IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

BRENT RICHARDSON AND CHRISTOPHER RICHARDSON, Plaintiffs, v. EVEREST NATIONAL INSURANCE COMPANY, STARR INDEMNITY AND LIABILITY COMPANY, IRONSHORE INDEMNITY INCORPORATED, and LANDMARK AMERICAN INSURANCE COMPANY, Defendants.	)	Civil Action No. _____ JURY TRIAL DEMANDED

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Brent Richardson and Christopher Richardson (collectively the "Richardsons"), by and through their undersigned counsel, for this Complaint and Demand for Jury Trial against Everest National Insurance Company ("Everest"), Starr Indemnity and Liability Company ("Starr"), Ironshore Indemnity, Incorporated ("Ironshore"), and Landmark American Insurance Company ("Landmark"), allege as follows:

NATURE OF THE ACTION

1. This is a civil action for declaratory judgment brought by Brent and Christopher Richardson, and for money damages and other appropriate relief, arising out of the Defendant insurers' respective breaches of their "follow form" excess Directors and Officers ("D&O") contracts.

2. Brent Richardson was the Chief Executive Officer and Christopher Richardson was General Counsel of Dream Center Education Holdings, LLC ("DCEH").

3. In late 2017, with the encouragement of the Department of Education, DCEH completed a transaction through which it acquired several then-failing university systems with numerous campuses nationwide, with the goal of restoring the universities to profitability.

4. Following the acquisition, DCEH discovered that the schools' finances were worse than had been represented. Despite best efforts, DCEH (and the Richardsons) were unable to effect a successful turnaround of the enterprise, and in January 2019 DCEH and the various campuses which it owned and operated went into receivership through a proceeding that remains pending in this Court, styled *Digital Media Solutions, LLC v. South University of Ohio, LLC, et. al.*, No. 1:19-cv-00145-DAP (N.D. Ohio).

5. Just prior to the DCEH receivership, a putative class action was filed against DCEH (and others) by former students of one of the universities, alleging that the defendants made false and misleading statements regarding the schools' accreditation status as institutions of higher learning. Further, the court-appointed DCEH Receiver subsequently asserted a variety of claims against DCEH's former officers, including the Richardsons, stemming from their acquisition and brief operation of the enterprise, including the alleged failure to ensure the accuracy of certain financial information provided to secured lenders, failure to oversee payment of credit balances to students in connection with student loans, and failure to properly oversee employee health care plans.

6. At the time of these claims, DCEH and the Richardsons as officers were insured under a $60 million tower of management liability insurance provided by National Union Fire Insurance Company ("AIG") and the Defendants. The tower consisted of a $10 million primary D&O policy sold by AIG; $40 million of "follow form" excess D&O coverage sold by Everest, Starr, Landmark and Ironshore; and finally a $10 million Side-A DIC policy sold by AIG.

7. With respect to coverage provided to individual insureds – like the Richardsons – for non-indemnified claims, the D&O tower included a "SIDE-A MATCH EDGESM (SAME) Endorsement" (the "SAME Endorsement"). The SAME Endorsement is a specifically negotiated-for enhancement attached to the primary AIG policy, the effect of which is that the "Side-A coverage" (*i.e*, D&O insurance for individual insureds who are not indemnified by the corporate entity) provided by both the primary policy ***and the follow form excess policies*** applies per the broad terms and conditions of the top layer AIG Side-A DIC policy.

8. The Richardsons demanded coverage from DCEH's D&O insurance policies for the claims asserted against them by the Receiver. AIG, in response, agreed to tender its $10 million limits under the primary policy to settle the claims. But Everest (as well as the higher layer follow form excess insurers – Defendants Starr, Landmark and Ironshore) have denied coverage or otherwise failed to contribute policy proceeds to resolve the Receiver's claims.

9. Defendants' respective denials of coverage are both baseless and unreasonable. Defendants continue to ignore the SAME Endorsement and have denied (and continue to deny) coverage to the Richardsons based on exclusions and other policy provisions that simply are not part of the policy forms applicable to the Richardsons' claim.

10. Through this action, the Richardsons seek a determination by this Court that, given the SAME Endorsement, "side A" coverage under each of the Defendants' excess policies follows the terms and conditions of the AIG Side-A policy, and that one or more of the Defendants is currently obligated to pay the Richardsons' costs of defense and to otherwise indemnify the Richardsons in connection with the Receiver's claims.

11. The Richardsons further seek extra-contractual damages from Defendant Everest for breach of its duty of good faith and fair dealing owed to the Plaintiffs.

PARTIES

12. Plaintiff Brent Richardson, a resident of Arizona, served at all times relevant to this Complaint as DCEH's Chief Executive Officer and a member of its Board of Managers.

13. Plaintiff Christopher Richardson, a resident of Arizona, served at all times relevant to this Complaint as General Counsel of DCEH.

14. Upon information and belief, Defendant Everest National Insurance Company is a Delaware corporation with its principal place of business in New Jersey.

15. Upon information and belief, Defendant Starr Indemnity and Liability Company is a Texas corporation with its principal place of business in New York.

16. Upon information and belief, Defendant Ironshore Indemnity Incorporated is a Minnesota corporation with its principal place of business in New York.

17. Upon information and belief, Defendant Landmark American Insurance Company is an Oklahoma corporation with its principal place of business in Georgia.

18. Everest, Starr, Ironshore and Landmark are referred to collectively as "the "Excess Insurers."

JURISDICTION AND VENUE

19. This Court has diversity jurisdiction over this dispute pursuant to 28 U.S.C. § 1332. This action is between citizens of different States, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

20. This Court has personal jurisdiction over Defendants by virtue of their business activity within the state of Ohio and an already pending case in this jurisdiction.

21. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this Complaint and Demand for

Jury Trial occurred in this district, as well as the fact that the Receivership whose underlying claims are at issue in this insurance coverage action was created by and is pending in this Court.

FACTS

A. Background

i. *DCEH's Acquisition and Operation of Argosy University, South University & the Art Institutes*

22. This insurance coverage action arises from DCEH's management and operation of three national university systems – Argosy University, South University, and the Art Institutes, all of which had numerous locations across the country.

23. In early 2017, the Universities were owned and managed by Education Management Corporation ("EDCM") and were struggling financially and were close to insolvent. The Department of Education ("DoE") was searching for a new owner to take over ownership and control of the universities in an effort to turn the schools around and to avoid the financial harm to taxpayers that would result if the schools closed and students' federal loans had to be forgiven.

24. The DoE contacted Plaintiffs, the Richardsons, who previously had transformed Grand Canyon University into a profitable business, to determine whether Plaintiffs were interested in attempting a similar turn-around with the universities.

25. Ultimately, the Richardsons, working in conjunction with the Dream Center Foundation – a California non-profit corporation ("DCF") – formed DCEH for the purpose of acquiring and operating the universities.[1]

26. In order to complete the transaction, DCEH – working with an investment banker, Lincoln International – sought financing from a consortium of lenders (the "Secured Lenders").

[1] The Richardsons were not officers or directors of DCF and in fact had no formal roles with the entity.

27. On October 17, 2017, DCEH entered into a Senior Secured Credit Guarantee Agreement (the "Credit Agreement") with the Secured Lenders, who provided $55 million to enable DCEH to close the transaction with EDMC.

28. DCEH ultimately closed its transaction with EDCM in early 2018 and took over ownership and operation of the three university systems.

29. Soon after the transaction closed, DCEH discovered that EDCM had overstated the universities' revenue and underrepresented their expenses. The three university systems were performing far worse financially than anticipated, and DCEH was unable to turn them around. Ultimately, by the end of 2018, DCEH was forced to close 30 campuses.

30. Despite DCEH's efforts, the universities' finances had not improved, and by the end of 2018, various unpaid landlords, vendors, and other creditors began filing lawsuits against DCEH.

31. Moreover, in December 2018, four students who had attended the Illinois Institute of Art ("IIA") filed a putative class action against DCEH, the Richardsons, and others, styled *Dunagan, et al. v. Illinois Institute of Art-Chicago, LLC, et al*. ("*Dunagan*").[2] *Dunagan* asserted that at the time DCEH acquired IIA, the school was accredited by the Higher Learning Commission, but that on January 20, 2018, when control transferred from ECDM to DCEH, IIA lost its status as an accredited institution of higher learning, and that the defendants to the action failed to inform students upon the loss of accreditation, and made false and misleading statements to students that the IIA campuses remained accredited. The Richardsons have denied the

[2] The initial *Dunagan* Complaint named John Does 1-10 as individual defendants. The Richardsons were formally added as party defendants to the action through a Third Amended Class Action Complaint filed on or about January 25, 2021. The *Dunagan* action was reported to the Defendant insurers on or about January 9, 2019.

allegations of wrongdoing and asserted various affirmative defenses in the *Dunagan* lawsuit, which remains pending against the Richardsons and others as of the date of this Complaint.

ii. *The Receivership and the Claims Against the Richardsons*

32. On January 8, 2019, Digital Media Solutions, LLC, one of the Secured Lenders, filed a receivership Complaint against DCEH and two of its university systems (South University and Argosy University) in the United States District Court, Northern District of Ohio (the "Receivership Action"). Digital Media Solutions alleged that it had entered into an on-line marketing agreement to recruit prospective students to the universities, but that DCEH had failed to pay $252,737 owed per the agreement. Digital Media Solutions sought, among other relief, the appointment of a receiver over DCEH and certain of its subsidiary entities (*i.e.*, the universities).

33. DCEH consented to the request for appointment of a receiver, and on January 18, 2019, the Court entered an Initial Receiver Order appointing Mark. E. Dottore as Receiver of DCEH and its various affiliated campuses (the "Receivership Entities").

34. On March 28, 2019, the Receiver (through its counsel), wrote to DCEH's insurance broker, Willis Towers Watson ("Willis"), indicating that the Receiver had been made aware of questions concerning whether credit balances – student loans in excess of tuition – known as "stipends," which had been collected by the Receivership Entities, had been properly distributed to students. The Receiver requested that Willis place the D&O Insurers on notice of a potential claim against DCEH's directors and officers relating to these stipend payment issues.

35. Following further investigation into DCEH's operations, on April 15, 2019, the Receiver wrote directly to AIG and the Excess Insurers providing notice of additional potential claims against the former officers and directors of DCEH. The April 15, 2019, letter elaborated on the previously reported "stipend issues." In addition, according to the Receiver, it anticipated

additional claims against the former officers and directors of DCEH, asserting among other things that: (a) Brent Richardson was aware, "or had a strong suspicion," that certain financial figures EDCM provided in connection with the transaction were inaccurate and that he had allowed misrepresentations to be made to the Secured Lenders in connection with the related funding transaction; (b) officers and directors breached fiduciary duties by creating a self-funded employee health care plan that they knew would be incapable of paying accruing claims; (c) officers and directors knew or should have known that, given the Argosy campuses' financial situation, it would be impossible to complete the Spring 2019 semester, but that they induced students to register nonetheless and, when the schools were forced to close, the students lost the value of the semester; (d) officers and directors breached fiduciary duties to the entity by approving improper bonuses to insiders, family members, and others without good cause; and (e) officers and directors engaged in fraudulent transfer between DCEH and DCF.

36. More than a year later, the Receiver turned its attention back to the alleged claims against DCEH's former officers and directors. On July 8, 2020, the Receiver's counsel sent a 65-page letter to AIG's representative further outlining the allegations of wrongdoing by the Richardsons and others and explaining why each of the various claims triggered coverage under AIG's primary policy. The letter closed: "We look forward to working with you, and the various insurers' representatives, to talk through the coverage issues and determine whether there will be a way to resolve the universe of claims being made against DCEH, to be indemnified by its insurers."

37. By letter dated October 13, 2020, AIG responded to the Receiver's letter, acknowledging potential coverage for the previously detailed claims.

38. After months of negotiations, in February 2021, the Receiver reached a settlement with DCEH's former officers and directors, and with AIG, with respect to the Receiver's claims (subject to the Court's approval in the Receivership Action). Per the agreement, AIG would pay the remaining limits of its primary policy ($8.5 million) into the Receivership estate.[3] In return, the Receiver would release DCEH's purported claims against the Richardsons and other former officers and directors and would also release AIG from any further obligations under both the primary policy and the AIG Side-A policy. The settlement was contingent upon entry by the Court in the Receivership Action of a "bar order" which would preclude non-settling third parties from pursuing personal-liability claims against non-debtors (including DCEH's former officers and directors) who were not in the Receivership.

39. On October 20, 2021, the district court issued an order approving the parties' settlement and issuing the "bar order."

40. Subsequently, objections were lodged to the settlement (including by certain students associated with the *Dunagan* action), and the district court's order was appealed to the United States Court of Appeals for the Sixth Circuit.

41. In a decision issued February 7, 2023, the Sixth Circuit reversed the district court's October 20, 2021 order, finding that the court lacked the equitable power to bar students' claims against third parties that were not part of the Receivership. *Digital Media Solutions, LLC v. South University of Ohio, LLC*, 59 4th 772 (6th Cir. 2023).

42. Following the Sixth Circuit's opinion, the district court renewed its efforts to resolve claims involving the Receivership. On May 5, 2023, the district court issued an order in the Receivership Action scheduling an in-person settlement conference for June 14, 2023, and

[3] The remainder of the AIG primary policy's limits had been incurred in connection with defense of the *Dunagan* action.

directing attendance by, among others, the *Dunagan* plaintiffs, the Receiver, the Richardsons and the D&O insurers. The district court directed each of the parties to submit pre-conference position papers explaining any issues that had kept the parties from resolving the then-pending claims.

43. On May 31, 2023, in connection with the settlement proceeding, the Receiver sent the Richardsons' counsel an updated demand letter, offering to resolve all claims against DCEH's former directors and officers for $58 million. Counsel for the *Dunagan* plaintiffs submitted a separate confidential settlement demand dated April 6, 2023, in connection with the district court's conference. Ultimately, the Receiver's claims were not resolved by the Court's settlement conference.

44. Subsequently, the Receiver, the Richardsons, and the D&O insurers (including AIG and the Defendants) participated in formal mediation before Jed Melnick of JAMS. But mediation failed as the Defendant Insurers refused to contribute sufficient policy proceeds to resolve the Receiver's claims.

45. Following mediation, on October 6, 2023, the Receiver served a Draft Complaint in further pursuit of its claims, asserting that the Richardsons (and others) breached their fiduciary duties to the enterprise and were otherwise negligent in their operation of the Receivership Entities. **Exhibit A**.

46. The Draft Complaint asserts that the Richardsons, "as officers, managers, and directors of DCEH and the Receivership Entities, owed a fiduciary duty to the enterprises for whom they so served." Compl., ¶ 50. The Receiver avers that the Richardsons breached their fiduciary duties to DCEH and the Receivership Entities in several separate and discrete ways, including:

(a) "failing to ensure the financial information provided to the Secured Lenders was accurate" which purportedly caused the Secured Lenders to loan funds that Defendants knew or should have known could not be repaid ("Secured Lender Issues");

(b) allowing misrepresentations to be made to the United States Department of Education in effort to obtain Title IV funding for which the Receivership Entities allegedly were not entitled (the "DOE Issues");

(c) allowing a system and process to be established whereby credit balances were not paid to students as required ("Stipend Issues");

(d) authorizing payments to DCF while DCEH was insolvent and without consideration ("Fraudulent Transfer Issues");

(e) paying friends and family unjustifiable bonuses while DCEH was insolvent (the "Bonus Issues");

(f) failing to oversee the Receivership Entities' health care plans, purportedly causing DCEH's former employees to sustain unreimbursed health care claims and triggering an ERISA claim by the Department of Labor to recover unreimbursed health care claims and related penalties (the "Health Insurance Issues"); and

(g) "operating the Receivership Entities without any accounting staff whatsoever for a period in December 2018 and January 2019 until the Receiver was appointed, leaving them with no foundation upon which to make any financial decisions . . ." (the "Accounting Issues").

Compl, ¶ 51.

47. The Receiver also asserts a cause of action for negligence asserting that the Richardsons (and others), as officers, managers and/or directors of DCEH "maintained a duty to exercise their jobs in a competent manner" and that they breached their duty with respect to the Secured Lender issues, the Stipend Issues, the DOE issues, the Fraudulent Transfer Issues, the Bonus Issues and the Health Insurance Issues, thereby causing DCEH and the Receivership Entities damages. Compl., ¶ 63.

48. The Receiver's Complaint seeks damages in excess of $336,000,000.

49. By letter dated November 2, 2023, the Receiver indicated that none of the Excess Insurers had responded to the Draft Complaint or tendered any updated offer to settle the Receiver's claims. The Receiver concluded:

> In one last attempt to resolve the dispute, be advised that the Receiver will accept payment of $35 million to resolve all of his claims against the former directors and officers. The offer will remain open until such time as we file the complaint. Thereafter, as we've discussed, the amount required to settle the case will increase.

50. On November 20, 2023, the Receiver filed a motion in the Receivership Lawsuit seeking approval of a Litigation Trust in effort to pursue the Complaint.

B. The D&O Policies

51. The claims at issue in this dispute were noticed to the Excess Insurers during the October 17, 2017 to April 17, 2019 D&O[4] insurance policy period.

52. During the relevant period, the Richardsons were insured under a $60 million tower of D&O insurance, as well as a separate $10 million limit of fiduciary liability coverage, as described below.

53. AIG sold DCEH a PortfolioSelect for Non-Profit Organizations Policy No. 02-420-25-70 (the "AIG Primary Policy"), which covers claims first made during the policy period of October 17, 2017 to October 17, 2018, and as later extended to April 17, 2019. A copy of the AIG Policy is attached as **Exhibit B**, the terms and conditions of which are incorporated herein by reference. The AIG Primary Policy provides, among other coverage, $10 million in D&O limits of liability, subject to a $500,000 self-insured retention.[5]

[4] The initial policy period terminated April 17, 2018, but was later extended by endorsement to April 17, 2019. Upon information and belief, an extended reporting period was then purchased for each of the policies with an April 17, 2020 expiration date.

[5] The AIG Primary Policy also provides a separate $10 million in limits for fiduciary liability claims, subject to $20 million in aggregate limits for all coverages under the Policy.

54. DCEH purchased four "follow form" excess D&O policies for the period October 17, 2017 to October 17, 2018 (and as later extended to April 17, 2019):

(a) Everest Zenith Excess Policy No. SCex00110-171 (the "Everest Policy"), attached as **Exhibit C**, the terms and conditions of which are incorporated herein by reference.

(b) Starr Secure Excess Liability Policy No. 1000620558171 (the "Starr Policy"), attached as **Exhibit D**, the terms and conditions of which are incorporated herein by reference.

(c) Landmark Excess Liability Policy No. HS674187 (the "Landmark Policy"), attached as **Exhibit E**, the terms and conditions of which are incorporated herein by reference.

(d) Ironshore Excess Liability Insurance Policy No. 003319600 (the "Ironshore Policy"), attached as **Exhibit F**, the terms and conditions of which are incorporated herein by reference.

(collectively, the "Excess Policies").

55. Each one of the Excess Policies, in all relevant aspects, "follows form" to and otherwise adopts the terms and conditions set forth in the AIG Primary Policy (including the SAME Endorsement, as discussed further, below). The combined aggregate limits of liability of the Excess Policies are $40 million.

56. In addition, AIG sold to DCEH a Side-A Edge Policy No. 02-420-25-71 (the "Side-A Policy)." A copy of the Side-A Policy is attached hereto as **Exhibit G**, and its terms and conditions are incorporated herein by reference. The AIG Side-A Policy provides $10 million in limits of liability, which apply excess of $50 million in underlying limits provided by the AIG Primary Policy and the Excess Policies, subject to certain "differences in conditions" or "drop down" obligations.

i. *The AIG Primary Policy*

57. AIG sold DCEH the AIG Primary Policy for the period from October 17, 2017 to October 17, 2018. The policy period was later extended by endorsement to April 17, 2019.

58. The AIG Primary Policy provides, among other insurance protections, D&O coverage for both **Insured Persons**[6] and the **Organization**, as well as Fiduciary Liability coverage.

59. The Non-Profit D&O Coverage Section's *Insured Person Coverage* provides:

> This policy shall pay the **Loss** of any **Insured Person** that no **Organization** has indemnified or paid, and that arises from any **Claim** made against such **Insured Person** . . . for any **Wrongful Act** of such **Insured Person**

Policy, 1. Insuring Agreement. A. *Insured Person Coverage*.

60. The AIG Primary Policy states that "[t]he **Insureds** shall defend and contest any **Claim** made against them" and obligates the **Insurer** to "advance, excess of any applicable Retention, covered **Defense Costs** on a current basis, but no later than ninety (90) days after the **Insurer** has received itemized bills for those **Defense Costs**." Policy, § 9.

61. The AIG Primary Policy contains a Side-A Match EDGESM Endorsement that modifies the policy's Non-Profit D&O Coverage Section:

SIDE- A MATCH EDGESM (SAME)
Matches Primary Side-A Coverage With Your AIG Side-A Excess Coverage)
(Without Reinstatement Features)

Policy, End. 23 (the "SAME Endorsement").

62. As the above title indicates, where, as here, AIG has also issued the lead Side-A Excess Policy, the SAME Endorsement provides that the AIG Primary Policy's Side A coverage "matches" the terms and conditions of the AIG Side-A Policy.

63. Specifically, the SAME Endorsement provides:

> for any **Claim** against . . . any **Insured** Person, the **Non-Profit D&O Coverage Section's COVERAGE A: Insured Person Coverage** and Clause 3.A. *Advancement* (the **Side-A Coverage**) shall be extended to include coverage

6 **Bold terms** are defined by the AIG Primary Policy.

> provided by the **AIG Lead Side-A Policy** that is not already encompassed in the **Side-A Coverage**.

SAME Endorsement.

64. The SAME Endorsement clarifies that "The *Side-A Match* shall not . . . apply to any endorsement to this policy that specifically provides that the *Side-A Match* clause does not apply to it" or "modify any term, condition or exclusion applicable to any coverage afforded under this policy, other than the coverage provided under the **Side-A Coverage**." SAME Endorsement.

65. Accordingly, with respect to coverage under Insuring Agreement A (non-indemnified **Claims** against **Insured Persons**, *i.e.*, "Side-A Coverage"), the AIG Primary Policy generally applies the broad terms and conditions of the AIG Side-A Policy, detailed below.

ii. *The Follow Form Excess Policies*

66. DCEH purchased $40 million of "follow form" excess D&O coverage, which applies generally per the terms and conditions of the AIG Primary Policy.

67. Everest sold DCEH the Everest Policy, which provides $10 million in "follow form" coverage excess of the AIG Primary Policy's $10 million in D&O limits of liability. **Exhibit C**. The Everest policy states that "[e]xcept as provided herein, this policy shall follow form to the term and conditions of the Primary Policy."

68. Starr sold DCEH the Starr Policy, which provides $10 million in "follow form" coverage excess of the $20 million in underlying D&O limits of liability provided by the AIG Primary Policy and the Everest Policy. **Exhibit D.** The Starr Policy identifies the AIG Primary Policy as the "Followed Policy" and provides coverage "in accordance with the terms, conditions, limitations and other provisions of the Followed Policy" subject to "all other terms and conditions of, and the endorsements attached to this Policy."

69. Landmark sold DCEH the Landmark Policy, which provides $10 million in "follow form" coverage excess of $30 million in underlying D&O limits of liability. **Exhibit E**. The Landmark Policy identifies the AIG Primary Policy as the "**Followed Policy**" and states: "This policy is subject to the same terms, conditions, other provisions and endorsements (except as regards the premium, the amount and limits of liability, and duty to defend, and except as otherwise provided herein) as are contained in the **Followed Policy**."

70. Ironshore sold DCEH the Ironshore Policy, which provides $10 million in "follow form" coverage excess of $40 million in underlying D&O limits of liability. **Exhibit F**. The Ironshore Policy identifies the AIG Primary Policy as the "Followed Policy" and states: "the Insurer agrees to provide insurance coverage to the Insureds in accordance with the terms, definitions, conditions, exclusions and limitations of the Followed Policy, except as may be otherwise provided in this Policy."

iii. *The AIG Side-A Edge Policy*

71. AIG sold DCEH a Side-A Edge Policy No. 02-420-25-71 (the "Side-A Policy"). **Exhibit G**. The Side-A Policy provides $10 million in limits of liability which apply, generally, excess of $50 million in underlying limits, subject to certain "differences in conditions" or "drop down" obligations.

72. The Side-A Policy identifies the AIG Primary Policy as the **Followed Policy** (*see* Declarations; Schedule of Underlying Coverage Amended), and it lists the AIG Primary Policy, and the Everest, Starr, Landmark and Ironshore follow form excess policies, as "Underlying Insurance." Schedule of Underlying Coverage Amended.

73. The basic coverage under the Side-A policy is set forth in an Amended Side A Edge Amendatory Endorsement (End. 7).

74. The Amendatory Endorsement states:

> The Declarations are amended to add the following at the end thereof:
>
> | | |
> |---|---|
> | ***SAME*** | *The **Followed Policy** does include a Side-A Match Edge endorsement providing Side-A coverage that follows the terms and conditions of this policy.* |

75. The Side-A Policy "provides coverage to **Insured Persons** solely for **Loss** that arises from **Claims** first made against **Insured Persons** . . . first reported to the Insurer, during the **Policy Period** or the applicable **Discovery Period**." The policy "is an excess follow form and differences in conditions insurance policy" that "only protects and benefits **Insured Persons**." No coverage is afforded by the Side-A Policy for any entity, including DCEH. End. 7, Insuring Agreement.

76. Pursuant to its Insuring Agreement, the Side-A Policy shall pay: "the **Loss** of any **Insured Person**, where such **Loss** arises from any **Claim** for any **Wrongful Act** of such **Insured Person** . . .". Such **Loss** must be either:

> (a) excess of amounts paid under any **Underlying Policy** (including payments by any **Insured Person** or others of **Loss** . . . insured under that **Underlying Policy** . . .) and amounts indemnified or advanced from an **Organization** . . .; or (b) on a drop-down basis solely as provided in the Differences in Conditions ("DIC") Event Coverage below.

End. 7, Insuring Agreement.

77. The Side-A Policy "shall provide coverage for **Insured Persons** in accordance with the terms, conditions and limitations of the [AIG Primary Policy], as modified by and subject to the terms, conditions and limitations of this policy . . ." End. 7, Follow Form. Moreover, "A term in **bold typeface** not defined in [the Side-A Policy] or stated in the Declarations shall have the same meaning as the same term defined in the [AIG Primary Policy]." End. 7, Insuring Agreement.

78. With respect to DIC Events, the policy provides:

> The policy will drop down and pay the **Loss** . . . of an **Insured Person** if, for any reason . . . an **Underlying Insurer** fails or refuses to advance, pay or indemnify **Loss** . . . under an **Underlying Policy**; including but not limited to the occurrence of any one or more of the following events:
>
> (i) This policy affords broader coverage than the **Underlying Policy**;
>
> * * *
>
> (iv) the refusal in writing of an **Underlying Insurer** for any reason to pay any **Loss** . . . of an **Insured Person** pursuant to the terms and conditions of its **Underlying Policy**;
>
> (v) the failure of an **Underlying Insurer** for any reason to pay or advance any **Loss** . . . of an **Insured Person** within sixty (60) days of a written request from the **Named Entity** or any **Insured Person**;
>
> * * *
>
> (vii) the **Organization** fails or refuses to advance, pay or indemnify **Loss** . . . of an **Insured Person** by reason of bankruptcy, receivership or any similar proceeding in any jurisdiction worldwide . . .

End. 7., DIC Events. Moreover:

> Advancement, payment or indemnification of an **Insured Person** by an **Organization** [or] **Underlying Insurer** is deemed:
>
> (a) "failed" if it has been requested by or on behalf of an **Insured Person** and has not been provided by, agreed to be provided by or acknowledged as ab obligation by, or is not collectible from, an **Organization** [or] **Underlying Insurer**, respectively, within sixty (60) days of such request.
>
> (b) "refused" if an **Organization** [or] **Underlying Insurer** gives notice of the refusal to the **Insured Person**.

End. 7, DIC Events.

79. Significantly, the AIG Side A Policy states: "This policy shall not follow the Exclusions Section or Clause of the **Followed Policy**." Section 4. EXCLUSION.

80. The policy sets forth only three applicable Exclusions: a Conduct Exclusion, a Securities Claim Exclusion, and a Pending and Prior Litigation Exclusion.

81. The Conduct Exclusion states:

> The **Insurer** shall not be liable to make any payment for that portion of **Loss** . . . in connection with any **Claim** made against any **Insured Person** for: (a) any remuneration, personal profit or other financial advantage to which a final, non-appealable adjudication against such **Insured Person** in the underlying action establishes that the **Insured Person** was not legally entitled; or (b) any deliberate criminal or deliberate fraudulent act by the **Insured Person**, if a final, non-appealable adjudication against such **Insured Person** in the underlying action establishes that such deliberate criminal or deliberate fraudulent act was committed . . .

End. 7. Section X. The Conduct Exclusion does not, however, apply to **Defense Costs**. *Id*.

82. The Prior and Pending Litigation Exclusion provides that the policy does not cover:

> any **Loss** in connection with any **Claim** made against . . . any **Insured Person** alleging, arising out of, based upon or attributable to, as of October 17, 2017, any pending or prior (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an **Insured Person** had notice, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation.

End. 5

83. The Securities Claim Exclusion excludes coverage for:

> That portion of **Loss** in connection with any **Claim** made against any **Insured Person** alleging, arising out of, or in any way relating to any purchase or sale of securities by the **Organization**, or any **Subsidiary** or **Affiliate** of such, or **Claims** brought by securities holders of the **Organization** in their capacity as such . . .

End. 4, ¶ 3.

84. The Side-A Policy contains a "Related Claims" clause that provides:

> All **Claims** made against an **Insured Person** . . . alleging, arising out of, based upon or attributable to the same or related **Wrongful Acts**, circumstances or situations, or the same or related series of **Wrongful Acts**, circumstances or situations, shall be deemed to be a single **Claim** . . . made or reported at the time the earliest such **Claim** was first made against . . . an **Insured Person**.

End. 7, XI.

85. Finally, the Side-A Policy contains a *Bankruptcy Clause* that provides:

> Bankruptcy or insolvency of any **Organization** or any **Insured Person** shall not relieve the **Insurer** or any of its obligations hereunder.

> It is further understood and agreed that the coverage provided under this policy is intended to protect and benefit the **Insured Persons** . . .

End. 7, Section IX, *Bankruptcy Clause*.

C. The Side-A Coverage Under the Excess Policies Follows Form to the AIG Side-A Policy

86. The structure of DCEH's $60 million D&O insurance tower is impacted by the inclusion in the AIG Primary Policy of the SAME Endorsement.

87. Given the SAME Endorsement, with respect to coverage under Insuring Agreement A (non-indemnified **Claims** against **Insured Persons**, *i.e.*, "Side-A Coverage"), the AIG Primary Policy applies the broad terms and conditions of the AIG Side-A Policy.

88. Each of the Excess Policies, in turn, also follows form to the SAME Endorsement. Therefore, with respect to coverage for non-indemnified loss of **Insured Persons**, each of the Excess Policies ultimately follows form to the same terms and conditions set forth by the AIG Side-A Policy.

89. While the terms and scope of the Side-A coverage to which the Richardsons are entitled are clear and unambiguous from the face of the policies, AIG's marketing materials leave no doubt regarding how its Side-A Match Edge (Same) program works.

90. According to AIG: "By endorsing the primary AIG D&O policy with the SAME endorsement, the Side-A coverage provided by the primary D&O policy will match the breadth of coverage previously only available within the dedicated Side-A policy limits."

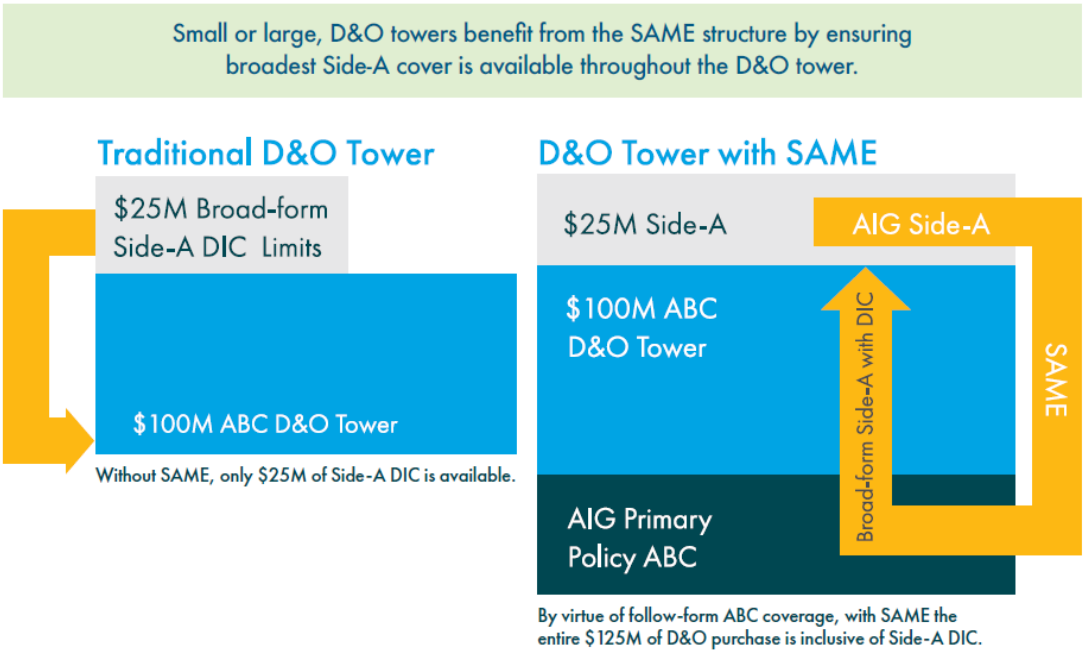
91. Moreover, each of the follow form Excess Policies sold by Everest, Starr, Landmark and Ironshore, also provide Side-A coverage that matches the scope of the Side-A Policy. "Companies who take advantage of this innovative solution benefit from broad-form Side-A DIC coverage ***throughout the entire D&O tower***." (Emphasis supplied). According to AIG:

SAME delivers:

- The same best-in-class Side-A Select coverage from the first dollar primary throughout the entire tower. By following SAME, the first excess ABC carrier now also serves as the lead Side-A DIC layer and this DIC coverage continues up through all the follow form layers.
- Consistency of coverage for non-indemnifiable loss of individuals throughout the D&O tower, which can minimize claim conflicts that may result from multiple carriers and different Side-A terms.

Exhibit H.

92. AIG illustrates the structure of such program as follows:



Id.

93. As relevant to this lawsuit, for purposes of the Side-A Coverage, each of the "follow form" Excess Policies – the Everest Policy, the Starr Policy, the Landmark Policy, and the Ironshore Policy – contain only the three exclusions applicable under the AIG Side-A Policy, namely, the Conduct Exclusion, the Securities Exclusion, and the Prior & Pending Litigation Exclusion. For purposes of the Richardsons' claim, no other exclusions are applicable under any of the policies.

94. Further, and as relevant to this lawsuit, each of the Excess Policies adopts the DIC Events clause from the AIG Side-A Policy. Accordingly, each of the follow form excess insurers has an independent obligation to "drop down" and provide coverage if (among other reasons) any underlying insurer refuses to pay loss pursuant to the terms and conditions of its respective policy. The concept is known as "DIC into DIC" and is depicted by AIG in the illustration in Paragraph 92, above.

D. The Excess Insurers' Wrongful Denial of Coverage

95. AIG and the Excess Insurers were put on notice of the Receiver's claims against the Richardsons by the Receiver's letters of March 28, 2019, and April 15, 2019.

96. On March 7, 2023, following the Sixth Circuit's decision in *Digital Media Solutions* vacating the district court's order approving the settlement, the Richardsons provided AIG and the Excess Insurers updated notice of the *Dunagan* action and the Receiver's claims. The letter requested copies of any "extant reservation of rights" and advised: "[t]he Richardsons are not being indemnified by DCEH, nor is that possible given that DCEH is in receivership."

97. Further, each of the Excess Insurers was provided timely notice of the Receiver's May 31, 2023, Demand Letter and the Receiver's October 6, 2023, Draft Complaint.

98. AIG, for its part, has been reimbursing the Richardsons' defense costs incurred in connection with the *Dunagan* lawsuit, and AIG has tendered (or agreed to tender) the remainder of its $10 million limits of the D&O coverage section of the AIG Primary Policy to settle *Dunagan* and/or the Receiver's claims.

99. Each of the Excess Insurers has to date, however, wrongfully disclaimed coverage for (or otherwise refused to settle or indemnify) the Receiver's claims under their respective policies.

100. Everest, by letters dated June 29, 2023, and November 10, 2023, has denied coverage for the Receiver's claims. Everest's disclaimer is premised primarily on several purported policy exclusions – including a prior wrongful acts exclusion, the entity v. insured exclusion, and an ERISA exclusion – as well as certain limitations to the definition of "Loss."

101. Everest's denial of coverage is baseless. Because the Everest Policy adopts the SAME Endorsement from the AIG Primary Policy, Everest follows form to the terms and conditions of the AIG Side-A Policy with respect to the claims at issue. Thus, the exclusions and definitions on which Everest relies to disclaim coverage do not apply.

102. Moreover, Everest has objected to AIG contributing its remaining primary policy limits to settlement of the Receiver's claims. In its June 29, 2023, letter, Everests asserts:

> ***Use of the Primary Policy's insurance proceeds for any other matter [besides Dunagan] – including paying the Receiver for non-Claims and uncovered Claims – would be wholly improper. Everest fully reserves its rights to only recognize erosion and potential exhaustion of the Primary Policy limits of liability by payment of covered Loss***.

(Emphasis supplied). Everest's position on this point has impeded and continues to impede the Richardsons' ability to negotiate with the Receiver by effectively taking AIG's primary policy limits off the table. For instance, if AIG were to contribute its remaining primary policy limits to settle the Receiver's claims, and if Everest refuses to recognize that such payment exhausts the AIG Primary Policy limits, the Richardsons could be left without insurance funding to defend against the pending *Dunagan* lawsuit. In other words, not only is Everest wrongfully refusing to contribute its policy limits to settlement of the Receiver's claims, but it is making it untenable for the Richardsons to use AIG's primary limits to settle the claims as well.

103. On August 24, 2023, Starr responded to the Receiver's May 31, 2023, demand letter. Starr denied coverage for the "Medical Plan Claims," citing the ERISA exclusion in the AIG Primary Policy. Starr also rejected coverage for the "Secured Lender Claims" based on a

Prior Acts exclusion. Starr's coverage letter reserved the right to disclaim coverage for the "Accreditation Claims" based on several purportedly applicable policy provisions. Starr has not otherwise responded to the Receiver's Draft Complaint or otherwise agreed to contribute any limits of liability under the Starr Policy towards settlement of the pending claims.

104. On January 18, 2024, Landmark disclaimed coverage for the Receiver's May 31 Demand Letter and Draft Complaint under its follow form excess policy, generally adopting the positions taken by Everest and Starr in their respective denial letters.

105. Ironshore (which issued the top layer excess follow form coverage) has, to date, neither issued a written coverage determination to the Richardsons with respect to the claims at issue, nor offered to contribute any of the Ironshore Policy limits to settlement of the Receiver's claims.

106. By letter dated November 29, 2023, and following the Receiver's motion to approve a DCEH litigation trust to authorize him to retain counsel to prosecute its claims against the Richardsons on a contingency fee basis, the Richardsons' counsel again reached out to the Excess Insurers, imploring them to engage in further and immediate settlement discussions with the Receiver in an effort to avoid litigation. Counsel wrote:

> The Richardsons are greatly concerned that the filing of litigation will further erode policy limits in these wasting policies. And, as we have informed you before, the conversion of this case to a standard contingency basis, which will happen when this litigation trust is approved, will increase the cost to settle because the Receiver has informed us that his legal fees are currently lower than the contingency amount he would accept in settlement, thus driving up settlement. Finally, we have just learned that the secured lender, who has the greatest interest in distribution from the estate . . . will require a larger settlement overall once the litigation trust is approved, in order to recover the same amount of funds that he would if he settled today.
>
> On behalf of Brent and Chris Richardson, we again urge and request that the insurers immediately fund an offer to the Receiver in full settlement of his claims, as a counter to his current $35 million demand. We recommend that offer be for of [sic] $12.5 million. While this offer is unlikely to settle the case, we believe it will

> move settlement negotiations forward, as well as encourage the receiver to consider a pause in any further litigation steps . . .

107. By letter dated December 7, 2023, the Richardsons provided a plenary response to Everest's wrongful disclaimer of coverage. The Richardsons explained that the SAME Endorsement in the AIG Primary Policy eliminated from the applicable Side-A coverage the exclusions relied upon by Everest to deny the Receiver's claims. The December 7 letter further explained that even if the exclusions cited by Everest were, in fact, part of the Side-A coverage under the Everest Policy, those exclusions still did not preclude coverage for the Receiver's claims. The Richardsons demanded that "Everest immediately reconsider its denials of coverage and agree to contribute some or all of its policy limits, as necessary, to effect a settlement of the Receiver's claims."

108. The following day, December 8, 2023, the Richardsons wrote directly to the higher-layer Excess Insurers – Starr, Landmark, and Ironshore – explaining that per the terms of the Side-A coverage under their respective policies, and in light of Everest's refusal and/or failure to pay covered Loss, each such Excess Insurer had an independent and immediate obligation to drop down and provide coverage for the Receiver's claim.

109. On December 20, 2023, Everest offered to contribute $3 million of its policy limits to a global resolution of the Receiver's claims – an amount well short of counsel's $12.5 million suggested counter – while persisting in its position that "no coverage is afforded for the draft complaint of the Receiver."

110. None of the other Excess Insurers have offered to contribute any amount in an effort to resolve the Receiver's claims.

111. As a result of the Excess Insurers' obstinance, the Richardsons have been forced to bring this action for declaratory judgment to enforce their rights to coverage for the Receiver's claims.

FIRST CAUSE OF ACTION

(Declaratory Relief Against the Excess Insurers Regarding the Applicable Terms and Conditions of the Follow Form Excess Policies)

112. The Richardsons repeat and incorporate herein by reference each of the preceding paragraphs as if fully set forth herein.

113. The Richardsons seek a determination regarding the terms, conditions, exclusions and other contractual provisions that govern the Side-A D&O coverage provided by the follow form excess policies sold to DCEH by the Excess Insurers.

114. The AIG Primary Policy contains the SAME Endorsement. The terms and conditions of the SAME Endorsement, considered together with the AIG Side-A Policy, provide that the primary policy affords Side-A coverage per the terms and conditions of the AIG Side-A Policy.

115. Each of the follow form excess policies sold to DCEH by the Excess Insurers, in turn, provides Side-A coverage to the Richardsons per the terms, conditions, and limitations of the AIG Side-A Policy.

116. The Excess Insurers have denied coverage for the Receiver's claims based on exclusions and other provisions that do not appear in and/or are otherwise not applicable to the terms and conditions of the AIG Side-A Policy or to the Side-A coverage under their respective policies.

117. Under 28 U.S.C. § 2201, there is an actual and justiciable controversy between the Richardsons and the Excess Insurers pertaining to, among other issues, the terms and conditions applicable to their respective follow form excess policies.

118. The issuance of the requested declaration will resolve the controversy between the Richardsons and the Excess Insurers regarding the correct interpretation of the follow form excess policies and their respective rights thereunder.

SECOND CAUSE OF ACTION

(Declaratory Relief Against Everest)

119. The Richardsons repeat and incorporate herein by reference each of the preceding paragraphs as if fully set forth herein.

120. Under 28 U.S.C. § 2201, an actual and justiciable controversy currently exists between the Richardsons and Everest with respect to Everest's duties and obligations under the Everest Policy.

121. The Richardsons are **Insured Persons** under the Everest Policy.

122. Everest is obligated under the terms and conditions of the Everest Policy, subject to any applicable retention and the exhaustion of the limits of the AIG Primary Policy, to pay the Richardsons' **Loss**, in connection with the Receiver's claims, including **Defense Costs** and amounts incurred by the Richardsons to settle such claims, up to the limits of liability of the Everest Policy.

123. Everest has failed and refused to acknowledge its obligation to pay the Richardsons' **Loss** relating to the Receiver's claims.

124. All conditions precedent under the Everest Policy have been satisfied, waived, or excused, or are otherwise inapplicable.

125. The issuance of the requested declaration will resolve the controversy between the Richardsons and Everest regarding the correct interpretation of the Everest Policy and the Parties' respective rights thereunder.

THIRD CAUSE OF ACTION

(Breach of Contract Against Everest)

126. The Richardsons repeat and incorporate herein by reference each of the preceding paragraphs as if fully set forth herein.

127. The Everest Policy is a valid and binding contract between Everest and DCEH.

128. The Receiver has asserted Claims containing allegations that the Richardsons committed wrongful acts as **Insured Persons** with respect to DCEH.

129. Pursuant to the terms and conditions of the Everest Policy, Everest is contractually obligated to pay the Richardsons' defense costs and other loss incurred in connection with the Receiver's claims in excess of the limits of liability of the AIG Primary Policy, and to act in good faith to resolve the Receiver's claims against the Richardsons including contributing all or a portion of the limits of liability of the Everest Policy, as necessary, towards settlement of the Receiver's claims.

130. Everest has breached its contractual obligations to the Richardsons as alleged herein, including those set forth in the Everest Policy, by refusing to honor its obligations to pay the Richardsons' loss and/or defense costs and by refusing to act in good faith to resolve the Receiver's claims against the Richardsons, including by paying all or a sufficient portion of the limits of liability of the Everest Policy to settle the Receiver's claims.

131. The Richardsons have performed all duties under the Everest Policy, and all conditions precedent under the policy with respect to the Receiver's claims have been satisfied, waived, excused, do not need to be performed, or are otherwise inapplicable.

132. As a direct and proximate result of Everest's breach of contract, the Richardsons have sustained damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Declaratory Relief Against Starr, Landmark, Ironshore – Duty to Drop Down and Pay Loss)

133. The Richardsons repeat and incorporate herein by reference each of the preceding paragraphs as if fully set forth herein.

134. The AIG Primary Policy contains the SAME Endorsement. The terms and conditions of the SAME Endorsement, considered together with the AIG Side-A Policy, provide that the primary policy affords Side-A coverage per the terms and conditions of the AIG Side-A Policy.

135. Each of the follow form excess policies sold to DCEH by the Excess Insurers, in turn, provides Side-A coverage to the Richardsons per the terms, conditions and limitations of the AIG Side-A Policy.

136. The Richardsons seek a declaration that Starr, Landmark and Ironshore each have an independent duty, pursuant to the Insuring Agreement and DIC Events clause of the AIG Side-A Policy to which their respective policies follow form, to drop down and pay the **Loss** of the Richardsons in connection with the Receiver's claims in the event that any insurer of an underlying policy fails or refuses to pay, advance, or indemnify such **Loss**.

137. Under 28 U.S.C. § 2201, there is an actual and justiciable controversy between the Richardsons and the Excess Insurers pertaining to, among other issues, the terms and conditions applicable to their respective follow form excess policies, including the DIC Events clause of the AIG Side-A Policy.

138. The issuance of the requested declaration will resolve the controversy between the Richardsons and the Excess Insurers regarding the correct interpretation of the follow form excess policies and their respective rights thereunder.

FIFTH CAUSE OF ACTION

(Declaratory Relief Against Starr, Landmark and Ironshore – Obligation to Pay Loss)

139. The Richardsons repeat and incorporate herein by reference each of the preceding paragraphs as if fully set forth herein.

140. Under 28 U.S.C. § 2201, an actual and justiciable controversy currently exists between the Richardsons and Starr, Landmark, and Ironshore with respect to Defendants' duties and obligations under their respective policies.

141. The Richardsons are **Insured Persons** under Starr's, Landmark's and Ironshore's Excess Policies.

142. Defendants are obligated under the terms and conditions of these policies, subject to any applicable retention, the exhaustion of the limits of applicable underlying policies, or obligations due to a DIC Event, to pay the Richardsons' **Loss** in connection with the Receiver's claims, including **Defense Costs** and amounts incurred by the Richardsons to settle such claims, up to the limits of liability of their respective policies.

143. Starr, Landmark and Ironshore have, under their respective Excess Policies, failed and refused to acknowledge their obligations to pay the Richardsons' **Loss** relating to the Receiver's claims.

144. All conditions precedent under the referenced policies have been satisfied, waived, or excused, or are otherwise inapplicable.

145. The issuance of the requested declaration will resolve the controversy between the Richardsons and Starr, Landmark and Ironshore regarding the correct interpretation of the various policies and the Parties' respective rights thereunder.

SIXTH CAUSE OF ACTION

(Breach of Contract Against Starr, Landmark, and Ironshore)

146. The Richardsons repeat and incorporate herein by reference each of the preceding paragraphs as if fully set forth herein.

147. The Starr, Landmark and Ironshore Excess Policies are valid and binding contracts between the Excess Insurers and DCEH.

148. The Receiver has asserted Claims containing allegations that the Richardsons committed wrongful acts as **Insured Persons** with respect to DCEH.

149. Defendants are obligated under the terms and conditions of their respective policies, subject to any applicable retention, the exhaustion of the limits of applicable underlying policies, or obligations due to a DIC Event, to pay the Richardsons' loss in connection with the Receiver's claims, up to the limits of liability of their respective policies.

150. The Excess Insurers have breached their contractual obligations to the Richardsons as alleged herein, including those set forth in the respective follow form excess policies, by refusing to honor their obligations to settle or contribute their limits of liability to settle, or to pay the Richardsons' loss in connection with, the Receiver's claims against the Richardsons upon the happening of a DIC Event.

151. All conditions precedent under the referenced policies have been satisfied, waived, or excused, or are otherwise inapplicable.

152. As a direct and proximate result of Starr's, Landmark's and Ironshore's breach of contract, the Richardsons have sustained damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION

(Against Everest – Bad Faith Denial of Coverage)

153. The Richardsons repeat and incorporate herein by reference each of the preceding paragraphs as if fully set forth herein.

154. Insurance contracts in the states of Arizona and Ohio contain an implied covenant of good faith and fair dealing.

155. Pursuant to this duty of good faith and fair dealing, Everest at all times had and continues to have an obligation to act reasonably and fairly towards the Richardsons.

156. Pursuant to this duty of good faith and fair dealing, Everest must treat the Richardsons fairly in evaluating its claim.

157. Pursuant to this duty of good faith and fair dealing, Everest owes the Richardsons fiduciary-like duties, including equal consideration, fairness, and honesty.

158. Pursuant to this duty of good faith and fair dealing, Everest has an obligation to act reasonably in evaluating the Richardsons' claims.

159. Everest lacked an objectively reasonable basis to deny the Richardsons' claims and has otherwise acted unreasonably for all of the reasons set forth in this Complaint. These reasons include, but are not limited to: (a) refusing to acknowledge the terms and conditions applicable to its follow form excess insurance policy in light of the SAME Endorsement; (b) denying coverage based on exclusions, definitions, and/or other terms that are not applicable to the coverage afforded by its follow form excess policy; (c) refusing to participate timely and in good faith in the Richardsons' efforts to negotiate a resolution of the Receiver's claims; and (d) asserting that tender of or payment by AIG of the remaining limits of liability of the AIG Primary Policy would not exhaust the primary policies limits of liability, thereby impeding the Richardsons' ability to settle or otherwise resolve the *Dunagan* action.

160. For all of these reasons, and for reasons set forth elsewhere in this Complaint, Everest knew or was conscious of the fact that it lacked any objectively reasonably basis to deny the Richardsons' claim.

PRAYER FOR RELIEF

WHEREFORE, the Richardsons pray for relief as follows:

(a) On the First Cause of Action, a determination of the terms and conditions that are applicable to side-A coverage under each of the Excess Policies;

(b) On the Second Cause of Action, a declaration that Everest is obligated to pay **Loss** in connection with the Receiver's claims against the Richardsons, subject to any applicable retentions, exhaustion of underlying limits, and the limits of liability of the Everest Policy.

(c) On the Third Cause of action, an award of money damages against Everest for its breach of contract in an amount to be determined at trial.

(d) On the Fourth Cause of Action, a determination of Starr's, Landmark's and Ironshore's respective and independent obligations to drop down and pay any covered **Loss** in the event that an underlying insurer fails or refuses to pay, advance, or indemnify such **Loss**.

(e) On the Fifth Cause of Action, a declaration that Starr, Landmark and Ironshore are obligated to pay **Loss** in connection with the Receiver's claims against the Richardsons, subject to any applicable retentions, exhaustion of underlying limits, DIC Events, and/or limits of liability of their respective policies.

(f) On the Sixth Cause of Action, an award of money damages against Starr, Landmark and/or Ironshore for breach of their respective policies in an amount to be determined at trial.

(g) On the Seventh Cause of Action, an award of money damages resulting from Everest's breach of its duty of good faith and fair dealing, including but not limited to economic damages, damages for the Richardsons' pecuniary losses, and punitive damages.

(h) An award of pre-judgment and post judgment interest;

(i) An award of costs of suit and attorneys' fees; and

(j) Any other relief that the Court may deem appropriate.

JURY DEMAND

The Richardsons demand a trial by jury on all issues so triable.

DATED: April 9, 2024

Respectfully submitted,

RUTTER & RUSSIN, LLC

By: */s/ Robert P. Rutter*
Robert P. Rutter
brutter@ohioinsurancelawyer.com
One Summit Office Park
4700 Rockside Road, Suite 650
Cleveland, Ohio 44131
Tel: (216) 642-1425

MILLER FRIEL, PLLC

By: */s/ Stephen R. Mysliciec*
Stephen R. Mysliwiec (*pro hac vice forthcoming)*
mysliwiecs@millerfriel.com
Tab R. Turano (*pro hac vice forthcoming*)
turanot@millerfriel.com
2445 M Street, NW Suite 910
Washington, DC 20037
Tel: (202) 760-3160

Attorneys for Plaintiffs Brent Richardson and Christopher Richardson