agreement"), § 5.02. Olin also assumed responsibility for litigating on behalf of Primex insurance claims that related to the Crab Orchard liabilities that Primex had assumed. Lamorak MSJ Reply 56.1 Statement ¶ 198. In 2001, General Dynamics acquired the assets and liabilities of Primex and changed Primex's name to "GD-OTS." Id. ¶¶ 199-201.

*3 In 1987, the Crab Orchard site was added to the National Priority List ("NPL") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA"). Lamorak Counter to Olin's 56.1 Statement ¶ 48. The NPL "identifies polluted or potentially polluted sites for purposes of CERCLA enforcement" by the United States Environmental Protection Agency ("EPA"). Olin IV, 864 F.3d at 136. The Crab Orchard site was divided into two "operable units" relevant to these motions: (1) the Additional and Uncharacterized Sites Operable Unit (the "AUS OU") and (2) the Miscellaneous Operable Unit (the "MISCA OU"). Lamorak Counter to Olin's 56.1 Statement ¶¶ 57, 60. An operable unit is a discrete area identified by a government agency as requiring environmental investigation or remediation. See 40 C.F.R. § 307.14.

In December 2002, GD-OTS executed an administrative order on consent (an "AOC") with the EPA, among other governmental entities. See Declaration of Craig C. Martin in Support of Olin Corporation's Motion for Summary Judgment ("Martin Support Decl."), Dkt. No. 2414, Ex. 26 (Consent Order). The AOC required GD-OTS to, among other things, perform a remedial investigation and feasibility study for the AUS OU and to pay past and future response and oversight costs to regulatory agencies. See id. ¶¶ 1, 85-93. Olin contends that GD-OTS has since incurred nearly $50 million in costs in connection with its AOC obligations at Crab Orchard. Lamorak Counter to Olin's 56.1 Statement ¶ 91. As for the MISCA OU, the United States brought litigation against GD-OTS in 2011, seeking reimbursement for over $8.9 million in costs that the Government had incurred for remedial activities at the MISCA OU. GD-OTS settled the claim for $1,614,812.50. Id. ¶¶ 173-178.

In 2004, GD-OTS notified Olin that it had "accepted responsibility for liabilities pertaining to Olin's ordnance and aerospace operations with respect to the AUS OU." In that letter, GD-OTS also notified Olin "of [Olin's] potential responsibility for certain costs related to the operations of Olin's industrial explosives division at the AUS OU," and explained that it believed it was "entitled to insurance coverage for its liabilities with respect to the AUS OU." Olin Corporation's Response to Lamorak Insurance Company's Counterstatement of Undisputed Material Facts Regarding Olin's Motion for Summary Judgment ("Olin Reply 56.1 Statement"), Dkt. No. 2454, ¶ 20.

Between 2007 and 2009, after Olin settled with INA and London, GD-OTS demanded a portion of the proceeds of each settlement as the current owner of the operations at certain of the settled sites. Lamorak MSJ Reply 56.1 Statement ¶¶ 209, 212. Olin and GD-OTS disputed, among other things, the "appropriate method for calculating the amount of GD-OTS' share" of the INA and London settlement proceeds. Olin Counter to Lamorak's MSJ 56.1 Statement ¶¶ 81, 91; Luongo Decl. Ex. FF (the "2008 Olin/GD-OTS Settlement"); id., Ex. OO (the "2009 Olin/GD-OTS Settlement," and collectively the "Olin/GD-OTS Settlement Agreements"). To settle that dispute, Olin agreed to pay GD-OTS $450,000 of the proceeds of the 2007 settlement with INA and $1.45 million of the proceeds of the 2009 settlement with London. See Olin Counter to Lamorak's MSJ 56.1 Statement ¶ 162.

Also in 2009, GD-OTS made a formal demand on Olin, as a potentially responsible party ("PRP"), for reimbursement for the roughly $26 million that it had incurred as of that date. Olin Reply 56.1 Statement ¶ 23. In its demand letter, GD-OTS explained that "[b]ecause any litigation that may be initiated in the future by GD-OTS may include claims under Section 107 of the [CERCLA] under which Olin is jointly and severally liable, this cost demand is for all of GD-OTS's response costs." Id. More recently, Olin, GD-OTS, and other PRPs participated in mediation regarding the liability and allocation of costs at Crab Orchard. Lamorak Counter to Olin's MSJ 56.1 Statement ¶ 158. Olin contends that it has itself incurred approximately $800,000 in costs since January 1, 2018 in connection with this mediation. Id. ¶¶ 278-80.

II. Procedural History

*4 The twists and turns of this litigation are central to the present motions for summary judgment. Accordingly, the

Court reviews the relevant aspects of the action's procedural history.

D. 2013 Trial before Judge Griesa on the Five Sites

This case was originally before Judge Sand and then was reassigned in 1997 to Judge Griesa. See Olin, 2018 WL 1901634, at *2; Dkt. No. 679 (notice of reassignment to Judge Griesa). In 2013, Olin and Lamorak went to trial over Lamorak's liability at five particular sites, the so-called "Five Sites." Olin Counter to Lamorak's MSJ 56.1 Statement ¶ 12.[2] After Lamorak's liability as to the Five Sites was established, Judge Griesa entered two judgments for approximately $87 million, inclusive of prejudgment interest (the "Five Sites Judgment"). Id. ¶ 19.

The Court arrived at the $87 million figure by resolving two legal questions regarding the meaning of the Condition C clause. The first question was whether, and if so how and to what extent, Lamorak could offset its liability to account for the money that Olin had already recovered from the other settling insurers. See Olin IV, 864 F.3d at 140. Lamorak sought a ruling that the Prior Insurance Provision of Condition C requires that the occurrence limits of the Lamorak policies be reduced by the occurrence limits of any prior policy in the same layer of coverage triggered by the same occurrence, regardless of which insurer issued the earlier policy or policies. Id. The Court denied Lamorak's motion, ruling that the Prior Insurance Provision applies only to other excess policies issued by the same insurer, "not to other excess policies issued by miscellaneous possible insurers." Id.

The second question was whether to calculate Lamorak's liability through a "pro rata" or "all sums" approach. Because of the progressive nature of environmental degradation, Olin's claims theoretically implicate decades of insurance coverage. As a result, the Court had to determine whether and how responsibility should be parceled out among the different insurance policies. One approach -- the pro rata approach -- divides the total property damage into equal annual shares for each year in which such damage took place; this "annual share is then treated as the total property damage attributable to that occurrence for that year, and the insurer providing coverage for that year is then responsible for indemnifying an insured only to the extent of its contractual liability for such deemed property damage." Id. at 138. Under an all sums approach, by contrast, each policy is potentially responsible for all of the loss (subject to its attachment point and occurrence limit) if the policyholder chooses to allocate the loss to that policy. Relying on prior rulings issued in this case by the Second Circuit, the Court adopted a pro rata allocation of liability. See Olin, 2018 WL 1901634, at *3.

E. The Second Circuit's Decision in Olin IV

Lamorak and Olin each appealed. See Dkt. Nos. 1835 & 1836. On July 18, 2017, the Second Circuit vacated the Five Sites Judgment. It first held that, in light of an intervening decision by the New York Court of Appeals, Condition C requires an application of an all sums allocation that permits Olin to "collect its total liability under any policy in effect during the periods that the damage occurred up to the policy limits." Olin IV, 864 F.3d at 140 (citing In re Viking Pump, Inc., 27 N.Y.3d 244, 52 N.E.3d 1144 (2016)). As for the Prior Insurance Provision, the Second Circuit held that Condition C allows Lamorak "to offset its indemnification obligations by amounts already paid to cover the loss by another insurer in the same coverage tier, so long as Lamorak "prove[s] its entitlement" to that offset. Id. at 151. Recognizing, however, that the record on appeal was "devoid of any information about these settlements," the Second Circuit remanded for this Court to "enhance the record and issue a decision in the first instance as to the effect of Olin's prior global settlement[s]." Id. at 150-51.

F. Post-Olin IV Remand and Discovery

*5 Following remand, the case was reassigned to the undersigned in 2016. The Court's task was to (1) apply an all sums allocation that allowed Olin to seek indemnification from Lamorak for the full amount of damage incurred over the relevant period up to the policies' applicable limits; and (2) issue a decision in the first instance as to the effect on the judgment against Lamorak of Olin's prior "global settlement[s]" with its other insurers, specifically, by determining the amount of Olin's settlements that is "properly associated" with the claims arising from the Five Sites and subtracting that amount from Lamorak's liability. See Olin IV, 864 F.3d at 135 n.1, 150.

To that end, on October 12, 2017, this Court entered a case management plan that "control[led] two separate issues: (1) the remand from the Second Circuit for the Five Remand Sites ...; and (2) the remaining sites that are ripe other than the Remanded Sites." Dkt. No. 1999. The case management plan stated "that all remaining issues in

this case between Olin and Lamorak be ready for a final pretrial conference on April 6, 2018." Id. Accordingly, on October 16, 2017, Olin filed its Fourth Amended (and now-operative) complaint, listing not only the "Five Remand Sites" but also the "Fifteen Remaining Sites,"[3] including Crab Orchard, which had been identified in prior pleadings but had not yet been the subject of litigation. Olin Counter to Lamorak's MSJ 56.1 Statement ¶ 37.

What then happened during that discovery process is at the center of Lamorak's motion for summary judgment. See infra Part I. In particular, Lamorak accuses Olin of engaging in spoliation and perjury in a "coordinated act of litigation deception" to cover up the existence of the Olin/GD-OTS Settlement Agreements. According to Lamorak, those agreements show that Olin allocated proceeds from the prior global settlements to particular sites in a manner that would have been relevant to at least one of the Court's tasks on remand. Olin, for its part, strenuously disputes that characterization of the discovery process and the settlement agreements.

What is undisputed, however, is that the discovery process, fairly or not, did not uncover the Olin/GD-OTS Settlement Agreements. Nor did it bring forth any other evidence that Olin's prior settlement recoveries had been allocated to any of the Five Sites or the Fifteen Remaining Sites. Olin Counter to Lamorak's MSJ 56.1 Statement ¶ 124. Instead, the produced settlement agreements indicated that they generally released the settling insurers of liability as to hundreds of sites, including the Five Remand Sites and the Fifteen Remaining Sites. Id. ¶ 58. In addition, Olin's witnesses all testified that the settlement payments went into Olin's general corporate account, rather than site-specific accounts. Olin, 2018 WL 1901634, at *6.

G. The Court's April 18, 2018 Decision on the Five Sites

Following discovery, Olin and Lamorak moved for summary judgment regarding the amount of Lamorak's liability for the Five Sites. The parties specifically briefed the "effect of Olin's prior global settlement with its other insurers." Id. at *1. In an April 18, 2018 opinion, the Court observed that Lamorak "did not even try to argue in its motion for summary judgment that any amount of the settlement agreements could be properly allocated to the Five Sites." See id. at *10. Accordingly, the Court found that Lamorak had failed to meet its burden of proving how much of the prior global settlements was properly attributable to the Five Sites. Id. at *6-7, 9.

*6 Still, rather than hold that no setoff was permissible, the Court adopted a multi-step approach that approximated how "much the settled insurers paid in exchange for releases from any potential indemnification claims relating to the Five Sites." Id. at *12. Relying on the insight that the more sites that were released under a settlement agreement, the less of that settlement agreement could be properly allocated to any one site, the Court crafted a setoff that involved dividing the settled policy limits at the Five Sites by the settled policy limits at all the settled sites. Id. at *13. Applying this setoff to the relevant settlements, the Court reduced Olin's recovery by $2,664,486.26, resulting in an award of $55,065,203.18 (exclusive of pre- or post-judgment interest). Id. at *13, 22.

H. The Court's July 17, 2018 Decision on the Fifteen Remaining Sites

With the Five Sites litigation resolved, the parties turned their attention to the Fifteen Remaining Sites. Olin moved for summary judgment in its favor as to the Fifteen Remaining Sites, including Crab Orchard. Olin, 332 F. Supp. 3d at 852. In its Rule 26(a)(1) disclosure, Olin "estimate[d] that it ha[d] incurred" $1.65 million in "Approximate Olin Costs through June 30, 2017 for Crab Orchard." Olin Counter to Lamorak's MPSJ 56.1 Statement ¶ 40. Olin did not present any claims for the GD-OTS costs.

On July 17, 2018, the Court granted summary judgement as to liability in favor of Olin at certain sites, including Crab Orchard, but found a genuine dispute as to Olin's damages. Olin, 332 F. Supp. 3d at 856. With respect to Crab Orchard, the Court observed: "[t]here is no dispute that property damage was occurring as a result of Olin's operations in 1970"; "that Olin did not expect or intend the damage at the site"; and "that Olin is liable at the site." Id. 852-53. The Court explained that Olin is liable at the site because the EPA, among other government agencies, "had ordered cleanup of [Crab Orchard] by Olin and other Potentially Responsible Parties alleged to have caused contamination." Id. The Court made no mention of GD-OTS.

I. The 2018 Settlement

A jury trial over the issue of damages commenced in August 2018. Olin Counter to Lamorak's MSJ 56.1 Statement ¶ 153. Shortly after the trial began, Olin and Lamorak settled all remaining claims, other than certain portions of Olin's Crab Orchard claim, in exchange for $120 million. Id. ¶¶ 306-307. As for Crab Orchard, the parties agreed that Olin was releasing Lamorak from its obligations, duties, and responsibilities for "the $1,289,338.00 Olin has incurred through December 31, 2017." But the settlement carved out not only (1) costs incurred by Olin on or after January 1, 2018 and (2) any costs "whenever incurred" that may be "allocated to Olin as part of the Crab Orchard site mediation or litigation process with GD-OTS," but also (3) any costs "whenever incurred" by GD-OTS "arising out of the former Olin/Primex operations at the Crab Orchard Site." See Luongo Decl. Ex. BBB (the "2018 Settlement"), §§ 9.A.i, ii. Under the 2018 Settlement, both parties "expressly reserve[d] all rights" and did not "release[e] any claims or defenses." Id. § 10.A. On October 11, 2018, this Court dismissed the settled claims but retained jurisdiction over the Carve Out Claims. Dkt. No. 2376

J. The Tolling Period and Present Litigation

Following the 2018 Settlement, the parties entered into a tolling agreement in an attempt to resolve the Carve Out Claims (the "Standstill Period"). Lamorak Counter to Olin's 56.1 Statement ¶ 202. Negotiations failed, however, and on April 1, 2020, the Court entered another case management plan that governed discovery over the Carve Out Claims. See Dkt. No. 2385. During the course of this discovery, Olin produced -- for the first time -- the Olin/GD-OTS Settlement Agreements. See Olin Reply 56.1 Statement ¶ 98.

Discussion

*7 All of which brings us to the current dispute. Olin and Lamorak each move for summary judgment the extent of Lamorak's liability with respect to the Carve Out Claims.

Summary judgment is appropriate under Federal Rule of Civil Procedure 56(c) only "if the pleadings, depositions, answers to interrogatories on file, together with the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). "A genuine dispute exists where the evidence is such that a reasonable jury could decide in the nonmovant's favor." Walsh v. New York City Housing Auth., 828 F.3d 70, 74 (2d Cir. 2016). The moving party has the burden of demonstrating the absence of any genuine disputes of material fact. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). In determining whether summary judgment is appropriate, the court must resolve all ambiguities and draw all reasonable inferences against the movant. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). Where, as here, "there are cross motions for summary judgment, the Court must assess each of the motions and determine whether either party is entitled to judgment as a matter of law." Admiral Indem. Co. v. Travelers Cas. and Sur. Co. of America, 881 F. Supp. 2d 570, 574 (S.D.N.Y. 2012).

I. Lamorak's Motion for Summary Judgment

In its motion for summary judgment, Lamorak accuses Olin of wrongfully concealing the Olin/GD-OTS Settlement Agreements. Lamorak contends that these documents would have enabled the Court to determine how much of the prior global settlements were properly attributable to the Five Sites and the Fifteen Remaining Sites. To punish Olin for its "blatant abuse" of the litigation process, Lamorak asks the Court to order Olin to return to Lamorak the $1,289,338 it already paid for Olin's Crab Orchard past costs, with interest and related litigation fees and costs, and to deem Olin to have forfeited any claim for further coverage from Lamorak for the Carve Out Claims. Brief in Support of Lamorak Insurance Company's Motion for Summary Judgment ("Lamorak MSJ Mem."), Dkt. No. 2397, at 4. Formally, Lamorak seeks summary judgment as to its (never pleaded) affirmative defenses of partial rescission of the 2018 Settlement as to the Olin's past costs and coverage forfeiture as to the Carve Out Claims. It also asks the Court to impose sanctions under Federal Rule of Civil Procedure 37. Id. at 20.

A. Background

The immediate issue, then, is whether Olin committed litigation misconduct by intentionally suppressing

evidence of the Olin/GD-OTS Settlement Agreements. Answering that question requires a review of the discovery process. As mentioned above, following remand from the Second Circuit, the Court ordered separate discovery on the Five Sites, which do not include Crab Orchard, and the Fifteen Remaining Sites, which do. See Dkt. No. 1999. Accordingly, Lamorak made two sets of discovery requests, one relating to the Five Sites and another relating to the Fifteen Remaining Sites.

1. The Five Sites Discovery

The first set of document requests, propounded on October 16, 2017, related to "Remand Issues," which were defined as: "any and all issues that may fairly be the subject of discovery or trial as a result of the July 2017 decision by [Olin IV]." Olin Counter to Lamorak's MSJ 56.1 Statement ¶ 45. As relevant here, Lamorak asked Olin to produce:

> ***8** Document Request 11. Any and all documents and/or communications reflecting Olin's allocation to particular Sites, groups of sites or claims, or particular insurance policies of the funds demanded or received from any Settlement by any and all Insurers and any calculations supporting same.
>
> Document Request 12. All documents and communications that relate, pertain, or refer to any amounts received pursuant to any Settlement reached between Olin and any and all Insurers.

Id. ¶¶ 46, 48. The term "Sites" was defined in the requests as the Five Sites, and the term "Settlement" was defined to mean "any agreement Olin reached with any of its Insurers in connection with Olin's liability for contamination that relates, pertains, or refers to any of the Sites." Id. ¶ 48.

Olin objected to these requests "to the extent [they] seek[ ] information beyond the limited discovery permitted under" Olin IV. Lamorak MSJ Reply 56.1 Statement ¶¶ 242-45. Olin then produced the prior global settlement agreements and other documents. Id. ¶¶ 246-47. Among these other documents was Olin's general accounting ledger, which reflected the prior global settlements, but which was redacted to exclude information that did not relate to the Five Sites, including information about Olin's settlements with GD-OTS. Id. ¶ 247.

Lamorak also served deposition notices on Olin, seeking testimony on the remand issues. Luongo Decl., Exs. Y, Z, & AA. Lamorak's 30(b)(6) Deposition Notice for the remand issues defined "Sites" as "those locations identified in Olin's Second, Third and Fourth Amended Complaints." See Luongo Decl. Ex. AA. Olin again objected and explained that the depositions would not "cover information unrelated to the five Olin manufacturing sites subject to" the Olin IV decision, and would be limited to "reach only Settlement Agreements or Settlement Communications that concern the Five Sites." Luongo Decl. Ex. BB. Lamorak never challenged these limitations with the Court. Indeed, there is no evidence in the record before the Court that Lamorak ever challenged these limitations with Olin.

As the Court discussed in its April 2018 opinion, Olin's witnesses stated that the settlement payments went into Olin's general corporate account, rather than site-specific accounts. Olin, 2018 WL 1901634, at *3 (citing deposition testimony of Michael Mann, Stuart Roth, and George Pain). For example, Stuart Roth, former Senior Deputy Counsel and Vice President of Regulatory Audit, who was designated to testify "as to all other Settlement Agreements concerning the Five Sites," stated that "settlement monies that came into Olin ... went into the general treasury." Lamorak MSJ Reply 56.1 Statement ¶¶ 258, 260.

2. The Fifteen Remaining Sites Discovery

The second set of document requests, propounded on October 19, 2017, related to the Fifteen Remaining Sites. As relevant here, Lamorak asked Olin to produce:

> Document Request 25: All documents from [Olin's] insurance and/or corporate risk management department concerning Olin's insurance coverage for environmental contamination relating to the Sites.
>
> Document Request 31: All documents relating to, referring to or payment(s) from any other entity to Olin regarding environmental issues at the Sites, including but not limited to copies of any agreement(s), the basis for any such agreement(s), the allocation(s) utilized in such agreement(s), and the basis for such allocation(s) including Settlements with Olin's other Insurers.

***9** Olin Counter to Lamorak's MSJ 56.1 Statement ¶¶ 49, 51. Olin objected to both requests as violating the scope, proportionality, and importance limitations of Rule 26.

Lamorak MSJ Reply 56.1 Statement ¶¶ 277, 281. For Request No. 31, Olin objected to the terms "any other entity," "Olin's other insurers," and "Settlements" as overly broad, and limited those terms to "settlement agreements with Insurers" and "relevant [Potentially Responsible Party or 'PRP'] allocation agreements" at the Fifteen Remaining Sites. Id. ¶ 281. Again, there is no evidence that Lamorak challenged these objections or limitations in any way, and certainly not by raising them with the Court and asking for a ruling.

B. Analysis

1. Whether Lamorak's Motion is Procedurally Proper

As a threshold matter, Olin contends that, because Lamorak's claims for partial rescission and coverage forfeiture are unpleaded affirmative defenses, they are not properly before the Court. The Court disagrees. While Federal Rule of Civil Procedure 8(c) requires parties to raise affirmative defenses, such as rescission and coverage forfeiture, in the pleadings, "a district court may entertain unpleaded affirmative defenses at the summary judgment stage in the absence of undue prejudice to the plaintiff, bad faith or dilatory motive on the part of the defendant, futility, or undue delay of the proceedings." Rose v. AmSouth Bank of Florida, 391 F.3d 63, 65 (2d Cir. 2004). Although Olin suggests Lamorak's delay has deprived Olin of the opportunity to take discovery on "relevant evidence and witnesses," Plaintiff Olin Corporation's Memorandum of Law in Opposition to Lamorak Insurance Company's Motion for Summary Judgment ("Olin Opp. to Lamorak's MSJ"), Dkt. No. 2425, at 20, Olin does not identify what sort of evidence or witnesses it needs and lacks to effectively address Lamorak's motion. Nor does the Court find that Lamorak's delay in bringing these claims is the product of bad faith or dilatory motive. Accordingly, the Court will, in an exercise of discretion, "construe [Lamorak's] motion for summary judgment as a motion to amend [its] answer." Saks v. Franklin Covey Co., 316 F.3d 337, 350-51 (2d Cir. 2003).

2. Whether Lamorak is Entitled to Summary Judgment on the Affirmative Defenses

As noted, Lamorak seeks summary judgment on its rescission and coverage forfeiture defenses. Lamorak contends, and Olin does not dispute, that Lamorak must demonstrate five elements to prevail on its rescission claim: (1) a material misrepresentation or omission, (2) knowledge of its falsity, (3) intent to defraud, (4) reliance, and (5) damages. See Crigger v. Fahnestock & Co., 443 F.3d 230, 234 (2d Cir. 2006). The elements of coverage forfeiture are similar to and are largely encompassed by the elements of rescission, requiring a showing "that the statements in question were (1) false, (2) willfully made, and (3) material to the insurer's investigation of the claim." Mon Chong Loong Trading Corp. v. Travelers Excess & Surplus Lines Co., No. 12-cv-6509 (CM), 2014 WL 406542, at *1 (S.D.N.Y. Jan. 30, 2014). In addition, "proof of intent to defraud is a necessary element of the defense of fraud or misrepresentation by an insured in a proof of loss statement." Id. To earn summary judgment on either defense, then, Lamorak must establish, at a minimum, that no reasonable trier of fact could infer anything other than intent to defraud by Olin.

Lamorak fails to make that showing. For one thing, the Olin/GD-OTS Settlement Agreements were not responsive to Lamorak's discovery requests, as limited by Olin's unchallenged objections. Document Requests 11 and 12 were part of the Five Sites discovery, and GD-OTS is not a corporate successor to any of those sites. As for the Fifteen Remaining Sites discovery, Document Request 25 sought documents from Olin's "insurance and/or corporate risk management department concerning Olin's insurance coverage," but the Olin/GD-OTS Settlement Agreements are settlements with a non-insurer drafted and signed by Olin's lawyers. Olin Opp. to Lamorak's MSJ at 16. Nor were the documents responsive to Document Request 31, as limited by Olin, since they do not relate to "payment(s) from any other entity to Olin regarding environmental issues"; rather, they involve payments from Olin to a third-party. Id. Likewise, Olin's redactions to the ledger were arguably proper since the ledger was produced in response to Lamorak's Five Sites discovery, and the redactions were consistent with the scope of that discovery. Id. And, again, Lamorak did not challenge those redactions.

***10** While the testimony of Olin's corporate officers may arguably have created a misleading impression, the testimony was technically true. That Olin eventually entered into an agreement to share certain insurance proceeds with GD-OTS is not inherently inconsistent with Mr. Roth's testimony that Olin deposited settlement proceeds into a general corporate account and did not itself assign any portion of the proceeds to specific sites.

Our adversary system leaves it to deposing counsel to follow up with additional questions concerning testimony of the kind here given. And, in any event, Lamorak has failed to come forward with material evidence that the testimony was knowingly false.

Accordingly, Lamorak's motion for summary judgment is denied.

3. Whether Rule 37 Sanctions are Warranted

Independently, Lamorak asks the Court to dismiss the Carve Out Claims as a discovery sanction pursuant to Federal Rule of Civil Procedure 37. Under Rule 37, a district court "has wide discretion in sanctioning a party for discovery abuses." Reilly v. Natwest Markets Group Inc., 181 F.3d 253, 267 (2d Cir. 1999). "[D]ispositive measures" under Rule 37, such as dismissal of a claim, are intended "to remedy otherwise irremediable prejudice or to address persistent bad-faith pre-trial conduct by a litigant." D'Attore v. City of New York, No. 10-cv-1782, 2012 WL 5871604, at *3 (S.D.N.Y. Sept. 27, 2012), report and recommendation adopted, 2012 WL 5871602 (Nov. 20, 2012). Courts examine "(1) the willfulness of the non-compliant party or the reason for the noncompliance; (2) the efficacy of lesser sanctions; (3) the duration of the period of noncompliance, and (4) whether the non-compliant party has been warned of the consequences of his non-compliance," as well as "the prejudicial impact of the noncompliance." Id. at *4.

For the reasons laid out above, the Court does not believe that Olin has committed discovery abuse, let alone of a sufficiently grievous nature to warrant dismissal of the Carve Out Claims. In any event, Lamorak has not complied with the procedural requirements of Rule 37 and Local Rule 37.1, which respectively require Lamorak to provide certification that it met and conferred with Olin over any issue in its motion, Fed. R. Civ. P. 37(d)(B), and to request an "informal conference with the Court ... for a pre-motion discovery conference," Local Civil Rule 37.2.

Simply put, if Lamorak had problems with Olin's many objections and limitations, it should have brought them to this Court. Its failure to have done so dooms Lamorak's request, both substantively and procedurally.

II. Olin's Motion for Summary Judgment and Lamorak's Motion for Partial Summary Judgment

Olin submits that GD-OTS has incurred approximately $51 million in costs arising out of Olin's operations at the Crab Orchard site, and that Olin itself has incurred $800,000 in such costs since January 1, 2018. Accordingly, Olin seeks summary judgment in the amount of $25,710,662 (plus prejudgment interest), which, according to Olin, is the available coverage left under the policies after applying the proper setoffs for the 2018 Settlement and the prior global settlements.[4] Lamorak concedes that, but for its allegations of litigation misconduct, the "costs incurred by Olin since December 31, 2017 would be indemnifiable." See Brief in Support of Lamorak Insurance Company's Motion for Partial Summary Judgment ("Lamorak MPSJ Mem."), Dkt. No. 2421, at 6 n.4 (emphasis omitted). But Lamorak maintains that it is not responsible for the GD-OTS costs and that, in any event, Olin forfeited its right to seek those costs by failing to present them in connection with the earlier motion practice over the Fifteen Remaining Sites.

A. Whether the Court Should Dismiss the GD-OTS Claims under Rule 37 or Judicial Estoppel

***11** Lamorak asks the Court to dismiss Olin's claim for the GD-OTS costs because those costs were not presented for adjudication in connection with the earlier motion practice over the Fifteen Remaining Sites. Lamorak Insurance Company's Brief in Opposition to Olin Corporation's Motion for Summary Judgment ("Lamorak Opp. Mem."), Dkt. 2429, at 13. As mentioned, the Court's case management plan stated that "all remaining issues in this case between Olin and Lamorak be ready for a pretrial conference on April 6, 2018." Even though Olin had notice that GD-OTS believed it was entitled to insurance coverage under Olin's policies, Olin limited its claims to its own costs. Accordingly, Lamorak asks the Court to dismiss Olin's claim for the GD-OTS costs either under Rule 37 or the principle of judicial estoppel.

1. Whether Rule 37 Sanctions are Warranted

As discussed above, Rule 37 invests the Court with "broad authority to impose appropriate remedies to cure the harm visited on the discovering party and to deter other litigants from similarly refusing to comply with the

court's scheduling and discovery directives." D'Attore, 2012 WL 5871604, at *3. Lamorak contends that Olin's failure to present the GD-OTS costs in a timely manner was a "calculated litigation" tactic warranting sanctions in the form of dismissal. Lamorak MPSJ Mem. at 18, 20.

The Court finds, however, that Rule 37 sanctions are here unwarranted. For one thing, as explained above, Lamorak's request is procedurally defective since Lamorak failed to abide by either Rule 37's meet-and-confer requirement or Local Rule 37.1's informal-conference requirement. In any event, the Court fails to see how Lamorak suffered any prejudice, other than the inconvenience of needlessly prolonged litigation, by Olin's failure to present these claims during the prior motion practice. Lamorak contends that Olin's decision to "confine" its earlier Crab Orchard claim to costs incurred by Olin meant that Olin "withh[e]ld from Lamorak the documents, testimony, expert reports, and other proofs to substantiate a GD-OTS claim by proxy." Id. at 17-18. But Lamorak has received these materials during the most recent discovery period. As a result, Lamorak now has every opportunity to, and does, strenuously defend against the GD-OTS claims in these motions. Accordingly, the Court will not impose Rule 37 sanctions on Olin.

2. Whether Judicial Estoppel is Warranted

Lamorak also invokes the doctrine of judicial estoppel. Under that doctrine, "[w]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." In re Adelphia Recovery Trust, 634 F.3d 678, 695 (2d Cir. 2011). "Typically, judicial estoppel will apply if: 1) a party's later position is clearly inconsistent with its earlier position; 2) the party's former position has been adopted in some way by the court in the earlier proceeding; and 3) the party asserting the two positions would derive an unfair advantage against the party seeking estoppel." Id.

The Court holds that Olin is not judicially estopped from seeking to recover the GD-OTS costs. As explained above, Lamorak has failed to explain how Olin has derived an unfair advantage from its decision to confine its earlier Crab Orchard claim to costs incurred by Olin. In the absence of prejudice, judicial estoppel is unwarranted. Even if Olin should have presented the GD-OTS costs in connection with the prior motion practice, the Court will not preclude Olin from doing so now.

B. Whether Olin is Entitled to Recover the GD-OTS Costs

That Olin is permitted to seek the GD-OTS costs does not necessarily mean that Olin is entitled to recover them. It must still establish that those costs are covered under the policies. Olin contends that GD-OTS has coverage rights under the policies because GD-OTS was assigned those insurance rights as part of the 1996 spin-off transaction. Memorandum of Law in Support of Olin Corporation's Motion for Summary Judgment ("Olin Mem."), Dkt. No. 2412, at 11-14.[5] Lamorak responds that the policies have a non-assignment provision that prohibits any assignment without Lamorak's consent. Lamorak Opp. Mem. at 15.

***12** Under New York law, an assignment is valid, even in the face of a non-assignment provision, where the assignment is made after the insured-against loss has already occurred. See Globecon Group, LLC v. Hartford Fire Ins. Co., 434 F.3d 165, 170 (2d Cir. 2006). The rule comes down to whether "the risk imposed on an insurer by the assignment of a claim is meaningfully different from that borne by the insurer before such assignment." SR Inter. Business Ins. Co., Ltd. v. World Trade Center Properties, LLC, 375 F. Supp. 2d 238, 249 (S.D.N.Y. 2005). Thus, the issue here is whether Olin's assignment to Primex in 1996 (and the subsequent assumption of those rights by GD-OTS) increased the risk borne by Lamorak when it initially issued the policies to Olin. Lamorak contends that summary judgment for Olin must be denied because the record is unclear as to the extent to which "GD-OTS' Crab Orchard liability arise from [its] post-'spin' period of Primex and GD-OTS actively operating and polluting." Lamorak Opp. Mem. at 16.

The Court disagrees. The policies expired many years before the 1996 spinoff. As the Supreme Court of New Jersey has explained, where the right to insurance for the "occurrence" of environmental contamination is assigned after the policies have expired, "[t]he risk of exposure that was contractually undertaken by the insurer occurred prior to the assignment." Givaudan Fragrances Corporation v. Aetna Casualty & Surety Company, 227 N.J. 322, 151 A.3d 576, 591-92 (2017). Indeed, "[t]he environmental contamination occurrence -- and resultant loss -- took place during the relevant policy periods. The assignment does not alter the insurers' liability for

indemnifying the underlying insured event. The loss event has occurred. It is no more, and no less, as a result of [Olin's] assignment of its rights under the respective policies to [GD-OTS]." Id. And "[t]he fact that the environmental claim will require time to sort out liability and damages resulting therefrom d[id] not alter [the court's] conclusion." Other courts have adopted the same rule. See Fluor Corp. v. Superior Court, 61 Cal.4th 1175, 191 Cal.Rptr.3d 498, 354 P.3d 302, 326-27 (2015) (collecting cases).

The Continuing Coverage Provision of Condition C does not change this analysis. As noted, Lamorak must cover "all sums that the insured shall be obligated to pay by reason of liability imposed upon it by law ... on account of property damage caused by or arising out of an occurrence." Olin, 332 F. Supp. 3d at 847. A covered occurrence is defined as "an accident or a happening or event or a continuous or repeated exposure to conditions which unexpectedly and unintentionally result in ... property damage ... during the policy period." Lamorak Counter to Olin's 56.1 Statement ¶ 41. When, but only when, an occurrence is "continuing at the time of termination" of the policy, the Continuing Coverage Provision may "require[ ] the insurer to indemnify the insured for personal injury or property damage continuing after the termination of the policy." Olin III, 704 F.3d at 100. In Olin III, for example, the Second Circuit explained that "damage 'continuing at the time of termination' of the policy clearly contemplates property damage from the migration of chemicals in the expanding groundwater plume during the term of the policy and continuing after the policy terminated." Id. at 101. Unlike the passive migration of chemicals, any post-spin pollution on the part of Primex and GD-OTS, years after the policies expired, would not trigger the Continuing Coverage Provision. Thus, the post-spin activity of Primex and GD-OTS could not have increased Lamorak's liability under the policies. The assignment, therefore, is valid.

C. Whether the GD-OTS Costs are Covered Under the Policy

That the assignment is valid does not necessarily mean that the costs Olin now seeks to recover are covered under the policies. Olin must show that the GD-OTS costs are based on Olin's historical operations at the Crab Orchard site. This is so not only because the Distribution Agreement assigned GD-OTS coverage as to liabilities that "aris[e] from the activities of Olin prior to [December 31, 1996]," see Distribution Agreement § 5.01, but also because the 2018 Settlement carved out "GD-OTS' own past costs (whenever incurred) and future costs arising out of the former Olin/Primex operations at the Crab Orchard site."

*13 The policies require Lamorak to indemnify the insured for "all sums" the insured becomes obligated to pay for the "ultimate net loss" that the insured incurs on account of property damage "caused by or arising out of [an] occurrence." Lamorak Counter to Olin's 56.1 Statement ¶ 39. "Ultimate net loss" is defined as the "total sum which the Insured ... becomes obligated to pay by reason of ... property damage ... claims, either through adjudication or compromise." Id. ¶ 40. It includes "all sums paid ... for litigation, settlement, adjustment and investigation of claims and suits which are paid as a consequence of any occurrence covered." Id. Under New York law, policies with an "all sums" provision cover environmental response costs that the government compels the insured to incur. See Texaco A/S (Denmark) v. Com. Ins. Co., 160 F.3d 124, 130 (2d Cir. 1998); see also Olin, 332 F. Supp. 3d at 847 (explaining that the insured is liable "for damages arising out of an occurrence where it received some adversarial communication or it was the object of an adversarial action").

To make that showing, Olin offers the expert testimony of Jeffery Zelikson, who "identifie[d]" costs GD-OTS has incurred for the AUS OU and MISCA OU and "characterize[d]" those costs by analyzing why they were incurred and how they related to Olin's historical operations at the Crab Orchard site. Lamorak Counter to Olin's 56.1 Statement ¶¶ 237-38. Based on that analysis, Zelikson opined that GD-OTS reasonably incurred more than $51 million in costs "because of contamination released by historical operations at the Crab Orchard Site," and that it was compelled to do so by regulatory agencies. Id. ¶ 238.

In addition, Olin points to several pieces of circumstantial evidence that suggest that the GD-OTS costs arose out of Olin's historical operations at the Crab Orchard site. For example, the Fish and Wildlife Service identified the "peak industrial years" of the Crab Orchard site as the 1950s, 1960s, and 1970s, decades before the 1996 spin-off. See Lamorak Insurance Company's Response to Olin Corporation's Additional Material Facts in Support of its Opposition to Lamorak's Motion for Partial Summary Judgment, Dkt. No. 2445, ¶ 84. Moreover, the AUS OU was first established between 1997 and 1999, shortly after the 1996 spinoff. Declaration of Craig C. Martin in Support of Plaintiff Olin Corporation's Memoranda of Law in Opposition to Lamorak Insurance Company's (1) Motion for Summary Judgment and (2) Motion for Partial Summary Judgment ("Martin Opp.

Decl."), Dkt. No. 2438, Ex. 24, ¶ 13. That the AUS OU was setup so soon after the spinoff lends additional support to the inference that the operable unit was created in response to Olin's historical operations at the Crab Orchard site, rather than any post-spinoff activity.

In response, Lamorak contends that GD-OTS's liability for the Crab Orchard costs arises independently of Olin's historical operations at Crab Orchard. That is because GD-OTS's liability arises under Section 107(A) of CERCLA, which imposes joint and several liability on any party that owned or operated a facility at a time when any hazardous substances were disposed of at the facility, regardless whether that party's activities caused the contamination. Lamorak Insurance Company's Reply Brief in Support of its Motion for Partial Summary Judgement ("Lamorak MPSJ Reply"), Dkt. No. 2453, at 6. Thus, Lamorak concludes, "GD-OTS is stuck paying 100% of the Crab Orchard AUS OU investigation costs not because of Olin's historical operations at Crab Orchard, but because its own presence and operations there caused the United States to target it, only, as CERCLA permits." Id.

***14** The Court finds that there is no genuine dispute of material fact as to whether GD-OTS's costs arose in connection with Olin's historical operations at the site. Olin's expert testified that the costs were incurred in connection with Olin's historical operations. Lamorak does not seriously dispute that testimony or point to any other evidence in the record that suggests otherwise. It is perhaps true, as Lamorak points, that the Government could have brought claims against GD-OTS for its post-spin activity, to the extent that such activity resulted in additional property damage. But there is no evidence to suggest that that is what happened here. Instead, the undisputed evidence establishes that the GD-OTS costs were reasonably incurred as a result of Olin's historical operations at the Crab Orchard site. Those costs are therefore covered under the policies.

D. Whether Lamorak's Newly Pleaded Affirmative Defenses Preclude Summary Judgment

Because, as discussed above, the Court treats Lamorak's motion for summary judgment as a motion to amend its answer to include the affirmative defenses of rescission and coverage forfeiture, the Court must decide whether those affirmative defenses preclude granting summary judgment to Olin. For substantially the reasons discussed above, the Court grants summary judgment for Olin on these affirmative defenses. Simply put, no reasonable juror could find that Olin's failure to produce evidence of the Olin/GD-OTS Settlement Agreements was the product of fraud.

E. Whether the Court Should Otherwise Limit Olin's Recovery

Finally, Lamorak asks the Court to make certain other adjustments to limit Olin's recovery.

1. The Start Date for the GD-OTS Costs

Lamorak argues that if Olin is permitted to recover the GD-OTS costs, Olin's recovery should be limited to those costs incurred after December 31, 2017. Before that date, Olin had represented to the Court that the only Crab Orchard costs it sought to recover were the costs that it had itself incurred. Lamorak contends that these representations were "judicial and evidentiary admissions, and Olin should be held to them." Lamorak MPSJ Mem. at 21.

"A judicial admission is a statement made by a party or its counsel which has the effect of withdrawing a fact from contention and which binds the party making it throughout the course of the proceeding." In re Motors Liquidation Company, 957 F.3d 357, 360 (2d Cir. 2020). It must be "intentional, clear, and unambiguous." Id. at 361. While Olin previously represented that it was seeking to recover its own costs, it never affirmatively disclaimed the GD-OTS costs. Therefore, the Court will not construe its prior representations to the Court as judicial admissions disclaiming the GD-OTS costs. Furthermore, while Olin's prior representations to the Court might constitute evidentiary admissions, such admissions "may be controverted or explained by the party." Guadagno v. Wallack Ader Levithan Assocs., 950 F. Supp. 1258, 1261 (S.D.N.Y. 1997). Because Olin has since provided supplemental discovery and additional testimony making clear that it does seek the GD-OTS costs, Olin's prior representations to the Court do not provide a basis to limit the recoverable costs.

2. The Start Date for Prejudgment Interest

Lamorak argues that any award of prejudgment interest to Olin for the GD-OTS costs should start from October 16, 2019, the end of the Standstill Period, when Olin first formally claimed from Lamorak GD-OTS' past costs. Lamorak MPSJ Mem. at 23-24. However, as Olin responds, under New York law, when an insurer breaches its policy obligations, prejudgment interest starts to accrue from the invoice date. See Danaher Corp. v. Travelers Indem. Co., No. 10-cv-121 JPO, 2015 WL 1647435, at *6 (S.D.N.Y. Apr. 14, 2015). This Court previously held that Lamorak breached and repudiated its policy obligations for Olin's Crab Orchard site claim in the 1990's by failing to respond to Olin's timely notice letter and disclaiming coverage. Olin, 332 F. Supp. 3d at 841, 852-53.[7] That the policies were thereafter assigned to GD-OTS does not undo Lamorak's breach. Accordingly, prejudgment interest will run from the date each invoice was paid.[8]

3. The Cooperation Requirement

***15** Lamorak contends that its liability for costs incurred by GD-OTS should be "net of any sums recovered by [GD-OTS] from other Crab Orchard PRPs in the underlying Crab Orchard" dispute. Lamorak MPSJ Mem. at 22. Lamorak bases this request on the fact that GD-OTS, if deemed to be covered by the policies, breached its duty to cooperate with Lamorak after first becoming liable when it entered into the AOC in 2002. Id. at 23. However, as discussed above, Lamorak breached the policies in the 1990's by disclaiming coverage. Because Lamorak disclaimed the coverage even before the assignment, any failure on the part of Olin or GD-OTS to cooperate with Lamorak is excused. See Stradford v. Zurich Ins. Co., No. 02-cv-3628, 2002 WL 31819215, at *5 (S.D.N.Y. Dec. 13, 2002) ("New York law requires that in order for an insured's non-cooperation to be excused, the insured must carry the heavy burden of demonstrating that the insurer intended to deny the claim prior to demanding the insured's cooperation.").[9] Therefore, the Court will not reduce Olin's recovery by the sums recovered by GD-OTS from other PRPs.

4. The Application of the Exhaustion Doctrine

Next, the parties dispute whether and how Olin must exhaust underlying policies before accessing other policies at a higher coverage layer. As mentioned, there are five policies that, together, provide coverage up to $27 million for each covered occurrence. Functionally, there are two so-called "policy towers": the 1965 tower and the 1970 tower. Three policies in the 1970 tower collectively provide coverage up to $20 million excess of the $300,000 primary policy issued by INA.[10] Then, one policy in the 1965 tower provides up to $3 million of coverage for costs between $20.3 million and $30.3 million.[11] Finally, another policy back in the 1970 tower provides up to $4 million of coverage for costs between $30.3 million and $40.3 million.[12]

If these policies were all in one tower, the operation would be straightforward: Olin could access each excess policy only once the immediately underlying policy's limits are depleted. This would be a straightforward application of Olin IV's so-called "vertical exhaustion" requirement. See 864 F.3d at 143.

Here, however, Lamorak has no excess policies directly underlying the 1965 tower. The question, then, is how Olin must allocate its costs in order to access both the 1965 tower's coverage for costs between $20.3 million and $30.3 million and the 1970 tower's coverage for costs between $30.3 million and $40.3 million? Olin maintains that it may use a single underlying payment to satisfy underlying limits in more than one policy tower; in other words, it could climb both the 1965 and the 1970 policy towers at the same time. On this theory, Olin would allocate the first $20 million in costs excess $300,000 to the 1970 policy tower, then jump sideways and allocate the subsequent $10 million in costs excess $20.3 million to the 1965 policy tower, before returning to the 1970 policy tower to allocate costs excess $30.3 million. Courts have described this method of allocation as "hopscotching" because it enables an insured "to move outside of a vertical line of underlying insurance and tap into a horizontally located policy." See Kaiser Aluminum & Chem. Corp. v. Certain Underwriters at Lloyd, No. 312415, Decision on Group IIA Trial Issues, at 9 (Cal. Super. Ct., S.F. Cnty., June 13, 2003).[13]

***16** Lamorak maintains that "hopscotching" is impermissible. "Rather, Olin must first demonstrate proper exhaustion of the coverage directly underlying Lamorak's '1965 tower' policy for the Crab Orchard occurrence." Lamorak Opp. Mem. at 24. Olin responds that the policies simply state that coverage is triggered when the insured "pa[ys] the amount of the underlying limits" and contain no language that would require the insured to allocate costs exclusively to the underlying coverage. Reply Memorandum in Support of Olin

Corporation's Motion for Summary Judgment ("Olin Reply"), Dkt. No. 2447, at 8.

The Court agrees with Olin that "hopscotching" between policy towers is permissible. With its 1965 policy tower, for example, Lamorak contracted to cover costs in excess of $20.3 million. So long as the insured's costs exceed that attachment point, the underlying coverage has been functionally exhausted and the insured can proceed up to the next coverage layer. Nothing in the language of the policies dictates a contrary outcome.

Other cases construing similar policies also permit hopscotching. See Kaiser Aluminum & Chem. Corp. v. Certain Underwriters at Lloyd, No. 312415, Decision on Group IIB Trial Issues at 5 (Cal. Super. Ct., San Francisco, Feb. 20, 2004) (permitting hopscotching to fill gaps created by settlements of an underlying insurance policy); Kaiser, No. 312415, Decision on Group IIA Trial Issues at 9 (permitting hopscotching to fill gaps created by the insolvency of an underlying insurer). In these cases, the court held that where a policy in one tower provides coverage on an "all sums" basis for the same liability and at the same excess layer as a policy in another tower, an insured can hopscotch between those towers so long as the amounts of the underlying liability specified in the policies have been satisfied. See Kaiser, No. 312415, Decision on Group IIB Trial Issues at 5. These decisions were based on the fact that the "all sums" provisions "render each policy liable from its trigger point for all losses resulting therefrom regardless of whether a portion of such losses occurs after the trigger point year." Id. These well-reasoned opinions, although not binding on this Court, are persuasive.

That is especially so since the parties have not directed the Court to any controlling case law. As mentioned, Olin IV holds that New York law requires vertical exhaustion. In doing so, it rejects horizonal exhaustion, which would require an insured to "exhaust all triggered primary and umbrella excess layers before tapping into any of the additional excess insurance policies." Olin IV, 864 F.3d at 143. Olin maintains that a prohibition on hopscotching would effectively impose a horizontal exhaustion requirement in violation of Olin IV. The Court disagrees. Horizontal exhaustion would require Olin to allocate losses to all of the policies in the first excess layer in all of the policy towers before accessing any policy in the second excess layer. By contrast, if hopscotching were prohibited, Olin could still access the fourth excess layer in the 1965 policy tower without first allocating losses to the first through third excess layers in the 1970 policy tower; it would simply have to allocate $20.3 million in losses to the 1965 policy tower.

Accordingly, the Court holds that hopscotching is permitted under the policies and is consistent with the exhaustion requirement set forth in Olin IV.

5. The Application of the Condition C Setoff

Finally, the Court must apply the appropriate setoff under the Prior Insurance Provision of Condition C. As discussed, the five policies together provide coverage of up to $27 million. Under Olin IV, that limit must be reduced by the amount of Olin's settlements that are "properly associated" with the claims arising from the Crab Orchard site. 864 F.3d at 150. There are two relevant classes of settlements: (1) the 2018 Settlement between Olin and Lamorak; and (2) the prior global settlements between Olin and other insurers.

***17** The parties agree that the available limits must first be reduced by $1,289,338 to reflect the amount of released costs for Crab Orchard in the 2018 Settlement. See Martin Support Decl., Ex. 138 ("McGrath Report"), at 8 (Olin's expert); id., Ex. 140 ("Scarcella Report") at 8 (Lamorak's expert). This results in an available policy limit of $25,710,662.

The parties disagree, however, over how to account for the prior global settlements. As discussed, the Court previously crafted a setoff formula for global settlements that sought to approximate how much the settled insurers paid in exchange for releases from any potential indemnification claims relating to a given site. Olin, 2018 WL 1901634, at *13. But Lamorak asks the Court to abandon this formula and to impose a "new pro tanto limits reduction" to reflect the fact that the Olin/GD-OTS Settlement Agreements "allocated $1.45 million from [a global settlement] to the Crab Orchard site in response to the GD-OTS demand for a share of that settlement." Lamorak MPSJ Mem. at 22.

The Court will not do so. For one thing, the Olin/GD-OTS Settlement Agreements do not specifically allocate funds to Crab Orchard; rather, they cover multiple sites that Olin had spun off to Primex. In any event, Olin IV strongly suggests that the allocations must be found in the settlement agreement themselves. See Olin IV, 864 F.3d at at 150 ("[W]e agree with [Lamorak] that its limits of liability should be reduced by amounts paid to settle claims with respect to the five manufacturing sites at issue here....") (emphasis added). That an insured might, after the fact, decide to allocate some money to certain sites

and not to others does not necessarily mean that those monies were paid to settle claims with respect to those sites.[14] Thus, while this Court discussed three potentially relevant forms of evidence in its April 2018 opinion -- (1) express allocations in the settlements themselves; (2) internal allocations by the insured; and (3) internal allocations by the insurer, Olin, 2018 WL 1901634, at *6-7, 9 -- the Court now holds that the first category of evidence is the most relevant to the setoff formula. Accordingly, the Court will apply here the same setoff methodology it applied in its earlier opinions.

Still, the parties disagree over how that methodology should operate in this case. It is undisputed that, under that methodology, the amount of the prior global settlements properly associated with the Crab Orchard site is $543,673. See McGrath Report at 7; Scarcella Report ¶ 14. That number is calculated for each settlement by dividing the total settlement value by the number of sites covered under the settlement. Olin, 2018 WL 1901634, at *12. For example, the London settlement released Olin's claims as to 108 sites in exchange for $55,201,431, yielding a per-site apportionment of $511,124 (that is, 1 / 108). Summing up the per-site apportionment for each of the six prior global settlement yields $543,673.[15]

***18** The parties disagree over how the Court should apply the $543,673 setoff. Olin argues that the $543,673 should be subtracted from the total claimed costs of $51,795,399, resulting in $51,251,726 claimable costs. See McGrath Report at 22. The Court notes that Olin's proposed methodology would render the setoff a nullity where, as here, the available limits are smaller than the claimable costs. After accounting for the $1,289,338 setoff from the 2018 Settlement, Olin seeks $25,710,662 (plus prejudgment interest).

Lamorak contends that the $543,673 should not only be subtracted from Olin's claimed costs, but also should be subtracted from available policy limits. See Scarcella Report ¶ 14. After also accounting for the 2018 Settlement, Lamorak's proposed methodology would result in an available limit of $25,177,789.[16] Olin takes issue with this approach on the ground that it results in double counting the setoff: first by reducing the available limits under the policies and then by reducing Olin's claimed costs. See Olin Mem. at 19 n.9. As a sort of compromise, Olin's expert concedes that the setoff should either be applied by reducing the claimed costs or by reducing the available policy limits -- but not both. McGrath Supp. Report at 6.

The Court holds that the setoff should be applied by reducing the available policy limits. This approach ensures that the setoff takes effect even where, as here, the available policy limits are smaller than the claimable costs. Accordingly, the Court holds that the available policy limits of $27 million should be reduced by $1,822,211, which reflects both the 2018 Settlement and the prior global settlements, resulting in $25,177,789 in available policy limits.

Conclusion

For the foregoing reasons, Olin's motion for summary judgment is granted in part and Olin's claim against Lamorak is awarded in the amount of $25,177,789 plus prejudgment interest. Lamorak's motion for summary judgment and motion for partial summary judgment are denied. The parties are hereby ordered to submit to the Court, by no later than February 8, 2021, a written statement of how much prejudgment interest would be added were the Court to enter judgment on the Crab Orchard site as of February 12, 2021, on which date the Court will enter judgment and close the case. The Clerk of the Court is directed to close the entries at docket numbers 2397, 2399, and 2411.

SO ORDERED.

All Citations

--- F.Supp.3d ----, 2021 WL 396781

Footnotes

1 Unless otherwise indicated, in quoting cases all internal quotation marks, alterations, emphases, footnotes, and citations are omitted.

2 These sites are McIntosh OU2; Augusta; Rochester; Ashtabula/Fields Brook; and Bridgeport Rental Oil Services. Olin Counter to Lamorak's MSJ 56.1 Statement ¶ 13.

3 These sites are Assonet, Bethany, Brazier Forest Industry, Central Chemical, Charleston, Crab Orchard, Frontier

Chemical-Pendleton, Middletown/Tri-Star, Morgantown Ordinance Works, New Haven, Niagara, County Refuse, North Little Rock, Olin Water Services, Pine Swamp, and Wallisville Road. Olin, 332 F. Supp. 3d at 829 n.1.

4 In the alternative, Olin seeks a declaratory judgment that, to the extent Lamorak's limits are not exhausted, Olin is entitled to recover future costs incurred by Olin or GD-OTS up to the available policy limits.

5 Olin also argues that GD-OTS is entitled to coverage for the independent reason that it is an insured under the policies. The three lowest 1970 policies define "Named Insured" as Olin "and/or subsidiary, associated affiliated companies or owned or controlled companies as now or hereafter constituted." See, e.g., Martin Decl., Ex. 1. Olin argues that this language obligates Lamorak to provide coverage to GD-OTS because GD-OTS is the reconstituted version of Olin's ordinance business. Olin Mem. at 13-14 (citing P.R. Mallory & Co., Inc. v. Am. States Ins. Co., No. 54C01-0005-CP-00156, 2004 WL 1737489, at *11 (Ind. Cir. Ct. July 29, 2004)). However, as Lamorak points out, courts routinely limit such provisions to entities affiliated with the insured during the policy period. See, e.g., Maryland Cas. Co. v. W.R. Grace & Co. - Conn, No. 88-cv-2613 (SWK), 1994 WL 592267, at *4 (S.D.N.Y. Oct. 26, 1994). Olin also contends that since GD-OTS acquired all of Primex's stock during the spin-off, it is entitled to coverage as a stockholder of the insured. This argument, too, misses the mark, since the policies only provide coverage to a stockholder "acting in his capacity as such." Olin Reply 56.1 Statement ¶ 105.

6 In its Rule 56.1 Statements, Lamorak disputes Olin's reliance on expert reports because such "expert reports and opinions are inadmissible hearsay and may not be used to admit into evidence the documents on which they purport to rely or to prove the existence of any such facts." See, e.g., Lamorak Counter to Olin's 56.1 Statement ¶ 237. Lamorak made a similar argument in opposition to Olin's motion for summary judgment in a prior phase of this litigation, and the Court rejected it. See Olin, 332 F. Supp. 3d at 837. As before, "Lamorak has not contended, let alone established, that any of the underlying evidence on which the[ ] experts rely is inadmissible." See id. The Court therefore rejects Lamorak's objection to Olin's reliance on expert testimony. See Federal Rule of Evidence 703.

7 While this holding pertained only to the three of the five policies here at issue, the same evidence establishes that Lamorak is liable under the remaining two policies.

8 Except, as Olin concedes, that Olin is not entitled to recover prejudgment interest during the Standstill Period.

9 Because the Court holds that any non-performance on the part of GD-OTS was excused following Lamorak's coverage disclaimer, the Court does not address Olin's suggestion that GD-OTS satisfied the cooperation requirement by, among other things, inviting Lamorak to participate in the negotiations with other PRPs for Crab Orchard. See Plaintiff Olin Corporation's Memorandum of Law in Opposition to Lamorak Insurance Company's Motion for Partial Summary Judgment ("Olin MPSJ Opp."), Dkt No. 2430, at 24.

10 The policy in the 1970 tower with the lowest attachment point is Policy No. EY-8057-011. Lamorak Counter to Olin's 56.1 Statement ¶ 29. It is excess of $300,000 of primary coverage and has an occurrence limit of $1 million. Id. At the next layer of coverage, excess of $1.3 million, is Lamorak Policy No. EY-8057-012, with a $4 million occurrence limit. Id. ¶ 30. At the third layer of coverage, excess of $5.3 million, is Lamorak Policy No. EY-8057-013, with a $15 million occurrence limit. Id. ¶ 31. These policies cover the period from January 1, 1970 to January 1, 1973. Id. ¶ 29.

11 This policy is Lamorak Policy No. EY-16-8057-001 and it covers a policy period of October 8, 1962 to January 1, 1966. Lamorak Counter to Olin's 56.1 Statement ¶ 32.

12 This policy is Lamorak Policy No. E-16-8057-004 and it covers a policy period of January 1, 1969 to January 1, 1972. Lamorak Counter to Olin's 56.1 Statement ¶ 33.

13 It may be observed, however, that "hopscotching" between two "towers" is a classic example of a mixed metaphor.

14 That is because a site's clean-up costs are not necessarily correlated with the amount of liability an insurer faces. If, for example, an insurer has an affirmative defense as to its liability at a particular site, it might be willing to pay far less to settle those claims, even if the claims are very expensive.

15 The $1.5 million AmRe settlement covered 185 sites for a per-site apportionment of $8,108; the $2 million Continental settlement covered 185 sites for a per-site apportionment of $10,811; the $300,000 GenRe settlement covered 106 sites for a

per-site apportionment of $2,830; the $1.5 million Fireman's Fund settlement covered 187 sites for a per-site apportionment of $8,021; and the $500,000 Federal Insurance settlement covered 180 sites for a per-site apportionment of $2,778. See McGrath Report at 17; Scarcella Report at 8 fig. 4.

16 Technically, as both parties' experts recognize, applying the setoff to the policy limits would result in a deduction of only $532,873. See Martin Support Decl., Ex. 138 ("McGrath Supp. Report") at 5; Scarcella Report ¶ 19. This is because the $10,799 in setoffs for the Fireman's Fund and Federal settlements do not reduce Lamorak's limits since those insurers' settled policies are in the fourth and fifth layers in which Lamorak has a quota share.

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EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLIN CORPORATION, Plaintiff, -v- LAMORAK INSURANCE COMPANY, Defendant.	84-cv-1968 (JSR) MEMORANDUM ORDER AND JUDGMENT

JED S. RAKOFF, U.S.D.J.

In an Opinion and Order dated February 4, 2021 (the "Opinion and Order"), the Court granted in part the motion of plaintiff Olin Corporation ("Olin") for summary judgment on the Crab Orchard costs in the amount of $25,177,789 plus prejudgment interest. Dkt. No. 2458 at 53. The Court ordered the parties to submit "a written statement of how much prejudgment interest would be added were the Court to enter judgment on the Crab Orchard site as of February 12, 2021, on which date the Court will enter judgment and close the case." Id. Now before the Court are the parties' written statements on prejudgment interest. Also before the Court is the motion of defendant Lamorak Insurance Company ("Lamorak") for partial reconsideration of the Opinion and Order.

The Court first determines the amount of prejudgment interest and total judgment to which Olin would be entitled under the Opinion and Order, before addressing Lamorak's motion for partial

reconsideration. Olin states that prejudgment interest should be awarded in the amount of $25,571,531 for a total judgment of $50,749,320. See Plaintiff Olin Corporation's Corrected Statement of Prejudgment Interest ("Olin Statement"), Dkt. No. 2462, at 3. Lamorak states that, assuming the Court were to deny its motion for partial reconsideration, prejudgment interest should be awarded in the amount of $24,785,399 for a total judgment of $49,963,188. See Lamorak Insurance Company's Statement Calculating Prejudgment Interest and Memorandum Supporting its Motion for Reconsideration of the Court's February 4, 2021 Rulings Affecting that Calculation ("Lamorak Mem."), Dkt. No. 2461, at 1; Supplemental Report of Marc C. Scarcella, M.A. ("Scarcella Supp."), Dkt. No. 2461-1, ¶ 10.

The parties' respective calculations differ by $786,132. This difference appears to reflect a disagreement between the parties as to whether Lamorak must pay the prejudgment interest that accrued on the $1,289,338 of Olin's past Crab Orchard costs that were released in the 2018 Settlement. Olin's expert previously estimated that this disagreement led the parties to prejudgment interest calculations that differed by "approximately $786,000." See Declaration of Craig C. Martin in Support of Olin Corporation's Motion for Summary Judgment, Dkt. No. 2414, Ex. 141, at 6. Olin argues that Lamorak must cover the prejudgment interest

obligations on those costs during the roughly 13 years prior to the 2018 Settlement.

The Court disagrees with Olin and adopts Lamorak's methodology that excludes these costs from the prejudgment interest calculation. Olin's approach effectively assumes that the 2018 Settlement carved out prejudgment interest on Olin's past Crab Orchard costs. But Olin points to no such carve out in the 2018 Settlement. If Olin felt it were entitled to prejudgment interest on those costs, it could have bargained for them in the 2018 Settlement. Accordingly, before addressing Lamorak's motion for reconsideration, the Court holds that Olin's prejudgment interest should be awarded in the amount of $24,785,399 for a total judgment of $49,963,188.

As mentioned, however, along with its statement on prejudgment interest, Lamorak filed a motion for reconsideration of three elements of the Court's Opinion and Order, which, according to Lamorak, "directly affect how prejudgment interest is calculated." Lamorak Mem. at 1. The standard for granting such a motion "is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked -- matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp. Inc., 70 F.3d 255, 257 (2d Cir.

1995). This strict standard is intended to "ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters." Carolco Pictures Inc. v. Sirota, 700 F. Supp. 169, 170 (S.D.N.Y. 1988). Accordingly, "[a] motion for reconsideration should be granted only when the [moving party] identifies an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr., 729 F.3d 99, 104 (2d Cir. 2013).

First, Lamorak asks the Court to reconsider its holding that that "prejudgment interest will run from the date each invoice was paid." Opinion and Order at 42. Lamorak argues that, even if, as this Court previously held, Lamorak breached its policy obligations to Olin in the 1990's, Lamorak was not aware of, let alone presented with, the GD-OTS costs before 2018. Id. at 2. Lamorak argues that, in starting prejudgment interest at the date each invoice was paid, the Court's holding "constitutes a finding that had Olin or GD-OTS made a claim for GD-OTS' Crab Orchard liabilities and costs sometime prior to trial, Lamorak would have 'breached and repudiated' its policy obligations." Id. Lamorak argues that, in so ruling, the Court overlooked the Second

Circuit's controlling holding that, although the policies "do[] not require Olin to submit a 'definite claim' along with a 'sum certain' of such claim," they still require "a definite claim along with a description of the insurer's potential liability with respect to that claim." Olin Corp. v. OneBeacon Am. Ins. Co. ("Olin IV"), 864 F.3d 130, 152 (2d Cir. 2017).

The Court disagrees with Lamorak's argument and reaffirms the holding of the Opinion and Order. There, the Court observed that "Lamorak breached and repudiated its policy obligations for Olin's Crab Orchard site claim in the 1990's by failing to respond to Olin's timely notice letter and disclaiming coverage. That the policies were thereafter assigned to GD-OTS does not undo Lamorak's breach." Opinion and Order at 42 (citation omitted). Implicit in the Court's holding is that Olin's notice letter of Lamorak's potential liability with respect to the Crab Orchard site satisfied Olin IV's notice requirement -- even if, as here, the identity of the policies' holder has changed. It is clear that if Olin had not assigned the policies to GD-OTS, and instead had incurred the costs itself, prejudgment interest would run from the date each invoice was paid. The assignment from Olin to GD-OTS -- after the insured-against loss has already occurred and after Lamorak has already breached its obligations with respect to that loss -- does not

require Olin or GD-OTS to make a new claim for the Crab Orchard site.

Next, Lamorak asks the Court to reconsider its holding that "hopscotching between policy towers is permissible." Opinion and Order at 46. Lamorak directs the Court -- for the first time -- to particular policy language that, Lamorak contends, precludes hopscotching between policy towers. Specifically, Lamorak points to the Loss Payable Condition, which provides, in relevant part, that:

> Liability under this policy with respect to any occurrence shall not attach unless and until the Assured, or the Assured's underlying insurer, shall have paid the amount of the underlying limits on account of such occurrence. The Assured shall make a definite claim for any loss for which the Underwriters may be liable under the policy within twelve (12) months after the Assured shall have paid an amount of ultimate net loss in excess of the amount borne by the Assured . . . .

Martin Support Decl. Ex. 10, at 10. Lamorak contends that allowing hopscotching conflicts with the Loss Payable Condition's requirement that either the Assured or the Assured's underlying insurer pay "the amount of the underlying limits on account of such occurrence." Lamorak Mem. at 6. That is because hopscotching would enable Olin to "(i) pay the amount of the underlying limits (here $20.3 million), (ii) be reimbursed by Lamorak for that sum under the 1970s tower policies, and then (iii) use that same amount to trigger the 1965 tower policy, despite having been reimbursed

by Lamorak." Id. Lamorak also seeks to distinguish -- again for the first time -- the Kaiser Aluminum opinions cited by the Court on the ground that those opinions do not address language like that contained in the Loss Payable Condition. Id. at 6. n.4.

As a threshold matter, motions for reconsideration do not allow a losing party to "examin[e] a decision and then plug[] the gaps of a lost motion with additional matters." Carolco Pictures, 700 F. Supp. at 170. Lamorak had every opportunity to make these points in the voluminous briefing at the summary judgment stage. Instead, Lamorak generally argued that hopscotching would violate "Insurance 101" and was without support in the "policy language or the law." See Lamorak Insurance Company's Brief in Opposition to Olin Corporation's Motion for Summary Judgment on the Crab Orchard Site, Dkt. No. 2435, at 24-25. Nor did Lamorak address the Kaiser Aluminum opinions, both of which were cited in Olin's moving papers. See Memorandum of Law in Support of Olin Corporation's Motion for Summary Judgment ("Olin Mem."), Dkt. No. 2412, at 18.

In any event, the Loss Payable Condition does not change the Court's analysis. Under a hopscotching allocation, as Lamorak recognizes, the insured must still, at least initially, pay the underlying amount. That is enough to satisfy the Loss Payable Condition, even if it is the insurer, rather than the insured, who ultimately might be on the hook for the underlying amount. Cf.

Kaiser Aluminum & Chem. Corp. v. Certain Underwriters at Lloyd, No. 312415, Decision on Group IIA Trial Issues, at 9 (Cal. Super. Ct., S.F. Cnty., June 13, 2003) (explaining that "the excess insurer is not prejudiced where underlying amounts are paid by other than vertically underlying sources").

Finally, Lamorak asks the Court to rule on whether $3.6 million paid by GD-OTS to the United States Fish and Wildlife Service (the "FWS") in stipulated penalties for certain alleged violations of the AOC is indemnifiable under the policies.[1] Lamorak contends that the $3.6 million cost is not recoverable for either of two reasons: (1) it is not covered under Lamorak's policies because it is "not property damage"; and (2) it is "uninsurable as a matter of public policy." Lamorak Mem. at 5 n.3. Olin disagrees on both counts. See Plaintiff Olin Corporation's Response to Lamorak's Argument Regarding the Recoverability of GD-OTS' $3.6 Million Payment to the U.S. Fish and Wildlife Service ("Olin Opp."), Dkt. No. 2463. The Court holds that the cost is not covered under the policies and declines to reach whether they are uninsurable as a matter of public policy.

---

[1] Because Olin and GD-OTS have incurred more than $3.6 million in excess of the policy limits, this cost has no effect on Lamorak's liability for the full amount of its policy limits: $25,177,789. But it affects the timing of when Olin incurred certain costs and therefore the amount of prejudgment interest owed to Olin.

The operative question is whether civil penalties paid by the insured are covered under the "all sums" provision found in the policies. As discussed in the Opinion and Order, the policies require Lamorak to cover "all sums" the insured becomes obligated to pay for the "ultimate net loss" that the insured incurs on account of property damage "caused by or arising out of" a covered occurrence, including "all sums paid . . . for litigation, settlement, adjustment and investigation of claims and suits which are paid as a consequence of any occurrence covered." Opinion and Order at 36.

Lamorak cites to R & D Maidman Family L.P. v. Scottsdale Ins. Co., 783 N.Y.2d 205, 214-215 (Sup. Ct. 2004) for the proposition that "fines for violations are not damages in this context." In that case, "plaintiffs had begun demolition on property they owned. After a brick or piece of masonry was dislodged and fell onto an adjoining roof, the New York City Department of Buildings ["DOB"] issued notices of violation. In order to cure the condition, the plaintiffs erected a sidewalk bridge, scaffolding and net meshing, and then filed a claim with their insurer to recover the costs expended on their property to mitigate or prevent future damage." Castle Village Owners Corp. v. Greater New York Mut. Ins. Co., 878 N.Y.S.2d 311, 315-16 (1st Dep't 2009) (discussing R&D Maidman). The court held that the "notices of violation did not give rise to

a legal obligation to bear the costs for remedial work that would trigger the indemnification provisions of the commercial general liability policy issued to the plaintiffs." Id. at 316. The reason why these notices of violation were insufficient was because "any failure of plaintiffs to remedy the violations would not result in liability for remedial costs either imposed by the DOB or as a result of any proceeding by DOB, but instead, would result in a fine. R&D Maidman, 783 N.Y.2d at 214. The court explained that "[u]nlike 'response costs' for which indemnification is often sought in environmental pollution cases, fines for violations are not damages in this context." Id. at 214-15.[2]

Olin attempts to distinguish R&D Maidman in three ways, but none is persuasive. Olin first argues that the policies at issue in that case did not provide for "all sums" coverage. Olin Opp. at 2 n.3. While that might be true, R&D Maidman itself relies on cases holding that even policies with "all sums" coverage do not cover civil penalties. For example, R&D Maidman cites for support to A.Y. McDonald Industries, Inc. v. Insurance Co. of North America, 475 N.W.2d 607, 626 (Iowa 1991). In that case, the Supreme Court of Iowa explained that a "civil penalty . . . imposed because of

[2] The court subsequently reversed itself on other grounds. See Castle Village, 878 N.Y.S.2d at 316; R&D Madman Family L.P. v. Scottsdale Ins. Co., 2004 WL 5707880 (Sup. Ct. Sept. 24, 2004).

[the insured's] failure to comply with notification, permit, and groundwater monitoring regulations under [federal law] . . . is far different from government mandated response costs resulting from property damage." Accordingly, the court held that "the term 'damages' under the . . . policies [which contained an "all sums" provision] does not include the civil penalty imposed." See also Independent Petrochemical Corp. v. Aetna Casualty and Surety Co., 944 F.2d 940, 947 (D.C. Cir. 1991) (explaining that, unlike response costs, a civil penalty "is not understood to be dollar-for-dollar recompense").

Olin's second and third arguments are non-sequiturs. It contends that the plaintiffs in R&D Maidman did not face the "immediate threat of action to enforce remedial action" and that the notices of violation allowing for fines "were not sufficiently adversarial to require plaintiff to incur remedial costs." Olin Opp. at 2 n.3. But the reason why the plaintiffs in R&D Maidman were not faced with remedial action is because the notices of violation threatened only fines, not remedial costs. 878 N.Y.S.2d at 214-15. In other words, Olin is simply restating the reason why fines are not covered under the policies in the first place.

Olin also cites for support to Ispat Inland Inc. v. Kemper Env't, Ltd., 2009 WL 4030858, at *8 (S.D.N.Y. Nov. 20, 2009). That case, however, is distinguishable. In holding that the policies

might cover "fines or penalties," the court made an inference from the fact that "[a]n endorsement attached to the Policy removed a clause originally in the Policy that excluded coverage for sums incurred due to 'civil, administrative or criminal fines or penalties, assessments, punitive, exemplary or multiplied damages, or non-pecuniary relief.'" Id. No such negative inference is available here.

Finally, Olin points out that the stipulation between GD-OTS and the FWS provides that it does not "represent any admission of violation of the AOC." Olin Opp. at 2 (quoting Stipulation and Agreement Regarding the Assessment and Payment of Certain Stipulated Penalties, Dkt. 2414-50, ¶ 4). That is correct, but irrelevant to the question at hand.[3] The stipulation calls the payments "stipulated penalties." And, for the reasons already discussed, such penalties are not covered under the policies.

Accordingly, the Court holds that the 3.6 million paid by GD-OTS to the FWS in stipulated penalties is not covered under the

[3] That GD-OTS did not admit to violating the AOC might be relevant to the question whether the penalties are independently uninsurable as a matter of public policy. See La. Generating LLC v. Ill. Union Ins. Co., 2014 WL 12769615, at *4 (M.D. La. Sept. 30, 2014) (applying New York law and distinguishing between punitive and non-punitive penalties). Because the Court holds that the stipulated penalties are not covered under the policies, however, the Court does not reach the question whether they are also uninsurable as a matter of public policy.

policies. Lamorak's expert concludes that removing the $3.6 million cost reduces prejudgment interest from $24,785,399 to $24,169,014. See Scarcella Supp. ¶ 10.[4] Therefore, Olin is entitled to prejudgment interest in the amount of $24,169,014.

* * * * *

For the foregoing reasons, Lamorak's motion for reconsideration is denied in part and granted in part, and prejudgment interest is awarded to Olin in the amount of $24,169,014. Judgment is therefore hereby entered requiring Lamorak to promptly pay Olin the sum of $49,346,803. The Clerk of the Court is directed to close the entry at docket number 2460 and to close the case.

SO ORDERED.

Dated: New York, NY
February 12, 2021

JED S. RAKOFF, U.S.D.J.

[4] By Olin's calculation, removing the $3.6 million cost would reduce prejudgment interest from $25,571,531 to $24,913,377. Olin Opp. at 1 n.2. For the reasons discussed above, however, the Court adopts Lamorak's approach to calculating prejudgment interest.

EXHIBIT 5

Bedivere Insurance Company
ACTION BY UNANIMOUS
WRITTEN CONSENT OF DIRECTORS

The undersigned, being the directors on the board of Bedivere Insurance Company ("Bedivere" or "Company"), do hereby ratify, adopt, approve and consent to the following resolutions:

> WHEREAS, the Insurance Commissioner of the Commonwealth of Pennsylvania has requested that Bedivere consent to the entry of an order of liquidation; and
>
> WHEREAS, the directors of Bedivere deem it beneficial to the interest of Bedivere, its policyholders, creditors, and the public that Bedivere be placed into liquidation; and
>
> NOW THEREFORE, BE IT RESOLVED that in the judgment of the directors of Bedivere it is deemed advisable and for the benefit of Bedivere, its policyholders, its creditors and the public that Bedivere should be liquidated, and that the Insurance Commissioner of the Commonwealth of Pennsylvania should apply to the Commonwealth Court for an order authorizing the liquidation of Bedivere; and
>
> BE IT FURTHER RESOLVED, that the officers of the Company shall be and hereby are authorized, empowered and directed to execute and deliver all such documents or instruments necessary, appropriate or desirable for the implementation of the foregoing resolution, and to do and perform such other acts and things on behalf of the Company as they deem or any of them determine to be necessary, appropriate or desirable to carry out and effect the intent of the foregoing resolution, including but not limited to providing consent to the entry of an Order of Liquidation by the Commonwealth Court pursuant to the Insurance Department

Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.1-221.63, any such determination to be conclusively evidenced by the execution and delivery of any such document or instrument or the doing or performing of any such act or thing.

The foregoing ACTION BY UNANIMOUS WRITTEN CONSENT OF DIRECTORS is taken pursuant to and in accordance with Section 1727(b) of the Pennsylvania Business Company Law and shall be filed with the Secretary of the Company.

Dated as of February 25, 2021.

Brad Huntington, Chairman

John Williams

Sarah Lawhorne

Gary Orndorff

Stephen Greenberg

Richard Milazzo

Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.1-221.63, any such determination to be conclusively evidenced by the execution and delivery of any such document or instrument or the doing or performing of any such act or thing.

The foregoing ACTION BY UNANIMOUS WRITTEN CONSENT OF DIRECTORS is taken pursuant to and in accordance with Section 1727(b) of the Pennsylvania Business Company Law and shall be filed with the Secretary of the Company.

Dated as of February 25, 2021.

Brad Huntington, Chairman	John Williams
Sarah Lawhorne	Gary Orndorff
Stephen Greenberg	Richard Milazzo

Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.1-221.63, any such determination to be conclusively evidenced by the execution and delivery of any such document or instrument or the doing or performing of any such act or thing.

The foregoing ACTION BY UNANIMOUS WRITTEN CONSENT OF DIRECTORS is taken pursuant to and in accordance with Section 1727(b) of the Pennsylvania Business Company Law and shall be filed with the Secretary of the Company.

Dated as of February 25, 2021.

Brad Huntington, Chairman

John Williams

Sarah Lawhorne

Sarah Lawhorne

Gary Orndorff

Stephen Greenberg

Richard Milazzo

Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.1-221.63, any such determination to be conclusively evidenced by the execution and delivery of any such document or instrument or the doing or performing of any such act or thing.

The foregoing ACTION BY UNANIMOUS WRITTEN CONSENT OF DIRECTORS is taken pursuant to and in accordance with Section 1727(b) of the Pennsylvania Business Company Law and shall be filed with the Secretary of the Company.

Dated as of February 25, 2021.

Brad Huntington, Chairman

John Williams

Sarah Lawhorne

Gary Orndorff

Stephen Greenberg

Richard Milazzo

Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.1-221.63, any such determination to be conclusively evidenced by the execution and delivery of any such document or instrument or the doing or performing of any such act or thing.

The foregoing ACTION BY UNANIMOUS WRITTEN CONSENT OF DIRECTORS is taken pursuant to and in accordance with Section 1727(b) of the Pennsylvania Business Company Law and shall be filed with the Secretary of the Company.

Dated as of February 25, 2021.

Brad Huntington, Chairman

John Williams

Sarah Lawhorne

Gary Orndorff

Stephen Greenberg

Richard Milazzo

Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.1-221.63, any such determination to be conclusively evidenced by the execution and delivery of any such document or instrument or the doing or performing of any such act or thing.

The foregoing ACTION BY UNANIMOUS WRITTEN CONSENT OF DIRECTORS is taken pursuant to and in accordance with Section 1727(b) of the Pennsylvania Business Company Law and shall be filed with the Secretary of the Company.

Dated as of February 25, 2021.

Brad Huntington, Chairman

John Williams

Sarah Lawhorne

Gary Orndorff

Stephen Greenberg

Richard Milazzo

EXHIBIT 6

Bedivere Insurance Company
ACTION BY WRITTEN CONSENT
OF SOLE SHAREHOLDER

The undersigned, being the sole Shareholder of Bedivere Insurance Company ("Bedivere" or "Company") does hereby ratify, adopt, approve and consent to the following resolutions:

WHEREAS, the Insurance Commissioner of the Commonwealth of Pennsylvania has requested that Bedivere consent to the entry of an order of liquidation; and

WHEREAS, the sole shareholder of Bedivere deems it beneficial to the interest of Bedivere, its policyholders, creditors, and the public that Bedivere be placed into liquidation; and

NOW THEREFORE, BE IT RESOLVED that in the judgment of the sole Shareholder of Bedivere it is deemed advisable and for the benefit of Bedivere, its policyholders, its creditors and the public that Bedivere should be liquidated, and that the Insurance Commissioner of the Commonwealth of Pennsylvania should apply to the Commonwealth Court for an order authorizing the liquidation of Bedivere; and

BE IT FURTHER RESOLVED, that the officers of the Company shall be and hereby are authorized, empowered and directed to execute and deliver all such documents or instruments necessary, appropriate or desirable for the implementation of the foregoing resolution, and to do and perform such other acts and things on behalf of the Company as they deem or any of them determine to be necessary, appropriate or desirable to carry out and effect the intent of the foregoing resolution, including but not limited to providing consent to the entry of an Order of Liquidation by the

Commonwealth Court pursuant to the Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.1-221.63, any such determination to be conclusively evidenced by the execution and delivery of any such document or instrument or the doing or performing of any such act or thing.

The foregoing ACTION BY WRITTEN CONSENT OF SOLE SHAREHOLDER is taken pursuant to and in accordance with Section 1766(a) of the Pennsylvania Business Company Law and shall be filed with the Secretary of the Company.

Dated as of Feb 26th, 2021.

Trebuchet US Holdings, Inc.:

By: _____

DIRECTOR

EXHIBIT 7

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jessica K. Altman Insurance Commissioner of the Commonwealth of Pennsylvania Plaintiff	:	
v.	:	Docket No.
Bedivere Insurance Company 1880 JFK Boulevard Suite 801 Philadelphia, PA 19103 Defendant.	:	

CONSENT TO ENTRY OF ORDER OF LIQUIDATION

1. Bedivere Insurance Company ("Bedivere") hereby agrees and consents to the terms of the attached Order of Liquidation (Attachment A), to be entered by the Commonwealth Court in accordance with the Insurance Department Act of 1921, P.L. 789, *as amended*, 40 P.S. §§221.1-221.63.

2. Consent is given pursuant to the Consents of the Board of Directors (Attachment B) and Sole Shareholder (Attachment C).

3. Bedivere consents to the entry of the Order of Liquidation on the terms contained in said Order, which are incorporated herein by reference.

4. Bedivere represents that the undersigned has the authority to consent to entry of the Order of Liquidation and to waive Bedivere's rights to (a) any hearing before the Insurance Commissioner or the Commonwealth Court with respect to the entry of such Order, and (b) service of the Petition for Review in the Nature of a Complaint for Liquidation, as provided for in Section 520 of the Insurance Department Act of 1921, 40 P.S. §221.20, or any other sections or acts.

5. Bedivere agrees that the consent and waivers set forth herein are voluntary, made with advice of counsel, and with full knowledge and understanding of the consequences of the entry of the Order of Liquidation.

Bedivere Insurance Company

By: _____
Bryan Enos
Acting President

DATED: Feb 27, 2021

ATTACHMENT A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, Plaintiff, v. Bedivere Insurance Company, 1880 JFK Boulevard Suite 801 Philadelphia, PA 19103, Defendant.	: : : : : : : : : : : : : :	Docket No. _____

ORDER OF LIQUIDATION

AND NOW, this __ day of _____, 2021, upon consideration of the Petition for Review in the Nature of a Complaint for Order of Liquidation ("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, *as amended*, 40 P.S. §§ 221.1 – 221.63 ("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.

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 this 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) thirty (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 the equivalent insurance with another insurer or otherwise terminated the policy; or (4) until the Liquidator has effected a transfer of the policy obligation pursuant to Section 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; (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 thirty (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 noting, in reasonable detail, the date on which and manner by which these notices were given.

ADMINISTRATIVE EXPENSES

12. The Liquidator shall pay, as costs and expenses of administration pursuant to Section 544 of Article V, 40 P.S. § 221.44, the actual, reasonable and necessary costs of preserving or recovering the assets of Bedivere.

13. Distribution of the assets of Bedivere in payment of the costs and expenses of estate administration including, but not limited to, compensation for the services of employees and professional consultants, such as attorneys, actuaries and accountants, shall be made under the direction and approval of the Court.

STAY OF LITIGATION

14. 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.

15. 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 40 P.S. § 221.43.

16. 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 Employer's Fire Insurance Company ("Employers"), Lamorak Insurance Company (formerly OneBeacon American Insurance Company) ("Lamorak"), and Potomac Insurance

Company ("Potomac") made under Article XIV of The Insurance Company Law of 1921 (40 P.S. §§ 991.1401—991.1413), all references herein to Bedivere shall include Employers, Lamorak, and Potomac.

_____

, Judge

ATTACHMENT B

Bedivere Insurance Company
ACTION BY UNANIMOUS
WRITTEN CONSENT OF DIRECTORS

The undersigned, being the directors on the board of Bedivere Insurance Company ("Bedivere" or "Company"), do hereby ratify, adopt, approve and consent to the following resolutions:

WHEREAS, the Insurance Commissioner of the Commonwealth of Pennsylvania has requested that Bedivere consent to the entry of an order of liquidation; and

WHEREAS, the directors of Bedivere deem it beneficial to the interest of Bedivere, its policyholders, creditors, and the public that Bedivere be placed into liquidation; and

NOW THEREFORE, BE IT RESOLVED that in the judgment of the directors of Bedivere it is deemed advisable and for the benefit of Bedivere, its policyholders, its creditors and the public that Bedivere should be liquidated, and that the Insurance Commissioner of the Commonwealth of Pennsylvania should apply to the Commonwealth Court for an order authorizing the liquidation of Bedivere; and

BE IT FURTHER RESOLVED, that the officers of the Company shall be and hereby are authorized, empowered and directed to execute and deliver all such documents or instruments necessary, appropriate or desirable for the implementation of the foregoing resolution, and to do and perform such other acts and things on behalf of the Company as they deem or any of them determine to be necessary, appropriate or desirable to carry out and effect the intent of the foregoing resolution, including but not limited to providing consent to the entry of an Order of Liquidation by the Commonwealth Court pursuant to the Insurance Department

Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.1-221.63, any such determination to be conclusively evidenced by the execution and delivery of any such document or instrument or the doing or performing of any such act or thing.

The foregoing ACTION BY UNANIMOUS WRITTEN CONSENT OF DIRECTORS is taken pursuant to and in accordance with Section 1727(b) of the Pennsylvania Business Company Law and shall be filed with the Secretary of the Company.

Dated as of February 25, 2021.

Brad Huntington, Chairman

John Williams

Sarah Lawhorne

Gary Orndorff

Stephen Greenberg

Richard Milazzo

Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.1-221.63, any such determination to be conclusively evidenced by the execution and delivery of any such document or instrument or the doing or performing of any such act or thing.

The foregoing ACTION BY UNANIMOUS WRITTEN CONSENT OF DIRECTORS is taken pursuant to and in accordance with Section 1727(b) of the Pennsylvania Business Company Law and shall be filed with the Secretary of the Company.

Dated as of February 25, 2021.

Brad Huntington, Chairman

John Williams

Sarah Lawhorne

Gary Orndorff

Stephen Greenberg

Richard Milazzo

Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.1-221.63, any such determination to be conclusively evidenced by the execution and delivery of any such document or instrument or the doing or performing of any such act or thing.

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Dated as of February 25, 2021.

Brad Huntington, Chairman	John Williams
Sarah Lawhorne	Gary Orndorff
Stephen Greenberg	Richard Milazzo

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Dated as of February 25, 2021.

Brad Huntington, Chairman	John Williams
Sarah Lawhorne	Gary Orndorff
Stephen Greenberg	Richard Milazzo

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Dated as of February 25, 2021.

Brad Huntington, Chairman

John Williams

Sarah Lawhorne

Gary Orndorff

Stephen Greenberg

Richard Milazzo

ATTACHMENT C

Bedivere Insurance Company
ACTION BY WRITTEN CONSENT
OF SOLE SHAREHOLDER

The undersigned, being the sole Shareholder of Bedivere Insurance Company ("Bedivere" or "Company") does hereby ratify, adopt, approve and consent to the following resolutions:

WHEREAS, the Insurance Commissioner of the Commonwealth of Pennsylvania has requested that Bedivere consent to the entry of an order of liquidation; and

WHEREAS, the sole shareholder of Bedivere deems it beneficial to the interest of Bedivere, its policyholders, creditors, and the public that Bedivere be placed into liquidation; and

NOW THEREFORE, BE IT RESOLVED that in the judgment of the sole Shareholder of Bedivere it is deemed advisable and for the benefit of Bedivere, its policyholders, its creditors and the public that Bedivere should be liquidated, and that the Insurance Commissioner of the Commonwealth of Pennsylvania should apply to the Commonwealth Court for an order authorizing the liquidation of Bedivere; and

BE IT FURTHER RESOLVED, that the officers of the Company shall be and hereby are authorized, empowered and directed to execute and deliver all such documents or instruments necessary, appropriate or desirable for the implementation of the foregoing resolution, and to do and perform such other acts and things on behalf of the Company as they deem or any of them determine to be necessary, appropriate or desirable to carry out and effect the intent of the foregoing resolution, including but not limited to providing consent to the entry of an Order of Liquidation by the

Commonwealth Court pursuant to the Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§ 221.1-221.63, any such determination to be conclusively evidenced by the execution and delivery of any such document or instrument or the doing or performing of any such act or thing.

The foregoing ACTION BY WRITTEN CONSENT OF SOLE SHAREHOLDER is taken pursuant to and in accordance with Section 1766(a) of the Pennsylvania Business Company Law and shall be filed with the Secretary of the Company.

Dated as of Feb 26th, 2021.

Trebuchet US Holdings, Inc.:

By: _____

DIRECTOR

EXHIBIT 8

2 1 9 7 0 2 0 2 0 2 0 1 0 0 1 0 0

PROPERTY AND CASUALTY COMPANIES—ASSOCIATION EDITION

ANNUAL STATEMENT

For the Year Ended December 31, 2020

OF THE CONDITION AND AFFAIRS OF THE

Bedivere Insurance Company

NAIC Group Code	04829 (Current Period)	04829 (Prior Period)	NAIC Company Code	21970	Employer's ID Number 23-1502700
Organized under the Laws of	Pennsylvania		State of Domicile or Port of Entry	Pennsylvania	
Country of Domicile	United States				
Incorporated/Organized	06/01/1956		Commenced Business	07/11/1956	
Statutory Home Office	1880 JFK Boulevard, Ste 801 (Street and Number)		Philadelphia, PA, US 19103 (City or Town, State, Country and Zip Code)		
Main Administrative Office	1880 JFK Boulevard, Ste 801 (Street and Number)		Philadelphia, PA, US 19103 (City or Town, State, Country and Zip Code)	215-665-5000 (Area Code) (Telephone Number)	
Mail Address	1880 JFK Boulevard, Ste 801 (Street and Number or P.O. Box)		Philadelphia, PA, US 19103 (City or Town, State, Country and Zip Code)		
Primary Location of Books and Records	1880 JFK Boulevard, Ste 801 (Street and Number)		Philadelphia, PA, US 19103 (City or Town, State, Country and Zip Code)	215-665-5000 (Area Code) (Telephone Number)	
Internet Web Site Address	www.armourrisk.com				
Statutory Statement Contact	Bryan Enos (Name)		857-403-1883 (Area Code) (Telephone Number) (Extension)		
	benos@armourrisk.com (E-Mail Address)		215-665-1888 (Fax Number)		

OFFICERS

Name	Title	Name	Title
Bryan John Enos	President/Treasurer	John Gerard Zimitski #	Assistant Treasurer
Doreen Pauline Elizabeth Richards	Secretary	Terri Renee Weaver	Assistant Secretary

OTHER OFFICERS

DIRECTORS OR TRUSTEES

Brad Scott Huntington	John Caldicott Williams	Sarah Hayes Lawhorne	Gary Joseph Orndorff
Stephen Jay Greenberg	Richard Charles Milazzo		

State of Pennsylvania

ss

County of Philadelphia

The officers of this reporting entity, being duly sworn, each depose and say that they are the described officers of said reporting entity, and that on the reporting period stated above, all of the herein described assets were the absolute property of the said reporting entity, free and clear from any liens or claims thereon, except as herein stated, and that this statement, together with related exhibits, schedules and explanations therein contained, annexed or referred to, is a full and true statement of all the assets and liabilities and of the condition and affairs of the said reporting entity as of the reporting period stated above, and of its income and deductions therefrom for the period ended, and have been completed in accordance with the NAIC Annual Statement Instructions and Accounting Practices and Procedures manual except to the extent that: (1) state law may differ; or, (2) that state rules or regulations require differences in reporting not related to accounting practices and procedures, according to the best of their information, knowledge and belief, respectively. Furthermore, the scope of this attestation by the described officers also includes the related corresponding electronic filing with the NAIC, when required, that is an exact copy (except for formatting differences due to electronic filing) of the enclosed statement. The electronic filing may be requested by various regulators in lieu of or in addition to the enclosed statement.

Bryan John Enos President/Treasurer	John Gerard Zimitski Assistant Treasurer	Terri Renee Weaver Assistant Secretary

Subscribed and sworn to before me this _____ day of _____

a. Is this an original filing? Yes [X] No [ ]

b. If no:

1. State the amendment number _____
2. Date filed _____
3. Number of pages attached _____

ASSETS

		Current Year			Prior Year
		1	2	3	4
		Assets	Nonadmitted Assets	Net Admitted Assets (Cols. 1 - 2)	Net Admitted Assets
1.	Bonds (Schedule D)	138,036,081		138,036,081	132,508,952
2.	Stocks (Schedule D):				
	2.1 Preferred stocks	15,740,323		15,740,323	3,270,300
	2.2 Common stocks	69,954,432		69,954,432	46,877,659
3.	Mortgage loans on real estate (Schedule B):				
	3.1 First liens			0	0
	3.2 Other than first liens			0	0
4.	Real estate (Schedule A):				
	4.1 Properties occupied by the company (less $ encumbrances)			0	0
	4.2 Properties held for the production of income (less $ encumbrances)			0	0
	4.3 Properties held for sale (less $ encumbrances)			0	0
5.	Cash ($ 10,840,137, Schedule E-Part 1), cash equivalents ($ 4,975,693, Schedule E-Part 2) and short-term investments ($ 0, Schedule DA)	15,815,828		15,815,828	31,777,571
6.	Contract loans (including $ premium notes)			0	0
7.	Derivatives (Schedule DB)	0		0	0
8.	Other invested assets (Schedule BA)	225,000		225,000	225,000
9.	Receivables for securities	2,038,580		2,038,580	0
10.	Securities lending reinvested collateral assets (Schedule DL)			0	0
11.	Aggregate write-ins for invested assets	0	0	0	0
12.	Subtotals, cash and invested assets (Lines 1 to 11)	241,810,244	0	241,810,244	214,659,482
13.	Title plants less $ charged off (for Title insurers only)			0	0
14.	Investment income due and accrued	1,595,245		1,595,245	1,528,444
15.	Premiums and considerations:				
	15.1 Uncollected premiums and agents' balances in the course of collection	10,651,755		10,651,755	10,811,059
	15.2 Deferred premiums, agents' balances and installments booked but deferred and not yet due (including $ earned but unbilled premiums)			0	0
	15.3 Accrued retrospective premiums ($) and contracts subject to redetermination ($)			0	0
16.	Reinsurance:				
	16.1 Amounts recoverable from reinsurers	34,598,136		34,598,136	108,345,630
	16.2 Funds held by or deposited with reinsured companies	433,123		433,123	436,318
	16.3 Other amounts receivable under reinsurance contracts			0	0
17.	Amounts receivable relating to uninsured plans			0	0
18.1	Current federal and foreign income tax recoverable and interest thereon	639,847		639,847	2,584,982
18.2	Net deferred tax asset			0	0
19.	Guaranty funds receivable or on deposit			0	87,414
20.	Electronic data processing equipment and software			0	0
21.	Furniture and equipment, including health care delivery assets ($)			0	0
22.	Net adjustment in assets and liabilities due to foreign exchange rates			0	0
23.	Receivables from parent, subsidiaries and affiliates			0	0
24.	Health care ($) and other amounts receivable			0	0
25.	Aggregate write-ins for other-than-invested assets	14,554,077	3,309,238	11,244,839	12,898,989
26.	Total assets excluding Separate Accounts, Segregated Accounts and Protected Cell Accounts (Lines 12 to 25)	304,282,427	3,309,238	300,973,189	351,352,318
27.	From Separate Accounts, Segregated Accounts and Protected Cell Accounts			0	0
28.	Total (Lines 26 and 27)	304,282,427	3,309,238	300,973,189	351,352,318
DETAILS OF WRITE-INS					
1101.					
1102.					
1103.					
1198.	Summary of remaining write-ins for Line 11 from overflow page	0	0	0	0
1199.	Totals (Lines 1101 through 1103 plus 1198) (Line 11 above)	0	0	0	0
2501.	Prepaid Service Fees	1,235,200	1,235,200	0	0
2502.	Sundry Balances	8,601,291		8,601,291	12,528,255
2503.	TPA funding and other misc assets	1,697,586	2,074,038	(376,452)	370,734
2598.	Summary of remaining write-ins for Line 25 from overflow page	3,020,000	0	3,020,000	0
2599.	Totals (Lines 2501 through 2503 plus 2598) (Line 25 above)	14,554,077	3,309,238	11,244,839	12,898,989

LIABILITIES, SURPLUS AND OTHER FUNDS

	1 Current Year	2 Prior Year
1. Losses (Part 2A, Line 35, Column 8)	623,380,217	467,289,354
2. Reinsurance payable on paid losses and loss adjustment expenses (Schedule F, Part 1, Column 6)	301,420	301,693
3. Loss adjustment expenses (Part 2A, Line 35, Column 9)	80,180,118	24,554,255
4. Commissions payable, contingent commissions and other similar charges		0
5. Other expenses (excluding taxes, licenses and fees)	571,077	500,482
6. Taxes, licenses and fees (excluding federal and foreign income taxes)	(14,891)	(14,891)
7.1 Current federal and foreign income taxes (including $ on realized capital gains (losses))		0
7.2 Net deferred tax liability	123,788	319,793
8. Borrowed money $ and interest thereon $		0
9. Unearned premiums (Part 1A, Line 38, Column 5) (after deducting unearned premiums for ceded reinsurance of $ and including warranty reserves of $ and accrued accident and health experience rating refunds including $ for medical loss ratio rebate per the Public Health Service Act)	763	621
10. Advance premium		0
11. Dividends declared and unpaid:		
11.1 Stockholders		0
11.2 Policyholders		0
12. Ceded reinsurance premiums payable (net of ceding commissions)	648,120	648,120
13. Funds held by company under reinsurance treaties (Schedule F, Part 3, Column 20)	522,408	518,999
14. Amounts withheld or retained by company for account of others		0
15. Remittances and items not allocated		0
16. Provision for reinsurance (including $ certified) (Schedule F, Part 3, Column 78)	26,909,554	2,507,207
17. Net adjustments in assets and liabilities due to foreign exchange rates		0
18. Drafts outstanding	3,246,965	1,599,750
19. Payable to parent, subsidiaries and affiliates	449,725	130,465
20. Derivatives	0	0
21. Payable for securities		0
22. Payable for securities lending		0
23. Liability for amounts held under uninsured plans		0
24. Capital notes $ and interest thereon $		0
25. Aggregate write-ins for liabilities	(157,860,811)	(182,385,713)
26. Total liabilities excluding protected cell liabilities (Lines 1 through 25)	578,458,453	315,970,135
27. Protected cell liabilities		0
28. Total liabilities (Lines 26 and 27)	578,458,453	315,970,135
29. Aggregate write-ins for special surplus funds	1,269,314,262	1,269,314,262
30. Common capital stock	4,200,000	4,200,000
31. Preferred capital stock		0
32. Aggregate write-ins for other-than-special surplus funds	0	0
33. Surplus notes	101,000,000	101,000,000
34. Gross paid in and contributed surplus	1,103,030,599	1,103,030,599
35. Unassigned funds (surplus)	(1,819,489,527)	(1,506,622,078)
36. Less treasury stock, at cost:		
36.1 shares common (value included in Line 30 $)	935,540,598	935,540,598
36.2 shares preferred (value included in Line 31 $)		0
37. Surplus as regards policyholders (Lines 29 to 35, less 36) (Page 4, Line 39)	(277,485,264)	35,382,185
38. Totals (Page 2, Line 28, Col. 3)	300,973,189	351,352,320
DETAILS OF WRITE-INS		
2501. Ceded balances payable to Torer Group	8,513,880	8,513,880
2502. National accounts loss fund	746,742	1,063,573
2503. Retroactive Reinsurance Reserve	(167,121,433)	(192,963,166)
2598. Summary of remaining write-ins for Line 25 from overflow page	0	1,000,000
2599. Totals (Lines 2501 through 2503 plus 2598) (Line 25 above)	(157,860,811)	(182,385,713)
2901. Special Surplus from Retroactive Reinsurance Account	1,269,314,262	1,269,314,262
2902.		
2903.		
2998. Summary of remaining write-ins for Line 29 from overflow page	0	0
2999. Totals (Lines 2901 through 2903 plus 2998) (Line 29 above)	1,269,314,262	1,269,314,262
3201.		
3202.		
3203.		
3298. Summary of remaining write-ins for Line 32 from overflow page	0	0
3299. Totals (Lines 3201 through 3203 plus 3298) (Line 32 above)	0	0

EXHIBIT 9

2 1 9 7 0 2 0 2 0 3 9 0 0 0 1 0 0

COMPANY INFORMATION PAGE (JURAT)
Property Risk-Based Capital
For the Year Ending December 31, 2020

(A) Company Name Bedivere Insurance Company

(B) NAIC Group Code 04829 (C) NAIC Company Code 21970 (D) Employer's ID Number 23-1502700

(E) Organized Under the Laws of the State of US

Contact Person for Risk-Based Capital:

(F) First Name Bryan (G) Middle (H) Last Name Enos

(I) Mail Address of Contact Person 3 Batterymarch Park, Suite 101

(Street and Number or P.O. Box)

(J) City Quincy (K) State MA (L) Zip 02169

(M) Phone Number of RBC Contact Person 857-403-1883 Extension Email benos@armourrisk.com

(N) Date Prepared

(O) Preparer (if different than Contact) _____ _____ _____

First Name Middle Name Last Name

PR001

(P) Is this filing an Original, Amended or Refiling? (O,A,R) Original

(P1) If Amended, Amended Number

(Q) Were any items that come directly from the annual statement entered manually to prepare this filing? (Y/N) No

Officer Name:	Bryan John Enos	John Gerard Zimitski	Terri Renee Weaver
Officer Title:	President/Treasurer	Assistant Treasurer	Assistant Secretary

Each says that they are the above described officers of the said insurer, and that this risk-based capital is a true and fair representation of the company's affairs and has been completed in accordance with the NAIC instructions according to the best of their information, knowledge and belief, respectively.

Signature Signature Signature

EXHIBIT 10

Bedivere Insurance Company

Company Code 21970

COMPARISON OF TOTAL ADJUSTED CAPITAL TO RISK-BASED CAPITAL PR034

Excluding the Trend Test:

		Abbreviation	(1) Amount
(1)	Total Adjusted Capital (Post-Deferred Tax: PR029 Line 14)		(277,485,264)
(2)	Company Action Level = 200% of Authorized Control Level	CAL	177,525,768
(3)	Regulatory Action Level = 150% of Authorized Control Level	RAL	133,144,326
(4)	Authorized Control Level = 100% of Authorized Control Level	ACL	88,762,884
(5)	Mandatory Control Level = 70% of Authorized Control Level	MCL	62,134,019
(6)	Level of Action, if Any (excluding the trend test)		Mandatory Control Level

Including the Trend Test:

(7)	Level of Action, if Any (including the trend test)		Mandatory Control Level

PR034

THE FOLLOWING NUMBERS MUST BE REPORTED IN THE FIVE YEAR HISTORY EXHIBIT ON THE INDICATED LINE

Total Adjusted Surplus to Policyholders	Five Yr Hist C1 L28	L(1)C(1)	(277,485,264)
Authorized Control Level Risk-Based Capital	Five Yr Hist C1 L29	L(4)C(1)	88,762,884

VERIFICATION

I verify that the statements made in the Nature of a Complaint for Order of Liquidation of Bedivere Insurance Company are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Melissa Greiner
Deputy Insurance Commissioner

Dated: March 2, 2021

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in the following manner:

Service by email as indicated below:

Steven Burgess Davis
sdavis@stradley.com
Stradley Ronan Stevens & Young,LLP
2005 Market Street, Suite 2600
Philadelphia, PA 19103-7018

Jodi A. Frantz
Jodi A. Frantz (Atty ID #84727)
jodfrantz@pa.gov
Deputy Chief Counsel

Amy Griffith Daubert (Atty ID #62064)
adaubert@pa.gov
Chief Counsel

Kathryn McDermott Speaks (Atty ID #77238)
kspeaks@pa.gov
Senior Litigation Counsel

John J. Lacek, IV (Atty ID #319369)
jlacek@pa.gov
Department Counsel
Pennsylvania Insurance Department
1341 Strawberry Square
Harrisburg, PA 17120
(717) 787-2567

Counsel for the Pennsylvania Insurance Department, Commonwealth of Pennsylvania

DATE: March 2, 2021

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, Plaintiff, v. Bedivere Insurance Company, 1880 JFK Boulevard Suite 801 Philadelphia, PA 19103, Defendant.	: : : : : : : : : : : : : : :	Docket No. _____

ORDER OF LIQUIDATION

AND NOW, this __ day of _____, 2021, upon consideration of the Petition for Review in the Nature of a Complaint for Order of Liquidation ("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, *as amended*, 40 P.S. §§ 221.1 – 221.63 ("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.

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 this 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) thirty (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 the equivalent insurance with another insurer or otherwise terminated the policy; or (4) until the Liquidator has effected a transfer of the policy obligation pursuant to Section 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; (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 thirty (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 noting, in reasonable detail, the date on which and manner by which these notices were given.

ADMINISTRATIVE EXPENSES

12. The Liquidator shall pay, as costs and expenses of administration pursuant to Section 544 of Article V, 40 P.S. § 221.44, the actual, reasonable and necessary costs of preserving or recovering the assets of Bedivere.

13. Distribution of the assets of Bedivere in payment of the costs and expenses of estate administration including, but not limited to, compensation for the services of employees and professional consultants, such as attorneys, actuaries and accountants, shall be made under the direction and approval of the Court.

STAY OF LITIGATION

14. 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.

15. 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 40 P.S. § 221.43.

16. 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 Employer's Fire Insurance Company ("Employers"), Lamorak Insurance Company (formerly OneBeacon American Insurance Company) ("Lamorak"), and Potomac Insurance

Company ("Potomac") made under Article XIV of The Insurance Company Law of 1921 (40 P.S. §§ 991.1401—991.1413), all references herein to Bedivere shall include Employers, Lamorak, and Potomac.

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, Judge