

CAUSE NO. D-1-GN-18-001285

THE TEXAS DEPARTMENT OF	§	IN THE DISTRICT COURT OF
INSURANCE,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ACCESS INSURANCE COMPANY,	§	
<i>Defendant.</i>	§	261 ST JUDICIAL DISTRICT

**SPECIAL DEPUTY RECEIVER’S APPLICATION TO ENFORCE PERMANENT
INJUNCTION AND AUTOMATIC STAY, FOR ISSUANCE OF SHOW CAUSE
ORDER AND FOR WRIT OF PERMANENT INJUNCTION
[ABC RESPONDENTS AND THE EMBARK RESPONDENTS]**

TO THE HONORABLE JUDGE OF THIS COURT:

CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Access Insurance Company (the “SDR” and “Access,” respectively), files this Application to Enforce Permanent Injunction and Automatic Stay, for Issuance of Show Cause Order and for Writ of Permanent Injunction (the “Application”), and shows the following:

I. INTRODUCTION

1.1 This Court (the “Receivership Court”) should issue a show cause order requiring the ABC Respondents¹ and the Embark Respondents² (collectively, “Respondents”) to appear and show cause as to why they should not be enjoined and, after final hearing, issue a permanent injunction barring the ABC Respondents and the Embark Respondents from pursuing claims against the SDR, Access, or property of the estate in any forum other than the Receivership Court.

¹ APF (Assignment for the Benefit of Creditors), LLC, AGIA (Assignment for the Benefit of Creditors), LLC, AGIAC (Assignment for the Benefit of Creditors), LLC, ACS (Assignment for the Benefit of Creditors), LLC, ACPAHM (Assignment for the Benefit of Creditors), LLC; ACPI (Assignment for the Benefit of Creditors), LLC (collectively, the “ABC Respondents”).

² Embark Holdco Management, LLC (“Embark Holdco”) and Embark Corporate Services, LLC (“Embark Services”) (collectively, the “Embark Respondents”).

All Respondents are parties to a scheme to defraud the receivership estate, its policyholders and creditors. They cheerfully admitted their intent in an e-mail to employees, as follows:

We have a truly “fresh start” – Embark is a new legal entity that has inherited Access’ most important assets ... but none of its legacy liabilities. All historical issues related to things of the past will stay with the legacy Access business [the SDR] and won’t be our problem.

1.2 The SDR has already filed suit in the Receivership Court to thwart the scheme and recover assets for the Access receivership estate (“Estate”) and its creditors. The latest machinations by the Respondents – filing suit on July 26, 2019 against the SDR in Delaware³ and seeking to consolidate the new lawsuit with certain Assignment for Benefit of Creditor actions also pending in Delaware Chancery Court – are only their most recent efforts to obstruct and interfere with the conduct of this proceeding; to waste, convert, and conceal Estate assets; and commence and prosecute actions against the SDR outside of the Receivership Court. Further injunctive relief is required to enforce this Court’s own orders and the integrity of this delinquency proceeding.

II. STATUTORY AUTHORITY

2.1 On March 13, 2018, the Court entered an *Agreed Order Appointing Liquidator, Permanent Injunction, and Notice of Automatic Stay* (the “Permanent Injunction”), appointing the Texas Commissioner of Insurance (“Commissioner”) as Liquidator (“Liquidator”) of Access. Effective March 13, 2018, the Liquidator appointed CANTILO & BENNETT, L.L.P. as Special Deputy Receiver of Access. The SDR is authorized to file this Application under the provisions of the Insurer Receivership Act, Chapter 443 of the Texas Insurance Code , which provides, in

³ On July 26, 2019 the ABC Respondents and the Embark Respondents filed suit against the SDR in Case No. 2019-0577 in the Court of Chancery of the State of Delaware (the “Delaware Lawsuit”). On that same date, the same plaintiffs filed motions to consolidate the Delaware Lawsuit with certain Assignment for Benefit of Creditor actions also pending in Chancery Court. Finally, they sought to expedite that court’s consideration of the Delaware Lawsuit and the other litigation against the SDR.

part: “[t]he receivership court may issue any order, process, or judgment, including stays, injunctions, or other orders, as necessary or appropriate to carry out the provisions of this chapter or an approved rehabilitation plan.” TEX. INS. CODE § 443.008 (a).

III. JURISDICTION AND VENUE

3.1 This Court has jurisdiction to enter the relief sought pursuant to the provisions of the Insurer Receivership Act, including but not limited to Section 443.008.

3.2 This Court has exclusive jurisdiction over the subject matter of this application pursuant to TEX. INS. CODE § 443.005, as it concerns: (1) the disposition of Access’ property, and (2) a request to enforce a stay and injunctions under TEX. INS. CODE § 443.008. TEX. INS. CODE § 443.005 (c) provides that this Court has exclusive jurisdiction over all of Access’ property, wherever located, including property located outside the territorial limits of the State of Texas. Under TEX. INS. CODE § 443.005 (b), only this Court is authorized to exercise jurisdiction over a request for a stay, injunction or other relief related to this proceeding. The authority to make such a request is contained in TEX. INS. CODE § 443.008, which states in pertinent part: “INJUNCTIONS AND ORDERS. (a) The receivership court may issue any order, process, or judgment, including stays, injunctions, or other orders, as necessary or appropriate to carry out the provisions of this chapter or an approved rehabilitation plan.”

3.3 Further, this Court’s Permanent Injunction issued on March 13, 2018, states: “[7.2] Pursuant to TEX. INS. CODE § 443.055, this Order constitutes a final judgment, provided that this Court shall retain jurisdiction to issue further orders pursuant to the Insurer Receivership Act.”

3.4 This Court has jurisdiction over the Respondents herein pursuant to TEX. INS. CODE § 443.005. Specifically, this Court has personal jurisdiction over the ABC Respondents and the Embark Respondents for the following reasons:

- This is a civil proceeding arising under and related to this Delinquency Proceeding under the TIRA.
- The Insurer Receivership Act extends the scope of personal jurisdiction over debtors of the insurer located outside of Texas. TEX. INS. CODE § 443.001(e)(5)(B).
- Respondents violated the Permanent Injunction and the automatic stay in the State of Texas by filing suit against the SDR and causing a summons to be issued and served on the SDR at its office in Texas.
- Respondents hold property of the Estate, which is subject to this Court's exclusive jurisdiction wherever located.
- Respondents have wasted, converted, and concealed property of the estate, which is subject to this Court's exclusive jurisdiction wherever located.
- Respondents fall under the Court's statutory personal jurisdiction set out in TEX. INS. CODE § 443.005(d) and Texas Civil Practice & Remedies Code Chapter 17.
- The exercise of jurisdiction over the Respondents comports to customary standards of fair play and substantial justice and complies with the protections of the Constitutions of the United States of America and the State of Texas.

3.5 The remedies asserted herein arise from or relate to the contacts of the Respondents with the State of Texas, thereby conferring specific jurisdiction over them. Moreover, the ABC Respondents and the Embark Respondents, individually and collectively, engaged in activities constituting business in the State of Texas as provided by Section 17.042 of the Texas Civil Practice and Remedies Code. Each either is or was a successor in contracts with Texas residents.

3.6 Finally, this Court has personal jurisdiction over Respondents because, as more fully described below, each has taken action in violation of a final judgment entered against them and others by the Receivership Court.

3.7 Exclusive and mandatory venue for this proceeding is in Travis County, Texas pursuant to TEX. INS. CODE § 443.005(g). The *Order of Reference to Master* entered in this proceeding is not applicable to the injunctive relief requested this action, as requests for temporary restraining orders or injunctions are not referred to the Master appointed herein

IV. CONDITIONS PRECEDENT

4.1 All conditions precedent have occurred or been complied with; alternatively, conditions precedent, if any, have been waived.

V. RESPONDEAT SUPERIOR AND RATIFICATION

5.1 Whenever the Application alleges that the ABC Respondents and the Embark Respondents did any act or thing, it means: (1) the ABC Respondents' and the Embark Respondents' attorneys, officers, agents, servants, employees or representatives did such act; (2) at that time such act was done, it was done with the full authorization or ratification of the ABC Respondents and the Embark Respondents; and/or (3) it was done in the normal and routine course and scope of employment of the ABC Respondents' and the Embark Respondents' attorneys, officers, agents, servants, employees, or representatives.

VI. THE PARTIES

6.1 The SDR is the Special Deputy Receiver of Access, duly appointed by the Liquidator.

6.2 APF (Assignment for the Benefit of Creditors), LLC claims to be a Delaware limited liability company. It may be served through its attorney of record or through its registered agent.

6.3 AGIA (Assignment for the Benefit of Creditors), LLC claims to be a Delaware limited liability company. It may be served through its attorney of record or through its registered agent.

6.4 AGIAC (Assignment for the Benefit of Creditors), LLC claims to be a Delaware limited liability company. It may be served through its attorney of record or through its registered agent.

6.5 ACS (Assignment for the Benefit of Creditors), LLC claims to be a Delaware limited liability company. It may be served through its attorney of record or through its registered agent.

6.6 ACPAHM (Assignment for the Benefit of Creditors), LLC claims to be a Delaware limited liability company. It may be served through its attorney of record or through its registered agent.

6.6 ACPI (Assignment for the Benefit of Creditors), LLC claims to be a Delaware limited liability company. It may be served through its attorney of record or through its registered agent.

6.7 Embark Holdco Management, LLC (“Embark Holdco”) claims to be a Delaware LLC. It may be served through its attorney of record or through its registered agent.

6.8 Embark Corporate Services, LLC claims to be a Delaware LLC. It may be served through its attorney of record or through its registered agent.

VII. FACTUAL BACKGROUND

7.1 Access was a Texas domiciled insurance company operating under Chapter 822 of the Texas Insurance Code. Access wrote private passenger nonstandard automobile liability and physical damage policies. At all relevant times, Access was regulated by the Texas Department of Insurance and sold insurance throughout the United States.

7.2 Before receivership Access was a virtual insurance company.⁴ It had no employees, no offices, and no fixtures, furniture or equipment. Almost every function necessary to operate as an insurance company was performed by a number of entities, which were largely owned and operated independently of the insurance company. The ABC Respondents and Embark Respondents claim to be the successors to these entities.

7.3 By way of example, virtually all management functions for the company were performed by Access Holdco Management, LLC (“Holdco Management”) under a Management Services Agreement (“MSA”). Respondents ACPAHM (Assignment for the Benefit of Creditors), LLC and Embark Holdco each claim to have succeeded to all of Holdco Management’s contracts. The MSA provided that Holdco Management “had officers and employees trained to underwrite, process applications, issue policies, interact with agents, process claims, file rates and forms and prepare records of account for insurance covering non-standard automobile policies.” Furthermore, to the extent that Holdco Management did not provide the services necessary for the operation of Access, Holdco Management’s subsidiaries (each of which was a predecessor to the Respondents) provided such services. As such, almost the entire range of operations normally conducted by an insurance company was conducted on Access’ behalf by Respondents and/or their predecessor entities. Under these contracts, the ABC Respondents, the Embark Respondents and their predecessors were obligated to operate and manage Access’ business, to create and maintain appropriate records of Access’ operations, to properly report data of Access’ operations to regulatory authorities and reinsurers, and to manage Access’ functions in compliance with all relevant common law, statutory, regulatory, and contractual obligations. By entering into such

⁴ Prior to 2015, Access and the Respondents’ predecessor entities were under common ownership. In late 2015, ownership of Access was separated from ownership of the Respondents’ predecessors resulting in these companies favoring their own interests to the detriment of Access. For example, weeks before receivership, in January 2018, Access was required to pay over \$6 million to the State of California that was actually owed by one of the Respondents’ predecessors.

contracts and by conducting such activities, the ABC Respondents' and the Embark Respondents' predecessors assumed and owed fiduciary duties to Access. The SDR has not rejected any of the agreements between Access and the ABC Respondents' and the Embark Respondents' predecessors. Moreover, the Respondents purport to have adopted and assumed all such agreements.

7.4 On March 13, 2018, the Texas Department of Insurance filed an Application for Order Appointing Liquidator and Request for Injunctive Relief (the "Delinquency Application"), thereby initiating the action styled Cause No. D-1-GN-18-001285, *The Texas Department of Insurance v. Access Insurance Company* (the "Texas Receivership Proceeding"), in the 261st Judicial District Court for Travis County, Texas. The Delinquency Application requested an order placing Access into liquidation pursuant to the Insurer Receivership Act and appointing the Commissioner as Liquidator. Effective March 14, 2018, the Liquidator appointed CANTILO & BENNETT, L.L.P. as SDR of Access.

7.5 On March 13, 2018, the Receivership Court entered the Permanent Injunction. As of the entry of that final order of liquidation, by operation of law, the Liquidator is vested with the title to all of the property, contracts, rights of action, and books and records of the insurer ordered liquidated, wherever located. The Permanent Injunction specifies that

[s]uch property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds held in shared, escrow, or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to [Access], whether asserted or not, including but not limited to accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, and all licenses held by [Access] (collectively, "[Access'] Property"). ***The Liquidator's title shall extend to [Access'] Property regardless of the name in which such items are held, or where such items are located.***

Permanent Injunction at ¶ 2.4 (emphasis added).

7.6 The Permanent Injunction also bars all parties, including, but not limited to the ABC Respondents, the Embark Respondents, and their predecessors, from “[m]aking any claim, charge or offset, or commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against [Access], [Access]’s Property or any part thereof, or against the Liquidator; **except as permitted by the [Insurer Receivership Act].** *Id.* at ¶ 4.10 (emphasis added).

7.7 The Permanent Injunction recognized the automatic stay created by TEX. INS. CODE § 443.008 (c)(1) which likewise bars all parties, including, but not limited to, the ABC Respondents and the Embark Respondents and their predecessors, from

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the insurer, including an arbitration proceeding, that was or could have been commenced before the commencement of the delinquency proceeding under this chapter, or to recover a claim against the insurer that arose before the commencement of the delinquency proceeding under [the Insurer Receivership Act].

7.8 Because Access was a “virtual insurance company,” the SDR had to contract with Holdco Management to continue to receive its services so that the SDR could begin the liquidation process. To that end, the SDR and Holdco Management entered into a Transition Services Agreement (the “TSA”) that provided the SDR and its staff access to “facilities, personnel and records, in order to discharge the SDR’s duties and responsibilities under the Liquidation Order.” TSA at ¶ 3. The TSA included a Confidentiality provision barring Holdco Management from disclosing proprietary and confidential information. *Id.* at ¶ 5. Most significantly, the TSA required that any litigation between the parties “shall be brought exclusively in the Receivership Court.” *Id.* at ¶ 10.3. Thus, Holdco Management consented to the personal jurisdiction of the

Receivership Court. Importantly, according to Respondents' own documentation, the TSA was part of the "assets" allegedly transferred in the ABC scheme from Holdco Management and its affiliates to the ABC Respondents, and ultimately to the Embark Respondents, as described more fully below.

7.9 The Permanent Injunction expressly enjoined any party from "[w]asting, disposing of, converting, dissipating or concealing, in any manner, any of [Access'] Property." Permanent Injunction at ¶ 4.3. It further enjoins "[u]sing, releasing, transferring, selling, assigning, canceling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, asserting ownership of, concealing, in any manner, or removing from this Court's jurisdiction or from [Access'] place of business any of [Access'] Property. . . ." Id. at ¶ 4.4. It also bars "[d]oing anything, directly or indirectly, to prevent the Liquidator or his designees from gaining access to, acquiring, examining, or investigating any of [Access'] Property or any other property, books, documents, records, or other materials concerning [Access'] business, under whatever name they may be found." Id. at ¶ 4.6. Nevertheless, after Access was placed into liquidation, Holdco Management and its affiliates, the ABC Respondents, and the Embark Respondents engaged in a series of transactions intended to strip the Holdco Management entities of all assets and transfer those assets to a new series of entities under the umbrella name of "Embark" in order to prevent the creditors of those entities, including the SDR and the Estate's policyholders and creditors, from recovering estate property, money owed to Access and to favor certain insiders.

7.10 To that end, on August 23, 2018, (five months after Access' receivership) the ABC Respondents, the Embark Respondents and their predecessors (including Holdco Management and its five affiliates) initiated Delaware state law insolvency proceedings referred to as "Assignment for the Benefit of Creditors" (hereinafter "ABC Proceedings"), effectively reassigning the predecessors' assets (while avoiding their liabilities) to the Embark group of entities so that they

could continue pursuing the exact same business, with the same employees, using the same equipment, and controlled by the same owners as their predecessors. Indeed, they made their fraudulent purpose abundantly clear in their communications to employees when explaining the transition:

We have a truly “fresh start” – Embark is a new legal entity that has inherited Access’ most important assets ... but none of its legacy liabilities. All historical issues related to things of the past will stay with the legacy Access business and won’t be our problem.

7.11 These proceedings are only part of an elaborate scheme to violate the Receivership Court’s orders. All of these transactions were part of a deliberate plan by the Respondents, their predecessors, and their management to place the assets beyond the reach of creditors such as the SDR, while allowing the assignor Respondents’ shareholders and officers and directors to continue to enjoy all of the benefits of those assets. At all times the individuals directing these transactions intended to continue the business of the predecessor Holdco Management entities under a new name. The assignee ABC Respondents and the Embark Respondents were aware of, and participated actively in, the scheme to defraud creditors.

7.12 The filing of the ABC Proceedings and the fraudulent transfers before and after the filings violated the Permanent Injunction. Notwithstanding the Texas Receivership Proceeding—already more than five months old by the date the ABC Proceedings commenced – the scheme allegedly assigned to each respective Assignee all of their right, title, and interest in their respective assets, including but not limited to

all of [Holdco affiliate’s] currently existing right, title, and interest in all real or personal property and all other assets, whatsoever and where so ever situated, which assets include (without limitation) all personal property and any interest therein, including all that certain stock of merchandise, office furniture and fixtures, machinery, equipment, leasehold interests and improvements, inventory (raw goods, work in process and finished goods), book accounts, books and records, bills, accounts receivable, cash on hand, cash in bank, intellectual property including all patents, patent applications, copyrights, trademarks and trade names, and all goodwill associated therewith, insurance policies (including any and all

policies for Directors and Officers Liability Insurance), tax refunds, rebates, general intangibles (including any and all causes of action), insurance refunds and claims (including any payments arising out of Directors and Officers Liability Insurance), and choses in action that are legally assignable, together with the proceeds of any non-assignable choses in action that may hereafter be recovered or received by the Assignor, and all real property interests.

(ABC Petition, Exhibit A, ¶2). Each ABC entity then immediately transferred these assets to an Embark Assignee.

7.13 On February 15, 2019, the SDR filed suit against the ABC Respondents and the Embark Respondents and others in the Texas Receivership Proceeding. The SDR has obtained service on all defendants in that suit. The ABC Respondents and the Embark Respondents filed a Special Appearance in the Receivership Court on July 26, 2019.

7.14 A February 19, 2019 deadline to file claims was set in the ABC Proceedings. None of the ABC Respondents or the Embark Respondents provided notice to Access or the SDR of the ABC Proceedings or any purported deadline to file claims. These actions (or inactions) were in derogation of their fiduciary obligations, the contractual provisions between the parties, the Permanent Injunction, and the Insurer Receivership Act.

7.15 On February 19, 2019, the SDR filed six timely Proofs of Claim, each of which expressly objected to the jurisdiction of the ABC Proceedings and did not waive any rights regarding jurisdiction over any causes of action involving the parties to the ABC Proceedings.

7.16 On July 26, 2019, the ABC Respondents and the Embark Respondents filed suit in Delaware state court against the SDR and others. See Exhibit 1, ABC Verified Complaint⁵. Shortly thereafter, they filed motions to consolidate their lawsuit with the ABC Proceedings, a motion to expedite the trial of the Delaware suit, and separate objections to the SDR's Proofs of Claim in the ABC proceedings. The ABC Respondents and the Embark Respondents then served

⁵ The Verified Complaint is 334 pages. The pleading, without exhibits, is attached.

the ABC Verified Complaint on the SDR at its office in Texas. See Exhibit 2, Affidavit of Mailing.

7.17 The SDR now faces extensive litigation outside of the Texas Receivership Proceeding that is pursued in violation of the Permanent Injunction and automatic stay. The litigation is intended to obstruct and interfere with the conduct of this Texas Receivership Proceeding; to waste, convert, and conceal Access estate assets; and commence and prosecute actions against the SDR outside of the Texas receivership forum.

VIII. RELIEF SOUGHT

8.1 The transactions and occurrences, described above, are incorporated by reference.

A. Enforce the Permanent Injunction and Automatic Stay against the ABC Respondents and the Embark Respondents' to enjoin their litigation against the SDR in any forum other than the Texas Receivership Court.

8.2 The SDR seeks injunctive relief halting the various Delaware proceedings against it. Litigating in a foreign forum is both depleting the assets available from parties responsible for Access' liquidation and reducing the value of these assets to the detriment of the policyholders, the state insurance guaranty associations and all other creditors of the Estate. The harm caused by the ABC Respondents and the Embark Respondents' litigation is irreparable because those parties will not be able to pay the Estate damages due to their claimed lack of assets, as well as the difficulty in calculating the losses arising from the multiplicity of litigation and the waste of Estate assets.

8.3 The SDR moves the Court to enforce the terms of the Permanent Injunction, and the provisions of the Insurer Receivership Act, including but not limited to TEX. INS. CODE § 443.008(k). First, the SDR seeks an order compelling the ABC Respondents and Embark Respondents to appear and show cause why they should not be enjoined and, following such hearing, entering a temporary injunction in order to preserve the status quo pending final hearing. Second, after final hearing, the SDR requests that the Court issue a writ of permanent injunction

enjoining the ABC Respondents and the Embark Respondents and requiring them to dismiss or abate further pursuit of the claims and causes of action asserted in the Delaware Lawsuit, the ABC Proceedings or in any other forum.

8.4 Pursuant to TEX. INS. CODE § 443.008(m), the SDR moves that the Court waive any requirement of bond. “Notwithstanding any other provision of law, bond may not be required of the commissioner or receiver in relation to any stay or injunction under this section.”

B. Award the SDR’s Attorneys’ Fees.

8.5 As a direct and proximate result of the ABC Respondents and the Embark Respondents’ violation of the automatic stay and Permanent Injunction, the SDR has incurred expenses, including, but not limited to, the hiring of the undersigned and Delaware counsel and agreeing to pay them their reasonable and necessary attorneys’ fees. The SDR prays for an award pursuant to TEX. INS. CODE ANN. § 443.008 (k), which provides: “The estate of an insurer that is injured by any willful violation of a stay provided by this section is entitled to actual damages, including costs and attorney’s fees. In appropriate circumstances, the receivership court may impose additional sanctions.”

8.6 The ABC Respondents and Embark Respondents’ conduct, described herein, has required the SDR to engage the undersigned counsel and Delaware counsel and agree to pay reasonable and necessary attorneys’ fees, litigation costs, costs of court and other related expenses. The SDR is entitled to recover its attorneys’ fees and expenses from the ABC Respondents and Embark Respondents, individually and collectively, pursuant to the provisions of Texas law, including, but not limited to, the Insurer Receivership Act, Chapter 38 of the Texas Civil Practice & Remedies Code, and equitably. The SDR prays for an award of its reasonable and necessary attorneys’ fees and related costs from the ABC Respondents and Embark Respondents, jointly and severally.

IX. OFFER OF PROOF AND VERIFICATION

9.1 This Application is verified as required by the Texas Rules of Civil Procedure by the affidavit and certification pursuant to TEX. INS. CODE § 443.017(b) by Susan E. Salch, Partner in CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Access Insurance Company.

X. NOTICE

10.1 The SDR has served this Application on the ABC Respondents, the Embark Respondents, their designated agents for service of process and/or their counsel, all parties at interest and all individuals and entities identified by the SDR in the Certificate of Service by e-mail and, as noted, by mail to certain regulatory agencies.

XI. NOTICE OF ELECTRONIC SERVICE REQUIREMENT

11.1 Pursuant to the *Order Granting SDR's Application to Use Electronic Service of Pleadings and Notices*, all pleadings filed in response to this Application or any other pleadings filed in the Texas Receivership Proceeding shall be served by e-mail on the undersigned counsel and all parties shown in the attached Certificate of Service.

PRAYER

WHEREFORE, PREMISES CONSIDERED, for all of the foregoing reasons, the Special Deputy Receiver respectfully requests that this Court:

1. Grant the Application;
2. Rule that ABC Respondents and the Embark Respondents are in violation of TEX. INS. CODE § 443.008 and the Permanent Injunction;
3. Enter orders requiring the ABC Respondents and the Embark Respondents to appear and show cause why they should not be further enjoined, following the show cause hearing entering a temporary injunction; thereafter entering a writ of permanent injunction barring the ABC Respondents and the Embark Respondents from

obstructing and interfering with the conduct of this proceeding; from wasting, converting, and concealing estate assets; and commencing and continuing to prosecute actions against the SDR outside of the Texas Receivership Court;

4. Order that no bond is required pursuant to TEX. INS. CODE § 443.008(m);
5. Award the SDR its reasonable and necessary attorneys' fees, cost of court and all other costs of litigation against the ABC Respondents and the Embark Respondents, jointly and severally;
6. Award the SDR such other relief under TEX. INS. CODE § 443.008 in the Court's discretion; and
7. Grant the SDR such other and further general relief to which it may be justly entitled.

Respectfully submitted,

By: /s/ Christopher Fuller
Christopher Fuller
State Bar No. 07515500
FULLER LAW GROUP
4612 Ridge Oak Drive
Austin, Texas 78731
Telephone: (512)470-9544
cfuller@fullerlaw.org
Attorney in Charge

- and -

By: /s/ Greg Pierce
Gregory A. Pierce
State Bar No. 15994250
P.O. Box 40
Austin, Texas 78767
Telephone: (512) 474-2154
gpierce@gpiercelaw.com

**Attorneys for CANTILO & BENNETT, LLP,
Special Deputy Receiver of
Access Insurance Company**

CERTIFICATE OF SERVICE

I certify that, pursuant to the Texas Rules of Civil Procedure, the Amended Order of Reference, the Court's Order on Electronic Service and TEX. INS. CODE § 443.007, on August 8, 2019 a true and correct copy of the Application was served on the following by e-mail, except as specifically noted.

Via Email: specialmasterclerk@tdi.texas.gov
Special Master's Clerk
Rehabilitation & Liquidation Oversight
TEXAS DEPARTMENT OF INSURANCE
PO Box 149104
Austin, Texas 78714-9104

Via e-Service: James.Kennedy@tdi.texas.gov
James Kennedy
TEXAS DEPARTMENT OF INSURANCE
PO Box 149104
Austin, Texas 78714-9104

Via Email: John.Alexander@tdi.texas.gov
John Alexander
Rehabilitation & Liquidation Oversight
TEXAS DEPARTMENT OF INSURANCE
P.O. Box 149104
Austin, Texas 78714-9104

Via Email: kathy.gartner@tdi.texas.gov
Kathy Gartner
Rehabilitation & Liquidation Oversight
TEXAS DEPARTMENT OF INSURANCE
P.O. Box 149104
Austin, Texas 78714-9104

Via Email: Vicente.Aguillon@tdi.texas.gov
Vicente Aguillon
Rehabilitation & Liquidation Oversight
TEXAS DEPARTMENT OF INSURANCE
PO Box 149104
Austin, Texas 78714-9104

Via Email: Moya.McKenna@tdi.texas.gov
Moya McKenna
TEXAS DEPARTMENT OF INSURANCE
PO Box 149104
Austin, Texas 78714-9104

Via Email: Ellen.Webking@tdi.texas.gov
Ellen Webking
TEXAS DEPARTMENT OF INSURANCE
PO Box 149104
Austin, Texas 78714-9104

Via e-Service: cynthia.morales@oag.texas.gov
Cynthia Morales
Assistant Attorney General
Financial, Litigation Division
OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548
Austin, Texas 78711-2548

Via e-Service: Jennifer.Jackson@oag.texas.gov
Jennifer Jackson
Assistant Attorney General
Financial, Litigation Division
OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548
Austin, Texas 78711-2548

Via e-Service: bburner@mwlaw.com
Burnie Burner
MITCHELL, WILLIAMS, SELIG, GATES &
WOODYARD, PLLC
500 W. 5th Street Suite 1150
Austin, Texas 78701
Counsel for Defendant
Access Insurance Company

Via Email: ajga01@bellsouth.net
Andrea Lentine
Executive Director
ALABAMA INSURANCE GUARANTY
ASSOCIATION
2020 Canyon Road, Suite 200
Birmingham, Alabama 35216

Via Email: MSurguine@azinsurance.gov
Michael E. Surguine
Executive Director
ARIZONA P&C INSURANCE GUARANTY FUND
2910 N. 44th Street, Second Floor
Phoenix, Arizona 85018

Via Email: Steve.Uhrynowycz@arkansas.gov
Steve Uhrynowycz
Administrator
ARKANSAS PROPERTY & CASUALTY GUARANTY
FUND
1023 W. Capitol Avenue, Suite 2
Little Rock, Arkansas 72201

Via Email: RoeberB@caiga.org
Brad Roeber
Executive Director
CALIFORNIA INSURANCE GUARANTEE
ASSOCIATION
PO Box 29066
Glendale, California 91209-9066

Via Email: tstreukens@agfgroup.org
Tom Streukens
Executive Director
FLORIDA INSURANCE GUARANTY ASSOCIATION
PO Box 15159
Tallahassee, Florida 32317

Via Email: fknighton@gaiga.org
Frank Knighton
Executive Director
GEORGIA INSURERS INSOLVENCY POOL
3700 Crestwood Parkway NW, Suite 400
Duluth, Georgia 30096

Via Email: abarbera@quadassoc.org
Amanda Barbera
Executive Director
INDIANA INSURANCE GUARANTY ASSOCIATION
3502 Woodview Trace, Suite 100
Indianapolis, Indiana 46268

Via Email: JWells@laiga.org
John Wells
Executive Director
LOUISIANA INSURANCE GUARANTY ASSOCIATION
2142 Quail Run Drive
Baton Rouge, Louisiana 70808-4126

Via Email: blaw@gfms.org
Barbara Peterson law
President
GUARANTY FUND MANAGEMENT SERVICES
One Bowdoin Square
Boston, Massachusetts 02114-2916

Via Email: arussell@msiga.net
Arthur Russell
Executive Director
MISSISSIPPI INSURANCE GUARANTY ASSOCIATION
713 South Pear Orchard Road, Suite 200
Ridgeland, MS 39157-4823

Via Email: BGilbert@niga-pc.org
Bruce W. Gilbert
Executive Director
NEVADA INSURANCE GUARANTY ASSOCIATION
3821 West Charleston Boulevard, Suite 100
Las Vegas, Nevada 89102-1859

Via Email: debbiel@integriongroup.com
Debbie Luera
Director of Operations
NEW MEXICO INSURANCE GUARANTY
ASSOCIATION - Integrion Group, Inc.
PO Box 27815
Albuquerque, New Mexico 87125

Via Email: JCannon@opciga.org
Jessica Cannon
OKLAHOMA PROPERTY & CASUALTY
INSURANCE GUARANTY ASSOCIATION
2601 Northwest Expressway, Suite 330E
Oklahoma City, Oklahoma 73112

Via Email: rbauso@ppciga.org
Raymond Bauso
Executive Director
PENNSYLVANIA PROPERTY & CASUALTY
INSURANCE GUARANTY ASSOCIATION
One Penn Center, Suite 1850
1617 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103

Via Email: smitty@scwind.com
J. Smith Harrison
Executive Director/Secretary
SOUTH CAROLINA PROPERTY & CASUALTY
INSURANCE GUARANTY ASSOCIATION
PO Box 407
Columbia, South Carolina 29202

Via Email: dbroemel@bakerdonelson.com
David Broemel
Executive Secretary
TENNESSEE INSURANCE GUARANTY ASSOCIATION
3100 West End Ave., Suite 670
Nashville, Tennessee 37203-5805

Via Email: mkelly@tpciga.org
Marvin Kelly
Executive Director
TEXAS PROPERTY CASUALTY INSURANCE
GUARANTY ASSOCIATION
9120 Burnet Road
Austin, Texas 78758

Via Email: LMeltzer@tpciga.org
Via Email: Slang@tpciga.org
Linda R. Meltzer
Sara Lang
TEXAS PROPERTY CASUALTY INSURANCE
GUARANTY ASSOCIATION
9120 Burnet Road
Austin, Texas 78758

Via Email: Wallock.Michael@aaa-calif.com
Mike Wallock
Office of the General Counsel
AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA
(AAA)
3333 Fairview Rd., A-451
Costa Mesa, California 92626

Via Email: Young.Courtney@aaa-calif.com
Courtney Young
Office of the General Counsel
AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA
(AAA)
3333 Fairview Rd., A-451
Costa Mesa, California 92626

Via Email: Stanley.jason@aaa-texas.com
Jason Stanley
Subrogation Claims Team Manager
AAA TEXAS
Dallas, Texas

Via First Class Mail
INTERNAL REVENUE SERVICE
Special Procedures Branch
300 East 8th Street, Suite 352
Mail Stop 5026AUS
Austin, Texas 78701

Via e-Service: anthony@icenoglefirm.com
Anthony Icenogle
ICENOGL & BOGGINS, P.L.L.C.
6805 N. Capital of Texas Hwy., Ste 220
Austin, Texas 78731
*Attorneys for Allianz Risk Transfer AG
(Bermuda Branch)*

Via e-Service: Elliott.Kroll@arentfox.com
Elliott Kroll
ARENT FOX, LLP
1301 Avenue of the Americas, Floor 42
New York, NY 10019
*Attorneys for Allianz Risk Transfer AG (Bermuda
Branch)*

Via Email: Gregg.Galardi@ropesgray.com
Gregg M. Galardi (#2991)
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036-8704
212-596-9139
Attorneys for Embark Entities

Via Email: Matthew.McGinnis@ropesgray.com
Matthew L. McGinnis
ROPES & GRAY LLP
800 Boylston Street
Boston, MA 02199-3600
617-951-7567
Of counsel to Embark Respondents

Via Email: Brown@chipmanbrown.com
Via Email: Degross@chipmanbrown.com
Paul D. Brown (#3903)
Mark L. Desgrosseilliers (#4083)
CHIPMAN BROWN CICERO & COLE, LLP
1313 N. Market Street, Suite 5400
Wilmington, DE 19801
302-295-0194
Attorneys for Embark Respondents

Via Email: Matthew.ward@wbd-us.com
Via Email: Morgan.patterson@wbd-us.com
Matthew P. Ward (#4471)
Morgan L. Patterson (#5388)
WOMBLE BOND DICKINSON (US) LLP
1313 North Market Street, Suite 1200
Wilmington, Delaware 19801
302-252-4320
Attorneys for the ABC Respondents

/s/Christopher Fuller
Christopher Fuller

**SPECIAL DEPUTY RECEIVER'S VERIFICATION AND CERTIFICATION
PURSUANT TO TEX. INS.CODE ANN. §443.017(b)**


AFFIDAVIT OF SUSAN E. SALCH

State of Texas

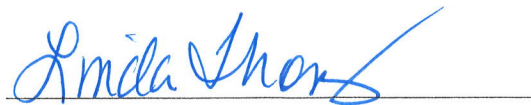
County of Travis

BEFORE ME, the undersigned authority appeared Susan E. Salch, who after being by me duly sworn, stated the following under oath:

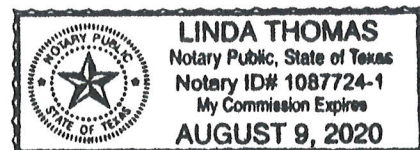
1. "My name is Susan E. Salch. I am of sound mind, capable of making this affidavit, and am competent to testify to the matters contained in this affidavit.
2. I am a partner in CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Access Insurance Company (the "SDR" and "AIC" respectively), I am duly authorized to make this Affidavit on behalf of the SDR.
3. I have reviewed the *Application to Enforce Permanent Injunction and Automatic Stay, for Issuance of Show Cause Order and for Writ of Permanent Injunction* and the facts stated therein are true and correct based on my personal knowledge, my review of estate records and my consultation with the staff and subcontractors.
4. I certify that the exhibits, books, accounts, records, papers, correspondence, and/or other records and documents attached hereto were produced pursuant to TEX. INS. CODE § 443.017, are either true and correct copies of records of AIC and were received from the custody of AIC or found among its effects, or were created by and filed with the Receiver's office in connection with the receivership of this delinquent agency, and are held by the Special Deputy Receiver in its official capacity."
5. Further affiant sayeth not.

By: 
Susan E. Salch

SUBSCRIBED AND SWORN TO BEFORE ME on August 8, 2019, by Susan E. Salch, partner in CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Access Insurance Company



Notary Public





IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

_____)
ACPI (ASSIGNMENT FOR THE)
BENEFIT OF CREDITORS), LLC;)
ACPAHM (ASSIGNMENT FOR THE)
BENEFIT OF CREDITORS), LLC;)
APF (ASSIGNMENT FOR THE)
BENEFIT OF CREDITORS), LLC;)
ACS (ASSIGNMENT FOR THE)
BENEFIT OF CREDITORS), LLC;)
AGIA (ASSIGNMENT FOR THE)
BENEFIT OF CREDITORS), LLC;)
AGIAC (ASSIGNMENT FOR THE)
BENEFIT OF CREDITORS), LLC;)
EMBARK HOLDCO)
MANAGEMENT, LLC; *and* EMBARK) C.A. No. _____ - _____
CORPORATE SERVICES, LLC,)
))
Plaintiffs,)
))
v.)
))
CANTILO & BENNETT, LLP; POP 3)
RAVINIA, LLC; *and* HEATH &)
YUEN, APC,)
))
Defendants.)
))
))
))
_____)

VERIFIED COMPLAINT

Plaintiffs, for their Verified Complaint for declaratory and injunctive relief,
allege as follows:

SUMMARY OF THE ACTION

1. This action seeks declaratory and injunctive relief in connection with six (6) cases commenced in this Court on August 23, 2018 (the “ABC Petition Date”) pursuant to 10 Del. C. § 7381, *In re: Access Premium Finance, LLC*, Civ. No. 2018-0623-AGB (Del. Ch. Aug. 23, 2018); *In re: Access General Insurance Adjusters, LLC*, Civ. No. 2018-0624-AGB (Del. Ch. Aug. 23, 2018); *In re: Access General Insurance Agency of California, LLC*, Civ. No. 2018-0625-AGB (Del. Ch. Aug. 23, 2018); *In re: Access Corporate Services, LLC*, Civ. No. 2018-0626-AGB (Del. Ch. Aug. 23, 2018); *In re: Access Holdco Management, LLC*, Civ. No. 2018-0627-AGB (Del. Ch. Aug. 23, 2018); *In re: ACP Insurance, LLC*, Civ. No. 2018-0628-AGB (Del. Ch. Aug. 23, 2018) (collectively, the “ABC Cases”). The ABC Cases are presently pending before Chancellor Andre G. Bouchard.

2. As alleged below, this action has been commenced by two groups of plaintiffs, the ABC Entities (as defined below) and the Embark Entities (as defined below). The ABC Entities are the assignees of all assignable assets and property (the “ABC Assets”) of the Holdco Entities (as defined below), pursuant to voluntary assignments dated August 23, 2018 (the “ABC Assignment”) and the petitioner in the ABC Cases. The Embark Entities acquired certain of the ABC Assets (the “Collateral Assets”) from the ABC Entities on the ABC Petition Date

pursuant to an asset purchase agreement dated August 23, 2018 (the “Embark Acquisition”).

3. Since the commencement of the ABC Cases, each of the Defendants (as defined herein) in this case have commenced litigation against one or more of the ABC Entities and the Embark Entities (together, the “Plaintiffs”), the Holdco Entities and other persons in Texas, California and Georgia (the “State Court Actions”). The State Court Actions challenge, among other things, the *bona fides* of the ABC Assignment and the Embark Acquisition. In the State Court Actions, the Defendants in this matter allege, among other things, that (i) the ABC Assignment and the Embark Acquisition improperly included the transfer of property of an insurer, Access Insurance Company (“AIC”), that is presently the subject of liquidation and receivership proceedings in Texas (the “Texas Action”); (ii) the commencement of the ABC Cases violated a permanent injunction issued in the Texas Action as well as the “automatic stay” provisions of the Texas Insurer Rehabilitation Act (the “Texas IRA”); and (iii) the Embark Entities are liable for the debts and obligations of the Holdco Entities as transferees of certain assets, successors-in-interest or under theories of consolidation or “de facto” merger.

4. The Plaintiffs dispute each of the Defendants’ contentions and many of the allegations on which they are based, and respectfully submit that the State Court Actions and the relief the Defendants seek therein circumvent this Court’s

authority to oversee and bring to conclusion an orderly ABC process properly commenced by the ABC Entities as assignees of the Holdco Entities assets pursuant to 10 Del. C. §§ 7381-7387 (the “Delaware ABC Statute”). Accordingly, the Plaintiffs bring this Complaint seeking declaratory relief that, among other things, (1) the ABC Assets, and, thus, the ABC Assignment and the Embark Acquisition, did not involve any property or assets of AIC; (2) the filing of the ABC Petitions, and, thus, the ABC Assignment and the Embark Acquisition, did not violate the Permanent Injunction or the Texas IRA; and (3) the Embark Entities are not liable for any debts or obligations of the Holdco Entities as a result of the Embark Acquisition, having only acquired the Collateral Assets but assuming no liabilities of the Holdco Entities.

JURISDICTION AND VENUE

5. Jurisdiction and venue with respect to this Complaint and the relief sought is proper pursuant to 10 Del. C. § 341, 10 Del. C. §§ 6501 *et seq.*, and 10 Del. C. §§ 7322–31 and 7381–87.

6. The Court also has *in rem* or *quasi in rem* jurisdiction over the property transferred in the ABC Assignment and the Embark Acquisition. *See United States v. Bank of New York Co.*, 296 U.S. 463, 476–78 (1936) (describing state court ABC proceeding as *quasi in rem* because “[c]ontrol of the funds was

essential to the exercise of the court's jurisdiction to protect the rights of claimants").

THE PARTIES

The ABC Entities

7. Plaintiff ACPI (Assignment for the Benefit of Creditors), LLC ("ACPI") is a Delaware limited liability company formed on June 19, 2018, with its principal place of business located in Georgia. In the ABC Assignment, all assignable assets of the assignor ACP Insurance, LLC ("ACP Insurance") were assigned to ACPI.

8. Plaintiff ACPAHM (Assignment for the Benefit of Creditors), LLC ("ACPAHM") is a Delaware limited liability company formed on June 19, 2018, with its principal place of business located in Georgia. In the ABC Assignment, all assignable assets of the assignor Access Holdco Management, LLC ("Holdco") were assigned to ACPAHM.

9. Plaintiff APF (Assignment for the Benefit of Creditors), LLC ("APFABC") is a Delaware limited liability company formed on July 2, 2018, with its principal place of business located in Georgia. In the ABC Assignment, all assignable assets of the Assignor Access Premium Finance, LLC ("APF") were assigned to APFABC.

10. Plaintiff ACS (Assignment for the Benefit of Creditors), LLC (“ACSABC”) is a Delaware limited liability company formed on June 19, 2018, with its principal place of business located in Georgia. In the ABC Assignment, all assignable assets of the assignor Access Corporate Services, LLC (“ACS”) were assigned to ACSABC.

11. Plaintiff AGIA (Assignment for the Benefit of Creditors), LLC (“AGIAABC”) is a Delaware limited liability company formed on June 19, 2019, with its principal place of business located in Georgia. In the ABC Assignment, all assignable assets of the assignor Access General Insurance Adjusters, LLC (“Adjusters”) were assigned to AGIAABC.

12. Plaintiff AGIAC (Assignment for the Benefit of Creditors), LLC (“AGIACABC”) is a Delaware limited liability company formed on June 19, 2018, with its principal place of business located in Georgia. In the ABC Assignment, all assignable assets of the assignor Access General Insurance Agency of California, LLC (“AGIAC”) were assigned to AGIACABC.

13. Collectively, ACPI, ACPAHM, APFABC, ACSABC, AGIAABC, AGIACABC are referred to herein as the “ABC Entities.”

The Embark Entities

14. Embark Holdco Management, LLC (“Embark Holdco”) is a Delaware limited liability company, formed on July 30, 2018, with its principal place of

business located in Georgia. Embark Holdco is a signatory to that certain asset purchase agreement dated August 23, 2018 by and among the ABC Entities, Embark Holdco and Embark Corporate Services, LLC (the “Embark APA”). Embark Holdco, along with Embark Corporate Services, LLC, acquired certain Collateral Assets in the Embark Acquisition pursuant to the Embark APA, including but not limited to sellers’ underwriting systems, sellers’ intellectual property, cash and equivalents, outstanding accounts and commissions receivable, collateral under the December 23, 2015, Credit Agreement, and ACPI’s contingent right to receive distributions from an escrow agreement. *See* Embark APA, Schedule 1.1(a).

15. Embark Corporate Services, LLC (“Embark Services”) is a Delaware limited liability company formed on July 30, 2018, with its principal place of business located in Georgia. Embark Services is a signatory to the Embark APA, and along with Embark Holdco acquired certain Collateral Assets in the Embark Acquisition pursuant to the Embark APA, including but not limited to the Collateral Assets identified in the preceding paragraph. *See* Embark APA, Schedule 1.1(a).

16. Collectively Embark Holdco and Embark Services are referred to herein as the “Embark Entities.”

The Defendants

17. Cantilo & Bennett, L.L.P., is a Texas limited liability partnership with its principal place of business located in Texas. On March 13, 2018, the Texas District Court (the “Receivership Court”) appointed Cantilo & Bennett as Special Deputy Receiver (“SDR”) of Access Insurance Company (“AIC”). On February 15, 2019, the SDR filed a Petition against the above-named Plaintiffs, among other entities, in the Receivership Court (the “Original Petition”). On May 20, 2019, the SDR amended the Original Petition filed in the Texas Action, and the case remains pending.

18. POP 3 Ravinia, LLC (“Ravinia”) is a Delaware limited liability company with its principal place of business located in Georgia. It owns a property known as Three Ravinia in Atlanta, Georgia. On October 3, 2018, Ravinia filed suit against Holdco and plaintiff Embark Holdco, as well as non-party Access Insurance Holdings, LLC (“AIH”), the parent of AIC. The Ravinia lawsuit is pending in the State Court of DeKalb County, Georgia (the “Georgia Action”).

19. Heath & Yuen, APC (“H&Y”) is a California professional law corporation with its principal place of business located in California. H&Y filed suit against several of the Holdco Entities, Embark Entities, and other non-parties on March 29, 2019. On May 29, 2019, H&Y amended its complaint. The H&Y

litigation is pending in the California Superior Court in San Francisco County (the “California Action”).

NON-PARTIES

The Holdco Entities

20. Assignor ACP Insurance was a Delaware limited liability company with its principal place of business located in Georgia. It was indirectly majority-owned by non-party ACP Insurance Holdings, L.P (“Insurance Holdings”). ACP Insurance was the sole member and parent company of Holdco. It was dissolved effective February 19, 2019.

21. Assignor Holdco was a Georgia limited liability company through August 14, 2018, after which it became a Delaware limited liability company, with its principal place of business located in Georgia. It was a subsidiary of ACP Insurance and the parent of APF, ACS, Adjusters, and AGIAC. Holdco was dissolved effective February 19, 2019.

22. Assignor APF was a Delaware limited liability company with its principal place of business located in Georgia. It was a subsidiary of Holdco. It was dissolved effective February 19, 2019.

23. Assignor ACS was a Delaware limited liability company with its principal place of business located in Georgia. It was a subsidiary of Holdco.

24. Assignor Adjusters was a Delaware limited liability company with its principal place of business located in Georgia. It was a subsidiary of Holdco. It was dissolved effective February 19, 2019.

25. Assignor AGIAC, was a Delaware limited liability company with its principal place of business located in Georgia. It was a subsidiary of Holdco. It was dissolved effective February 19, 2019.

26. Collectively, petitioners and non-parties ACP Insurance, Holdco, APF, ACS, Adjusters, and AGIAC are referred to as the “Holdco Entities.”

AIC Entities

27. AIC was an insurance company regulated by the Texas Department of Insurance (TDI”). AIC was placed into receivership proceedings in the State of Texas on March 13, 2018 (the “Receivership Date”).

28. Upon information and belief, AIH is a Georgia limited liability company and the parent company of AIC.

29. Upon information and belief, Turning Leaf Group, Inc. (“TLG”) is the majority owner of AIH.

FACTUAL BACKGROUND

I. Administration of the AIC Insurance Program and the Holdco Acquisition.

30. AIC was an insurance carrier that specialized in private passenger nonstandard automobile liability and physical damage policies (the “AIC Insurance Program”). AIC was regulated by the TDI.

31. Upon information and belief, from 2008 to December 2015, the AIC Insurance Program was carried out in part by Holdco, which upon information and belief was then a wholly owned subsidiary of AIH, and various entities affiliated with Holdco and AIH.

32. In December 2015, Altamont Capital Management, LLC (“Altamont”) formed ACP Insurance Intermediate LLC (“Intermediate”) and ACP Insurance for the purpose of acquiring Holdco and its insurance servicing business. Intermediate was the sole member of ACP Insurance.

33. On or about December 18, 2015, ACP Insurance acquired Holdco from AIH for \$123 million (the “Holdco Acquisition”) pursuant to a membership interest purchase agreement. ACP Insurance did not acquire AIC, which continued to be wholly owned by AIH.

34. At the time of the Holdco Acquisition, AIC was Holdco’s primary insurance carrier. The economic value of Holdco’s servicing business was

primarily tied to the stability, financial condition, and performance of the AIC Insurance Program.

35. In connection with the Holdco Acquisition, AIC and Holdco entered into a Services Agreement dated December 23, 2015 (the “Service Agreement”). Pursuant to the Service Agreement, Holdco agreed to provide specified services to AIC as an independent contractor. Under the Service Agreement, Holdco had no obligation to collect or hold funds on behalf of AIC. The Service Agreement contained no provision expressly stating that Holdco owed any fiduciary obligation to AIC or that it served as a trustee for AIC. The Service Agreement was submitted to the TDI.

36. As permitted by the Service Agreement, the existing AIC Insurance Program continued to be administered by Holdco’s affiliates, including several state-level managing general agents (the “MGAs”) and Adjusters.

37. The duties and responsibilities of the MGAs were set forth in individual territory specific agreements (the “MGA Agreements”) that were approved by the TDI. The MGA Agreements were amended contemporaneously with the closing of the Holdco Acquisition. The MGA Agreements required the MGAs to, among other things, collect and hold premium payments paid on AIC policies in separate trust accounts for the benefit of AIC (the “Premium Trust Accounts”). The only provision in the MGA Agreements imposing a fiduciary

obligation on the MGAs stated that the MGA had a fiduciary obligation to AIC with respect to funds held in the Premium Trust Accounts, which funds were expressly recognized as property of AIC. *See, e.g., Ex. A, California MGA Agreement, § X.A.*

38. Adjusters was the claims administrator for AIC pursuant to a Claims Service Agreement, dated April 1, 2005 (as amended, the “Claims Service Agreement”). Pursuant to the Claims Service Agreement, Adjusters was obligated to provide specified claims management services to AIC in exchange for which AIC was to pay Adjusters “Claims Service Fees.” The Claims Service Agreement was amended substantially contemporaneously with the closing of the Holdco Acquisition. Pursuant to the Claims Service Agreement, Adjusters had no obligation to collect or hold funds on behalf of AIC. The Claims Service Agreement contained no provision expressly stating that Holdco owed any fiduciary obligation to AIC or that it served as a trustee for AIC. The Claims Service Agreement was approved by the TDI.

39. ACP Insurance financed the 2015 Holdco Acquisition, in part, with \$60 million borrowed from NXT Capital, LLC and certain other lenders (the “NXT Lenders”) pursuant to a credit agreement dated December 23, 2015 (the “NXT Credit Agreement”). Pursuant to the NXT Credit Agreement, the NXT Lenders were granted a first priority security interest in substantially all of each borrower’s

and guarantor's assets and property (the "NXT Liens"). In connection with the Holdco Acquisition, the sellers were required to fund an escrow account for, among other things, potential indemnification and other claims that the buyer might have under the purchase agreement (the "Escrow Account"). At the closing of the Holdco Acquisition, the Escrow Account was funded in the amount of more than \$19 million (the "Escrow Funds"). ACP Insurance's contingent interest in the Escrow Funds was part of the collateral securing the NXT Liens. Claims and counterclaims have been asserted by both the sellers and ACP Insurance against the Escrow Funds since its creation.

II. The Texas Receivership Proceedings and Commencement of the ABC Cases.

40. AIC's businesses deteriorated in 2016 and 2017, and on the Receivership date of March 13, 2018, the TDI placed AIC into receivership in the Receivership Court. Ex. B, Agreed Order Appointing Liquidator, Permanent Injunction and Notice of Automatic Stay (the "Permanent Injunction"). On that same day, the Receivership Court entered an order agreed to by AIH that, among other things, restrained and enjoined "[AIC] and its agents from conducting [AIC]'s business, and restraining other parties from taking any actions against [AIC] or its property in violation of the Insurer Receivership Act." See Ex. B, Permanent Injunction. The Permanent Injunction identified Holdco, the MGAs, Adjusters and ACP Insurance and Intermediate (the "Holdco Affiliates") as

“agents” of AIC and enjoined them from taking certain actions with respect to AIC’s property and business. *Id.* The Plaintiffs were not named in the Permanent Injunction.

41. In compliance with the Permanent Injunction, the Holdco Affiliates stopped doing, operating or conducting any business under the MGA and other Agreements, except to take actions expressly requested by the SDR. After the Receivership Date, the MGAs turned over to the SDR all funds that were in the Premium Trust Accounts, and the Holdco Affiliates made available to the SDR all of AIC’s records and data.

42. On April 19, 2018, the NXT Lenders exercised their rights under a share pledge agreement with ACP Insurance and appointed Brent Kugman as the sole member and manager of ACP Insurance. In his capacity as the sole member of ACP Insurance, Mr. Kugman removed all of ACP Insurance’s officers and appointed himself as the Chief Restructuring Officer.

43. On April 19, 2018, the NXT Lenders also modified the ACP Insurance operating agreement to eliminate any obligations or duties that the sole member would have to the company itself or its members. As revised, the operating agreement for ACP Insurance provided that, “[n]otwithstanding anything contained herein or in the Certificate to the contrary, and to the fullest extent permitted by law, the members of the Board of Managers shall owe no duties, to

the Company or the Member.” Upon information and belief, the ACP Insurance Operating Agreement was not further amended or modified.

44. From April 19, 2018, through May 4, 2018, Brent Kugman and others he appointed in his capacity as the sole member and Chief Restructuring Officer exercised full authority and control over ACP Insurance, Holdco, Adjusters and the MGAs, and their respective remaining businesses.

45. At no time since April 19, 2018, has Intermediate, as the equity holder of ACP Insurance, exercised any rights as shareholder over ACP Insurance, Holdco, Adjusters or the MGAs. At all times since April 19, 2018, ACP Insurance and Holdco have had separate counsel and management from Altamont.

46. On May 4, 2018, a newly formed entity, ACP Insurance Finance, Inc. (“ACP Finance”), owned by funds managed by Altamont, acquired the then-current \$55 million of outstanding secured debt obligations owed by ACP Insurance and Holdco to the NXT Lenders and took an assignment of the NXT Credit Agreement and the NXT Liens. ACP Finance took this action in an effort to avoid the liquidation of ACP Insurance, Holdco and its remaining business and to preserve any remaining value.

47. Then, exercising the same rights that the NXT Lenders had previously exercised under the share pledge, ACP Finance appointed James Carroll as sole manager of ACP Insurance. Mr. Carroll then assumed the responsibilities of the

Chief Restructuring Officer of ACP Insurance. Upon information and belief, as sole manager of ACP Insurance, Mr. Carroll reappointed Raimundo Ruiz, who Mr. Kugman had removed, as an officer and retained separate counsel.

48. From May 4, 2018, through the ABC Petition Date, Mr. Carroll was the sole member of ACP Insurance and, together with its officers, oversaw the business and operations of Holdco and its remaining business operations.

49. As Holdco's and ACP Insurance's secured lender under the NXT Credit Agreement, ACP Finance entered into forbearance agreements with ACP Insurance that required ACP Insurance to conduct a sale process with respect to Holdco's remaining business and assets. As part of the forbearance agreements, ACP Insurance was required to reduce the \$55 million outstanding and owed to ACP Finance by making two payments totaling approximately \$21 million. This left ACP Finance with an outstanding secured claim of approximately \$33 million as of late August 2018.

50. To conduct the sale process required by the forbearance agreements, ACP Insurance engaged Commenda Asset Resolution Partners, LLC ("Commenda"), an affiliate of Commenda Capital, LLC. Upon information and belief, during the sale process, Commenda contacted over 100 potentially interested parties and had introductory calls with eight of those that expressed

interest in the Holdco's remaining business and assets. Ultimately, however, no offers were received for Holdco's remaining business or assets.

51. In late June 2018, Commenda and ACP Insurance advised ACP Finance that the sale process had yielded no buyers and asked ACP Finance whether it had an interest in purchasing Holdco and its remaining businesses and assets, as opposed to having those remaining entities' assets liquidated. ACP Finance advised ACP Insurance and Commenda that it would purchase the assets that were subject to the NXT Liens (previously defined as the "Collateral Assets") in an assignment for the benefit of creditors in exchange for ACP Finance releasing part of the \$33 million in secured debt outstanding.

52. As a result, from late June through the ABC Petition Date, ACP Finance continued to permit Holdco to use cash that was subject to the NXT Liens, as ACP Finance completed due diligence, negotiated a purchase agreement with counsel to Commenda and prepared for the acquisition of the Collateral Assets from the ABC Entities.

53. As part of those preparations, ACP Finance formed the Embark Entities that would acquire the Collateral Assets. These Collateral Assets were part of the ABC Assets assigned by the Holdco Entities to the ABC Entities in the ABC Cases.

III. The ABC Cases.

54. On the ABC Petition Date, the Holdco Entities executed voluntary assignments with respect to the ABC Assets in favor of the ABC Entities (*i.e.*, the ABC Assignment), and the ABC Entities filed ABC petitions in the Delaware Chancery Court¹ pursuant to 10 Del. C. § 7381. On that same date, the ABC Entities, as assignees of the ABC Assets, transferred, conveyed and sold the Collateral Assets to the Embark Entities (previously defined as the “Embark Acquisition”) in exchange for ACP Finance’s forgiveness of \$27 million of the \$33 million of debt then owed and outstanding under the NXT Credit Agreement pursuant to the Embark APA.

55. The Embark Acquisition was an asset acquisition negotiated at arms’ length between unrelated third parties: (i) the Holdco Entities were directed and controlled by ACP Insurance’s sole member and Chief Restructuring Officer, James P. Carroll; (ii) the ABC Entities were directed and controlled by

¹ See *In re: Access Premium Finance, LLC*, Civ. No. 2018-0623-AGB (Del. Ch. Aug. 23, 2018); *In re: Access General Insurance Adjusters, LLC*, Civ. No. 2018-0624-AGB (Del. Ch. Aug. 23, 2018); *In re: Access General Insurance Adjusters, LLC*, Civ. No. 2018-0624-AGB (Del. Ch. Aug. 23, 2018); *In re: Access General Insurance Agency of California, LLC*, Civ. No. 2018-0625-AGB (Del. Ch. Aug. 23, 2018); *In re: Access Corporate Services, LLC*, Civ. No. 2018-0626-AGB (Del. Ch. Aug. 23, 2018); *In re: Access General Insurance Adjusters, LLC*, Civ. No. 2018-0624-AGB (Del. Ch. Aug. 23, 2018); *In re: Access Holdco Management, LLC*, Civ. No. 2018-0627-AGB (Del. Ch. Aug. 23, 2018); *In re: ACP Insurance, LLC*, Civ. No. 2018-0628-AGB (Del. Ch. Aug. 23, 2018).

Commenda; and (iii) ACP Finance was directed and controlled by an Altamont affiliate. Each party was represented by separate, independent counsel.

56. Subsequently, on September 21, 2018, the ABC Entities filed an inventory list of assets to which the assignees had an unconditional right for each of the Holdco Entities (each an “Inventory List” and, collectively, the “Inventory Lists”) based on the existing book and records of each of the Holdco Entities. The Inventory Lists for ACP Insurance, APF and ACS listed no assets. Upon information and belief, ACP Insurance had a contingent and intangible interest in the Escrow Funds that was not listed because the Inventory List reflects tangible assets on the books and records of ACP Insurance and assets to which the assignees had an unconditional right.

57. Thereafter, the ABC Entities sought to appoint appraisers of the ABC Assets and provided notice to creditors. The ABC Assets assigned included, among other things, approximately \$9 million in cash on the balance sheet of Holdco, ACP Insurance’s right to any distributions from the Escrow Account, various contracts, office furniture, certain intellectual property, and other miscellaneous assets.

58. The ABC Entities also filed and served notice of the deadline for filing claims in the ABC Cases against the Holdco Entities. That notice provided that all claims had to be filed by February 19, 2019 (the “ABC Claims Bar Date”).

59. In addition, ACS and its ABC counterpart, ACSABC, entered into a transition services agreement under which ACS temporarily “leased” its employees to ACSABC. *See generally* Ex. C, Transition Services Agreement (Aug. 23, 2018). After the Embark Acquisition, many of the ACS employees were offered employment by the Embark Entities. Absent the Embark Acquisition, employees would have been laid off and become unemployed.

60. As a result of the Embark Acquisition, ACP Finance retained an unsecured deficiency claim of approximately \$6 million. ACP Finance filed a proof of claim for that deficiency amount in the ABC Cases prior to the ABC Claims Bar Date.

61. No later than January 2019, the SDR was aware of the ABC Cases and the February 19, 2019 ABC Claims Bar Date. Nonetheless, the SDR waited until February 21, 2019, two days after the ABC Claims Bar Date, to file a Notice of Claim, which attached two exhibits. Exhibit A to the Notice of Claim was a proof of claim, with an exhibit attached setting forth objections to, among other things, this Court’s subject matter jurisdiction (the “SDR Objection”). Exhibit B was the Original Petition filed in the Texas Action on February 15, 2019. Based on the Notice of Claim, this Court has not proceeded on the ABC Entities’ pending requests for relief regarding the filing of appraisals and posting of a bond.

IV. The State Court Actions.

62. Notwithstanding the commencement of the ABC Cases, the Defendants commenced litigations in various state courts.

A. The Texas Action.

63. On February 15, 2019, nearly six months after the ABC Petition Date and four days before the ABC Claims Bar Date, the SDR filed a petition in the Texas (the “Original Petition”) in the Texas Action.

64. On May 20, 2019, the SDR filed an amended petition (the “Amended Petition”) in the Texas Action. Ex. D, Amended Petition. The Amended Petition alleges substantially the same causes of action alleged in the Original Petition, but added a number of individual defendants. Both the Original Petition and the Amended Petition name the Holdco Entities, the ABC Entities, and the Embark Entities as defendants. In the Texas Action, the SDR seeks a recovery from the Holdco Entities, the ABC Entities and/or the Embark Entities based on, among other grounds, breach of contract, breach of fiduciary duty, fraudulent conveyance, and violations of various provisions of the Texas IRA. *See* Ex. D, Amended Petition.

65. The present deadline for the Plaintiffs in the above-captioned matter to answer or otherwise respond to the Amended Petition is July 26, 2019.

B. The Georgia Litigation

66. No later than September 2018, Ravinia was aware of the ABC Cases and the ABC Claims Bar Date. Nonetheless, Ravinia did not file a claim in the ABC Cases. Instead, on October 3, 2018, nearly two months after the ABC Petition Date, Ravinia filed suit against in Georgia Plaintiffs Holdco and Embark Holdco, as well as non-party AIH.

67. Ravinia alleges claims against Holdco and AIH based on a purported breach of a lease for office space. The original lease was between CRT Ravinia, LLC, as landlord, and AIH, as tenant. *See Ex. E*, Georgia Compl. ¶ 7. CRT Ravinia, LLC assigned its interest in the lease to Ravinia and AIH assigned its interest to Holdco. *Id.* ¶¶ 8, 10. Embark Holdco was never assigned the lease and did not assume any obligations under the lease in the Embark Acquisition. Ravinia alleges that Embark Holdco is liable for breach of the lease as a successor-in-interest to Holdco under the lease or as a result of a de facto merger with Holdco. *See Ex. E*, Georgia Compl. ¶¶ 31–36.

C. The California Litigation

68. H&Y, a California law firm, filed its amended complaint in California on May 29, 2019, asserting claims against Altamont affiliates, Holdco, Adjusters, and the Embark Entities for, among other causes of action, breach of contract related to allegedly unpaid legal bills. *See Ex. F*, California Complaint at ¶¶ 37–

80. The California Complaint alleges that H&Y was retained to provide legal services for the benefit of AIC insureds in personal injury and wrongful death matters, but that neither Adjusters nor Holdco paid the firm's invoices. *See Ex. F*, California Compl. ¶¶ 24, 34. The Embark Entities have never had a contractual relationship with H&Y and did not assume any of the Holdco Entities liabilities to H&Y pursuant to the Embark APA or otherwise.

69. On information and belief, H&Y was actually or constructively aware of the ABC Cases and ABC Claims Bar Date but did not submit a claim in the ABC Cases. Subsequent to the commencement of the ABC Cases, H&Y were provided with notice of the ABC Case and the ABC Claims Bar Date. H&Y still has not submitted any claim to the ABC Entities.

V. The State Court Actions Are Inconsistent with the Delaware ABC Statute and This Court's Jurisdiction over the ABC Cases and ABC Assets.

70. The State Court Actions dispute the fairness, validity, and arms-length nature of the ABC Cases, the ABC Assignment, and the Embark Acquisition. In the State Court Actions, the Defendants seek to recover property from or assert claims against the Plaintiffs in jurisdictions other than this Court, many of which claims and causes of action should have been brought in this Court against the Holdco Entities and the ABC Assets pursuant to the Delaware ABC Statute.

71. The ABC Cases are *in rem* or *quasi in rem* proceedings under the supervision of this Court.

72. The Delaware ABC Statute set forth in Title 10 of the Delaware Code §§ 7381 through 7387 sets forth the statutory scheme for voluntary assignments for the benefit of creditors.

73. Title 10 of the Delaware Code §§ 7325 through 7331 provides guidance, if not the statutory requirements, for the conduct of the persons serving as assignees in an ABC case.

74. Pursuant to the Delaware ABC Statute, any person seeking to obtain a recovery from the ABC Assets must pursue that recovery by filing a claim in this Court and raising any objections as exceptions to the final account filed by the ABC Entities. 10 Del. C. §§ 7381 and 7385.

75. Pursuant to the Delaware ABC Statute, any person challenging the conduct of the ABC Entities as the assignees of the ABC Assets may seek to remove the ABC Entities as assignees. None of the Defendants has sought to remove the ABC Entities in this Court, but have instead sought to challenge the conduct of the ABC Entities and to obtain similar relief in the State Court Actions.

76. Pursuant to the Delaware ABC Statute, any person seeking to assert that the Holdco Entities engaged in voidable transfers before commencing the ABC Cases may request the ABC Entities to pursue such transfers or the Court for

permission to do so. The SDR has not sought such relief in this Court but has instead sought such relief in the Texas Action.

77. The Delaware ABC Statute provides the Defendants with adequate avenues and a proper venue for pursuing their claims, causes of action and challenges to the ABC Assignment and the Embark Acquisition, but the Defendants have instead sought to bring those claims, causes of action, and challenges in the State Court Actions.

78. By filing and pursuing the State Court Actions, the Defendants seek to avoid this Court's oversight and jurisdiction with respect to the ABC Assets, undermine the authority and obligations of the ABC Entities as the assignees of the ABC Assets, and challenge the ABC Entities' judgment and determinations with respect to the conduct of the ABC Cases, including the consummation of the Embark Acquisition, and to secure for themselves more favorable distributions than they would be entitled to in the ABC Cases based on claims they allegedly hold.

COUNT I

(DECLARATORY RELIEF THAT THE ABC CASES, THE ABC ASSIGNMENT, AND THE EMBARK ACQUISITION DID NOT TRANSFER AIC PROPERTY – AGAINST DEFENDANT SDR)

79. Plaintiffs reallege and incorporate, as though fully set forth herein, each and every allegation stated above.

80. Texas Insurance Code § 443.004(a)(20) defines “[p]roperty of the insurer,” and “property of the estate” to include:

(A) all right, title, and interest *of the insurer*, whether legal or equitable, tangible or intangible, choate or inchoate, and includes choses in action, contract rights, and any other interests recognized under the laws of this state;

(B) entitlements that:

(i) existed prior to entry of the order of rehabilitation or liquidation; and

(ii) may arise by operation of the provisions of this chapter or other provisions of law allowing the receiver to avoid prior transfers or assert other rights; and

(C) all records and data that are otherwise property *of the insurer*

Tex. Ins. C. § 443.004(a)(20)(emphasis added).

81. In the SDR Objection, the Original Petition, and the Amended Petition (collectively, the “SDR Pleadings”), defendant SDR contends that the Holdco Entities held property belonging to AIC (the “AIC Property”), which AIC Property was assigned to the ABC Entities in the ABC Assignment. Defendant SDR further contends that the ABC Entities sold the AIC Property to the Embark Entities in the Embark Acquisition. *See Ex. G*, SDR Objection at 2–4; *Ex. D*, Amended Petition ¶¶ 7.11–7.12.

82. In the SDR Pleadings, the SDR does not identify any specific tangible, intangible or other property falling within the definition of Tex. Ins. Code § 443.004(a)(20) that was held by the Holdco Entities as of the ABC Petition Date.

83. Prior to the ABC Petition Date, all of the funds held by the MGAs in the Premium Trust Accounts were transferred to the SDR.

84. Prior to the ABC Petition Date, the Holdco Affiliates made available to the SDR all of AIC's records and data.

85. Plaintiffs contend that at the time of the ABC Assignment and as of the ABC Petition Date, the Holdco Entities did not hold any AIC Property. Plaintiffs further contend that in the ABC Assignment, each Holdco Entity only assigned to an ABC Entity the assets and properties that were titled in its respective name or to which it had full legal right and interest.

86. Plaintiffs contend that the Holdco Entities did not assign any AIC Property in the ABC Assignment. Plaintiffs further contend that the Holdco Entities do not hold any AIC Property because they assigned all of their assignable property and assets to the ABC Entities in the ABC Assignment.

87. Plaintiffs also contend that because the Holdco Entities had no AIC Property as of the ABC Petition Date, the ABC Entities did not take an assignment of any AIC Property in the ABC Assignment. Plaintiffs further contend that because none of the property assigned to the ABC Entities was AIC Property and

because the ABC Entities only sold the Collateral Assets to the Embark Entities, the Embark Entities did not acquire and do not now hold any AIC Property as a result of the Embark Acquisition.

88. There is presently a dispute between defendant SDR and the Plaintiffs regarding the ownership of ABC Assets. There is also presently a dispute between the defendant SDR and the Embark Entities as to whether any of the Collateral Assets acquired by the Embark Entities in the Embark Acquisition was AIC Property.

89. This Court may, pursuant to 10 Del. C. §§ 6501–6513, declare the rights, status and other legal relations regarding the ownership of any property or assets that (i) the Holdco Entities held as of the ABC Petition Date, (ii) the Holdco Entities assigned to the ABC Entities in the ABC Assignment and (iii) the ABC Entities sold and assigned to the Embark Entities in the Embark Acquisition.

90. Wherefore, Plaintiffs ask the Court to enter a judgment declaring that (1) none of the property held by the Holdco Entities as of the ABC Petition Date was AIC Property, (2) none of the ABC Assets assigned in the ABC Assignment included AIC Property and (3) none of the Collateral Assets sold or assigned by the ABC Entities to the Embark Entities in the Embark Acquisition was AIC Property.

COUNT II

(DECLARATORY RELIEF THAT THE FILING OF THE ABC PETITIONS, THE ABC ASSIGNMENT, THE EMBARK ACQUISITION AND OTHER ACTIONS TAKEN IN THE ABC CASES WERE NOT IN VIOLATION OF THE TEXAS IRA OR THE PERMANENT INJUNCTION — AGAINST DEFENDANT SDR)

91. Plaintiffs reallege and incorporate, as though fully set forth herein, each and every allegation stated above.

92. The ABC Entities were not parties named as being enjoined or restrained by the Permanent Injunction. The ABC Entities were not served with the Permanent Injunction.

93. The ABC Entities have taken no actions and conducted no business in the State of Texas. The ABC Entities have taken no actions with respect to any property of AIC.

94. The Embark Entities were not parties named as being enjoined or restrained by the Permanent Injunction. The Embark Entities were not served with the Permanent Injunction.

95. The Embark Entities have taken no actions and conducted no business on behalf of AIC in the state of Texas. The Embark Entities have taken no actions with respect to any property of AIC.

96. The Holdco Entities executed a voluntary assignment of their assets to the ABC Entities and filed petitions with this Court commencing the ABC Cases

on the ABC Petition Date. As of the ABC Assignment and the filing of the ABC Petitions, the Holdco Entities held no AIC Property, and was not doing, operating or conducting any business of AIC under the MGA Agreements, as a purported agent or otherwise.

97. Accordingly, the Plaintiffs contend that the filing of the ABC Petitions, the ABC Cases, the ABC Assignment, the Embark Acquisition and other actions taken in the ABC Cases by the Plaintiffs or the Holdco Entities were not in violation of the Permanent Injunction or the automatic stay provisions of the Texas IRA. Additionally, the Plaintiffs contend that this Court may proceed on the ABC Entities' pending motions with respect to the required appraisals and the ABC Entities' posting of a bond.

98. In the SDR Objection, Defendant SDR contends that the filing of the ABC Petitions, the ABC Assignment, the Embark Acquisition and other actions taken in the ABC Cases were in violation of the Permanent Injunction and the automatic stay provisions of the Texas IRA.

99. Since the filing of the Notice of Claim, this Court has advised the parties that it would take no action with respect to matters then presently pending before the Court in the ABC Cases. As a result, the Court has not ruled on pending motions filed by the ABC Entities with respect to the required appraisals and the

ABC Entities' posting of a bond. Defendant SDR will not consent to the filing of the appraisals, despite being requested to do so.

100. There is a present dispute between defendant SDR and the Plaintiffs regarding whether the filing of the ABC Petitions, the ABC Assignment, the Embark Acquisition and other actions taken in the ABC Cases were in violation of the Permanent Injunction or the automatic stay provisions of the Texas IRA.

101. This Court may, pursuant to 10 Del. C. §§ 6501–6513, declare the rights, status, and other legal relations as to whether the filing of the ABC Petitions, the ABC Assignment, the Embark Acquisition or any other actions taken by the Plaintiffs in connection with the ABC Cases were in violation of the Permanent Injunction or the automatic stay provisions of the Texas IRA.

102. Wherefore, Plaintiffs ask the Court to enter a judgment declaring that (x) the Plaintiffs have not violated the provisions of the Permanent Injunction or the Texas IRA by filing the ABC Petitions, consummating the ABC Assignment or the Embark Acquisition or taking any other actions in the ABC Cases, and (y) neither the Permanent Injunction nor the automatic stay provisions prohibit the Court from proceeding with the ABC Case.

COUNT III

(DECLARATORY RELIEF THAT THE EMBARK ENTITIES ARE NOT LIABLE AS SUCCESSORS-IN-INTEREST TO THE HOLDCO ENTITIES— ALL DEFENDANTS)

103. Plaintiffs reallege and incorporate, as though fully set forth herein, each and every allegation stated above.

104. On the ABC Petition Date, the Embark Entities acquired the Collateral Assets from the ABC Entities pursuant to the Embark APA. *See* Ex. H, Embark APA. In the Embark APA, the Embark Entities did not assume any liabilities of the Holdco Entities or the ABC Entities other than the liabilities assumed pursuant to Section 1.2. *See* Ex. H, Embark APA, §§ 1.2–1.3; Ex. I, Assignment & Assumption Agreement (Aug. 23, 2018), §§ 1–2.

105. The Plaintiffs contend that the Embark APA was the product of good faith, arms'-length negotiations between and among independent parties represented by separate counsel. The Plaintiffs further contend that the Embark Entities acquired the Collateral Assets for fair and reasonable value and in good faith. The Plaintiffs further contend that the ABC Entities sold the Collateral Assets to the Embark Entities in exchange for a release and reduction of \$27 million secured obligations due and owing to ACP Finance under the NXT Credit Agreement, the performance on which obligations was secured by the NXT Liens, which secured claims were senior in priority to all of the claims asserted in the

State Court Actions against the Holdco Entities. The Plaintiffs further contend that the Embark Entities were under no obligation to assume any liabilities of the Holdco Entities and did not assume any liabilities owing to the Defendants.

106. The Plaintiffs further contend that the Holdco Entities were not merged or consolidated into the Embark Entities and that the Embark Entities are not successors-in-interest to the Holdco Entities as a result of their having acquired the Collateral Assets from the ABC Entities. The Plaintiffs further contend that Embark Entities did not acquire the Collateral Assets from the ABC Entities by fraud or in a scheme to defraud the creditors of the Holdco Entities, but as good faith transferees for value.

107. The Defendants contend that certain of the Plaintiffs are liable for the obligations of the Holdco Entities because those Plaintiffs are successors-in-interest or transferees of the Holdco Entities' assets and property.

108. The SDR contends that the Plaintiffs aided and abetted breaches of fiduciary duties by, among others, the Holdco Entities.

109. The SDR contends that the Embark Entities acquired the Collateral Assets by fraud or a scheme to defraud the SDR and the persons and interests it represents.

110. Ravinia contends that the Embark Entities are successors-in-interest by "de facto merger" and liable for all rent payments under the Ravinia Lease.

111. H&Y contends that the Embark Entities are contractually or otherwise obligated to pay for services purportedly rendered to the Holdco Entities.

112. There are present disputes between Defendants and Plaintiffs regarding the Embark Entities' liability with respect to claims and causes of action that have or may be asserted against the Holdco Entities, as well as themselves, by the Defendants.

113. This Court may, pursuant to 10 Del. C. §§ 6501–6513, declare the rights, status and other legal relations among the Plaintiffs and the Defendants resulting from the Embark Acquisition and whether the Plaintiffs or the property acquired by the Embark Entities in the Embark Acquisition are liable to the Defendants for any claims or causes of action the Defendants have or might assert in the State Court Actions.

114. Wherefore, Plaintiffs ask the Court to enter a judgment declaring that the Plaintiffs are not liable on any claims asserted or that may be asserted by the Defendants in the State Court Actions on account of the Embark Acquisition, whether based on theories of fraudulent conveyance, voidable transfers, affiliated transfers, contract, “de facto merger,” consolidation, successor-in-interest, mere continuation of the Holdco Entities, or otherwise.

COUNT IV

(DECLARATORY RELIEF THAT THE VALUE OF THE ACP FINANCE LIENS EXCEEDED THE VALUE OF

THE COLLATERAL ASSETS – ALL DEFENDANTS)

115. Plaintiffs reallege and incorporate, as though fully set forth herein, each and every allegation stated above.

116. At all times after the Holdco Acquisition through May 4, 2018, the NXT Liens were valid, properly perfected, and fully enforceable, first priority liens on substantially all of the assets and properties held by the Holdco Entities.

117. On May 4, 2018, ACP Finance acquired all of the rights and interests of the NXT Lenders under the NXT Credit Agreement and took an assignment of all of the security interests in and to the NXT Liens on the Holdco Entities' property and assets and held those interests and the NXT Liens as of the ABC Petition Date.

118. On the ABC Petition Date, the Holdco Entities owed ACP Finance an amount in excess of \$33 million under the NXT Credit Agreement, which obligation was secured by the valid, perfected and fully enforceable NXT Liens against the Collateral Assets.

119. The Embark Entities acquired the Collateral Assets from the ABC Entities for fair value, in good faith, and after arm's length negotiations. The \$27 million in value that the ABC Entities received for the Collateral Assets was fair and reasonable value. The value of the Collateral Assets was less than the \$27

million in secured debt forgiven by ACP Finance and the only offer received for the Holdco Entities' assets and business after an extensive sale process.

120. All of the claims or causes of action asserted by the Defendants against the Holdco Entities in State Court Actions, the ABC Cases, the Landlord Action, the Receivership Court or the California Action would, if proven, constitute unsecured claims for money damages payable only from unencumbered assets of the Holdco Entities assigned to the ABC Entities.

121. By seeking payment on those unsecured claims from the Collateral Assets acquired by the Embark Entities in the Embark Acquisition, the Defendants contend that the value of the Collateral Assets exceeded the value of the ACP Finance secured claims and that the ABC Entities received too little value in exchange for the Collateral Assets in the Embark Acquisition.

122. Plaintiffs contend that the value of the Collateral Assets sold and transferred to the Embark Entities was (i) not more than the \$27 million in secured debt that ACP Finance released in exchange for the Collateral Assets, and (ii) in no event more than the \$33 million due and owing to ACP Finance as of the ABC Petition Date, and, thus, that there was no excess value in the Collateral Assets upon which the Defendants could obtain a monetary recovery.

123. There is a present dispute between Defendants and Plaintiffs regarding the value of the Collateral Assets acquired by the Embark Entities in the

Embark Acquisition, whether the Embark Entities paid too little to the ABC Entities for the Collateral Assets, and whether the Defendants would be entitled to a monetary recovery from the value of the Collateral Assets.

124. This Court may, pursuant to 10 Del. C. §§ 6501–6513, declare the rights, status and other legal relations among the Embark Entities and the Defendants resulting from the Embark Acquisition and whether the Collateral Assets had any value in excess of the secured claims of ACP Finance upon which the Defendants could receive a monetary recovery.

125. Wherefore, Plaintiffs ask the Court to enter a judgment declaring that the value of the Collateral Assets acquired by the Embark Entities in the Embark Acquisition was no more than \$27 million and in any event no more than the \$33 million due and owing to ACP Finance as of the ABC Petition Date.

COUNT V

(INJUNCTIVE RELIEF ENJOINING INTERFERENCE IN THE PROPERTY ACQUIRED BY THE EMBARK ENTITIES IN THE EMBARK ACQUISITION — AGAINST ALL DEFENDANTS)

126. Plaintiffs reallege and incorporate, as though fully set forth herein, each and every allegation stated above.

127. The Defendants' sole remedy with respect to their respective claims or causes of action is a claim for monetary damages against one or more of the Holdco Entities.

128. The ABC Cases provide the Defendants with an adequate and proper forum for pursuing those claims or causes of action.

129. The assets and business acquired by the Embark Entities from the ABC Entities are not subject to the claims or causes of action asserted or that could be asserted by the Defendants.

130. Wherefore, upon entry of the declaratory relief requested in Counts I through IV of this Complaint, this Court should enjoin the Defendants from interfering or taking any action against the assets and properties acquired by the Embark Entities in the Embark Acquisition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

A. To enter a judgment granting the Plaintiff the declaratory relief specified above.

B. Enter a permanent order enjoining and restraining Defendants, all of their officers, agents, servants, employees, attorneys, parent and subsidiary corporations, and all of their assigns and successors-in-interest, and those persons in active concert and participation with them from (i) interfering with the ABC Cases other than taking those actions permitted by the Delaware ABC Provisions

Estate, or (ii) interfering with or otherwise pursuing claims against the Embark Entities or the property and assets they acquired in the Embark Acquisition.

C. Ordering such further and additional relief as this Court may deem just, proper, and equitable.

Of counsel to the Embark Entities:

Matthew L. McGinnis
Ropes & Gray LLP
800 Boylston Street
Boston, MA 02199-3600
617-951-7567
Matthew.McGinnis@ropesgray.com

/s/ Gregg M. Galardi
Gregg M. Galardi (#2991)
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704
212-596-9139
Gregg.Galardi@ropesgray.com

/s/ Paul D. Brown
Paul D. Brown (#3903)
Mark L. Desgrosseilliers (#4083)
Chipman Brown Cicero & Cole, LLP
1313 N. Market Street, Suite 5400
Wilmington, DE 19801
302-295-0194
Brown@chipmanbrown.com
Degross@chipmanbrown.com

Attorneys for the Embark Entities

/s/ Matthew P. Ward
Matthew P. Ward (#4471)
Morgan L. Patterson (#5388)
Womble Bond Dickinson (US) LLP
1313 North Market Street, Suite 1200
Wilmington, Delaware 19801
302-252-4320
Matthew.ward@wbd-us.com
Morgan.patterson@wbd-us.com

Dated: July 26, 2019

Attorneys for the ABC Entities



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

_____)
ACPI (ASSIGNMENT FOR THE)
BENEFIT OF CREDITORS), LLC;)
ACPAHM (ASSIGNMENT FOR)
THE BENEFIT OF CREDITORS),)
LLC; APF (ASSIGNMENT FOR)
THE BENEFIT OF CREDITORS),)
LLC; ACS (ASSIGNMENT FOR)
THE BENEFIT OF CREDITORS),)
LLC; AGIA (ASSIGNMENT FOR)
THE BENEFIT OF CREDITORS),)
LLC; AGIAC (ASSIGNMENT FOR)
THE BENEFIT OF CREDITORS),) C.A. No. 2019-0577 - AGB
LLC; EMBARK HOLDCO)
MANAGEMENT, LLC; *and*)
EMBARK CORPORATE)
SERVICES, LLC;)
))
Plaintiffs,)
))
v.)
))
CANTILO & BENNETT, LLP; POP)
3 RAVINIA, LLC; *and* HEATH &)
YUEN, APC,)
))
Defendants.)
_____)

AFFIDAVIT OF MAILING PURSUANT TO 10 DEL. C. § 3104

Morgan L. Patterson, being duly sworn, deposes and says:

1. I am an attorney with the law firm of Womble Bond Dickinson (US) LLP, counsel to Plaintiffs ACPI (Assignment for the Benefit of Creditors), LLC; ACPAHM (Assignment for the Benefit of Creditors), LLC; APF (Assignment for the Benefit of Creditors), LLC; ACS (Assignment for the Benefit of Creditors), LLC; AGIA (Assignment for the Benefit

of Creditors), LLC; and AGIAC (Assignment for the Benefit of Creditors), LLC (together, the “ABC Entities”) in the above captioned matter. I submit this affidavit pursuant to 10 *Del. C.* § 3104.


2. I am duly authorized to make this Affidavit on the ABC Entities’ behalf to represent the facts set forth herein.

3. Defendant Cantilo & Bennett, LLC, is a non-resident of the State of Delaware.

4. On July 30, 2019, Womble Bond Dickinson (US) LLP caused the following to be delivered to Defendant Cantilo & Bennett, LLC, 11401 Century Oaks Terrace, Suite 300, Austin, TX 78758 via Federal Express (signature required): a copy of the Summons directed to Cantilo & Bennett, LLC and the Verified Complaint with Exhibits A-I. Pursuant to 10 *Del. C.* § 3104, process has been served on Defendant Cantilo & Bennett, LLC and such service is effectual for all intents and purposes as if it had been made on Defendant Cantilo & Bennett, LLC personally.

5. On July 31, 2019, the signed return receipt for Defendant Cantilo & Bennett, LLC was received by Womble Bond Dickinson (US) LLP, as evidenced by the return receipt attached hereto as Exhibit A.

Dated: July 31, 2019



Matthew P. Ward (#4471)

Morgan L. Patterson (#5388)

Womble Bond Dickinson (US) LLP

1313 North Market Street, Suite 1200

Wilmington, Delaware 19801

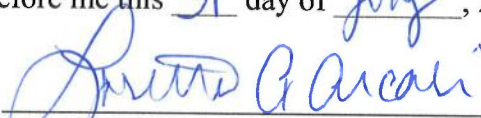
302-252-4320

Matthew.ward@wbd-us.com

Morgan.patterson@wbd-us.com

Attorneys for the ABC Entities

SWORN TO AND SUBSCRIBED before me this 31st day of July, 2019.



Notary Public

My Commission Expires: February 20, 2021

LORETTA A. ARCARI
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires February 20, 2021



EXHIBIT A



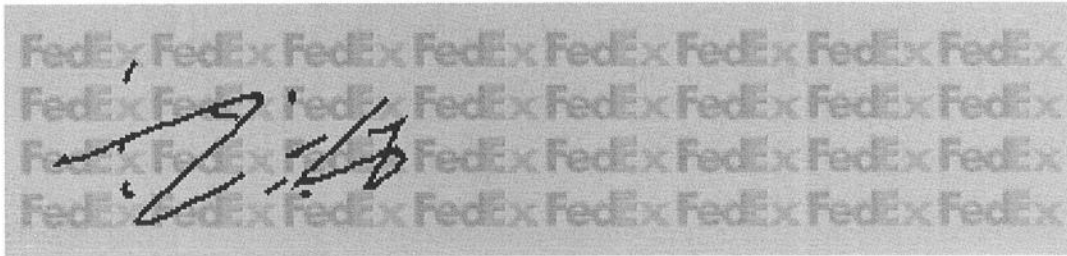
July 31, 2019

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Womble, Carlyle
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