

JAMES J. DONELON, COMMISSIONER : SUIT NO.: _____ DIVISION: _____
OF INSURANCE FOR THE STATE OF :
LOUISIANA, IN HIS CAPACITY AS :
REHABILITATOR OF EXCALIBUR :
NATIONAL HOLDINGS, INC. :
:
19TH JUDICIAL DISTRICT COURT
versus :
:
JEFFREY C. POLLICK, DENNIS P. :
NEYLAND, ANTONIO SCOGNAMIGLIO :
THE BANK OF TAMPA, SEACOAST : PARISH OF EAST BATON ROUGE
BANKING CORPORATION OF :
FLORIDA d/b/a SEACOAST NATIONAL :
BANK, KATRINA RIGALI TRUMP and :
CAPITOL SPECIALTY INSURANCE :
COMPANY : STATE OF LOUISIANA

PETITION FOR DAMAGES
AND JURY DEMAND

NOW INTO COURT, through undersigned counsel, comes James J. Donelon, Commissioner of Insurance for the State of Louisiana, in his capacity as Rehabilitator of Excalibur National Holdings, Inc., through his duly appointed Receiver, Billy Bostick, who respectfully represents:

JURISDICTION AND VENUE

1.

This Court has jurisdiction over this dispute involving Excalibur National Holdings, Inc. ("Excalibur Holdings"), a member of an insurance holding company system as defined by La. R.S. 22:691 *et seq.*, La R.S. 22:2002 and 2003, which did business in Louisiana, and involving Excalibur National Insurance Company ("Excalibur Insurance"), a Louisiana corporation licensed to do and doing business in Louisiana, which is engaged in the business of insurance as defined by Louisiana law and is deemed to be an insurer pursuant to, *inter alia*, La. R.S. 22:2002 and 2003, and subject to the regulation of the Louisiana Department of Insurance ("LDI").

2.

This Court has jurisdiction over the Defendants named below because each of them has transacted business, and/or has contracted to provide services in Louisiana, and/or has provided services in Louisiana, and/or has caused damages in Louisiana by an offense or quasi-offense, and/or is obligated to or holds assets of Excalibur Holdings, and/or has served on the Board of a corporation incorporated in Louisiana and/or which has a principal place of business in Louisiana, and because exercise of jurisdiction over each of them is otherwise consistent with the Louisiana Constitution and the Constitution of the United States of America.

3.

Venue is proper in this Court pursuant to the provisions of the Louisiana Insurance Code, which dictates that the Nineteenth Judicial District Court has jurisdiction over this proceeding and La. R.S. 22:2004, which provides for venue in this Court and Parish, as well as other provisions of Louisiana law.

PARTIES

Plaintiff

4.

The Plaintiff herein is James J. Donelon, Commissioner of Insurance for the State of Louisiana (“Commissioner”) in his capacity as Rehabilitator of Excalibur Holdings, through his duly appointed Receiver, Billy Bostick (“Receiver” or “Plaintiff”).

5.

On July 19, 2018, the Commissioner filed a Petition for Rehabilitation, Injunctive Relief and Rule to Show Cause in the 19th JDC, Parish of East Baton Rouge, bearing Docket No. 671699, Div. 22 (“Receivership Court”), which requested, *inter alia*, that Excalibur Insurance and Excalibur Holdings be placed into receivership. On August 30, 2019, a Permanent Order of Rehabilitation (“Rehabilitation Order”) was entered by the Receivership Court which placed Excalibur Insurance and Excalibur Holdings into rehabilitation and under the direction and control of the Commissioner of Insurance for the State of Louisiana as Rehabilitator, and Billy Bostick as the duly appointed Receiver of these two entities.

6.

As of the date of the Rehabilitation Order, Excalibur Holdings was the parent holding company and sole shareholder of Excalibur Insurance, which together maintained their corporate registered office at 227 Erlanger Avenue, Slidell, Louisiana. As of the date of the Rehabilitation Order, Excalibur Holdings was also the parent and sole member of Excalibur National Risk Management, LLC (“Excalibur Risk Management”), which was a managing general agency performing essential services for Excalibur Insurance and Excalibur Holdings from the same registered office at 227 Erlanger Avenue, Slidell, Louisiana.

7.

Pursuant to an “Order Granting Motion of Rehabilitator to Approve Plan of Rehabilitation of Excalibur National Insurance Company, to Approve Purchase Agreements Regarding Excalibur

National Insurance Company and Excalibur National Risk Management, LLC, to Release Excalibur National Insurance Company from the Rehabilitation Order and Rehabilitation, Effective Upon Closing, and for Other Relief” entered by the Receivership Court on April 15, 2019 (the “Approval Order”), transactions were closed and funded on April 30, 2019, and in connection therewith, all issued and outstanding shares of capital stock of Excalibur Insurance and all membership interest in Excalibur Risk Management were sold by Excalibur Holdings to a third party, and Excalibur Insurance was released from rehabilitation (the “Lighthouse/Excalibur Transaction”). The Receivership Court retained jurisdiction over Excalibur Holdings.

8.

In connection with the Lighthouse/Excalibur Transaction, on April 30, 2019 the Receiver, on behalf of Excalibur Holdings, accepted assignments of certain causes of action existing as of that date from Excalibur Insurance and from Excalibur Risk Management, including but not limited to any claims they may have against former officers, directors, banks or financial institutions.

9.

Pursuant to an “Order Granting Motion of Rehabilitator to Approve Plan of Rehabilitation of Excalibur National Holdings, Inc. and for Other Relief” entered on June 27, 2019, the Plan of Rehabilitation submitted by Excalibur Holdings was approved, and the Receiver of Excalibur Holdings was authorized to assert and administer those causes of action belonging to Excalibur Holdings, whether accrued directly or acquired by assignment from Excalibur Insurance or Excalibur Risk Management, in connection with the transactions approved by the Receivership Court in the Approval Order of April 15, 2019.

10.

Plaintiff has the authority and power to take action as deemed necessary to rehabilitate Excalibur Holdings and to pursue all legal remedies available to Excalibur Holdings, Excalibur Insurance, and/or Excalibur Risk Management, where tortious conduct or breach of any contractual or fiduciary obligation by any person or entity has been discovered, that caused damages to Excalibur Holdings, Excalibur Insurance, and/or Excalibur Risk Management, their shareholders, policyholders, claimants, and/or creditors.

Defendants

11.

Named Defendants herein are the following:

a. **Jeffrey C. Pollick (“Pollick”)**, an individual of the full age of majority domiciled in the State of Florida. Pollick was the Chief Executive Officer, President and Director of Excalibur Holdings, Excalibur Risk Management and Excalibur Insurance prior to these companies being placed into receivership and at all times material hereto.

b. **Dennis P. Neyland (“Neyland”)**, an individual of the full age of majority domiciled in the State of Louisiana. Neyland was a Director of Excalibur Holdings and a Director and Officer of Excalibur Insurance prior to these companies being placed into receivership and at all times material hereto.

c. **Antonio Scognamiglio (“Scognamiglio”)**, an individual of the full age of majority domiciled in the State of Florida. Scognamiglio was a Director of Excalibur Holdings and a Director and Officer of Excalibur Insurance prior to these companies being placed into receivership and at all times material hereto.

(Pollick, Neyland and Scognamiglio are hereinafter referred to collectively as the “D&O Defendants”).

d. **Katrina Rigali Trump (“Trump”)**, an individual of the full age of majority domiciled in the State of Florida. Trump was the employee successively of Bank of Tampa, Northstar Bank and Seacoast Bank as the loan officer with responsibility for loans at issue in this suit and who made representations about the loans and CDs at issue in this suit.

e. **The Bank of Tampa (“Bank of Tampa”)**, a Florida-chartered bank domiciled in Florida with its principal place of business in Florida. As discussed in more detail below, Bank of Tampa made a loan to Louisiana-based Excalibur Holdings, issued a Certificate of Deposit (“CD”) to Louisiana-based Excalibur Insurance on April 19, 2016, and negligently hired and supervised Trump who during the course of her employment fraudulently misrepresented to the Commissioner that the CD was unencumbered when in fact it was 100% encumbered and did not qualify as statutory capital.

f. **Seacoast Banking Corporation of Florida d/b/a Seacoast National Bank (“Seacoast Bank”)**, a federally chartered bank with its principal place of business in Florida, in its own capacity and as successor by acquisition and surviving merger partner of a merger with Northstar Bank, which previously had been a Florida-chartered bank domiciled in Florida with its

principal place of business in Florida. As discussed in more detail below, Northstar Bank made a loan to Louisiana-based Excalibur Holdings and issued a Certificate of Deposit (“CD”) to Louisiana-based Excalibur Insurance on April 20, 2017 (which paid out the Bank of Tampa loan) and negligently hired and supervised Trump in making the replacement loan. Northstar Bank was then merged into Seacoast Bank, which succeeded to all of Northstar’s liabilities, and later, upon information and belief, renewed the loan and CD in its own name.

**(Trump, Bank of Tampa, and Seacoast Bank are hereinafter
referred to collectively as the “Bank Defendants”)**

g. **Capitol Specialty Insurance Company (“CSIC”)**, a foreign insurer, doing business in the State of Louisiana and subject to the regulatory authority of the Louisiana Department of Insurance, who issued an applicable policy or policies to Excalibur Holdings that provide coverage for claims asserted herein against former officers and directors of Excalibur Holdings, Excalibur Risk Management and/or Excalibur Insurance.

FACTUAL BACKGROUND

12.

Excalibur Insurance applied to the Louisiana Department of Insurance (“LDI”) for a Certificate of Authority to do business as a Louisiana domestic Property and Casualty insurance company for the lines of liability, workers’ compensation, and homeowner’s insurance.

13.

Prior to this application, Excalibur Insurance was owned by its sole shareholder, Excalibur Holdings, through an initial capitalization of \$5,016,000.

14.

On March 22, 2016, Excalibur Insurance entered into a Consent Agreement with the LDI wherein Excalibur Insurance agreed, *inter alia*, to contribute and maintain a total of \$8 million in capital, consisting of a minimum capital and surplus of \$5 million and an additional required capital contribution of \$3 million in a form to be approved by LDI. Defendant Pollick, was the only representative to sign this Consent Agreement as Chairman and CEO, of Excalibur Insurance. LDI could suspend the Certificate of Authority issued to Excalibur Insurance if, at any time, the terms of the Consent Agreement were not satisfied.

15.

Excalibur Insurance was required by the Consent Agreement with the LDI to contribute the additional \$3 million of unencumbered capital within 30 days from March 21, 2016, the date of the initial Certificate of Authority issued by the LDI.

16.

Pollick alone signed the Consent Agreement on behalf of Excalibur Insurance. Upon information and belief, no officer or director of Excalibur Holdings and Excalibur Insurance other than Pollick knew that the LDI required there be an additional \$3 million in additional unencumbered capital.

17.

A capital contribution is a contribution of new funds or property free and clear of liens and encumbrances to a business by a partner, owner or shareholder used to support or, as in this case, increase the support for the company's business.

18.

In an attempt to meet the \$3 million in additional capital required by the Consent Agreement with LDI, Excalibur Holdings raised and invested into Excalibur Insurance an additional \$1,414,000 in cash contributions by April 19, 2016.

19.

Prior to and for several months after April 18, 2016, John W. Peters ("Peters") was a Director of Excalibur Holdings and Excalibur Insurance.

20.

Prior to and for several months after April 18, 2016, Lyle J. Mouton, Jr. ("Mouton") was a Director of Excalibur Holdings and Excalibur Insurance.

21.

On April 18, 2016, Pollick, Peters, Mouton and Neyland (the "Initial Directors") executed, in lieu of a meeting, a Unanimous Written Consent of the Board of Directors of Excalibur Insurance in which they authorized, *inter alia*, Excalibur Insurance:

- a) To guarantee a \$1,950,000 loan granted by the Bank of Tampa to Excalibur Holdings;
- b) To grant a security interest in favor of the Bank of Tampa; and
- c) To enter into any agreement of any nature with the Bank of Tampa, such that any such agreement would bind Excalibur Insurance.

22.

On or about April 19, 2016, Excalibur Holdings borrowed from the Bank of Tampa, \$1,950,000 ("The Bank of Tampa Loan") and deposited \$1,944,825 of the proceeds of this loan into a CD account in Excalibur Insurance's name with the Bank of Tampa.

23.

Upon information and belief, Pollick was the only director who knew that the LDI required an additional \$3 million capital contribution into Excalibur Insurance and would consent to using the proceeds of the Bank of Tampa Loan for the additional capital obligation if and only if no assets of Excalibur Insurance were used to secure the loan.

24.

While it is generally legal for one entity to use its assets to secure the debts of another entity in the ordinary course of business, the Consent Agreement terms and La. R.S. 22:597(e)-(f) disqualified the loan proceeds from being considered a capital contribution because the CD containing those proceeds was pledged as collateral.

25.

Upon information and belief, none of Initial Directors other than Pollick knew on or before April 2018, that LDI required an additional \$3 million capital contribution and would not approve using the Bank of Tampa loan proceeds to satisfy the additional \$3 million in capital required by the Consent Agreement if the Bank of Tampa loan was secured by Excalibur Insurance's assets.

26.

On April 19, 2016, Excalibur Insurance assigned to the Bank of Tampa the CD containing \$1,944,825.00 to secure Bank of Tampa Loan.

27.

Pollick then falsely represented to the LDI that the \$1.944 million in the CD was an additional capital contribution by Excalibur Holdings which satisfied the terms of the Consent Agreement.

28.

Upon information and belief, in or around May or June of 2016, Pollick represented to the LDI that the Bank of Tampa had given an unencumbered loan to Excalibur *Insurance* as a surplus note also in the amount of \$1,944,825.00.

29.

In reality, Excalibur Holdings did not contribute \$3 million more in capital to Excalibur Insurance. Put simply, Excalibur Insurance did not have unfettered access to an additional \$3.8 million—the Bank of Tampa Loan funds *and* the CD. The Bank of Tampa Loan proceeds and the CD funds were the same \$1.944 million.

30.

Moreover, the \$1.944 million proceeds of the loan Excalibur Holdings did not qualify as a matter of law as additional capital pursuant to La. R.S. 22:597 and 22:599(e)-(f).

31.

Upon information and belief, Excalibur Insurance never actually had access to the loan proceeds and the CD had no statutory worth because the Bank of Tampa had the right to keep the funds in the CD to satisfy Excalibur Holdings' Bank of Tampa Loan debt.

32.

To make it appear as though Excalibur Insurance had complied with the terms of the Consent Agreement, Defendant Pollick represented to the LDI that the CD in the amount of \$1,944,825.00 was not encumbered in any way. That is, Pollick informed LDI that Excalibur Holdings contributed \$1,944,825.00 without assistance from Excalibur Insurance to meet the \$8 million total capital and surplus mandated by the Consent Agreement. This representation to the LDI was not accurate.

33.

Pollick also misrepresented the true nature of the transaction to Excalibur Insurance's legal counsel, William, D. Shea ("Shea") by representing by email on April 19, 2016:

The additional \$3M of funds that was required for the COA came in 2 forms. We secured a \$2M surplus note from the holdings company through the bank, and we received private investor funds totaling \$1,414,000. ...The bank information is below.

Pollick then provided Katrina Trump's contact information with the Bank of Tampa.

34.

Mr. Shea confirmed that Pollick represented that the Excalibur Holdings loan was unsecured by Excalibur Insurance assets stating:

With regard to the loan, you have advised that there is no security or collateral being provided by the insurance company for the loan, whether that be by a CD in the name of [Excalibur Insurance], or by pledging stock or other assets. As I recall, you mentioned that a portion of MGA [Excalibur Risk Management

Company] fees are to be utilized to pay the note and that may be part of the collateral for the loan. Please confirm that I am correct on this point. ...

35.

Pollick replied to this email from Shea on April 19, 2016, "That is correct [sic] we will be using money from the MGA to pay back the loan. ..."

36.

Shea again directly asked Pollick on April 19, 2016: "...am I correct that there is no collateral from the insurer [Excalibur Insurance] that is being used to secure the [Bank of Tampa] loan?" to which Pollick replied, "correct."

37.

Pollick was not the only person to make inaccurate representations about the nature of the Bank of Tampa Loan. Katrina R. Trump, a Bank of Tampa officer whose responsibilities included the Bank of Tampa Loan, provided substantial assistance to aid Pollick in conveying this inaccurate information to LDI and innocent representatives of Excalibur Insurance.

38.

On May 9, 2016, a representative of the LDI sought to verify that Excalibur Insurance complied with the Consent Agreement by confirming that the CD remained unencumbered after the Bank of Tampa Loan, so he sent an email to Trump stating: "could you also tell me whether any of the reported balance [of the CD] is pledged or otherwise encumbered?" Trump replied on the same date "... None of these funds are encumbered."

39.

Upon information and belief, Trump knew that the Consent Agreement with the LDI required Excalibur Insurance to have \$5 million in capital and surplus, plus an additional \$3 million in unencumbered surplus when she made this inaccurate statement to the LDI representative.

40.

Sometime in early 2017, Trump switched employers from Bank of Tampa to Northstar Bank, and she took her loan portfolio to her new employer, who gave Excalibur Insurance a replacement loan (the "Northstar Loan"), upon information and belief using the proceeds to pay off the Bank of Tampa loan.

41.

On April 20, 2017, Trump again gave substantial assistance to Excalibur Insurance by facilitating an assignment by Excalibur Insurance of the same \$1.944 million, now in a Northstar

Bank CD, to secure the Northstar Loan, thus keeping up the charade that Excalibur Insurance was maintaining its capital and surplus obligation as required by the Consent Agreement.

42.

Northstar Bank was subsequently acquired by Seacoast Bank, and Trump continued to work at and have responsibility for the Northstar Loan, now as an employee of Seacoast Bank. On information and belief, in 2018, Seacoast Bank renewed the loan and maintained its security interest in the CD.

43.

The Bank of Tampa, Northstar Bank, and Seacoast Bank profited financially from the Excalibur Holdings loans, including receiving interest payments and fees on the loans.

44.

At no time during their existence did Excalibur Insurance or Excalibur Holdings have sufficient capital and surplus to meet the \$8 million threshold mandated by the LDI in the Consent Agreement for these entities to sell insurance in Louisiana.

45.

Excalibur Insurance filed quarterly and annual statements with the LDI in 2016 and 2017 which failed to disclose that Excalibur Insurance pledged company assets in violation of La. R.S. 22:597(A) and 22:599(6)(e).

46.

Further, despite the representation that the Bank of Tampa loan payments would come from the assets of Excalibur Risk Management fees, in fact, Excalibur Insurance paid the monthly payments due by Excalibur Holdings. Excalibur Insurance transferred the loan payment due for each monthly payment, around \$5,500, to Excalibur Holdings' bank account to cover the payments due on the Bank of Tampa, and thereafter the Northstar Loan and Seacoast renewal thereof.

47.

But for the inaccurate representations about the terms of the Bank of Tampa Loan, LDI would have (i) determined that Excalibur Insurance failed to have \$8 million in capital and surplus and the terms of the Consent Agreement were not met, and (ii) cancelled Excalibur Insurance's Certificate of Authority, causing Excalibur Insurance to cease business.

48.

But for the inaccurate representations about the terms of the Bank of Tampa Loan and the additional investments by Excalibur Holdings, Excalibur Insurance would have never conducted business or written any policies of insurance.

49.

But for the inaccurate representations about the terms of the Bank of Tampa Loan and the additional investments in Excalibur Insurance, Excalibur Holdings would not have lost its cash investments in Excalibur Insurance. These funds, totaling over \$7 million, would have been returned to Excalibur Holdings since Excalibur Insurance would never have operated.

50.

Upon information and belief, in or around April 2018, during the course of an LDI audit, Neyland discovered that Pollick had failed to perform his duties as CEO and as a Director of Excalibur Holdings, Excalibur Insurance, and Excalibur Risk Management.

51.

On April 12, 2018, Neyland wrote a letter to the Boards of the Excalibur companies informing them of a:

- a. Violation of the Consent Agreement
- b. Lack of transparency to its shareholders and other board members concerning all financial transactions, regulatory action, settlement of litigation and employee compensation
- c. Failure to disclose excessive compensation to the LDI for approval
- d. Failure to disclose banking relationships
- e. Failure to not utilize the LDI premium tax credit
- f. Failure to disclose the issuance of all stock to its shareholders
- g. Failure to fulfill commitments made to shareholders and other board members
- h. Failure to appoint a Louisiana shareholder to the board
- i. Failure to be an independent board
- j. Failure to hold an annual shareholders' meeting as required
- k. Violation of the Operating Agreement, Cost Sharing Agreement and By-Laws filed with the LDI.

52.

Specifically, Neyland became aware that Pollick was receiving an excessive compensation package, and Excalibur Insurance was paying profit sharing under the Management General Agency Contract with Excalibur Risk Management, both without the approval of the LDI as provided by the Consent Agreement.

53.

In April 2018, Neyland belatedly notified the Boards of these entities and asked them to investigate and take action.

54.

Upon information and belief, had Neyland known in April 2016 that the Bank of Tampa Loan and subsequently the Northstar Loan terms violated the terms of the Consent Agreement, he would have acted to take corrective action, and/or he would have notified the LDI of the violation, thus avoiding the damages suffered by Excalibur Holdings and Excalibur Insurance.

55.

Shortly prior to July 2018, the LDI discovered that Excalibur Holdings and Excalibur Insurance were in a hazardous financial condition that posed a danger to their policyholders, creditors, and general public; therefore, the Commissioner filed his Petition for Rehabilitation as described in detail in Para. 5, *supra*.

56.

As set forth herein, Defendants are liable to Plaintiff for all compensatory and punitive damages arising from their actionable conduct.

57.

Plaintiff has previously made amicable demand and provided a Notice of Claim concerning the matters set forth in this Petition to CSIC, on or about June 25, 2019, giving sufficient notice of the claims asserted herein, to no avail.

CAUSES OF ACTION

Count One: Breach of Fiduciary Duty (Against the D&O Defendants and CSIC)

58.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

59.

The D&O Defendants owed Excalibur Holdings and Excalibur Insurance, their members, and their creditors, fiduciary duties of loyalty, including the exercise of oversight as pleaded herein, due care, and the duty to act in good faith and in the best interest of Excalibur Holdings and Excalibur Insurance. The D&O Defendants stand in a fiduciary relation to Excalibur Holdings, Excalibur Insurance, and their members and creditors and must discharge their fiduciary duties in good faith, and with that diligence, care, judgment and skill which the ordinarily prudent person would exercise under similar circumstances in like a position.

60.

The D&O Defendants breached their fiduciary duties to Excalibur Holdings and Excalibur Insurance in the particulars set forth in this Count One.

61.

Defendant Pollick breached his fiduciary obligations in the following, non-exclusive, ways:

- a. Allowing Excalibur Insurance to apply for and secure a Certificate of Authority to sell insurance and be licensed to operate as an insurance company, knowing full well from day one that Excalibur Insurance did not meet the necessary capital and surplus requirements of the Consent Agreement.
- b. Deliberately, or grossly negligently, or in the alternative, negligently, submitting CDs as alleged capital and surplus of Excalibur Insurance, knowing full well (or he should have known) that the LDI expected and required the alleged capital to be unencumbered, and knowing full well (or he should have known) that the CDs were in fact 100% encumbered.
- c. Knowingly, grossly negligently or negligently causing Excalibur Insurance to do business and waste its surplus and capital despite knowing (or he should have known) that Excalibur Insurance was undercapitalized.
- d. Knowingly, grossly negligently or negligently causing Excalibur Insurance to become approved and licensed despite knowing (or he should have known) that the requirements of the Consent Agreement with the LDI were not satisfied.
- e. Knowingly, grossly negligently or negligently representing to the Excalibur Insurance's legal counsel that "there is no collateral from the insurer that is being used to secure the [Bank of Tampa] loan."
- f. Knowingly, grossly negligently or negligently representing to the LDI and the directors of the Boards of Excalibur Insurance and Excalibur Holdings that the Bank of Tampa loan was a "surplus loan" allowed by the LDI.
- g. Knowingly, grossly negligently or negligently inducing Excalibur Holdings solicit investments for and to invest in Excalibur Insurance which was undercapitalized and out-of-compliance with the Consent Agreement with the LDI from the start.
- h. In such other particulars as may be shown at trial.

62.

Each D&O Defendant other than Pollick breached his fiduciary obligations by negligently or grossly negligently failing to determine that the terms of the Bank of Tampa Loan for which they granted Pollick, as CEO, authority to enter into on behalf of Excalibur Insurance and Excalibur Holdings did not satisfy the requirements that the LDI set forth in the Consent Agreement.

63.

The conduct of all D&O Defendants went beyond simple negligence. The conduct of these Defendants constitutes gross negligence, and in the case of Pollick, willful misconduct. In other words, the D&O Defendants did not simply act negligently in the management and supervision of and their dealings with Excalibur Insurance, Excalibur Holdings, and LDI, but the D&O Defendants acted grossly negligently, incompetently in many instances, and deliberately in other instances, all in a manner that damaged Excalibur Holdings and Excalibur Insurance, their shareholders, and creditors.

64.

As a direct and proximate result of the gross negligence and foregoing failures of the D&O Defendants to perform their fiduciary obligations, Excalibur Holdings and Excalibur Insurance, their shareholders, their members and their creditors have sustained substantial, compensable damages for which the D&O Defendants and CSIC are liable, and for which Plaintiff is entitled to recover in this action.

65.

The compensable damages caused by the D&O Defendants' grossly negligent conduct, if not willful conduct, include, but are not limited to:

- a. damages in the form of all losses sustained by Excalibur Holdings and Excalibur Insurance from their inception (i.e., they should have never started Excalibur Holdings and Excalibur Insurance in the first place);
- b. damages in the form of lost investments, profits, capital, and/or surplus (i.e., the amount Excalibur Holdings and Excalibur Insurance would have earned or retained, if any, but for their conduct);
- c. damages in the form of excessive losses (i.e., the difference between the amount Excalibur Holdings and Excalibur Insurance would have lost, if any, and the amount Excalibur Holdings and Excalibur Insurance did lose, because of their conduct);
- d. damages in the form of deepening insolvency (i.e., the damages caused by their decision to prolong the corporate existence of Excalibur Holdings and Excalibur Insurance beyond insolvency);

- e. disgorgement of all salaries, bonuses, profits, benefits, and other compensation inappropriately obtained by them;
- f. damages in the form of all administrative, operational, and/or management expenses; and
- g. all costs and disbursements of this action, including all compensable litigation expenses.

66.

CSIC issued a Private Company Directors and Officers Liability Insurance Policy to Excalibur Holdings and Excalibur Insurance, with policy limits, upon information and belief, of \$3,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff.

67.

CSIC also issued a Managed Care Errors and Omissions Liability Insurance Policy to Excalibur Holdings and Excalibur Insurance, with policy limits, upon information and belief, of \$3,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff.

68.

CSIC is therefore liable to the Plaintiff jointly, severally and *in solido* with the D&O Defendants to the extent of the limits of its policy or policies of insurance.

Count Two: Aiding and Abetting Breach of Fiduciary Duty, Fraud, Intentional Misrepresentation and/or Negligent Misrepresentation (Against the Bank Defendants)

69.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

70.

Trump acted within the scope of her authority as employee or agent for the Bank of Tampa when communicating with the LDI.

71.

Trump acted with reckless disregard for the truth when she represented to the LDI that the CD was not encumbered.

72.

The Bank of Tampa and Seacoast Bank are vicariously liable for the tortious conduct of Trump set forth in this suit, as Trump was acting within the course and scope of her employment/agency on behalf of the banks in undertaking the actions alleged in this Petition.

73.

The Bank of Tampa acted negligently in supervising and/training Trump to ensure that she was aware that if she communicated with third parties regarding customer information, she had a duty to communicate that information truthfully.

74.

Trump and the Bank of Tampa are liable to Plaintiff for the damages caused by Trump's inaccurate statements.

75.

Excalibur Insurance was damaged by the inaccurate statement because they aided Pollick's self-interest in paying himself a salary and other benefits from proceeds of not just Excalibur Insurance operations but also from the proceeds of payments made by Excalibur Insurance to Excalibur Risk Management, all of which he would not have received if the LDI had withdrawn the Excalibur Insurance Certificate of Authority. The Bank Defendants, knowing of Pollick's fiduciary relationship with Excalibur Insurance and Excalibur Holdings, provided substantial assistance to Pollick by helping him deceive the LDI, thereby aiding and abetting Pollick's breach of fiduciary duty to Excalibur Insurance and Excalibur Holdings.

76.

Excalibur Insurance was further damaged, and Bank of Tampa benefited from aiding and abetting Pollick, by the amount of interest paid to the Bank of Tampa on account of the \$1.944 million Bank of Tampa Loan, which would not have accrued any interest had LDI known of the encumbrance supporting it and withdrawn the Certificate of Authority.

77.

Excalibur Holdings was damaged by the inaccurate statement because the Bank of Tampa's actions allowed Pollick to maintain access to and squander in excess of \$7 million in capital provided by Excalibur Holdings to Excalibur Insurance.

78.

Northstar Bank acted negligently in hiring, supervising, and training Trump since it:

- a. hired her at a time when she had an existing, unsatisfied duty to communicate to LDI the truthful status of the encumbered Excalibur Insurance CD;
- b. failed to supervise Trump, who had actual knowledge of the impropriety of using Excalibur Insurance assets to encumber the Northstar Excalibur Holdings loan, by directing her to cease aiding and abetting Pollick's fraud; and
- c. permitted Trump to grant the Northstar loan to Excalibur Holdings and also to a security interest in Excalibur Insurance's CD despite Trump's knowledge that this violated the Consent Agreement.

79.

Excalibur Insurance was further damaged by Northstar Bank's actions in hiring, supervising and training Trump because Northstar Bank aided Pollick's self-interest in continuing to pay himself a salary and other benefits from proceeds of not just Excalibur Insurance operations but also from the proceeds of payments made by Excalibur Insurance to Excalibur Risk Management, all of which he would not have received if the LDI had withdrawn the Excalibur Insurance Certificate of Authority.

80.

Excalibur Holdings was damaged by the Northstar Bank's negligent hiring, supervision and training of Trump because her actions allowed Pollick to maintain access to and squander in excess of \$7 million in capital provided by Excalibur Holdings to Excalibur Insurance.

81.

Excalibur Insurance company was damaged by the Northstar Bank's negligent hiring, supervision and training of Trump because she aided Pollick's continued receipt of a salary and other benefits from proceeds of not just Excalibur Insurance operations but also from the proceeds of payments made by Excalibur Insurance to Excalibur Risk Management, all of which he would not have received if LDI had withdrawn the Excalibur Insurance Certificate of Authority.

82.

Excalibur Insurance was further damaged, and Northstar Bank and Seacoast Bank benefited from Trump's aiding and abetting Pollick, by the amount of interest it paid to Northstar Bank and Seacoast Bank on account of the \$1.944 million loan, which would not have accrued any interest had the LDI known of the encumbrance supporting it and withdrawn the Certificate of Authority.

83.

As a direct and proximate result of the Bank Defendants actions, Excalibur Holdings and Excalibur Insurance have incurred substantial, compensatory damages, as specified in Paragraph 65, *supra*, which are recoverable herein by Plaintiff.

**Count Three: Claim for Punitive Damages
(Against Pollick and the Bank Defendants)**

84.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

85.

Plaintiff avers, on information and belief, that Defendants Pollick and Trump intentionally made misstatements concerning the alleged unencumbered nature of the CDs making up \$1.944 million of Excalibur Insurance's alleged capital and surplus, knowing full well that the CDs were in fact pledged to secure the Bank of Tampa Loan and the NorthStar Loan and were 100% encumbered, and knowing full well that the Commissioner was relying upon the alleged unencumbered nature of the CDs in allowing Excalibur Insurance to become and to remain licensed and operative. These Defendants had actual knowledge of the wrongfulness of the misstatements they were making and knew the high probability that injury or damage to Excalibur Insurance would result from its undercapitalization. Despite such knowledge, Pollick and Trump intentionally pursued a course of conduct to deceive the Commissioner about the capitalization of Excalibur Insurance, resulting in the damages claimed herein.

86.

Alternatively, Defendants Pollick and Trump were grossly negligent in making misstatements concerning the alleged unencumbered nature of the CDs making up \$1.944 Million of Excalibur Insurance's alleged capital and surplus, when the CDs were in fact pledged to secure the Bank of Tampa Loan and the NorthStar Loan and were 100% encumbered. If Pollick and Trump did not know that the Commissioner was relying upon the alleged unencumbered nature of the CDs in allowing Excalibur Insurance to become and to remain licensed and operative, then Pollick and Trump were grossly negligent in not ascertaining and understanding such facts. The conduct of Pollick and Trump was so reckless and wanting in care that it constituted a conscious disregard or indifference to the rights of the shareholders, policyholders and creditors of Excalibur Insurance and/or Excalibur Holdings.

87.

The Banking Defendants, as the *seriatim* employers of Trump, are vicariously liable for any punitive damages awarded against Trump, and are jointly and solidarily liable with Trump for any such punitive damages awarded. The Banking Defendants either knowingly condoned, ratified or consented to Trump's actions set forth herein, or alternatively, were at least grossly negligent in failing to discover and prevent Trump's actions set forth herein, contributing to the loss and damages suffered by the Plaintiff.

88.

Plaintiff avers that the substantive law applicable in this case is Florida law, except to the extent that federal banking laws might preempt Florida law. This is true because (a) such substantive law was selected by the parties in Choice-of-Law provisions in multiple relevant contracts between Excalibur Holdings/Excalibur Insurance and the Banking Defendants, all signed by Defendant Pollick on behalf of Excalibur Holdings and Excalibur Insurance, and (b) such is the law that would otherwise apply to this action under the Conflict of Laws provisions of the Louisiana Civil Code. La. Civ. Code arts. 3515, 3537, and 3542.

89.

Although Excalibur Holdings and Excalibur Insurance were based in Louisiana, the Banking Defendants were 100% based in Florida. The majority of the directors were domiciled in Florida. Bank of Tampa and NorthStar Bank were chartered in Florida; Seacoast Bank was federally chartered but based solely in Florida since 1934. The lending contracts at issue in this case were negotiated in Florida and were probably signed by both parties – but certainly by the lenders – in Florida. On information and belief, Excalibur Holdings and Excalibur Insurance went to the Florida lenders, and not vice-versa, to obtain the loans at issue, and their relationship was centered in Florida. The loan contracts and issuance of the CDs were performed entirely in Florida. Furthermore, at least some of the delictual acts alleged in this Petition occurred in Florida. As to which state has stronger relevant policies against “detering wrongful conduct and repairing the consequences of such acts,” Plaintiff shows that Florida has a longer statute of limitations than Louisiana and potentially allows punitive damages while Louisiana does not.

90.

Plaintiff avers that applicable Florida law allows for the recovery of punitive damages under the circumstances alleged in this Count Three.

91.

Plaintiff prays for punitive damages in an amount to be determined by the trier of fact pursuant to Florida law of punitive damages.

**Count Four: Bad Faith Insurance Practices
(Against CSIC)**

92.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

93.

CSIC issued a policy of insurance that insured Excalibur Holdings, Excalibur Risk Management and Excalibur Insurance and their directors and officers (“CSIC policy”) against, among other things, “any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an [officer or director] in his or her capacity as such.”

94.

The CSIC policy defines a “Claim” against the insureds as:

- i. Any written notice or demand for monetary, non-monetary, or injunctive relief;**
- ii. Any written request to toll or waive the statute of limitations;
- iii. Any civil proceeding in a court of law;**
- iv. Any criminal proceeding in a court of law;
- v. Any administrative or regulatory proceeding, commenced by the filing of a notice of charges, formal investigative order or similar document;**
- vi. Any notice of any suit; or
- vii. Any arbitration or mediation proceeding
- viii. Any Derivative Demand made solely under Insuring Agreement 2.

[Emphasis added].

95.

On July 19, 2018, the Commissioner filed a Petition for Rehabilitation, Injunctive Relief and Rule to Show Cause in the 19th JDC, Parish of East Baton Rouge, bearing Docket No. 671699, Div. 22, which requested, *inter alia*, that Excalibur Insurance and Excalibur Holdings be placed into receivership due to certain acts and omissions of the Director Defendants including those alleged in this Petition, e.g. violation of the Consent Order.

96.

The Excalibur receivership proceedings clearly constituted a “Claim” against Excalibur Insurance and the D&O Defendants under CSIC’s policy, which Claim was clearly made within the term of CSIC’s policy.

97.

On June 25, 2019, the Receiver filed a Notice of Claim with the insurer, alleging losses covered by CSIC’s policy as a result of the aforementioned Claim. This notice was clearly given within the sixty-day post-policy period provided for in Section V(B)(1) of the CSIC policy.

98.

The insurer responded on August 14, 2019, alleging *inter alia* that no “Claim” had been timely made against the insureds as defined in the policy, an arbitrary and capricious position that clearly misrepresented the facts and the terms of the CSIC policy.

99.

The insurer took other and further positions concerning coverage that were arbitrary, capricious, and without just cause, such as claiming that the Consent Order, under which Excalibur Insurance was allowed to open in the first place, was an “administrative or regulatory proceeding” under CSIC’s exclusions, even though that Consent Order was a normal, ordinary and necessary proceeding for the entity to come into existence so that CSIC could insure it at a hefty annual premium.

100.

La. R.S. 22:1973 provides, in pertinent part, as follows:

A. An insurer, including but not limited to a foreign line and surplus line insurer, owes to his insured a duty of good faith and fair dealing. The insurer has an affirmative duty to adjust claims fairly and promptly and to make a reasonable effort to settle claims with the insured or the claimant, or both. Any insurer who breaches these duties shall be liable for any damages sustained as a result of the breach.

B. Any one of the following acts, if knowingly committed or performed by an insurer, constitutes a breach of the insurer’s duties imposed in Subsection A:

(1) Misrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue.

(5) Failing to pay the amount of any claim due any person insured by the contract within sixty days after receipt of satisfactory proof of loss from the claimant when such failure is arbitrary, capricious, or without probable cause.

C. In addition to any general or special damages to which a claimant is entitled for breach of the imposed duty, the claimant may be awarded penalties assessed against the insurer in an amount not to exceed two times the damages sustained or five thousand dollars, whichever is greater.

101.

The Receiver alleges that CSIC's complete rejection of the Notice of Claim, misstatement of the date of the "claim," misstatement of its coverage, and its failure to adjust the Receiver's claims fairly and promptly, were arbitrary, capricious and without just cause and subject CSIC to treble damages under La. R.S. 22:1973.

JURY DEMAND

102.

Plaintiff is entitled to and hereby demands a trial by jury on all triable issues.

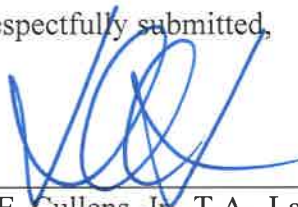
[THE REMAINDER OF THIS PAGE DELIBERATELY LEFT BLANK]

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Excalibur Holdings, through his duly appointed Receiver, Billy Bostick, prays and demands that the Defendants named herein, Jeffrey C. Pollick, Dennis P. Neyland, Antonio Scognamiglio, Katrina Rigali Trump, The Bank of Tampa, Seacoast Banking Corporation of Florida d/b/a Seacoast National Bank, and Capitol Specialty Insurance Company, be cited to appear and answer, and that upon a final hearing of the cause, judgment be entered against Defendants and in favor of Plaintiff for all compensable damages in an amount reasonable in the premises, including:

- a. All compensatory damages allowed by applicable law caused by Defendants' actionable conduct;
- b. the recovery from Defendants of all administrative costs incurred as a result of the necessary rehabilitation and/or liquidation proceedings;
- c. all fees, expenses, and compensation of any kind paid by Excalibur Insurance and/or Excalibur Holdings;
- d. any and all equitable relief to which Plaintiff may appear properly entitled;
- e. all recoverable costs and litigation expenses incurred herein;
- f. all judicial interest;
- g. any and all equitable relief to which Plaintiff may appear properly entitled; and
- h. all further relief to which Plaintiff may appear entitled.

Respectfully submitted,



J. E. Cullens, Jr., T.A., La. Bar #23011
Andrée Matherne Cullens, La. Bar #23212
S. Layne Lee, LA. Bar #17689
**WALTERS, PAPILLION,
THOMAS, CULLENS, LLC**
12345 Perkins Road, Bldg One
Baton Rouge, LA 70810
Phone: (225) 236-3636
Facsimile: (225) 236-3650
cullens@lawbr.net

**SERVICE INSTRUCTIONS
ON NEXT PAGE**

PLEASE SERVE

JEFFREY C. POLLICK

via the Louisiana Long-Arm Statute
302 Buttonwood Lane
Largo, FL 33770

DENNIS P. NEYLAND

162 Lighthouse Point
Slidell, LA 70458

ANTONIO SCOGNAMIGLIO

via the Louisiana Long-Arm Statute
1436 74th Circle NE
St. Petersburg, FL 33702

THE BANK OF TAMPA

via the Louisiana Long-Arm Statute
Through its Agent for Service of Process
Richard L. Junkermann
4503 Woodland Corporate Boulevard
Suite 100
Tampa, FL 33614

**SEACOAST BANKING
CORPORATION OF FLORIDA d/b/a
SEACOAST NATIONAL BANK**

via the Louisiana Long-Arm Statute
Through its Agent for Service of Process
Dennis S. Hudson, III
815 Colorado Avenue
Stuart, FL 34994

KATRINA RIGALI TRUMP

via the Louisiana Long-Arm Statute
1516 E. Lake Woodlands Parkway
Oldsmar, FL 34677

**CAPITOL SPECIALTY INSURANCE
COMPANY**

Through its Agent for Service of Process
Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809