

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. ____ - Civ

SECURITY NATIONAL INSURANCE
COMPANY,

Plaintiff,

v.

AVILA RODRIGUEZ HERNANDEZ MENA
& GARRO LLP F/K/A AVILA RODRIGUEZ
HERNANDEZ MENA & FERRI LLP,

Defendant.

COMPLAINT FOR RESCISSION AND DECLARATORY JUDGMENT

Plaintiff Security National Insurance Company (“Security”), by and through its undersigned counsel, by way of its Complaint against Defendant Avila Rodriguez Hernandez Mena & Garro LLP (“ARHMG”) f/k/a Avila Rodriguez Hernandez Mena & Ferri LLP (“ARHMF”), asserts as follows:

NATURE OF THE ACTION

1. Pursuant to 28 U.S.C. § 2201, Security brings this action for Declaratory Judgment on coverage and rescission.

2. ARHMG is a law firm in Coral Gables, Florida, which according to its website practices in the areas of banking and finance; corporate, mergers and acquisitions; immigration; litigation and arbitration; and real estate, zoning and land use.

3. This insurance coverage action relates to two claims-made Lawyers Professional Liability Insurance Policies issued by Security to ARHMG for the periods effective

i. October 30, 2019 to October 30, 2020 (the “2019-20 Policy”), and

- ii. October 30, 2020 to October 30, 2021 (the “2020-21 Policy”).

The 2019-20 Policy and the 2020-21 Policy will be collectively referred to herein as the “Policies.”

4. In 2020, ARHMG tendered two (2) claims to Security under the 2019-20 Policy. The first claim, referred to as the Investor Claim, and tendered on March 5, 2020, concerns a lawsuit filed on February 21, 2020, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, titled, *Ernesto Esteban Lopez Lincuez, et. al. v. Robert G. Cortes, et. al.*, Case No. 2020-004163-CA-01 (the “Investor Complaint”). The Investor Complaint alleged that certain defendants were part of a “massive ‘Ponzi Scheme’ fraud” where they “stole directly and indirectly more than \$250 million from investors, including over \$70 million from Plaintiffs. . . .” ARHMF was a named defendant in the original Investor Complaint and was alleged to have served as counsel in 2014-16 to a group of companies known as the Biscayne Group and three “Principals,” who are identified as Roberto G. Cortes (“RC”), Juan Carlos Cortes (“JCC”), and Ernesto Weisson (“EW”) (collectively the “Principals”). The Principals are alleged to be the “masterminds of [a] huge fraudulent scheme that has caused massive losses to the Plaintiffs” in connection with the restructuring of Biscayne Group and the formation of SBH and Vanguardia Trusts in response to a Securities and Exchange Commission (“SEC”) Investigation described in the Investor Complaint.

5. The second claim under the 2019-20 Policy, referred to as the Liquidators Claim, was tendered on July 23, 2020, as a “notice of a purported threatened claim and request for disclosure of insurance coverage information” as outlined within correspondence from ARHMG of the same date. Subsequently, counsel for ARHMG forwarded to Security a draft complaint that had been provided by the Liquidators’ legal counsel. The draft complaint called for suit to be filed in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida against

ARHMG by Michael Pearson, solely in his capacity as joint official liquidator and foreign representative for Diversified Real Estate Development Ltd. (f/k/a ORC Senior Secured Limited), GMS Global Market Step Up Note Ltd., Preferred Income Collateralized Interest Ltd., SG Strategic Income Ltd., and Sentinel Investment Fund SPC (the “Liquidators Complaint”). The Plaintiff alleged that ARHMG was retained to represent Biscayne Capital no later than 2012 and provided legal services directly to, or for the benefit of, the Note Issuers and “other entities in the Investment Structure” at that time. The Liquidators Complaint alleges that ARHMG failed to advise the Note Issuers’ Independent Directors of material information known by ARHMG while allegedly representing the Note Issuers and failed to give appropriate related legal advice. Plaintiff seeks damages against ARHMG in the amount of \$4.1 million due to ARHMG’s alleged negligent failure to inform the Note Issuers’ Independent Directors that an asset had been allegedly “left behind” in 2016 Offshoring and alleged failure to take reasonable actions to protect its value from dissipation.

6. Security has appointed defense counsel for the Investors Claim and the Liquidators Claim subject to a complete reservation of rights, and has incurred substantial defense costs and other expenses on ARHMG’s behalf.

7. Security seeks a declaration that the Policies issued to ARHMG were issued in reliance upon material misrepresentations and/or omissions of fact and that, consequently, Security is entitled to rescind the Policies as void *ab initio*. Security also seeks a declaration entitling it to return the premiums for the Policies to ARHMG.

8. In the alternative, Security seeks a declaration that it is not obligated to provide ARHMG with a defense or indemnification in connection with any and all claims related to the Investor Claim or the Liquidators Claim because ARHMG had knowledge of Wrongful Acts prior

to the Inception Date of the respective Policies and because coverage is precluded by certain exclusions and conditions.

PARTIES

9. Plaintiff Security is an insurance company organized and existing under the laws of the State of Delaware, with its principal place of business in Dallas, Texas. Security is, and at all times relevant to this Complaint was, duly authorized to transact business in the State of Florida.

10. Defendant is a Florida limited liability partnership, which is, and was at all times mentioned, engaged in the business of the practice of law, with its offices and place of business at 2525 Ponce de Leon Blvd., PH 12th Floor, Coral Gables, Florida 33134.

11. Based upon Security's diligent search of publicly available information, Security avers that each of the following individuals is a partner of defendant, that none of the partners is a citizen of Delaware or Texas, and further that each partner's citizenship is as follows:

- a) Alcides I. Avila is a citizen of the State of Florida;
- b) Wilfredo A. Rodriguez is a citizen of the State of Florida;
- c) Eugenio Hernandez is a citizen of the State of Florida;
- d) Patricia M. Hernandez is a citizen of the State of Florida;
- e) Daniel O. Mena is a citizen of the State of Florida; and
- f) Asnardo Garro is a citizen of the State of Florida.

12. On March 10, 2021, Avila Rodriguez Hernandez Mena & Ferri LLP changed its name to Avila Rodriguez Hernandez Mena & Garro LLP. Defendant may be served with process via its registered agent for service of process, Interamerican Corporate Services LLC, located at 2525 Ponce de Leon, Suite 1225, Coral Gables, FL 33134. All references in this Complaint to ARHMG include ARHMF where relevant, and vice versa.

JURISDICTION AND VENUE

13. The parties are of diverse citizenship, and jurisdiction is appropriate in this Court pursuant to 28 U.S.C. § 1332.

14. The amount in controversy exceeds \$75,000, exclusive of interest and costs. As set forth below, the Policies that are the subject of this action have limits of liability of \$4,000,000 per claim, \$4,000,000 aggregate, and the claims against ARHMG are for amounts substantially in excess of \$75,000.

15. Venue is proper in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1391, because the defendant is domiciled in the Southern District of Florida and the Policies were issued to the defendant at its address in the Southern District of Florida.

BACKGROUND

A. The Investor Claim

16. The Investor Claim was tendered to Security on March 5, 2020, and concerns the Investor Complaint, filed on February 21, 2020, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The Investor Complaint alleges that certain defendants were part of a “massive ‘Ponzi Scheme’ fraud” where they “stole directly and indirectly more than \$250 million from investors, including over \$70 million from Plaintiffs” Investor Complaint, ¶ 1.

17. ARHMF was a named defendant in the original Investor Complaint and was alleged to have served as counsel to a group of companies known as the Biscayne Group and Principals in 2014-16 in connection with the restructuring of Biscayne Group and formation of SBH and

Vanguardia Trusts in response to an SEC Investigation described in the Investor Complaint at ¶¶ 44-53, Investor Complaint, ¶ 28.

18. On or about January 14, 2021, ARHMG entered into a tolling agreement with the Plaintiffs in the Investor Claim, and ARHMG subsequently was dismissed without prejudice as a defendant on July 16, 2020. Notwithstanding, the subsequent Amended Complaint, while not naming ARHMG, continues to make allegations concerning ARHMG's involvement, and the Plaintiffs have continued to make demands upon ARHMG. The Investor Complaint is attached hereto as **Exhibit A**.

19. In the original Investor Complaint, the Plaintiffs assert that the Principals attempted to hide ongoing involvement in a scheme despite the SEC Investigation by conducting what they claim to be a sham sale of Biscayne Group, which allegedly allowed the Principals to continue managing the companies. Investor Complaint, ¶ 75. Plaintiffs claimed that in anticipation of the Settlement with the SEC, with the assistance of ARHMG and other defendants, the Principals established the Vanguardia and SBH Trusts to separate assets from liabilities. The Investor Complaint contends that ARHMG prepared a "detailed PowerPoint presentation reflecting the formation of the trusts and the restricting of the affiliated entities". *Id.* The Plaintiffs allege that it is from this moment that "the Plaintiffs and other investors lost everything." *Id.* Plaintiffs assert that the formation of the trusts allegedly created to avoid the SEC's prohibitions and to continue with the alleged fraudulent scheme was known, or should have been known, by each of the independent defendants as the SEC Order and Settlement, including the censure, prohibition and fines against the Principals, were public as well as "official announcements by the Principals giving notice of that prohibition to the investors at that time." *Id.* at ¶ 79.

20. It is alleged within the Investor Complaint that the creation of trusts by defendants Amicorp and SGG was accomplished with the active participation and advice of ARHMG, a factor that the Plaintiffs claim was “absolutely key to hiding the involvement of the Principals and the Biscayne Group companies in the further sale of Notes and the continued operation of the Biscayne Group’s fraudulent business.” Investor Complaint, ¶ 86. The Plaintiffs further alleged “that the trusts were woefully undercapitalized from inception and were based upon an unviable business.” *Id.* The Plaintiffs assert allegations of Aiding Securities Fraud under Florida Statutes, Sections 517.301 and 517.211, against ARHMG, alleging that ARHMG acted as an agent of the Principals in materially aiding in the sale of the subject securities to the Plaintiffs. The Plaintiffs have alleged that ARHMG is jointly and severally liable to the Plaintiffs under Florida Statute § 517.211. The Amended Complaint continues to allege “the active participation and advice of a Miami law firm,” Amended Investor Complaint at ¶ 96, and alleges that the firm was “essential to creating the organization in a way that would not immediately raise red flags to investors and third parties.” *Id.* at ¶ 116.

21. The Investor Complaint is currently stayed awaiting the outcome of the appeal in another matter.

B. The Liquidators Claim

22. ARHMG tendered the Liquidators Claim to Security on July 23, 2020, as a “notice of a purported threatened claim and request for disclosure of insurance coverage information” as outlined within correspondence from ARHMG of the same date. Subsequently, counsel for ARHMG forwarded to Security a draft complaint that had been provided by the Liquidators’ counsel. The draft complaint called for suit to be filed in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida against ARHMG by Michael Pearson, solely in his

capacity as joint official liquidator and foreign representative for Diversified Real Estate Development Ltd. (f/k/a ORC Senior Secured Limited), GMS Global Market Step Up Note Ltd., Preferred Income Collateralized Interest Ltd., SG Strategic Income Ltd., and Sentinel Investment Fund SPC (the “Liquidators Complaint”). The Plaintiff alleged that ARHMG was retained to represent Biscayne Capital no later than 2012 and provided legal services directly, or for the benefit of, the Note Issuers and “other entities in the Investment Structure” at that time. Liquidators Complaint, ¶ 12. A copy of the draft Liquidators Complaint is attached hereto as **Exhibit B**.

23. The Liquidators Complaint alleges that ARHMG failed to advise the Note Issuers’ Independent Directors of material information known by ARHMG while allegedly representing the Note Issuers and failed to give appropriate related legal advice. Liquidators Complaint, ¶ 5. Plaintiff claims that had ARHMG done so, it would have prevented \$192.6 million in losses to the Note Issuers. *Id.* Plaintiff states that it further seeks damages against ARHMG in the amount of \$4.1 million due to ARHMG’s alleged negligent failure to inform the Note Issuers’ Independent Directors that an asset had been allegedly “left behind” in 2016 Offshoring and alleged failure to take reasonable actions to protect its value from dissipation. *Id.* Specific Counts as outlined within the draft Liquidators Complaint include two Counts of Legal Malpractice and Breach of Fiduciary Duty.

C. The PAG Claim

24. On October 29, 2021, ARHMG sent a letter to Security purporting to be a “Notice of Claim” under the 2020-21 Policy. In that letter, ARHMG stated, “[p]ursuant to the subject Policy, we hereby provide you with notice of certain circumstances regarding one of the firm’s partners, Alcides I. Avila, as it relates to Premier Assurance Group SPC Ltd. and its segregated portfolio companies, Premier Assurance Segregated Portfolio and Global Assurance Segregated

Portfolio (collectively, 'PAG'). Based on the information we have to date, PAG is currently subject to a liquidation proceeding in the Cayman Islands. The Liquidator in that proceeding has also commenced a Florida proceeding under Chapter 15 of the Bankruptcy Code. Mr. Avila was previously an independent outside director for PAG but resigned, effective on February 23, 2021, following the institution of the provisional liquidation proceeding for PAG in Grand Cayman. Despite this circumstance, we, as your insured, are not aware of, and have no knowledge concerning, any actual or potential claim made or threatened against ARHMG and/or Mr. Avila that relates to this reported circumstance and/or pertaining to Mr. Avila's prior involvement as an independent outside director for PAG."

25. As part of Security's coverage investigation, Security located the following Public Notice from the Cayman Island Monetary Authority ("CIMA") dated September 23, 2020, indicating that PAG had been placed in controllership as of September 14, 2020:



23 September 2020

PUBLIC NOTICE

Re: Premier Assurance Group SPC Ltd. – In Controllership

The public is advised that effective 14 September 2020 the Cayman Islands Monetary Authority ("the Authority") appointed Messrs. Jeffrey Stower and Jason Robinson ("the Controllers") of the firm KPMG Cayman Islands to assume control of the affairs of Premier Assurance Group SPC Ltd. ("Premier" or "the Company") pursuant to section 24(2)(h) of the Insurance Law, 2010 ("the Law"). The Authority also found Jorge Eduardo Falcon and Leonardo Cornide, two of Premier's directors, not fit and proper to hold the position of director of a licensee pursuant to section 24(1)(g) of the Law.

Effective with this appointment, the Controllers assumed immediate control of the affairs of the Company and have all the powers necessary to administer the affairs of the Company including power to terminate the insurance business of the Company. The Controllers are also responsible for assessing the financial position of the Company and submitting a report to the Authority by a specified deadline.

Written enquiries to the Controllers should be forwarded to Thomas Anderson by email at tmanderson1@kpmg.ky or telephone +1 345 914 4725.

26. In addition, the following information is available in a public article dated September 23, 2020, as follows:

Jorge Eduardo Falcon (53) of Pinecrest, Florida and Leonardo Leandro Cornide of Coral Gables, Florida have been removed as directors of Premier Assurance Group SPC Ltd. (PAG) by the Cayman Islands Monetary Authority (CIMA). Their original license was issued in July 2012 despite the fact that the U. S. Securities and Exchange Commission (SEC) had previously shut down the pair in 2005 for alleging [sic] defrauding more than 3,400 investors of \$127 million. . .

CIMA now suspects that PAG and its directors, Falcon, Cornide, Luis Lauredo, and Alcides Isidoro Avila, were:

“manipulating financial statements by understating reserves and overstating assets”;

“operating an insolvent segregated portfolio (GASP) which is struggling to pay its claims”;

“in the process of relocating the book of business currently written by GASP to another jurisdiction”;

“in the process of selling GASP without informing CIMA”;

“in breach of CIMA's order to cease-and-desist from writing further business through GASP”; and

“in breach of the Insurance Law”.

Their conclusions are largely based on a current cease and desist order and SEC investigation. The history of some of the parties with the SEC appears to span some 15 years and multiple entities. . .

See <https://caymanmarlroad.com/cima-strips-directors-of-pag-after-sec-forced-them-to-repay-millions/>, September 23, 2020 (emphasis added). The preceding article is attached hereto as **Exhibit C**. Another publicly-available article similarly describes the controllership with PAG as of September 25, 2020. See <https://www.caymancompass.com/2020/09/25/cima-places-premier-assurance-group-in-controllership/>, September 25, 2020. The preceding article is attached hereto as **Exhibit D**.

D. Security's Defense of the Claims Under Reservation of Rights

27. As of November 24, 2021, Security has incurred \$156,768 in defense costs and continues to provide defense counsel for ARHMG against the Investor Claim and the Liquidators Claim subject to a complete reservation of rights.

E. The Policies

28. Security issued a Lawyers Professional Liability Insurance Policy, policy number SES1342450 07, to Avila Rodriguez Hernandez Mena & Ferri LLP for the period effective October 30, 2019 to October 30, 2020 (the “2019-20 Policy”). The 2019-20 Policy was a renewal of previous Lawyers Professional Liability Insurance Policies issued to Avila Rodriguez Hernandez Mena & Ferri LLP. The 2019-20 Policy is a claims-made and reported policy and has a \$4 million per claim limit of liability and \$4 million in the aggregate, with a per claim self-insured retention of \$25,000.

29. Security issued a Lawyers Professional Liability Insurance Policy, policy number SES1342450 08, to Avila Rodriguez Hernandez Mena & Garro LLP for the period effective October 30, 2020 to October 30, 2021 (the “2020-21 Policy”). The 2020-21 Policy was a renewal of previous Lawyers Professional Liability Insurance Policies issued to Avila Rodriguez Hernandez Mena & Ferri LLP. The 2020-21 Policy is a claims-made and reported policy and has a \$4 million per claim limit of liability and \$4 million in the aggregate, with a per claim self-insured retention of \$50,000.

30. The Policies’ Declarations page state, “These Declarations, the completed and signed **Application**, and this policy with endorsements shall constitute the full and complete contract between the Insured and the Company as of the effective date unless and until otherwise endorsed.”¹

31. At Section I. Insuring Agreements, the Policy states

In consideration of the payment of the premium, and the undertaking of the **Insured** to pay the Retention herein, and in reliance upon all statements made and information contained in the **Application**, which is attached hereto and made a part

¹ Capitalized terms not otherwise defined herein are defined in the Policy. Terms appearing in **bold font** are also defined in the Policy.

hereof, and subject to the Declarations, limitations, conditions, provisions and other terms of this Policy, the **Company** and the **Insured** agree as follows:

INSURING AGREEMENTS

The **Company** shall pay **Damages** and **Claim Expenses**, in excess of the Self-Insured Retention identified in the Declarations, if applicable, and subject to the Policy's Limit of Liability, that the **Insured** shall become legally obligated to pay as a result of a **Claim** made against the **Insured** for a **Wrongful Act**, provided that (i) the **Claim** is first made against the **Insured** and reported to the Company, in writing, during the **Policy Period** or the Extended Reporting Period, if applicable; (ii) the **Insured** has no knowledge of such **Wrongful Act** prior to the Inception Date of this Policy; and (iii) such **Wrongful Act** took place on or after the **Retroactive Date** set forth in the Declarations Page of this Policy and prior to the end of the **Policy Period**.

32. Certain Policy definitions in Section II – Definitions relevant to this matter are as follows:

A. **“Application”** means all signed applications, including attachments and other materials submitted therewith or incorporated therein, submitted by the **Insured** to the **Company** for this Policy or for any policy of which this Policy is a direct or indirect renewal or replacement. **“Application”** shall also include all documents provided by the **Insured** to the **Company** in connection with the underwriting or issuance of this Policy and any information contained on the website(s) of the **Insured**, whether provided to the **Company** directly or indirectly through the use of public databases or similar sources. All such applications, attachments, and materials are deemed attached to and incorporated into this Policy.

...

C. **“Claim”** means a written demand received by the **Insured** for monetary **Damages** which alleges a **Wrongful Act**, including:

1. the service of suit or any civil proceeding in a court of law or equity, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment, or similar proceeding;
2. institution of arbitration, mediation or other formal alternative dispute resolution proceeding;
3. any written request to toll or waive a statute of limitations.

A **Claim** for injunctive relief alleging any **Wrongful Act** for which insurance would have been granted under this Policy if **Damages** had been sought, will be considered a **Claim** for the purposes of this Policy, but only the **Claim Expenses** arising therefrom will be covered by this Policy.

...

G. **“Damages”** means any compensatory sum which the **Insured** becomes legally obligated to pay and includes:

1. monetary judgments or settlements;
2. punitive or exemplary damages to the extent such damages are insurable under the law most favorable to the insurability of such damages of any jurisdiction which has a substantial relationship to the **Insured**, the **Company**, this Policy or the **Claim**;
3. pre-judgment and post-judgment interest.

“Damages” shall not include:

1. taxes, fines or penalties, sanctions, whether imposed by law or otherwise (except as provided above with respect to punitive or exemplary damages);
2. the return, reduction or restitution of fees, expenses or costs for **Professional Services** performed or to be performed by the **Insured**, or disgorgement by any **Insured**;
3. matters uninsurable under the law pursuant to which this Policy is construed;
4. the cost of correcting, re-performing or completing **Professional Services**;
5. future profits, future royalties, costs of licensing, or other costs of obtaining future use; or the costs to comply with orders granting injunctive relief or non-monetary relief, including specific performance, or any agreement to provide such relief.

...

J. **“Insured”** means:

1. the **Named Insured** and any Predecessor Firm designated in the Declarations;
2. any individual or professional corporation who is or becomes a partner, officer, director, stockholder, per diem attorney, independent contract attorney, or employee of the **Named Insured**, but solely while acting within the scope of their duties as such on behalf of the **Named Insured** in rendering **Professional Services**;
3. any individual or professional corporation who was a partner, officer, director, stockholder, per diem attorney, independent contract attorney, or employee of the **Named Insured**, but solely while acting within the scope of their duties as such on behalf of the **Named Insured** in rendering **Professional Services**;

4. any individual or professional corporation designated “counsel” or “of counsel” to the **Named Insured**, but solely while acting within the scope of their duties as such on behalf of the **Named Insured** for which a fee inures to the **Named Insured**[.]

...

V. **“Professional Services”** means services:

1. provided by any Insured to others as a lawyer, mediator, arbitrator, title agent or notary public but solely for services on behalf of the Named Insured or Predecessor Firm designated in the Declarations; or
2. performed by any Insured as an administrator, conservator, receiver, executor, guardian, trustee, or in any other fiduciary capacity, but only if the act or omission in dispute is in the rendering of services ordinarily performed as a lawyer and then only to the extent that such services are on behalf of and inure to the benefit of the Named Insured or any Predecessor Firm designated in the Declarations.

...

BB. **“Wrongful Act”** means any actual or alleged act, error, or omission committed or attempted in the rendering or failing to render **Professional Services, Non-Profit Services** or **Publishing** by any **Insured** on behalf of the **Named Insured**, including but not limited to **Personal Injury**.

33. The Policies afford coverage for claims first made and reported during the Policy Period. The Investor and Liquidators Claims were made and reported on March 5, 2020, July 23, 2020, respectively, which is within the effective Policy Period of October 30, 2019 to October 30, 2020.

34. Security is only obligated to defend or indemnify an Insured under the Policies. Avila Rodriguez Hernandez Mena & Ferri LLP is the Named Insured as listed in the declarations of the 2019-20 Policy and therefore qualifies as an Insured. Avila Rodriguez Hernandez Mena & Garro LLP is the Named Insured as listed in the declarations (as modified by endorsement) of the 2020-21 Policy and therefore qualifies as an Insured.

F. Prior Knowledge of Wrongful Acts

35. As set forth in Insuring Agreement I.a. quoted above, coverage only applies if “the **Insured** has no knowledge of such **Wrongful Act** prior to the Inception Date of this Policy[.]” Upon information and belief, ARHMG had knowledge of Wrongful Acts prior to the Policies’ Inception Dates of October 30, 2019, and October 30, 2020, respectively. Therefore, Insuring Agreement I.a. is not triggered, and no coverage applies to the Investor Claim and the Liquidators Claim.

36. First, the Investor Complaint alleges ARHMG’s prior knowledge of Wrongful Acts predating the Inception Date of the 2019-20 Policy: “53. The [SEC] Settlement was made public and thus it should have been carefully reviewed by any financial, fiduciary or other professional service provider who dealt with any entity within the Biscayne Group. In other words, financial, fiduciary or professional entities facilitating the business of the Biscayne Group from May 2016 onwards cannot say that they acted reasonably and in good faith. Further, the general reputation of the Principals had been poor for many years before May 2016, with ample negative information about them being easily available on the internet.”

37. The Investor Complaint further alleges, “59. Both trusts, which were established as ‘VISTA Trusts’ under BVI law, were in violation of the SEC’s requirements under the Settlement, because this type of trust enabled the Principals to continue to have effective control over the structure and the management of the relevant assets and investor funds, even though the Principals had been barred from the investment advisory business by the SEC. As if this were not enough, those new trusts had consulting agreements in place with companies owned by RC and EW. In sum, the Principals set up the trusts, but contrary to what they were required to do, they maintained control of the assets and they continued to raise money from investors to indirectly

continue the activities which the SEC had ordered to be shut down. Moreover, the Principals continued to visit the Montevideo offices of the Biscayne Group not only during 2016 but also during 2017 and they continued to act in front of their employees and the financial advisors of the group as the owners of the business, making decisions and approving transactions as usual. All of this was known or should have been known by the Biscayne Group's Florida counsel ARHMG, who from September 2014 on provided detailed legal advice to the Defendants as to the new structure, as well as by Amicorp, whose executives Demichelis and Scheltema worked closely with the Principals and ARHMG on this project. . . ."

38. The above allegations pre-date the October 30, 2019, inception date of the 2019-20 Policy. Thus, on their face, these allegations are that "the **Insured** [had] knowledge of such **Wrongful Act[s]** prior to the Inception Date of this Policy," which, if true, would preclude coverage under the 2019-20 Policy.

39. Second, in the draft Liquidators Complaint, the plaintiff alleges that ARHMG was retained to represent Biscayne Capital no later than 2012 and provided legal services directly, or for the benefit of, the Note Issuers and "other entities in the Investment Structure" at that time. The Liquidators Complaint alleges that ARHMG failed to advise the Note Issuers' Independent Directors of material information known by ARHMG while allegedly representing the Note Issuers and failed to give appropriate related legal advice. Plaintiff claims that had ARHMG done so, such advice would have prevented \$192.6 million in losses to the Note Issuers. Plaintiff states that it further seeks damages against ARHMG in the amount of \$4.1 million due to ARHMG's alleged negligent failure to inform the Note Issuers' Independent Directors that an asset had been allegedly "left behind" in 2016 Offshoring and alleged failure to take reasonable actions to protect its value from dissipation.

40. As with the Investor Complaint, the above allegations include dates prior to the October 30, 2019, Inception Date of the 2019-20 Policy, which, if true, would preclude coverage under the 2019-20 Policy.

41. Third, as part of its ongoing investigation, Security has become aware of another lawsuit, filed in Miami-Dade County and now on appeal to the Third District Court of Appeal, which is captioned *Romay, et al. v. South Bay Holding LLC, et al.* (the “Romay Lawsuit”). The Romay Lawsuit involves the same Ponzi Scheme that is alleged in the Investor Complaint and Liquidators Complaint. While ARHMG is not named as a defendant in the Romay Lawsuit, information gleaned from the available record in the Romay Lawsuit shows that, well before the 2019-20 Policy Inception Date, ARHMG’s role in the alleged Ponzi Scheme was already under scrutiny.

42. On March 13, 2019, for example, one of the plaintiff’s lawyers in the Romay Lawsuit, in an effort to establish that fraudulent conduct took place in Florida, filed a declaration that asserted that “several Amicorp agents attended key meetings in Miami with other co-conspirators,” and that one of the defendants had “attended a critical meeting in Miami in September 2014 with defendant Juan Carlos Cortes and a Miami law firm.” The attachments to the declaration reveal Alcides Avila of ARHMG as an active participant in the alleged conduct dating back to September 2014. Specifically, one of the emails in the string, written by defendant Cortes, referred to Mr. Avila as “the attorney leading the strategy in re Trust formation” and stated that Mr. Avila was “preparing a ‘road map.’”

43. Aside from the fact that ARHMG knew what activities it had engaged in, and the purpose of those activities, long before the 2019-20 Policy Inception Date in October 2019, ARHMG knew or should have known before that date that those activities were already at issue in

the Romy Lawsuit and might become the basis for claims against ARHMG itself – as indeed they later did. Such prior knowledge of Wrongful Acts precludes coverage for the Investor Claim and the Liquidators Claim.

G. Fraud Exclusion

44. Notwithstanding the fact that coverage has not been triggered because of ARHMG's prior knowledge of Wrongful Acts, Section III – Exclusions, Paragraph A., provides an additional potential barrier to coverage under the Policies:

III. EXCLUSIONS

This Policy shall not apply to any **Damages** or **Claims Expenses** incurred with respect to any **Claim**:

based upon or arising out of any actual or alleged dishonest, criminal, intentional, malicious or fraudulent act, error or omission or any willful violation of any statute or regulation by an **Insured**, if a final adjudication adverse to such **Insured** establishes such a dishonest, criminal, intentional, malicious or fraudulent act, error or omission or willful violation.

45. To the extent the Investor Claim and the Liquidators Claim are based upon or arising out of any actual or alleged dishonest, criminal, intentional, malicious or fraudulent act, error or omission or any willful violation of any statute or regulation by an Insured, if a final adjudication adverse to such Insured establishes such a dishonest, criminal, intentional, malicious or fraudulent act, error or omission or willful violation, no coverage is available under the Policy, and Security reserves the right to disclaim coverage based on this exclusion.

H. The Policy Applications

46. The Application for the 2019-20 Policy, signed by Partner Alcides Avila on October 1, 2019, contains the following relevant representations:

Under question 7, AREAS OF PRACTICE, ARHMG did not assign a percentage of its gross billings to Securities/Bonds, including Federal, State, Private Placement, and Bonds, leaving the percentage fields blank.

ARHMG answered the questions in the Claim and License Warranty as follows:

Claim and License Warranty

8. Have all claims, suits or proceedings made during the past year against the (a) Applicant; (b) its predecessor in business; (c) any subsidiary or affiliate of the Firm; (d) any entity proposed for coverage on this Application; or (e) any past or present principal, partner, member, director, officer, employee, leased employee or independent contractor of the Firm, its predecessors in business or any subsidiary or affiliate of the Firm been reported to AmTrust? ☐ Yes ☒ No *N/A*
9. After diligent inquiry of each principal, partner, managing member, director or officer, is the Firm aware of any fact, circumstance, incident, error, situation or accident that may result in a claim being made against (a) the Firm; (b) its predecessor in business; (c) any subsidiary or affiliate of the Firm; (d) any entity proposed for coverage on this Application; or (e) any past or present principal, partner, member, director, officer, employee, leased employee or independent contractor of the Firm, its predecessors in business or any subsidiary or affiliate of the Firm or entity proposed for coverage on this Application? ☐ Yes ☒ No
10. In the past year, has the Firm or any individual or entity seeking coverage been the subject of a reprimand or disciplinary proceeding, or criminal proceeding, by any federal, state or local authority, professional association or state licensing board? ☐ Yes ☒ No

If "Yes" to Questions 8, 9 and/or 10, AmTrust must be notified immediately.

47. Upon information and belief, ARHMG provided false responses to Questions 7 and 9 when applying for the 2019-20 Policy from Security.

48. ARHMG's Application for the 2019-20 Policy contains the following "REPRESENTATION STATEMENT":

I hereby apply for a policy of insurance as set forth in the application and I declare that all information contained in this application is correct and complete to the best of my knowledge and belief. I understand that any policy which may be issued by the company will be issued on the basis of and reliance upon my statements in this application. I agree that such policy shall be null and void if such information is false, or misleading, or would materially affect acceptance of the risk by the company.

The signing of this application does not bind the undersigned to purchase the Insurance and accepting this application does not bind the Insurer to complete the insurance or to issue any particular policy. If a policy is issued, it is understood and agreed that the Insurer relied upon this application in issuing each such policy and any endorsements thereto. The undersigned further agrees that if the statements in this application change before the effective date of any proposed policy, which would render this application inaccurate or incomplete, notice of such change will be reported in writing to the Insurer immediately. The Application must be signed and dated by a Principal, Partner, Managing Member or Senior Officer of the Applicant. Electronically reproduced signatures will be treated as original.

49. ARHMG partner, Alcides I. Avila, signed the Application on October 1, 2019.

50. Security justifiably relied on the foregoing representations in determining whether to issue the 2019-20 Policy under the terms provided and in determining the appropriate premium to be charged.

51. Had Security known that the answers to questions 7 and 9 were false, it would not have offered coverage to AHRMF and/or would have non-renewed the 2019-20 Policy.

52. The Application for the 2020-21 Policy, signed by Partner Patricia M. Hernandez on September 24, 2020, contains the following relevant representations:

Under question 7, AREAS OF PRACTICE, ARHMG did not provide information under “Areas of Practice” for “Securities/Bonds work,” “Investment Counseling / Money Mngt. [sic]”, and “International Law,” leaving the percentages blank, although it appears from publicly-available information that ARHMG was performing work under these categories. ARHMG answered the questions in the Claim and License Warranty as follows:

Claim and License Warranty

8. Have all claims, suits or proceedings made during the past year against the (a) Applicant; (b) its predecessor in business; (c) any subsidiary or affiliate of the Firm; (d) any entity proposed for coverage on this Application; or (e) any past or present principal, partner, member, director, officer, employee, leased employee or independent contractor of the Firm, its predecessors in business or any subsidiary or affiliate of the Firm been reported to AmTrust? ☒ Yes ☐ No
9. After diligent inquiry of each principal, partner, managing member, director or officer, is the Firm aware of any fact, circumstance, incident, error, situation or accident that may result in a claim being made against (a) the Firm; (b) its predecessor in business; (c) any subsidiary or affiliate of the Firm; (d) any entity proposed for coverage on this Application; or (e) any past or present principal, partner, member, director, officer, employee, leased employee or independent contractor of the Firm, its predecessors in business or any subsidiary or affiliate of the Firm or entity proposed for coverage on this Application? ☐ Yes ☒ No
10. In the past year, has the Firm or any individual or entity seeking coverage been the subject of a reprimand or disciplinary proceeding, or criminal proceeding, by any federal, state or local authority, professional association or state licensing board? ☐ Yes ☒ No

If “Yes” to Questions 8, 9 and/or 10, AmTrust must be notified immediately.

53. Upon information and belief, ARHMG provided false responses to Questions 7 and 9 when applying for the 2020-21 Policy from Security.

54. ARHMG’s Application for the 2020-21 Policy contains the following “REPRESENTATION STATEMENT”:

I hereby apply for a policy of insurance as set forth in the application and I declare that all information contained in this application is correct and complete to the best of my knowledge and belief. I understand that any policy which may be issued by the company will be issued on the basis of and reliance upon my statements in this application. I agree that such policy shall be null and void if such information is false, or misleading, or would materially affect acceptance of the risk by the company.

The signing of this application does not bind the undersigned to purchase the Insurance and accepting this application does not bind the Insurer to complete the insurance or to issue any particular policy. If a policy is issued, it is understood and agreed that the Insurer relied upon this application in issuing each such policy and any endorsements thereto. The undersigned further agrees that if the statements in this application change before the effective date of any proposed policy, which would render this application inaccurate or incomplete, notice of such change will be reported in writing to the Insurer immediately. The Application must be signed and dated by a Principal, Partner, Managing Member or Senior Officer of the Applicant. Electronically reproduced signatures will be treated as original.

55. ARHMG partner, Patricia M. Hernandez, signed the Application on September 24, 2020.

56. Security justifiably relied on the foregoing representations in determining whether to issue the 2020-21 Policy under the terms provided and in determining the appropriate premium to be charged.

57. Had Security known that the answers to questions 7 and 9 were false, it would not have offered coverage to AHRMG and/or would have non-renewed the 2020-21 Policy.

I. Investigation of the Claims

58. Security was first notified of the Investor Claim on March 5, 2020.

59. Security was first notified of the Liquidators Claim on July 23, 2020.

60. Security was first notified of the PAG Claim (Notice of Circumstances) On October 29, 2021.

61. Security sent ARHMG reservation of rights letters dated June 29, 2020, and August 27, 2020, for the Investor Claim (the second letter corrected a minor scrivener's error in the first)

and January 5, 2021, for the Liquidators Claim. The letters asserted the potential application of the fraud exclusion and made clear that Security's investigation of the claims would be ongoing and fully reserved Security's rights under all the terms, conditions, exclusions, and limitations of the Policy, including the right to disclaim coverage and any duty to defend or indemnify ARHMG.

62. During its ongoing investigation of the Investor Claim and Liquidators Claim in 2021, Security became aware of the Romay Lawsuit.

63. ARHMG never updated or corrected the Application that Alcides Avila signed on October 1, 2019 before the 2019-20 Policy went into effect on October 30, 2019. As of the date of this Complaint, ARHMG has never updated or corrected the Application that Alcides Avila signed on October 1, 2019.

64. The publicly available records in the Romay Lawsuit revealed that ARHMG made a number of material misrepresentations in the application. By way of example, although ARHMG had represented that it did not have any gross billings related to Securities/Bond practice areas, including private placements, Security learned that in fact ARHMG did private placement work. Thus, ARHMG misrepresented its response to question 7.

65. Although ARHMG answered "no" that "[a]fter diligent inquiry of each principal, partner, managing member, director or officer, is the Firm aware of any fact, circumstance, incident, error, situation or accident that may result in a claim being made against (a) the Firm; (b) its predecessor in business; (c) any subsidiary or affiliate of the Firm; (d) any entity proposed for coverage on this Application; or (e) any past or present principal, partner, member, director, officer, employee, leased employee or independent contractor of the Firm, its predecessors in business or any subsidiary or affiliate of the Firm or entity proposed for coverage on this Application?," a public document in the Romay Lawsuit file – including a long email string dating

back to September 2014, included Mr. Avila of ARHMG and referred to Mr. Avila as “the attorney leading the strategy in re Trust formation” and stated that Mr. Avila was “preparing a ‘road map.’”

66. Thus, Mr. Avila was not only aware, as a factual matter, what activities he and ARHMG had engaged in, and the purpose of those activities, long before the inception of the Policy in October 2019, but also Mr. Avila and ARHMG knew or should have known before that date that those activities were already at issue in the Romay Lawsuit and might become the basis for claims against ARHMG itself – as indeed they later did. Accordingly, ARHMG’s answer to question 9 was false.

67. After assessing the impact of the newly-discovered email in the Romay Lawsuit referenced above, Security sent ARHMG an updated reservation of rights letter on October 18, 2021, reserving the right to deny coverage based on the fraud exclusion and/or prior knowledge of claims, and/or to rescind the 2019-20 Policy.

68. ARHMG never updated or corrected the Application that Patricia M. Hernandez signed on September 24, 2020, before the 2020-21 Policy went into effect on October 30, 2020. As of the date of this Complaint, ARHMG has never updated or corrected the Application that Patricia M. Hernandez signed on September 24, 2020.

69. Publicly available records regarding the PAG Controllership revealed that ARHMG made a number of material misrepresentations in the application. By way of example, although ARHMG had represented that it did not have any gross billings related to “Securities/Bonds work,” “Investment Counseling / Money Mngt. [sic],” and “International Law,” leaving the percentages blank, it appears from the above publicly-available information that ARHMG was performing work under these categories. Thus, ARHMG misrepresented its response to question 7.

70. Although ARHMG answered “no” that “[a]fter diligent inquiry of each principal, partner, managing member, director or officer, is the Firm aware of any fact, circumstance, incident, error, situation or accident that may result in a claim being made against (a) the Firm; (b) its predecessor in business; (c) any subsidiary or affiliate of the Firm; (d) any entity proposed for coverage on this Application; or (e) any past or present principal, partner, member, director, officer, employee, leased employee or independent contractor of the Firm, its predecessors in business or any subsidiary or affiliate of the Firm or entity proposed for coverage on this Application?,” a public notice and articles dated September 23 and 25, 2020, show that PAG was in controllership and that Alcides I. Avila was suspected of the wrongdoing outlined in those articles. Thus, not only was Mr. Avila aware, as a factual matter, of the PAG controllership before the inception of the 2020-21 Policy in October 2020, but also, he and ARHMG knew or should have known before that date that the controllership had occurred and might become the basis for claims against Mr. Avila and ARHMG. Thus, the answer to question 9 was false.

71. A dispute remains concerning the existence and scope of any obligation on the part of Security to ARHMG under the Policies in connection with the Investor Claim and the Liquidators Claim.

72. As set forth above, ARHMG made certain material misrepresentations and/or omissions of fact when applying for coverage under the Policies rendering the Policies void *ab initio* and subject to rescission. Security seeks a declaration of its entitlement to the same.

73. Security also seeks a declaration that coverage under the Policies does not apply to the Investor Claim or the Liquidators Claim, and that Security has no duty to defend or indemnify ARHMG in any of these claims under the Policies.

74. Therefore, an actual and justiciable controversy exists regarding the nature and scope of the insurance coverage potentially owed to ARHMG.

COUNT I: RESCISSION

67. Florida law gives an insurer such as Security the right to rescind its insurance policy on the basis of misrepresentations in the application of insurance.

68. ARHMG made misrepresentations and/or omissions of material fact in the Applications for the Policies concerning whether it practiced in Securities law, including private placements, “Investment Counseling / Money Mngt. [sic]”, and “International Law,” and whether ARHMG was “aware of any fact, circumstance, incident, error, situation or accident that may result in a claim being made against the Firm” when applying for coverage under the Policies.

69. ARHMG’s misrepresentations, omissions, concealments, and statements were fraudulent or were material to the acceptance of the risk or to the hazard assumed by Security.

70. ARHMG made the foregoing misrepresentations and/or omissions of material fact with the full knowledge and expectation that Security would rely on said representations, which were a material and critical part of Security’s consideration of the risk and determination to issue the Policies under the terms provided and for the premium charged or to even offer coverage in the first place.

71. Security justifiably relied on the representations made in ARHMG’s Applications in determining whether to issue the Policies under the terms provided and in determining the appropriate premium to be charged.

72. If the true facts had been known to Security pursuant to the Policies’ requirement or other requirement, Security in good faith would not have issued the Policies, would not have

issued it at the same premium rate, would not have issued the Policies in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.

73. Therefore, Security is entitled to a declaration that the Policies are rescinded and void *ab initio*.

74. Security sent notice of rescission to ARHMG by certified mail and email on November 19 and 21, 2021.

75. Along with the notice of rescission to ARHMG, Security has returned to ARHMG the premium paid in connection with the Policies.

76. Security is entitled to an Order permitting it to return to ARHMG the premium paid in connection with the Policies.

COUNT II: FOR DECLARATORY JUDGMENT OF NON-COVERAGE FOR FAILURE TO SATISFY THE NO PRIOR KNOWLEDGE REQUIREMENT

77. The Policies' Insuring Agreement provides, in pertinent part, that Security "shall pay **Damages** and **Claim Expenses** . . . that the **Insured** shall become legally obligated to pay as a result of a **Claim** made against the **Insured** for a **Wrongful Act**, provided that . . . (ii) the **Insured** has no knowledge of such **Wrongful Act** prior to the Inception Date of this Policy. . . ."

78. ARHMG had knowledge of the Wrongful Acts alleged in the Investor Claim and the Liquidators Claim prior to the Policies' Inception Dates.

79. Accordingly, Security is entitled to a declaratory judgment that it has no duty to indemnify or defend ARHMG because ARHMG has not satisfied the "no prior knowledge" element of the Policies' Insuring Agreement.

**COUNT III: FOR DECLARATORY JUDGMENT OF NON-COVERAGE DUE
TO APPLICATION OF THE FRAUD EXCLUSION**

80. An exclusion in the Policies provides that “[the] Policy shall not apply to any Damages or Claims Expenses incurred with respect to any Claim: based upon or arising out of any actual or alleged dishonest, criminal, intentional, malicious or fraudulent act, error or omission or any willful violation of any statute or regulation by an Insured, if a final adjudication adverse to such Insured establishes such a dishonest, criminal, intentional, malicious or fraudulent act, error or omission or willful violation.”

81. The claimants in the Investor Claim and Liquidators Claim allege that ARHMG committed dishonest, criminal, intentional, malicious, or fraudulent acts, errors or omissions.

82. Accordingly, Security is entitled to a declaration that it has no duty to indemnify or defend ARHMG if a final adjudication establishes such acts by ARHMG.

RESERVATION OF RIGHTS

Security reserves the right to update this Complaint as the facts develop through discovery and otherwise.

WHEREFORE, Plaintiff Security respectfully requests that this Court enter judgment in favor of Security and against ARHMG as follows:

- a. Under Count I, declaring that the Policies are rescinded and void *ab initio* and permitting Security to return to ARHMG the premium paid in connection with the Policies;
- b. Under Count II, declaring that the Policies do not provide coverage for, or require Security to defend ARHMG, in connection with the Investor Claim or the Liquidators Claim because ARHMG had prior knowledge of the **Wrongful Acts** involved in those claims prior to the Inception Date of the Policies;
- c. Under Count III, declaring that the Policies do not provide coverage for, or require Security to defend ARHMG in connection with the Investor Claim and the Liquidators Claim because coverage is barred by the Fraud Exclusion;

- d. Awarding Security its costs and attorneys' fees; and
- e. Granting such other and further relief as this Court deems just, fitting, and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable.

Date this 3rd day of December, 2021.

Respectfully submitted,

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