

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

**WESTCHESTER SURPLUS LINES
INSURANCE COMPANY, et al.,**

CASE NO.: 3:23-cv-453-MCR-HTC

Plaintiffs,

vs.

**PORTOFINO MASTER HOMEOWNERS
ASSOCIATION INC., et al.,**

Defendants.

**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM TO
FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND DAMAGES**

Portofino Master Homeowners Association, Inc. d/b/a Portofino Master Homeowners Association at Pensacola Beach, Inc. (“Master”), Portofino Tower One Homeowners Association at Pensacola Beach, Inc. (“Tower One”), Portofino Tower Two Homeowners Association at Pensacola Beach, Inc. (“Tower Two”), Portofino Tower Three Homeowners Association at Pensacola Beach, Inc. (“Tower Three”), Portofino Tower Four Homeowners Association at Pensacola Beach, Inc. (“Tower Four”), and Portofino Tower Five Homeowners Association at Pensacola Beach, Inc. (“Tower Five”), (collectively, “Portofino”) files this Answer and Affirmative Defenses to the First Amended Complaint For Declaratory Judgment and Damages (“Amended Complaint”) (Doc. 104) filed by Westchester Surplus

Lines Insurance Company (“Westchester”), Arch Specialty Insurance Company (“Arch”), AXIS Surplus Lines Insurance Company (“Axis”), Colony Insurance Company (“Colony”), Evanston Insurance Company (“Evanston”), Aspen Specialty Insurance Company (“Aspen”), Independent Specialty Insurance Company (“Independent”), Interstate Fire & Casualty Company (“Interstate”), Certain Underwriters at Lloyd’s of London (Consortium #9226) (“Lloyd’s”), James River Insurance Company (“James River”), Maxum Indemnity Company (“Maxum”), Landmark American Insurance Company (“Landmark”), and Homeland Insurance Company of New York (“Homeland”) (collectively the “Market Insurers” or “Plaintiffs”), and Counterclaim against the Market Insurers, stating as follows:

ANSWER

INTRODUCTION

1. Denied. Portofino would affirmatively show that Hurricane Sally was a category 2 hurricane when it made landfall. Portofino would further show that the insurance claim was not inflated, and the Market Insurers are falsely representing to the Court that Portofino sought over \$230 million. After the hurricane struck the area, the Market Insurers were put on notice of a claim and were given the opportunity, and took the opportunity, to make exhaustive inspections of the property. The Market Insurers initially pretended that the

hurricane caused damages that did not exceed the approximately \$4.7 million deductible. Since there was a dispute as to the amount of loss, Portofino demanded appraisal for the incurred costs. Thereafter, in response to Portofino's demand for appraisal, appraisal was invoked as to the entire loss pursuant to Paragraph 50 of what the Market Insurers describe as the "Master Policy Form," the form on which the Market Insurers' Insurance Policies ("Policies") were written. In compliance therewith, Portofino selected an appraiser, the Market Insurers selected an appraiser, and the two party-selected appraisers selected a third appraiser, Mr. Doan, as the Umpire. Portofino are told by the Market Insurers that the appraiser selected by Portofino (Mr. Keys) believed the damages to be approximately \$230 million. That was more than what the Umpire ultimately determined the damages to be (the Umpire determined the damages to be in excess of \$186 million). The appraiser selected by the Market Insurers, on the other hand, apparently claimed that the amount of the loss was far less than the Umpire determined, as evidenced by the fact that he did not sign the appraisal awards (other than the \$14 million (in round numbers) "incurred costs" award). Portofino lacks knowledge or information sufficient to form a belief about the allegation that the appraiser selected by Portofino identified damages he believed to be in excess of \$230 million. If he did, that does not involve an "inflated" or "fraudulent" claim (as it was just his opinion), just as the undervaluing of the claim by the Market Insurers-

selected appraiser was not “deflated” or “fraudulent.” It is simply a disagreement as to value, a common occurrence among appraisers. As noted by the U.S. Supreme Court, “*different views of values are common*” and “insurance companies and assured [i.e., insured] *often entertain widely different views concerning the policy....*” *Jose Rivera Soler & Co. v. United Firemen’s Ins. Co.*, 299 U.S. 45 (1936) (emphasis added).¹

2. Admitted that Portofino exercised its contractual right to appraisal approximately two months after the hurricane struck,² and that Portofino submitted a proof of loss, specifically identified as a “partial / interim” proof of loss, for \$6,479,380.60. Otherwise, denied.

3. Portofino lacks knowledge or information sufficient to form a belief about the allegation regarding the value of the damages that the Portofino-selected

¹ To the extent footnote 2 of the Amended Complaint requires a response, Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

² To the extent footnote 3 of the Amended Complaint requires a response, Portofino denied the allegation; Mr. Hellman, the Designated Adjuster for the four insurers who are listed in footnote 3, was also the Designated Adjuster for all of the Market Insurers—this Designated Adjuster was expressly named in the Master Policy Form. At the time of the initial appraisal demand, Portofino sought only appraisal of the incurred costs. The Market Insurers, through their attorney, insisted (in writing) that the entire claim be submitted to appraisal, and Portofino acquiesced.

appraiser believed had been sustained at the property. Portofino would affirmatively show that if he believed the damages were \$233 million, that is not an “increase” in the value of a claim by over \$225 million; the initial proof of loss was not a claim for *all* damages, and was specifically delineated as a “partial / interim” claim and was never intended as the final claim. All allegations not expressly admitted in this paragraph are denied.

NATURE OF THE CASE

4. Admitted for jurisdictional purposes only.
5. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.
6. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.
7. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.
8. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.
9. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.
10. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

11. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

12. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

13. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph (and in footnote 4 to this paragraph).

14. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

15. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

16. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

17. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

JURISDICTION AND VENUE

24. Admitted for jurisdictional purposes only.

25. Admitted, for jurisdictional purposes only, that a justiciable controversy exists within the meaning of 28 USC § 2201. All allegations not expressly admitted in this paragraph are denied.

26. Admitted for jurisdiction purposes only.

27. Admitted for venue purposes only.

STATEMENT OF FACTS

28. Admitted.

29. Admitted.³

30. Admitted.

31. Admitted that the Properties are located on a property that is approximately 28 acres, that the Properties consist of five separate condominium buildings, each of which (including the parking garages) are 27 stories, and fourteen other buildings. All allegations not expressly admitted in this paragraph are denied.

³ As to footnote 5 of Plaintiffs' Amended Complaint, Portofino denies those allegations as phrased; the terms and conditions of the Policies speak for themselves.

32. Admitted that the Policies provide coverage for the property that is identified in the Policies. The remainder of the allegations of this paragraph are denied as phrased; the terms and conditions of the Policies speak for themselves.

33. Admitted that the Policies contain property valuation provisions as set forth more particularly in the Policies. The remainder of the allegations of this paragraph are denied as phrased; the terms and conditions of the Policies speak for themselves.

34. Admitted that the Policies contain an appraisal provision. The remainder of the allegations of this paragraph are denied as phrased; the terms and conditions of the Policies speak for themselves.⁴

35. Admitted that the Policies contain a provision titled “Assistance and Cooperation of the Insured.” The remainder of the allegations of this paragraph are denied as phrased; the terms and conditions of the Policies speak for themselves.⁵

⁴ As to footnotes 7, 8, and 9 of Plaintiffs’ Amended Complaint, Portofino denies those allegations as phrased; the terms and conditions of the Policies (and the legal effect thereof) speak for themselves. All allegations not expressly admitted in the footnotes to this paragraph are denied.

⁵ As to footnote 10 of Plaintiffs’ Amended Complaint, Portofino denies those allegations as phrased; the terms and conditions of the Policies (and the legal effect thereof) speak for themselves. All allegations not expressly admitted in the footnotes to this paragraph are denied.

36. Admitted that the Policies contain a provision titled “Payment of Loss.” The remainder of the allegations of this paragraph are denied as phrased; the terms and conditions of the Policies speak for themselves.

37. Admitted that the Policies contain a provision titled “Notice of Loss.” The remainder of the allegations of this paragraph are denied as phrased; the terms and conditions of the Policies speak for themselves.

38. Admitted that the Homeland Policy contains a provision titled “Duties in the Event of Loss or Damage.” The remainder of the allegations of this paragraph are denied as phrased; the terms and conditions of the Policies speak for themselves.

39. Admitted that the Policies contain a provision titled “Sublimit(s) of Liability.” The remainder of the allegations of this paragraph (including its sub-paragraphs) are denied as phrased; the terms and conditions of the Policies speak for themselves.

40. Admitted that the Policies contain provisions titled “Deductible Clause” and “Named Storm.” The remainder of the allegations of this paragraph are denied as phrased; the terms and conditions of the Policies speak for themselves.

41. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

42. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

43. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

44. Admitted that the Policies contain exclusions (as do all insurance policies), as set forth more particularly in the Policies. The remainder of the allegations of this paragraph are denied as phrased; the terms and conditions of the Policies speak for themselves.

45. Admitted that the Arch Policy contains an endorsement titled “Pre-Existing Damage Exclusion.” The remainder of the allegations of this paragraph are denied as phrased; the terms and conditions of the Policies speak for themselves.

46. Admitted that the Policies define the word “occurrence.” The remainder of the allegations of this paragraph are denied as phrased; the terms and conditions of the Policies speak for themselves.

47. Admitted that the Policies contain a provision titled “Proof of Loss.” The remainder of the allegations of this paragraph (including its sub-paragraphs) are denied as phrased; the terms and conditions of the Policies speak for themselves.

Portofino's Governing Documents

48. Admitted that Tower One, Tower Two, Tower Three, Tower Four, and Tower Five are each respectively governed by, *inter alia*, a Declaration of Condominium, in addition to Florida law (e.g., Chapter 718, Florida Statutes). In some instances, Florida law governing condominium associations may override provisions that may be contained within each Declaration of Condominium. All allegations not expressly admitted in this paragraph are denied.

49. Admitted that the Condominium Declarations contain provisions regarding maintenance, alterations, and improvements. All allegations not expressly admitted in this paragraph are denied.

50. Admitted that the Condominium Declarations contain provisions regarding maintenance, alterations, and improvements. The remainder of the allegations of this paragraph (including its sub-paragraphs) are denied as phrased; the terms and conditions of the Policies speak for themselves. Portofino would affirmatively show that although a maintenance obligation in those documents purportedly imposed duties on unit owners in relation to maintenance and replacement of the windows and sliding glass doors serving their respective condominium units, Florida law required that *Portofino* insure against casualty losses from events that include hurricanes, which Portofino did by purchasing the

Policies from the Market Insurers. *See also* affirmative defense 19, which is incorporated by reference herein.

Portofino's Claim Submission and the Appraisal Process

51. Admitted that Portofino reported a claim within 24 hours after the hurricane's September 16, 2020 landfall, which caused damage to the property. Notice was provided first through Portofino's insurance agent, at Arthur J. Gallagher, and later directly to the Market Insurers. Notice was specifically given to Gallagher, and to Mr. Hellman, who was listed in the Master Policy Form as the Designated Adjuster for insurance claims. All allegations not expressly admitted in this paragraph are denied.

52. Admitted that the Market Insurers, through independent consultants that include McLarens, JS Held, and, upon information and belief, American Environmental Group, were given immediate access to the property and that various Market Insurers' consultants visited the property within a few days of the hurricane. Portofino gave the Market Insurers all necessary access to investigate and adjust the claim. All allegations not expressly admitted in this paragraph are denied.

53. Admitted that in early December 2020, a dispute arose between the Market Insurers and Portofino. The remainder of the allegations in this paragraph are denied as phrased.

54. Denied. Portofino would affirmatively show that it demanded that the Market Insurers submit to appraisal on December 7, 2020.

55. Denied. A demand for appraisal was provided to Mr. Hellman, who was listed in the Master Policy Form as the Designated Adjuster for insurance claims. At the time of the initial appraisal demand, Portofino sought only appraisal of the incurred costs. Thereafter, in response to Portofino's demand for appraisal, appraisal was invoked as to the entire loss pursuant to Paragraph 50 of what the Market Insurers describe as the "Master Policy Form," the form on which the Market Insurers' Insurance Policies ("Policies") were written. The Market Insurers, through attorney, insisted (in writing) that the entire claim be submitted to appraisal, and Portofino acquiesced. Since there was a dispute as to the amount of loss, Portofino demanded appraisal for the incurred costs pursuant to paragraph 50 of the Master Policy Form.

56. Admitted.

57. Admitted that a claim was submitted to the Market Insurers for that amount on or about said date. All allegations not expressly admitted in this paragraph are denied.

58. Given the uncertainty regarding the deductible calculation, Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

59. Admitted that payments had been submitted by some of the Market Insurers in that amount. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph. All allegations not expressly admitted in this paragraph are denied.

60. Admitted that on February 26, 2021, after Portofino invoked the appraisal process, Portofino submitted a proof of loss to the Market Insurers in said amount. All allegations not expressly admitted in this paragraph are denied.

61. Admitted that payments had been submitted by some of the Market Insurers in that amount. Portofino lacks knowledge or information sufficient to form a belief about the remaining allegations contained in this paragraph. All allegations not expressly admitted in this paragraph are denied.

Alleged Interest and Alleged Incompetence of Appraiser selected by Portofino

62. Admitted.

63. Admitted that the Market Insurers sent correspondence on said date in which they claimed that Mr. Keys had previously been disqualified. Portofino would affirmatively show that the correspondence did not accurately state the facts or acknowledge the uncertain state of the law at that time regarding disqualification of appraisers. All allegations not expressly admitted in this paragraph are denied.

64. Admitted that the Market Insurers asked Portofino to disclose certain information relating to Mr. Keys. Although it is denied that the Policies required such disclosure, Portofino would affirmatively show that it nonetheless promptly responded to the Market Insurers' request, and provided all requested information. All allegations not expressly admitted in this paragraph are denied.

65. Admitted that the Market Insurers asked Portofino to disclose certain information relating to Mr. Keys, as set forth more particularly in the Market Insurers' correspondence. Portofino would affirmatively show that the Policies required no such disclosure, but that Portofino nonetheless promptly responded to the Market Insurers' request, and provided all requested information. All allegations not expressly admitted in this paragraph are denied.

66. Admitted that Portofino correctly asserted that the Policies required no such disclosure, but that Portofino nonetheless promptly responded to the Market Insurers' request, and provided all requested information. All allegations not expressly admitted in this paragraph are denied.

67. Denied; Portofino did not submit a claim of \$233,030,601.80. The appraisal process was underway, and—as is required by the appraisal process—the appraisers reportedly presented their respective assessments of the amount of the loss. A submission by one of the appraisers is not a submission of a claim by the party that selected the appraiser. Portofino lacks knowledge or information

sufficient to form a belief about the allegation regarding the value of the damages that the Portofino-selected appraiser believed had been sustained at the property. Portofino would affirmatively show that if Keys believed the damages were \$233 million, that is not an “increase” of seventeen times the prior “claim,” because Portofino had never finalized a claim for *all* damages—it had only submitted proofs of loss delineated as “partial / interim” claims that were never intended to be the final claim. All allegations not expressly admitted in this paragraph are denied.

68. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that a dispute as to the amount of the loss that could not be resolved between the two appraisers was, under the Policies, to be submitted to the Umpire. It was, and the Umpire resolved the dispute. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.”

69. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that a dispute as to the amount of the loss that could not be resolved between the two appraisers was, under the Policies, to be submitted to the Umpire. It was, and

the Umpire resolved the dispute. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.”

70. Admitted that a copy of the contract between Portofino and Keys was provided to the Market Insurers. The Market Insurers’ allegation seems to suggest that there had been a refusal by Portofino to produce the contract; the reality is that the Market Insurers had not previously requested a copy of the contract before they elected to proceed with—and independently demanded—appraisal. When the contract was ultimately requested, it was provided. All allegations not expressly admitted in this paragraph are denied.

71. Admitted that—as is often the case—an agreement was reached between the parties for Mr. Keys to serve as an appraiser and that the agreement was reduced to writing in the written contract several weeks later. The implication by the Market Insurers that this is evidence of any wrongdoing is denied. All allegations not expressly admitted in this paragraph are denied.

72. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies that could not be resolved between the two appraisers were, under the Policies, to be submitted to the Umpire. If there were any, they would have been submitted to the Umpire, and the Umpire would have

resolved the dispute. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.”

73. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies that could not be resolved between the two appraisers were, under the Policies, to be submitted to the Umpire. If there were any, they would have been submitted to the Umpire, and the Umpire would have resolved the dispute. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.”

74. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies that could not be resolved between the two appraisers were, under the Policies, to be submitted to the Umpire. If there were any, they would have been submitted to the Umpire, and the Umpire would have resolved the dispute. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.”

75. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not

present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies that could not be resolved between the two appraisers were, under the Policies, to be submitted to the Umpire. If there were any, they would have been submitted to the Umpire, and the Umpire would have resolved the dispute. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.”

76. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies that could not be resolved between the two appraisers were, under the Policies, to be submitted to the Umpire. If there were any, they would have been submitted to the Umpire, and the Umpire would have resolved the dispute. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.”

77. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies that could not be resolved between the two appraisers were, under the Policies, to be submitted to the Umpire. If there were any, they would have been submitted to the Umpire, and the Umpire would have

resolved the dispute. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.”

78. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies that could not be resolved between the two appraisers were, under the Policies, to be submitted to the Umpire. If there were any, they would have been submitted to the Umpire, and the Umpire would have resolved the dispute. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.”

79. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies that could not be resolved between the two appraisers were, under the Policies, to be submitted to the Umpire. If there were any, they would have been submitted to the Umpire, and the Umpire would have resolved the dispute. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.”

80. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not

present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies that could not be resolved between the two appraisers were, under the Policies, to be submitted to the Umpire. If there were any, they would have been submitted to the Umpire, and the Umpire would have resolved the dispute. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.”

Portofino’ Alleged Withholding of Information and Alleged Last-Minute Document Dump

81. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not present for the appraisal proceeding.

82. Portofino lacks knowledge or information sufficient to form a belief about what the Market Insurers contend they “learned ... during the appraisal process.” The Market Insurers had previously been given access to tens of thousands of pages of documents. The existence of documents that were relevant to the determination of hurricane damages and for which the Market Insurers had not previously been provided access is denied. (Plaintiff would affirmatively show that the condominium documents (the Declarations of Condominium) are a matter of public record available on the internet for download by anyone, at no charge, at the County’s website.) Portofino would affirmatively show that the Market

Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

83. Upon information and belief, admitted.

84. Upon information and belief, the request was referred to Portofino’s counsel by Mr. Keys. All allegations not expressly admitted in this paragraph are denied.

85. Admitted that the Market Insurers sent correspondence dated September 3, 2021 making such request. Portofino would affirmatively show that the Market Insurers had previously been given access to tens of thousands of pages of documents. The existence of documents that were relevant to the determination of hurricane damages and for which the Market Insurers had not previously been provided access is denied. Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

86. Denied.

87. Admitted that the appraiser appointed by the Market Insurers made “make-work” requests to Portofino. Portofino would affirmatively show that the Market Insurers had previously been given access to tens of thousands of pages of documents. The existence of documents that were relevant to the determination of hurricane damages and for which the Market Insurers had not previously been provided access is denied. Portofino would further affirmatively show that “incurred costs” had long-since been provided to the Market Insurers, and further show that even Mr. Lewis agreed that the “incurred costs” incurred by Portofino should be awarded. Finally, Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

88. Upon information and belief, Mr. Keys referred Mr. Lewis’s “make-work” requests to Portofino’s counsel. Portofino would affirmatively show that the Market Insurers had previously been given access to tens of thousands of pages of documents. The existence of documents that were relevant to the determination of hurricane damages and for which the Market Insurers had not previously been

provided access is denied. Portofino would further affirmatively show that “incurred costs” had long-since been provided to the Market Insurers, and further show that even Mr. Lewis agreed that the “incurred costs” incurred by Portofino should be awarded. Finally, Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

89. Admitted. See paragraph 88 above.⁶

90. Admitted; this allegation fails to note that Portofino’s counsel’s written response offered to produce other documents that might be relevant to the evaluation if the Market Insurers specifically identified said documents.

91. Admitted that requests were made for such documents.

92. Admitted.

93. Denied.

94. Admitted.

95. Denied.

⁶ The allegations of footnotes 12 and 13 are denied.

96. Denied. Portofino would affirmatively show that the Market Insurers had already been provided access to tens of thousands of pages of documents.

97. Admitted that the Market Insurers were provided with such documents in that time frame. Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

98. Admitted that the Market Insurers were provided with such documents on or about that time. Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

99. Admitted that the Market Insurers were provided with such documents on or about that time. Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all

documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

101. Admitted that the Market Insurers were provided with such documents on or about that time. Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

102. Admitted that the Market Insurers were provided with documents on or about that time. Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

103. Admitted that the Market Insurers were provided with such documents on or about that time. Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

104. Denied as phrased. Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

105. Upon information and belief, admitted that Mr. Lewis made such a request on or about that date. All allegations not expressly admitted in this paragraph are denied.

106. Upon information and belief, admitted that Mr. Keys opposed the request, as it is believed he did not think the documents were relevant to the

appraisal panel's work and did not desire a continuance given the schedules of dozens of participants in the appraisal process that a continuance would disrupt.

All allegations not expressly admitted in this paragraph are denied.

107. Upon information and belief, admitted that Mr. Keys did not think the documents were relevant to the appraisal panel's work. All allegations not expressly admitted in this paragraph are denied.

108. Upon information and belief, admitted that the neutral Umpire made such determination. All allegations not expressly admitted in this paragraph are denied.

109. Upon information and belief, admitted.

The Form of the Appraisal Award

110. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

111. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

112. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

Portofino's Alleged Fraudulent Loss Submission to The Market Insurers

113. Portofino denies that it made any representations that were fraudulent. Portofino lacks knowledge or information sufficient to form a belief about any

specific representations made by Mr. Keys, as Portofino's counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that Portofino knows of no such representations that were or may be fraudulent, and demands strict proof thereof. All allegations not expressly admitted in this paragraph are denied.

114. Portofino denies that any witness appearing for Portofino made any false representations. Portofino lacks knowledge or information sufficient to form a belief about any specific representations made by Mr. Keys, but Portofino would affirmatively state that Portofino knows of no such false representations, and demands strict proof thereof. All allegations not expressly admitted in this paragraph are denied.

115. Portofino denies that any witness appearing for Portofino made any false representations, and demands strict proof thereof. All allegations not expressly admitted in this paragraph are denied.

116. Portofino lacks knowledge or information sufficient to form a belief about any specific information in documents that is misleading and that was submitted by Mr. Keys or experts that appeared at the appraisal hearings, as Portofino's counsel was not present for the appraisal proceeding, but Portofino would affirmatively state that Portofino knows of no such misleading information,

and demands strict proof thereof. All allegations not expressly admitted in this paragraph are denied.

117. Portofino lacks knowledge or information sufficient to form a belief about pricing contained in estimates and invoices submitted by Mr. Keys or experts that appeared at the appraisal hearings, as Portofino's counsel was not present for the appraisal proceeding, but Portofino would affirmatively state that Portofino knows of no such basis for the Market Insurers' claim, and demands strict proof thereof. All allegations not expressly admitted in this paragraph are denied.

118. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino's counsel was not present for the appraisal proceeding, but Portofino would affirmatively state that Portofino knows of no such basis for the Market Insurers' claim, and demands strict proof thereof. All allegations not expressly admitted in this paragraph are denied.

119. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino's counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies or disagreements about what was damaged by the hurricane, "causation," the necessary scope of work to repair the damaged property, and the cost of doing so, was to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to wring out any errors, mistakes, or

disagreements between the appraisers. If those disagreements could not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire resolved the disputes about which the Market Insurers now complain. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

120. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies or disagreements about what was damaged by the hurricane, “causation,” the necessary scope of work to repair the damaged property, and the cost of doing so, was to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to wring out any errors, mistakes, or disagreements between the appraisers. If those disagreements could not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire resolved the disputes about which the Market Insurers now complain. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

121. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies or disagreements about what was damaged by the hurricane, “causation,” the necessary scope of work to repair the damaged property, and the cost of doing so, was to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to wring out any errors, mistakes, or disagreements between the appraisers. If those disagreements could not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire resolved the disputes about which the Market Insurers now complain. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

122. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies or disagreements about what was damaged by the hurricane, “causation,” the necessary scope of work to repair the damaged property, and the cost of doing so, was to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to wring out any errors, mistakes, or

disagreements between the appraisers. If those disagreements could not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire resolved the disputes about which the Market Insurers now complain. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

123. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that the Market Insurers’ conclusion relating to such alternate submissions (if they were made) does not follow. Alternate estimates for alternative means of remediation (i.e., repair versus replacement) are routinely provided in disputes in courts of law, in the event the finder of fact determines that repair is appropriate instead of replacement. Regardless, Portofino would affirmatively show that any purported discrepancies or disagreements about matters such as the necessary scope of work to repair the damaged property, and the cost of doing so, was to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to wring out any errors, mistakes, or disagreements between the appraisers. If those disagreements could not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire resolved the

disputes about which the Market Insurers now complain. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

124. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not present for the appraisal proceeding. Portofino would affirmatively state that it knows of no requirement that “cause of damage” be mentioned in building permits.

125. Portofino lacks knowledge or information sufficient to form a belief about the allegations contained in this paragraph, as Portofino’s counsel was not present for the appraisal proceeding. Portofino would affirmatively state that because of the Market Insurers’ refusal to pay for the work to repair damaged property, Portofino and its owners have had to prioritize, in “triage” fashion, the most immediate needs of the property; the fact that some of the damaged property has not yet been replaced does not mean it is not damaged.

126. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies or disagreements about matters such as the specific areas of the property that were damaged was to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to wring out any errors,

mistakes, or disagreements between the appraisers. If those disagreements could not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire resolved the disputes about which the Market Insurers now complain. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

127. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that construction experts would have knowledge and experience as to pricing that would not require actual price quotes. There is no requirement, either in a court of law, with its strict evidentiary requirements, or in an appraisal proceeding, that actual quotes be obtained to offer opinions about prices. Regardless, Portofino would affirmatively show that that any purported discrepancies or disagreements about matters such as the costs of repair (including crane rental) was to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to wring out any errors, mistakes, or disagreements between the appraisers. If those disagreements could not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire resolved the disputes about which the Market Insurers now complain. Under Florida law, that

is precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

128. Portofino lacks knowledge or information sufficient to form a belief about this allegation. See paragraph 127 above.

129. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that the Market Insurers’ conclusion relating to such alternate submissions (if they were made) does not follow. Alternate estimates for alternative means of remediation (i.e., repair versus replacement, or different products used in remediation) are routinely provided in disputes in courts of law, in the event the finder of fact determines that one means of remediation is more appropriate than the other. Regardless, Portofino would affirmatively show that any purported discrepancies or disagreements about matters such as the necessary scope of work to repair the damaged property, and the cost of doing so, was to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to wring out any errors, mistakes, or disagreements between the appraisers. If those disagreements could not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire resolved the disputes about which the Market Insurers now complain. Under Florida law, that is

precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

130. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies or disagreements about pricing were to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to wring out any errors, mistakes, or disagreements between the appraisers. If those disagreements could not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire resolved the disputes about which the Market Insurers now complain. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

131. Denied. Portofino would affirmatively show that not all Towers were completed when Hurricane Ivan impacted the area, and would further show that damages sustained to the property during Hurricane Ivan—16 years prior to Hurricane Sally—were fully remediated long before Hurricane Sally struck.

132. Denied.

133. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies or disagreements about the scope of repair was to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to wring out any errors, mistakes, or disagreements between the appraisers. If those disagreements could not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire resolved the disputes about which the Market Insurers now complain. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

134. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino’s counsel was not present for the appraisal proceeding; however, Portofino would affirmatively state that any purported discrepancies or disagreements about pricing were to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to wring out any errors, mistakes, or disagreements between the appraisers. If those disagreements could not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire

resolved the disputes about which the Market Insurers now complain. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

135. Admitted that such requests were made, and that documents were provided. Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

136. Denied. Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

137. Denied.

138. Denied.

139. Denied.

Issuance of the Appraisal Award

140. Admitted.

141. Admitted.

142. Denied.

143. Admitted; the requirement for submission of a proof of loss is not intended to apply post-appraisal-award, as—by that time—the amount of loss has been determined by the appraisal panel. When the Market Insurers filed suit, they effectively denied coverage for the claim in its entirety. Pursuant to Florida law, the Market Insurers cannot deny coverage and at the same time demand compliance with post-loss obligations. Rather, upon the denial, the Market Insurers waived their right to enforce such post loss obligations. *See Ifergane v. Citizens Prop. Ins. Corp.*, 232 So. 3d 1063 (Fla. 3d DCA 2017). Furthermore, and as to Westchester’s proof of loss, Westchester was requesting that Portofino sign a proof of loss for an amount that Westchester had agreed to pay, thus rendering the purpose of a proof of loss meaningless. Based on these facts, Westchester suffered no prejudice and never will. *See Am. Integrity Ins. Co. v. Estrada*, 276 So. 3d 905, 916 (Fla. 3d DCA 2019). *See also* Affirmative Defense 11.

144. Admitted.

145. Admitted.

146. Admitted.

147. Admitted.

148. Admitted.

149. Admitted.

150. Admitted.

151. Admitted that each part of the appraisal award incorporated a statement of loss; Portofino lacks knowledge or information sufficient to form a belief about the remaining allegations contained in this paragraph.

RELIEF SOUGHT BY THE MARKET INSURERS

152. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks.

153. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks.

154. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks.

155. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks.

156. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks.

157. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks.

**COUNT I – DECLARATORY JUDGMENT – AGAINST ALL
DEFENDANTS (COOPERATION PROVISION)**

158. Portofino incorporates by reference its responses set forth in paragraphs 1 - 157 as though set forth specifically herein.

159. Admitted that the Market Insurers are attempting to plead such an action.

160. Denied. Portofino would affirmatively show that the “cooperation provision” relied upon by the Market Insurers states as follows:

ASSISTANCE AND COOPERATION OF THE INSURED –
The Insured shall cooperate with this Company and, upon this Company’s request and expense, shall attend hearings and trials and shall assist in effecting settlements, in securing and giving evidence, in obtaining the attendance of witnesses, and in conducting suits.

This is a provision that would require Portofino to cooperate with the Market Insurers if the Market Insurers were defending a claim brought by a third party against Portofino. *See also* Portofino’s Affirmative Defenses. Regardless,

Portofino would further affirmatively show that Portofino *did* cooperate with the Market Insurers.

161. Portofino denies as phrased the allegations and statements of law contained within this paragraph. *See also* Portofino's Affirmative Defenses.

Regardless, Portofino would further affirmatively show that Portofino *did* cooperate with the Market Insurers.

162. Denied.

163. Denied.

164. Denied.

165. Denied.

166. Denied.

167. Denied.

168. Admitted that as a result of the Market Insurers' bad-faith refusal to timely and fully adjust the loss, as required by the Policies and Florida law, and as a further result of the Market Insurers' failure to pay the appraisal awards properly issued by the appraisal panel established pursuant to the appraisal process required by the Market Insurers in their Policies, there is a dispute that requires court adjudication.

169. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this

paragraph and denies that this party is entitled to the declaration it seeks; rather, Portofino is entitled to relief as set forth in its Counterclaim.

**COUNT II – DECLARATORY JUDGMENT – AGAINST ALL
DEFENDANTS (DEFENDANTS’ APPRAISER)**

170. Portofino incorporates by reference its responses set forth in paragraphs 1 - 157 as though set forth specifically herein.

171. Admitted that the Market Insurers are attempting to plead such an action.

172. Denied.

173. Denied.

174. Denied as phrased. Portofino would affirmatively show that the law governing disqualification of appraisers has been clarified in recent months; regardless, Mr. Keys is not paid on a contingent-fee basis in this case, one of the key considerations in prior cases. All allegations not expressly admitted in this paragraph are denied.

175. Portofino does not know what the Market Insurers pretend to “suspect,” but it does know that Mr. Keys’ compensation is not based on a percentage of the appraisal award; rather, his fee will be computed on an hourly basis. The Market Insurers’ rank speculation is just that, and Portofino denies the

allegation that Mr. Keys' compensation is based on a percentage of the appraisal award.

176. Denied.

177. Denied.

178. Denied.

179. Denied.

180. Denied.

181. Denied.

182. Portofino lacks knowledge or information sufficient to form a belief about this allegation, but Portofino would affirmatively state that Portofino knows of no such basis for the Market Insurers' claim, and demands strict proof thereof. It would, however, affirmatively show that any purported discrepancies that could not be resolved between the two appraisers were, under the Policies, to be submitted to the Umpire. If there were any, they would have been submitted to the Umpire, and the Umpire would have resolved the dispute. Under Florida law, that is precisely the work of an appraisal panel—to determine the "amount of loss."

183. Portofino lacks knowledge or information sufficient to form a belief about this allegation, but Portofino would affirmatively show that any purported discrepancies or disagreements about pricing were to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to

wring out any errors, mistakes, or disagreements between the appraisers. If those disagreements could not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire resolved the disputes about which the Market Insurers now complain. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

184. Denied. See paragraph 183 above.

185. Section 682.13(1) of the Florida Statutes speaks for itself.

186. Admitted that as a result of the Market Insurers’ bad-faith refusal to timely and fully adjust this insurance claim, as required by the Policies and Florida law, and as a further result of the Market Insurers’ failure to pay the appraisal awards properly issued by the appraisal panel established pursuant to the appraisal process required by the Market Insurers in their Policies, there is a dispute that requires court adjudication.

187. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks; rather, Portofino is entitled to relief as set forth in its Counterclaim.

**COUNT III – DECLARATORY JUDGMENT – AGAINST ALL
DEFENDANTS (FORM OF APPRAISAL AWARD)**

188. Portofino incorporates by reference its responses set forth in paragraphs 1 - 157 as though set forth specifically herein.

189. Admitted that the Market Insurers are attempting to plead such an action.

190. Denied.

191. Denied as phrased; the terms and conditions of the Policies speak for themselves.

192. Denied as phrased; the terms and conditions of the Policies speak for themselves.

193. Denied as phrased; the terms and conditions of the Policies speak for themselves.

194. Admitted that as a result of the Market Insurers' bad-faith refusal to timely and fully adjust this insurance claim, as required by the Policies and Florida law, and as a further result of the Market Insurers' failure to pay the appraisal awards properly issued by the appraisal panel established pursuant to the appraisal process required by the Market Insurers in their Policies, there is a dispute that requires court adjudication.

195. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks; rather, Portofino is entitled to relief as set forth in its Counterclaim.

COUNT IV – DECLARATORY JUDGMENT – AGAINST ALL DEFENDANTS (APPRAISAL DEMAND)

196. Portofino incorporates by reference its responses set forth in paragraphs 1 - 157 as though set forth specifically herein.

197. That said insurers are attempting to plead such an action is admitted.

198. Denied as phrased; the appraisal provision speaks for itself.

199. Denied as phrased; the appraisal provision speaks for itself.

200. Denied.

201. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks; rather, Portofino is entitled to relief as set forth in its Counterclaim.

COUNT V – DECLARATORY JUDGMENT – AGAINST ALL DEFENDANTS (PURPORTED FAILURE TO COMPLY WITH LANDMARK POLICY’S APPRAISAL CLAUSE AMENDMENT)

202. Portofino incorporates by reference its responses set forth in paragraphs 1 - 157 as though set forth specifically herein.

203. That said insurer is attempting to plead such an action is admitted.

204. Denied as phrased; said Policy provision speaks for itself; all allegations not expressly admitted in this paragraph are denied.

205. Denied.

206. Denied.

207. Portofino lacks knowledge or information sufficient to form a belief about this allegation.

208. Portofino lacks knowledge or information sufficient to form a belief about this allegation.

209. Portofino lacks knowledge or information sufficient to form a belief about this allegation.

210. Denied.

211. Denied.

212. Portofino lacks knowledge or information sufficient to form a belief about this allegation.

213. Denied.

214. The appraisal award speaks for itself; all allegations not expressly admitted in this paragraph are denied.

215. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this

paragraph and denies that this party is entitled to the declaration it seeks; rather, Portofino is entitled to relief as set forth in its Counterclaim.

**COUNT VI – DECLARATORY JUDGMENT AND DAMAGES – FRAUD –
AGAINST ALL DEFENDANTS**

216. Portofino incorporates by reference its responses set forth in paragraphs 1 - 157 as though set forth specifically herein.

217. Denied.

218. Denied.

219. Denied.

220. Denied.

221. Denied.

222. Denied.

223. Denied.

224. Portofino lacks knowledge or information sufficient to form a belief about this allegation, as Portofino's counsel was not present for the appraisal proceeding; however, Portofino would affirmatively show that that any purported discrepancies or disagreements about matters such as pricing of the work required to remediate the damaged property was to be determined by the appraisal panel, which was tasked with sorting out a very complex loss and to wring out any errors, mistakes, or disagreements between the appraisers. If those disagreements could

not be resolved between the two appraisers, the disagreements were, under the Master Policy Form, to be submitted to the Umpire. The Umpire resolved the disputes about which the Market Insurers now complain. Under Florida law, that is precisely the work of an appraisal panel—to determine the “amount of loss.” All allegations not expressly admitted in this paragraph are denied.

225. Denied.

226. Denied.

227. Denied.

228. Denied.

229. Denied.

230. Admitted that as a result of the Market Insurers’ bad-faith refusal to timely and fully adjust this insurance claim, as required by the Policies and Florida law, and as a further result of the Market Insurers’ failure to pay the appraisal awards properly issued by the appraisal panel established pursuant to the appraisal process required by the Market Insurers in their Policies, there is a dispute that requires court adjudication.

231. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks; rather, Portofino is entitled to relief as set forth in its Counterclaim.

COUNT VII – DECLARATORY JUDGMENT – FAILURE TO COMPLY WITH NOTICE AND LOSS APPRAISAL POLICY PROVISIONS AS TO HOMELAND - AGAINST ALL DEFENDANTS

232. Portofino incorporates by reference its responses set forth in paragraphs 1 - 157 as though set forth specifically herein.

233. That said insurer is attempting to plead such an action is admitted.

234. Denied as phrased; the terms and conditions of Homeland's Policy speak for themselves.

235. Admitted.

236. Denied. Homeland was on notice of the claim when Gallagher and Homeland's "Designated Adjuster," Jeff Hellman, were placed on notice of the claim immediately after the hurricane.

237. Admitted that while that particular letter did not provide all particulars of the claim, Homeland was on notice of the claim when Gallagher and Homeland's "Designated Adjuster," Jeff Hellman, were placed on notice of the claim immediately after the hurricane.

238. Denied.

239. Denied.

240. Admitted that Portofino was required to comply with the provisions of said Policy; denied that Portofino failed to do so and/or that Homeland was

prejudiced by any inadvertent technical failure of Portofino in relation to such provision, as Homeland was on notice of the claim.

241. Denied.

242. Denied.

243. Denied.

244. Denied; Homeland was on notice of the claim when Gallagher and Homeland's "Designated Adjuster," Jeff Hellman, were placed on notice of the claim immediately after the hurricane.

245. Denied.

246. Denied.

247. Denied.

248. Admitted that as a result of the Market Insurers' bad-faith refusal to timely and fully adjust this insurance claim, as required by the Policies and Florida law, and as a further result of the Market Insurers' failure to pay the appraisal awards properly issued by the appraisal panel established pursuant to the appraisal process required by the Market Insurers in their Policies, there is a dispute that requires court adjudication.

249. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this

paragraph and denies that this party is entitled to the declaration it seeks; rather, Portofino is entitled to relief as set forth in its Counterclaim.

**COUNT VIII – DECLARATORY JUDGMENT – LATE NOTICE AS TO
JAMES RIVER, MAXUM, AND LANDMARK – AGAINST ALL
DEFENDANTS**

250. Portofino incorporates by reference its responses set forth in paragraphs 1 - 157 as though set forth specifically herein.

251. That said insurers are attempting to plead such an action is admitted.

252. Denied as phrased; the terms and conditions contained in the Policies speak for themselves.

253. Admitted.

254. Denied; these insurers were on notice of the claim when Gallagher and these insurers' "Designated Adjuster," Jeff Hellman, were placed on notice of the claim immediately after the hurricane.

255. Denied; these insurers were on notice of the claim when Gallagher and these insurers' "Designated Adjuster," Jeff Hellman, were placed on notice of the claim immediately after the hurricane.

256. Denied; these insurers were on notice of the claim when Gallagher and these insurers' "Designated Adjuster," Jeff Hellman, were placed on notice of the claim immediately after the hurricane.

257. Denied.

258. Denied.

259. Admitted that notice was required, but denied that notice was not given. All allegations not expressly admitted in this paragraph are denied.

260. Denied.

261. Denied.

262. Admitted that as a result of the Market Insurers' bad-faith refusal to timely and fully adjust this insurance claim, as required by the Policies and Florida law, and as a further result of the Market Insurers' failure to pay the appraisal awards properly issued by the appraisal panel established pursuant to the appraisal process required by the Market Insurers in their Policies, there is a dispute that requires court adjudication.

263. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks; rather, Portofino is entitled to relief as set forth in its Counterclaim.

**COUNT IX – DECLARATORY JUDGMENT – AGAINST ALL
DEFENDANTS (COVERAGE)**

264. Portofino incorporates by reference its responses set forth in paragraphs 1 - 157 as though set forth specifically herein.

265. Admitted that the Market Insurers are attempting to plead such an action.

266. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks; rather, Portofino is entitled to relief as set forth in its Counterclaim.

267. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies the allegations contained in this paragraph and denies that this party is entitled to the declaration it seeks; rather, Portofino is entitled to relief as set forth in its Counterclaim.

**COUNT IX – DECLARATORY JUDGMENT – AGAINST ALL
DEFENDANTS (FLA. STAT. § 682.13)**

268. Portofino incorporates by reference its responses set forth in paragraphs 1 - 157 as though set forth specifically herein.

269. Admitted that the Market Insurers are attempting to plead such an action.

270. Section 682.13 of the Florida Statutes speaks for itself.

271. Denied.

272. Denied.

273. Denied.

274. Denied.

275. Admitted that the Market Insurers and the appraiser they selected made numerous “make-work” requests for documents; the Market Insurers had previously been given access to tens of thousands of pages of documents. The Market Insurers were not denied access to documents that were relevant to the determination of hurricane damages. Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

276. Denied.

277. Admitted that the Market Insurers and the appraiser they selected made numerous “make-work” requests for documents; the Market Insurers had previously been given access to tens of thousands of pages of documents. The Market Insurers were not denied access to documents that were relevant to the

determination of hurricane damages. Portofino would affirmatively show that the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

278. Denied.

279. Admitted.

280. Admitted that Mr. Lewis improperly sought to delay the appraisal hearing under the pretext that he needed to review documents that were irrelevant to the task at hand (determining the amount of loss). All allegations not expressly admitted in this paragraph are denied.

281. Upon information and belief, admitted that Mr. Keys opposed the request, and did not desire a continuance given the schedules of dozens of participants in the appraisal process that a continuance would disrupt. It would appear that neither Mr. Keys nor Mr. Doan, the Umpire, believed the additional “make-work” requests had a bearing on their determination of the amount of loss, as they did not make requests for documents other than those documents already reviewed by the appraisal panel. Portofino would further affirmatively show that

the Market Insurers—for more than two years—have been in possession of all documents they requested (even the documents that were the subject of “make-work” requests), and have yet to identify any documents that they did not already have that were not produced and that prejudiced the appraisal panel’s ability to determine the amount of loss. All allegations not expressly admitted in this paragraph are denied.

282. Denied.

283. Denied.

284. This paragraph contains no allegations requiring a response, but to the extent a response is required, Portofino denies that the appraisal award should be vacated; rather, Portofino is entitled to relief as set forth in its Counterclaim.

RESPONSE TO PRAYER FOR RELIEF

WHEREFORE, Portofino respectfully requests that the Court DENY the relief sought by the Market Insurers, and that the Court enter judgment in Portofino’s favor as set forth more fully in the Counterclaim herein, that the appraisal award be confirmed and judgment in the amount of the appraisal award be entered in Portofino’s favor, that, pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041, that Portofino be awarded its reasonable attorney’s fees and costs incurred in defending this action and in seeking the relief

to which Portofino is entitled, and that Portofino be awarded such further and other relief as may be deemed appropriate by this Court.

AFFIRMATIVE DEFENSES

Portofino asserts the following Affirmative Defenses to the Market Insurers' Amended Complaint:

1. Portofino has done nothing to cause a forfeiture of the policy. The Market Insurers have substantially breached their ethical and legal obligations to Portofino by failing to promptly and fully adjust the claim, and failing to pay amounts owed as determined by the Alternative Dispute Resolution (ADR) procedure that the Market Insurers mandated, and insisted, be followed to determine the amount of the loss.

Portofino arranged for and paid a substantial cost for, insurance from the Market Insurers to protect them from damages caused by a hurricane, such as the hurricane at issue in this action. Portofino timely paid its premiums, and timely reported (within 24 hours of the insured event) that the property had sustained substantial damages. Throughout this process, Portofino took immediate actions to mitigate the damages, spending millions of dollars of non-insurance-company funds to pay for site inspection, clean-up, identification (mapping) of moisture intrusion, tearing out wet carpet, and drywall, effecting temporary repairs to badly

damaged roofs, railings, and other building components, all with the knowledge and oversight of the Market Insurers through their Designated Adjuster.

All of the Market Insurers designated Jeff Hellman of McLarens as their “Designated Adjuster.”⁷

After being notified of the claim, the Designated Adjuster sent dozens of adjusters, hygienists, contractors, engineers and others to inspect the property. Portofino accommodated those inspectors in every way requested, including allowing them access to the roofs, attics, 765 condominium units (on multiple occasions), allowing them to sit in on project meetings of the remediation contractor, allowing them to erect scaffolding, swing stages, use drones, and other equipment required to inspect every square foot of the six major buildings, as well as the smaller structures, at Portofino—a process they engaged in for several months.

When the Market Insurers refused to approve (or disapprove) invoices for work performed totaling millions of dollars, their Designated Adjuster and his on-site representatives were asked why amounts were not being paid. They were told that the Market Insurers had decided that the total claim was less than the \$4.7

⁷ One of the insurers reserved the right to name another adjuster, but elected not to do so. All of the Market Insurers adjusted this claim, if at all, through their Designated Adjuster as per the terms of the policies.

million in deductibles. (Even the appraiser for the Market Insurers found that to be false, signing the first of the appraisal awards for more than \$14 million.) When the Market Insurers failed to pay for incurred costs, the dispute resolution process required by the contract (appraisal) was initiated. Each party selected an appraiser, as per the policy. Questions asked by the Market Insurer's attorney were promptly and accurately answered, contrary to the representations Market Insurers have made to this Court.

When Portofino, through its attorneys, asked for the Market Insurers' status of the adjustment of the total claim, it was told by the Market Insurers' attorney that this information was "work product," and status information would not be provided. In fact, Portofino was told that the adjustment had come to an end, and that the entire loss would be determined by appraisal. When Portofino pointed out that the only dispute that Portofino had submitted to appraisal was the dispute over approval and payment of incurred costs, the Market Insurers' attorney said that the entire loss was in appraisal, not just incurred costs, and named Pat Lewis as an appraiser, and said he would assume that Portofino would be naming George Keys as its designated appraiser. No objections were made as to the selected appraisers. Those two appraisers agreed on Jon Doan as the Umpire.

Portofino agreed to comply with the appraisal of the entire amount of the loss because they wanted (and expected) a prompt resolution of the claim without

the need for litigation. *See First Protective Ins. Co. v. Hess*, 81 So. 3d 482 (Fla. 1st DCA 2011) (holding “appraisal clauses are preferred, as they provide a mechanism for prompt resolution of claims and discourage the filing of needless lawsuits.”).

Two years later and after a lengthy and expensive appraisal process, appraisal awards were issued. Rather than pay the awards, the Market Insurers have wrongly attempted to find any way possible to avoid further liability for the loss. They sought to derail the appraisal process, an effort rejected by this Court which found that establishing the amount of loss was for the appraisal panel.

Again, Portofino has done nothing to cause a forfeiture of the claims. Rather, the Market Insurers simply don’t like the outcome of the appraisal and now they seek to wrongly avoid such outcome by attempting to fabricate a forfeiture, manufacturing claims of “fraud,” and attempting to void the policy to the detriment of more than 1,000 unit owners as well as hundreds of mortgage lenders. The Market Insurers’ position is inconsistent with Florida law and must fail.

Nearly seventy years ago, the Supreme Court of Florida established that a forfeiture of rights under an insurance policy is not favored by the law. *Johnson v. Life Ins. Co. of Ga.*, 52 So. 2d 813, 815 (Fla. 1951). In fact, Florida courts have gone so far as to state that Florida law *abhors* forfeitures. *See Axis Surplus Ins. Co. v. Caribbean Beach Club Ass’n*, 164 So. 3d 684, 587 (Fla. 2d DCA 2014); *see*

also Mora v. Tower Hill Prime Ins. Co., 155 So. 3d 1224 (Fla. 2d DCA 2015) (forfeitures disfavored *especially when the event that gives rise to the insurer's liability has occurred*, as it has here).

2. Portofino's appraiser is and was an independent and disinterested individual not employed or otherwise under the control or subject to the direction of Portofino. Thus, the opinions as to amount of loss reached by either of the party-appointed appraisers are, quite simply, non-actionable. The two appraisers disagreed. The mutually selected Umpire resolved the dispute. That is precisely what is contemplated by the concept of appraisal. It is precisely what occurred here.

3. Any evidence or arguments as to amount related to the loss or corresponding information or documentation submitted to the appraisal panel by either of the party-appointed appraisers are the acts of independent appraisers—not the acts of the parties who asked them to serve.

4. As to any allegations of fraud as to Portofino, subsection (b) of Rule 9 of the Federal Rules of Civil Procedure states, in part “[i]n alleging fraud ..., a party must state with particularity the circumstances constituting fraud” The Eleventh Circuit has held that “pursuant to Rule 9(b), a plaintiff must allege: ‘(1) the precise statements, documents, or misrepresentations made; (2) the time, place, and person responsible for the statement; (3) the content and manner in which

these statements misled the plaintiffs; and (4) what the defendants gained by the alleged fraud.” *ADA v. Cigna Corp.*, 605 F.3d 1283 (11th Cir. 2010). “The plaintiff must allege facts with respect to each defendant’s participation in the fraud.” *Id.*; *see also DiLeo v. Ernst & Young*, 901 F.2d 624 (7th Cir. 1990) (holding that as to the particularity requirement of Rule 9(b), “[t]his means the who, what, when, where, and how: the first paragraph of any newspaper story.”). The Market Insurers’ allegations of fraud against Portofino fail because the Market Insurers have failed to state with particularity the circumstances constituting fraud on behalf of Portofino.

Moreover, the Market Insurers’ allegations of fraud against Portofino fail because the Policies contemplate that in order to void the policy for any act of fraud, it is the insureds who must engage in the fraud—not a third party not under the control of Portofino.

The Market Insurers’ allegations of fraud also fail because they are based on a disagreement contemplated by the Master Policy Form. That is, just because Portofino’s appraiser’s valuation of the loss is/was higher than the opposing appraiser does not mean that it is inflated, overvalued, and fraudulent. As the Supreme Court of the United States has held, “[p]olicy holders may present inaccurate proofs of loss without conscious dishonesty or intent to defraud; different views of values are common; memory is faulty; insurance company and

assured often entertain widely different views concerning the policy; and evidence cannot always be produced to establish something declared to be true in entire good faith.” *Jose Rivera Soler & Co. v. United Firemen’s Ins. Co.*, 299 U.S. 45 (1936). “It is also well established that a mere overestimate of value of goods ..., error in judgment with respect to fixing of value, mistake, or inadvertence, will not render the insurance contract void. Since reasonable men might differ as to the values they place on certain objects, the severity of the rule voiding policies of insurance would not obtain unless the proof of the false swearing was such that no other conclusion could be drawn.” *Morgan v. Badger Mut. Ins. Co.*, 181 F. Supp. 496 (N.D. Fla. 1960).

Additionally, the Market Insurers’ allegations of fraud fail because both appraisers’ estimates deviated significantly from six of the seven appraisal awards. All three members of the Appraisal Panel agreed as to the first award, for the incurred costs. Two things should be noted here: (1) unanimous agreement is not required for a binding appraisal award (a two-out-of-three vote is sufficient); and (2) it was the Market Insurers’ refusal to pay the incurred costs that prompted the initiating of appraisal by Portofino, later expanded to include the entire loss.

There has been no attack on the experience, credibility, competence, or ethics of the Umpire, the person who resolved the dispute of the appraisers as to the amount of the loss after the hearing and considering all of the evidence. The

Market Insurers attack one of the two party-appointed appraisers, after and only after awards not to their liking were entered (or were about to be entered), and they attack Portofino, which rendered no opinion as to the amount of the loss in the appraisal process.

As to any suggestion that Portofino violated Florida Statutes § 817.234 as stated in paragraph 226 of the Market Insurers' Amended Complaint, Portofino denies such allegations based on the facts and arguments contained herein.

Furthermore, it is entirely inappropriate to suggest a violation of Florida Statutes § 817.234 because it implicates criminal sanctions. It is believed the Market Insurers are intentionally (but baselessly) invoking this statute to serve as a threat to Portofino to have a chilling effect on their pursuit of its claims.

5. As to allegations of fraud as to Portofino's appraiser, subsection (b) of Rule 9 of the Federal Rules of Civil Procedure states, in part, that "[i]n alleging fraud ..., a party must state with particularity the circumstances constituting fraud" The Eleventh Circuit has held that "pursuant to Rule 9(b), a plaintiff must allege: '(1) the precise statements, documents, or misrepresentations made; (2) the time, place, and person responsible for the statement; (3) the content and manner in which these statements misled the plaintiffs; and (4) what defendants gained by the alleged fraud.'" *ADA v. Cigna Corp.*, 605 F.3d 1283 (11th Cir. 2010). "The plaintiff must allege facts with respect to each defendant's

participation in the fraud.” *Id.* ; *see also DiLeo v. Ernst & Young*, 901 F.2d 624 (7th Cir. 1990) (holding that as to the particularity requirement of Rule 9(b), “[t]his means the who, what, when, where, and how: the first paragraph of any newspaper story.”). The Market Insurers’ allegations of fraud against Portofino’s appraiser fail because the Market Insurers have failed to state with particularity the circumstances constituting fraud on behalf of Portofino’s appraiser.

Moreover, the Market Insurers’ allegations of fraud against Portofino’s appraiser fail because the policy contemplates that in order to void the policy for any act of fraud, it is the insureds who must engage in the fraud—not a third party not under the control of Portofino. Furthermore, the alleged acts of fraud are based on differences of opinions on the “amount of loss,” which is contemplated by Florida law. As such, differences of opinions cannot be considered fraud. Additionally, because there are no allegations that the appraisal awards are deficient in any way, any allegations of fraud as to Portofino’s appraiser are entirely irrelevant.

6. James River Insurance Company (“James River”) alleges that Portofino failed to provide prompt notice of the loss, and that such failure bars recovery. James Rivers’ allegations fail for the following reasons. Nothing in the policies states that failure to provide prompt notice of the loss voids the policy or bars coverage for any claim. In fact, the policy specifically contemplates late

reporting and in doing so states “[f]ailure to give notice of any such loss which, at the time of occurrence, did not appear to involve this policy but which, at a later date, would appear to give rise to a claim hereunder, shall not invalidate such claim.” This provision would apply to the extent the Market Insurers suggest that only the primary layer of insurers were put on notice of the loss shortly after it occurred because the loss did not implicate exposure at the James River level. James River, as with all of the Market Insurers, had an independent duty to adjust the claim, and its Designated Adjuster, Jeff Hellman, was charged with that duty. In doing so, Mr. Hellman was charged with the “public trust” for doing his job in a manner that did not prejudice its insured, Portofino. Any failure on his part to do so is imputed to James Rivers.

Additionally, Portofino promptly reported the loss (shortly after the loss) to Arthur J. Gallagher, as contemplated by the policy. And the “Designated Adjuster” in the policy did so as well. And it is believed that James River was on prompt notice of the loss through other means. If its Designated Adjuster, or the attorney that the Portofino parties were told, in writing, would be handling the appraisal, failed to provide updates and notices to James River, and James River could demonstrate actual prejudice from that failure, James River’s remedies would be against its agents—not the insureds who did what they were required to do under the policy.

Even if there was a delay in reporting, such delay should not bar a recovery as it is well established in Florida that “‘prompt’ and other comparable phrases, like ‘immediate’ and ‘as soon as practicable,’ do not require instantaneous notice.” *Laquer v. Citizens Prop. Ins. Corp.*, 167 So. 3d 470, 473–74 (Fla. 3d DCA 2015). Moreover, an “insurer must be prejudiced by the insured’s non-compliance with a post-loss obligation in order for the insured to forfeit coverage.” *Am. Integrity Ins. Co. v. Estrada*, 276 So. 3d 905, 916 (Fla. 3d DCA 2019). Here, the Designated Adjuster was involved with the loss as early as the day of the storm. He inspected the property and damage numerous times (and documented it) and was given the opportunity to adjust the claim. Additionally, he retained consultants who inspected the property and the loss and further documented the damages. James River has access to all of this data as well as the data from the appraisal. As such, it is an impossibility that James River could ever be prejudiced by the alleged late reporting.

Portofino denies that it failed to comply with any post-loss obligations.

7. Maxum Indemnity Company (“Maxum”) alleges that Portofino failed to provide prompt notice of the loss, and that such failure bars recovery. Maxum’s allegations fail for the following reasons. Nothing in the policies states that failure to provide prompt notice of the loss voids the policy or bars coverage for any claim. Maxum, as with all of the Market Insurers, had an independent duty to

adjust the claim, and its Designated Adjuster, Jeff Hellman, was charged with that duty. In doing so, Mr. Hellman was charged with the “public trust” for doing his job in a manner that did not prejudice its insured, Portofino. Any failure on his part to do so is imputed to Maxum.

Additionally, Portofino promptly reported the loss (shortly after the loss) to Arthur J. Gallagher, as contemplated by the policy. And the “Designated Adjuster” in the policy did so as well. And it is believed that Maxum was on prompt notice of the loss through other means. If its Designated Adjuster, or the attorney that the Portofino parties were told, in writing, would be handling the appraisal, failed to provide updates and notices to Maxum, and Maxum could demonstrate actual prejudice from that failure, Maxum’s remedies would be against its agents—not the insureds who did what they were required to do under the policy.

Even if there was a delay in reporting, such delay should not bar a recovery as it is well established in Florida that “‘prompt’ and other comparable phrases, like ‘immediate’ and ‘as soon as practicable,’ do not require instantaneous notice.” *Laquer v. Citizens Prop. Ins. Corp.*, 167 So. 3d 470, 473–74 (Fla. 3d DCA 2015). Moreover, an “insurer must be prejudiced by the insured’s non-compliance with a post-loss obligation in order for the insured to forfeit coverage.” *Am. Integrity Ins. Co. v. Estrada*, 276 So. 3d 905, 916 (Fla. 3d DCA 2019). Here, the Designated

Adjuster was involved with the loss as early as the day of the storm. He inspected the property and damage numerous times (and documented it) and was given the opportunity to adjust the claim. Additionally, he retained consultants who inspected the property and the loss and further documented the damages. Maxum has access to all of this data as well as the data from the appraisal. As such, it is an impossibility that Maxum could ever be prejudiced by the alleged late reporting.

Portofino denies that it failed to comply with any post-loss obligations.

8. Landmark American Insurance Company (“Landmark”) alleges that Portofino failed to provide prompt notice of the loss, and that such failure bars recovery. Landmark’s allegations fail for the following reasons. Nothing in the policies states that failure to provide prompt notice of the loss voids the policy or bars coverage for any claim.

Additionally, Portofino promptly reported the loss (shortly after the loss) to Arthur J. Gallagher as contemplated by the Master Policy Form (and as permitted by Landmark’s policy). And the “Designated Adjuster” in the Master Policy Form did so as well. And it is believed that Landmark was on prompt notice of the loss through other means. Landmark knew that it insured Portofino for tens of millions of dollars, knew where the property was located, knew that Hurricane Sally had caused damages up and down Pensacola Beach, and knew (or should have known) through its Designated Adjuster and “appraisal team,” as it was called by the

Market Insurers' attorney, that the loss was substantial, and implicated all levels of coverage.

Even if there was a delay in reporting, such delay should not bar a recovery as it is well established in Florida that “‘prompt’ and other comparable phrases, like ‘immediate’ and ‘as soon as practicable,’ do not require instantaneous notice.” *Laquer v. Citizens Prop. Ins. Corp.*, 167 So. 3d 470, 473–74 (Fla. 3d DCA 2015). Moreover, an “insurer must be prejudiced by the insured’s non-compliance with a post-loss obligation in order for the insured to forfeit coverage.” *Am. Integrity Ins. Co. v. Estrada*, 276 So. 3d 905, 916 (Fla. 3d DCA 2019). Here, the Designated Adjuster in the Master Policy Form was involved with the loss as early as the day of the hurricane. He inspected the property and damage numerous times (and documented it) and was given the opportunity to adjust the claim. Additionally, he retained consultants who inspected the property and the loss and further documented the damages. Landmark knew that it insured Portofino for tens of millions of dollars, knew where the property was located, knew that Hurricane Sally had caused damages up and down Pensacola Beach, and knew (or should have known) through its Designated Adjuster and “appraisal team,” as it was called by the Market Insurers’ attorney, that the loss was substantial, and implicated all levels of coverage.

Landmark has access to all of this data as well as the data from the appraisal. As such, it is an impossibility that Landmark could ever be prejudiced by the alleged late reporting.

Portofino denies that it failed to comply with any post-loss obligations.

9. Homeland Insurance Company of New York (“Homeland”) alleges that Portofino failed to provide prompt notice of the loss, and that such failure bars recovery. Homeland’s allegations fail for the following reasons. Nothing in the policies states that failure to provide prompt notice of the loss voids the policy or bars coverage for any claim.

Additionally, Portofino promptly reported the loss (shortly after the loss) to Arthur J. Gallagher as required by the Master Policy Form (and as permitted by Homeland’s policy). And the “Designated Adjuster” in the policy did so as well. And it is believed that Homeland was on prompt notice of the loss through other means. Homeland knew, for example, that it insured Portofino for tens of millions of dollars, knew where the property was located, knew that Hurricane Sally had caused damages up and down Pensacola Beach, and knew (or should have known) through its Designated Adjuster and “Appraisal team,” as it was called by the Market Insurers’ attorney, that the loss was substantial, and implicated all levels of coverage.

Even if there was a delay in reporting, such delay should not bar a recovery as it is well established in Florida that “‘prompt’ and other comparable phrases, like ‘immediate’ and ‘as soon as practicable,’ do not require instantaneous notice.” *Laquer v. Citizens Prop. Ins. Corp.*, 167 So. 3d 470, 473–74 (Fla. 3d DCA 2015). Moreover, an “insurer must be prejudiced by the insured’s non-compliance with a post-loss obligation in order for the insured to forfeit coverage.” *Am. Integrity Ins. Co. v. Estrada*, 276 So. 3d 905, 916 (Fla. 3d DCA 2019). Here, the Designated Adjuster in the Master Policy Form was involved with the loss as early as the day of the storm. He inspected the property and damage numerous times (and documented it) and was given the opportunity to adjust the claim. Additionally, he retained consultants who inspected the property and the loss and further documented the damages. Homeland has access to all of this data as well as the data from the appraisal. As such, it is an impossibility that Homeland could ever be prejudiced by the alleged late reporting.

Portofino denies that it failed to comply with any post-loss obligations.

10. As to all of the claims of “delay” in reporting the amount of the claim, it should be noted that the Market Insurers failed and refused to adjust the amount of the claim, and deferred that determination to the appraisal panel. It is a question that should have been answered by the Market Insurers had they fully and promptly adjusted the claim, and it was their failure and refusal to do so that

resulted in any delays in determining which levels of coverage were at risk. The Market Insurers cannot complain about a late determination of the amount of the loss that they caused through their breach of their duty to promptly and fully adjust this claim.

11. To the extent that the Market Insurers suggest that Portofino has failed to comply with any post-loss obligations after the Market Insurers filed suit (including, but not limited to, any alleged failure to provide Westchester with a sworn proof of loss as alleged in paragraph 266(P) of The Market Insurers' Amended Complaint), such position fails for the following reasons. When the Market Insurers filed suit, they effectively denied coverage for the claim in its entirety. Pursuant to Florida law, the Market Insurers cannot deny coverage and at the same time demand compliance with post-loss obligations. Rather, upon the denial, the Market Insurers waived their right to enforce such post loss obligations. *See Ifergane v. Citizens Prop. Ins. Corp.*, 232 So. 3d 1063 (Fla. 3d DCA 2017). Furthermore, and as to Westchester's proof of loss, Westchester was requesting that Portofino sign a proof of loss for an amount that Westchester had agreed to pay, thus rendering the purpose of a proof of loss meaningless. Based on these facts, Westchester suffered no prejudice and never will. As a result, Westchester's defense in this regard fails. *See Am. Integrity Ins. Co. v. Estrada*, 276 So. 3d 905, 916 (Fla. 3d DCA 2019).

12. Portofino denies non-compliance with any post-loss requirement to the extent such conditions required a request to Portofino that was never made. *See Herrera v. Tower Hill Preferred Ins. Co.*, 161 So. 3d 565 (Fla. 2d DCA 2014) (holding “the ‘Duties After Loss’ provision required the insureds to respond to requests; it did not obligate them to produce documents to the insurer unsolicited.”).

13. Portofino denies that its appraiser included charges in the appraisal process that were “improper, overstated, unrelated, or duplicative.” The Market Insurers have not provided any evidence of such alleged acts, or (assuming they occurred) that such alleged acts were intentional, or anything more than a difference of opinions between members of the appraisal panel. Perhaps most importantly, the Market Insurers have failed to show how the appraisal awards were affected in any way by the purported acts of the Portofino-selected appraiser. Consequently, the Market Insurers’ allegations cannot invalidate the policies, the appraisal process, or the appraisal awards.

14. Any allegations that Portofino’s appraiser failed to produce documents that he was not in possession of cannot invalidate the Policies, the appraisal process, or the appraisal awards because producing such documents is beyond the scope of an appraiser’s duty to set the amount of the loss. Moreover, the Market Insurers came into possession of the documents via Portofino, and the

Market Insurers' appraiser had more than enough time to bring any relevant documentation to the Umpire's attention because after the appraisal hearing, the umpire took six months before he issued even the first award. The Market Insurers have been unable, during discovery, to identify a single "late produced" document that was relevant to any issue in the appraisal that they were unable to introduce to the Umpire who decided this dispute. Nor have they been able to point to a single request by the appraisal panel for documents not provided.

15. The Market Insurers claim that Portofino breached the "Cooperation Clause" in the policy by failing to provide documents, which they allege, bars a recovery. The Market Insurers' allegations fail for the following reasons. The clause at issue is inapplicable to a first-party property insurance claim; rather, it relates to liability coverage. In *Brown v. Travelers Ins. Co.*, 649 So. 2d 912 (Fla. 4th DCA 1995), the court found that an exclusion found in the liability section of a policy could not be applied to the property insurance section. In doing so, the court stated that the insurer's argument "invites us to erase all context, exclude all headings and sub-headings, ignore contrary provisions, and limit our attention to only the words the insurer selects to make its case." *Id.* at 914. In rejecting the insurer's argument, the court held "[w]e are simply unable to do what [the insurer] suggests." *Id.* It also held that "[c]ourts may not isolate a single sentence or group of words in an insurance policy and read the isolated part alone and apart from

other provisions; the goal is to arrive at a reasonable interpretation of the entire policy text to accomplish its stated meaning and purpose.” *Id.* at 914-915.

However, even if the clause was relevant, for it to invalidate the policy, it requires a material breach and substantial prejudice as was held by *Coconut Key Homeowners Ass’n, Inc. v. Lexington Ins. Co.*, 649 F. Supp. 2d 1363 (S.D. Fla. 2009) where the court stated: “Most insurance policies have “cooperation clauses” providing that the insured “shall cooperate with the insurer, attend hearings and trials upon the insurer’s request, and shall assist in effecting settlements, *in securing and giving evidence* ... and in the conduct of suits.” *Goldman*, 660 So.2d 300, 304 n.6 (emphasis added).

Cooperation clauses are less onerous on insured parties because courts will reject defenses based on alleged material breaches of cooperation clauses if the insurer cannot demonstrate “substantial prejudice” from the breach. The burden is “*on the insurer to demonstrate substantial prejudice* before a breach [of a cooperation clause] would preclude recovery under the policy.” *Goldman*, 660 So.2d 300, 304 (emphasis added).

Here, the Market Insurers’ requests covered six different condominium associations covering six buildings and more than eighteen years. Pursuant to Florida law, condominium associations are not required to maintain records for eighteen years. Nevertheless, Portofino made every effort to obtain and produce

such records. Naturally, that took time, as the records requested were not in either a hard files labeled in the categories requested, or in computer files. In fact, given the eighteen-year time period, computers on which records would have at some point been stored no longer existed. Furthermore, management companies had changed over the years. In any event, a search of multiple towers and multiple locations was made and found documents requested in multiple file cabinets, as well as on computers. Ultimately and after they were reviewed for privileged documents (which took more time), those documents were produced. As such, Portofino did not withhold the documents or conceal them. And the Market Insurers' "appraisal team" had more than enough time to evaluate and produce them to the Umpire before he ruled, which didn't occur as to the first award until six months after the hearing. Because the Umpire never refused to review any documents provided to him by the Market Insurers' appraiser, it is impossible that the Market Insurers could prove that they were prejudiced, let alone substantially prejudiced.

Additionally, because the Market Insurers voluntarily stopped adjusting the claim through no fault of Portofino, the Market Insurers could not be substantially prejudiced by any alleged delay in the production of documents.

Because the requested documents were ultimately produced, the Market Insurers cannot prove they were substantially prejudiced.

To the extent that the Market Insurers are alleging that not all documents were produced, where an insurance company is in possession of “sufficient information” to assess a policyholder’s claim, then appraisal is ripe. *Scottsdale Ins. Co. v. Univ. at 107th Ave.*, 827 So. 2d 1016 (Fla. 3d DCA 2002). Moreover, because Portofino complied or substantially complied with the Market Insurers’ requests, it is impossible for the Market Insurers to prove that Portofino “materially” breached the policy as is required by Florida law. *Am. Integrity Ins. Co. v. Estrada*, 276 So. 3d 905, 916 (Fla. 3d DCA 2019).

Portofino denies that it failed to comply with any post-loss obligations.

16. The Market Insurers allege that Portofino’s appraiser was not disinterested because they claim, through speculation alone, that his compensation was tied to the outcome of the claim. This defense fails not only because it is based on pure speculation, but because Portofino’s appraiser was paid on an hourly basis not tied in any way to the outcome of the appraisal or claim.

To the extent the Market Insurers suggest that Portofino’s appraiser was not disinterested because the amount of the loss determined by him was greater than that of the Market Insurers or the Market Insurers’ appraiser, such difference in opinions as to the amount of the loss is contemplated by the Master Policy Form and Florida law. For example, the Master Policy requires the umpire to become the tiebreaker when the appraisers fail to agree on the amount of the loss. This

difference in opinions regarding the amount of loss is also consistent with Florida law, which holds that appraisers “may reach individual conclusions and are required to meet only for the purpose of ironing out differences in the conclusions reached.” *Liberty Mut. Fire Ins. Co. v. Hernandez*, 735 So. 2d 587, 588 (Fla. 3d DCA 1999); *Preferred Nat’l Ins. Co. v. Miami Springs Golf Villas, Inc.*, 789 So. 2d 1156, 1157 (Fla. 3d DCA 2001) (holding that in appraisal, the umpire independently attempts to resolve any differences in the appraisals offered by both sides.”). Moreover, Portofino’s appraiser’s opinions were supported by the opinions of several reputable and experienced experts and consultants.

To the extent the Market Insurers suggest that Portofino’s appraiser was not disinterested because of certain things he did or failed to do, such allegations fail entirely as there is nothing in the Master Policy Form that requires certain actions on the part of the appraisers in determining the amount of the loss. That is, the determination of the amount of the loss is left to the appraisers’ discretion. And pursuant to Florida law, “[a]ppraisers are generally expected to act on their own skill and knowledge.” *Liberty Mut. Fire Ins. Co. v. Hernandez*, 735 So. 2d 587, 588 (Fla. 3d DCA 1999). Moreover, “the appraisal process is an informal one.” *Citizens Prop. Ins. Corp. v. Mango Hill #6 Condo. Ass’n*, 117 So. 3d 1226, 1229-30 (Fla. 3d DCA 2013). In appraisal, “[t]here is no requirement that appraisers be sworn. *Id.* Pursuant to Florida law, “[t]here is no obligation for appraisers to give

formal notice of their activities to the parties or counsel, or to hear evidence.” *Id.*

And appraisers “even may engage in *ex parte* investigation, so long as they ultimately meet in good faith for the purpose of ironing out individual differences.”

Id.

To the extent the Market Insurers suggest that Portofino’s appraiser was not disinterested because he was disqualified in other matters is not a basis to disqualify him here as those other matters are entirely irrelevant to this case and the associated claims.

17. The Market Insurers claim that Portofino’s appraiser is not competent as is required by policy. This allegation fails because Portofino’s appraiser has more than 40 years of experience in the insurance industry, is licensed by the State of Florida as an insurance adjuster, and over the course of his career, he has handled thousands of appraisals (many of which have involved large losses). Based on these facts, pursuant to Florida law, Portofino’s appraiser is competent. *See Citizens Prop. Ins. Corp. v. M.A. & F.H. Props.*, 948 So. 2d 1017 (Fla. 3d DCA 2007) (holding that an appraiser who had experience with more than 1,800 appraisals was “competent” to serve as an appraiser.).

To the extent that the Market Insurers claim that Portofino’s appraiser is not competent because of any alleged mistakes, errors (in calculations, measurements, estimates, etc.), duplicate entries, incomplete entries, scrivener’s errors, oversights,

or other problems, or even differences of opinions, this implicates issues of credibility, not competency, which were *matters for the Umpire to determine*. As at trial, competing and often conflicting evidence, both factual and opinion testimony, differs. At trial, the finder of fact (judge or jury) sorts through those conflicts and makes a ruling. At appraisal, the party designated to resolve disputes between the party-appointed appraisers, the Umpire, sorts through any conflicting evidence to render a final decision. That is what was required here. That is precisely what occurred here.

18. The Market Insurers claim that the appraisal awards are not valid because they are not itemized. Their position fails for the following reasons.

If the Market Insurers wanted a specific type of award form, they should have provided for one in the Master Policy Form, which was the policy they themselves demanded and expected the appraisal follow.

“It is well-established Florida law that in interpreting insurance contracts ‘the language of the policy is the most important factor.’” *Calzadilla v. Scottsdale Ins. Co.*, 2019 WL 2245518, at *4 (S.D. Fla. Apr. 10, 2019), *report and recommendation adopted*, 2019 WL 2245520 (S.D. Fla. Apr. 26, 2019). “Under Florida law, insurance contracts are construed according to their plain meaning.” *Id.* “Where the policy language is ‘plain and unambiguous, there is no special construction or interpretation required, and the plain language of the policy will be

given the meaning it clearly expresses.” *Id.* “[C]ourts may not rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties.” *Id.*

In *Coral Reef Metro, LLC v. Scottsdale Ins. Co.*, No: 2:18-cv-460, 2019 U.S. Dist. LEXIS 27594, at *2 (M.D. Fla. Jan. 30, 2019), report adopted, No: 2:18-cv-460, 2019 U.S. Dist. LEXIS 26675 (M.D. Fla. Feb. 20, 2019), the court evaluated similar policy language as exists in the Master Policy Form and rejected the insurer’s request for a line-item award because it was not required by the policy. *See also ABC Univ. Shops, LLC v. Scottsdale Ins. Co.*, No. 18-60562-CV, 2018 WL 6267943, at *2 (S.D. Fla. Nov. 30, 2018) (holding that the “language of the policy . . . does not require a delineated appraisal award.”); *White Surf Condo. Mgmt. Ass’n, Inc. v. Lexington Ins. Co.*, No: 6:17-cv-1203, 2017 U.S. Dist. LEXIS 222840, at *4-5 (M.D. Fla. Aug. 10, 2017) (holding that the “policy does not tell the appraisers . . . the form the award should take . . . [a]nd, it clearly does not provide for the line-item approach urged by Defendant.”); *Calzadilla v. Scottsdale Ins. Co.*, 18-25424-CIV, 2019 WL 2245518, at *4 (S.D. Fla. Apr. 10, 2019), *report and recommendation adopted*, 18-CV-25424-UU, 2019 WL 2245520 (S.D. Fla. Apr. 26, 2019) (holding that the policy which required the appraisers to “set the amount of the loss” did not require itemization of the loss on a line-item basis, and that the court was “bound to enforce the Policy as it is written.”); *Vista View*

Apartments, Ltd. v. Chubb Custom Ins. Co., No. 08-22772-CIV, 2009 WL 10669062, at *2 (S.D. Fla. July 7, 2009) (holding that “nothing in the plain language of the Policy provides for the itemization of the loss on a line-item basis as requested by the Respondent.”).

Because the Master Policy Form does not require a specific award form, the awards cannot be invalidated just because the Market Insurers claim they must be done on a line-item basis.

As to the Homeland policy, although such policy contemplates an itemized award, the policy does not provide a definition for “itemized award” and provides no further guidance on the issue. To the extent that this results in an ambiguity in the policy, it should be interpreted in favor of Portofino. *See Allstate Floridian Ins. Co. v. Farmer*, 104 So. 3d 1242 (Fla. 5th DCA 2012) (holding that any ambiguity is strictly construed against the drafter and liberally in favor of the insured).

Furthermore, appraisal for the entire amount of the loss proceeded under the Master Policy Form, which does not require a line-item award. As such, the Market Insurers waived any right to have an itemized award pursuant to any follow-form policies.

19. The Market Insurers allege that Portofino cannot recover for repair or replacement of windows and doors because the condominium declarations require

the individual unit owners to maintain, repair and replace them. The Market Insurers' allegation fails because it is completely inconsistent with Florida Statutes § 718.111(11)(f), which requires every property insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting a condominium, to provide primary coverage for such items (the windows and doors). As such, there is coverage for these items and thus, they are recoverable to the extent that they are contained in the appraisal awards.

20. The Market Insurers claim "Loss Adjustment Expenses" are not covered under the policy. The Market Insurers' argument fails because "Loss Adjustment Expenses" are covered in paragraph 49 of the Master Policy Form. Moreover, because the Market Insurers' "Designated Adjuster" admitted that he aborted the adjusting process before it was completed, that forced Portofino to incur expenses contemplated by the "Loss Adjustment Expenses" provision. Thus, such expenses are recoverable by Portofino.

21. To the extent the Market Insurers' allegations relate to issues of causation (e.g., what, if any, damages were caused by Hurricane Ivan as opposed to Hurricane Sally, any issues addressed in paragraphs 266(D), (E), (F), (G), (H), (I), (M), and (N) of the Market Insurers' Amended Complaint, etc.), such issues are irrelevant and should not bar recovery (or impair the appraisal awards) as the issue of causation is exclusively for the appraisal panel. *See Johnson v. Nationwide*

Mut. Ins. Co., 828 So. 2d 1021 (Fla. 2002); *Kendall Lakes Townhomes Developers, Inc. v. Agric. Excess & Surplus Lines Ins. Co.*, 916 So. 2d 12 (Fla. 3d DCA 2005); *Sunshine State Ins. Co. v. Rawlins*, 34 So. 3d 753 (Fla. 3d DCA 2010); *Citizens Prop. Ins. Corp. v. Demetrescu*, 137 So. 3d 500 (Fla. 4th DCA 2014); *Freeman v. Am. Integrity Ins. Co. of Florida*, 180 So. 3d 1203 (Fla. 1st DCA 2015); and, *People's Tr. Ins. Co. v. Tracey*, 2018 WL 3559914 (Fla. 4th DCA 2018). In fact, this very issue was addressed in *Gonzalez v. State Farm Fire & Cas. Co.*, 805 So. 2d 814 (Fla. 3d DCA 2000), *approved and remanded sub nom. Johnson v. Nationwide Mut. Ins. Co.*, 828 So. 2d 1021 (Fla. 2002), where the court held:

When the insurer admits that there *is* a covered loss, but there is a disagreement on the *amount* of loss, it is for the appraisers to arrive at the amount to be paid. In that circumstance, the appraisers are to inspect the property and sort out how much is to be paid on account of a covered peril. In doing so, they are to exclude payment for “a cause not covered, such as normal wear and tear, dry rot, or various other designated, excluded causes.”

Thus, [for example], if the homeowner’s insurance policy provides coverage for windstorm damage to the roof, but does not provide coverage for dry rot, the appraisers are to inspect the roof and arrive at a fair value for the windstorm damage, while excluding payment for the repairs required by preexisting dry rot.

Gonzalez, 805 So. 2d 814 (citations omitted) (emphasis in original).

The same is true for all issues exclusively within the authority of the appraisal panel. Pursuant to Florida law, amount of loss questions for the appraisal panel include determinations as to: causation (noted above); the cost of repair or

replacement (*State Farm Fire & Cas. Co. v. Licea*, 685 So. 2d 1285 (Fla. 1996)); the method of repair (*Cincinnati Ins. Co. v. Cannon Ranch Partners, Inc.*, 162 So. 3d 140 (Fla. 2d DCA 2014)); the scope of repair (*Florida Ins. Guar. Ass'n v. Branco*, 148 So. 3d 488 (Fla. 5th DCA 2014), *reh'g denied* (Oct. 15, 2014)); and, the requirements of the applicable building codes in order to estimate the cost of repair or replacement (*Noa v. Fla. Ins. Guar. Ass'n*, 215 So. 3d 141 (Fla. 3d DCA 2017)).

Moreover, a “Court may not substitute its judgment for that of the panel ...”; “[r]ather, the amount of loss is a question for the appraisal panel” . . . and “a determination of the accuracy of the award is beyond the authority of the Court.” *See Mont Claire at Pelican Marsh Condo. Ass'n v. Empire Indem. Ins. Co.*, No. 2:19-cv-601-SPC-MRM, 2021 U.S. Dist. LEXIS 142298, at *17 (M.D. Fla. May 24, 2021), report and recommendation adopted, No. 2:19-cv-601-SPC-MRM, 2021 U.S. Dist. LEXIS 141563 (M.D. Fla. July 29, 2021). And “a trial court may not look beyond the face of an appraisal award and consider extrinsic evidence to determine the basis for the award.” *First Protective Ins. Co. v. Hess*, 81 So. 3d 482 (Fla. 1st DCA 2011); *see also Jin Zhi Star LT. LLC v. Am. Zurich Ins. Co.*, No. 08-61191-CIV-MORE, 2011 U.S. Dist. LEXIS 160662, at *10 (S.D. Fla. June 15, 2011), report and recommendation adopted, No. 08-61191-CIV-MORE, 2011 U.S. Dist. LEXIS 160663 (S.D. Fla. Aug. 11, 2011) (holding “[w]e cannot sanction

Defendant's attempt to second-guess the appraisal panel's determination of the amount of the loss by reviewing what evidence the panel considered or how it reached its ultimate decision").

22. The Market Insurers claim that paragraph 50 of the Master Policy Form requires the appraisers to appraise the amount of the loss at the time of the hurricane. Because that is not what the policy states, any failure to do so shall not invalidate the appraisal awards. To the extent that there is an ambiguity in the Master Policy Form as to this issue, it should be interpreted in favor of Portofino. *See Allstate Floridian Ins. Co. v. Farmer*, 104 So. 3d 1242 (Fla. 5th DCA 2012) (holding that any ambiguity is strictly construed against the drafter and liberally in favor of the insured).

Additionally, there is no evidence that the appraisal awards don't reflect the alleged required pricing. And any defense in this regard is precluded by Florida law, which holds that "a trial court may not look beyond the face of an appraisal award and consider extrinsic evidence to determine the basis for the award." *First Protective Ins. Co. v. Hess*, 81 So. 3d 482 (Fla. 1st DCA 2011). Moreover, pursuant to *Mont Claire at Pelican Marsh Condo. Ass'n v. Empire Indem. Ins. Co.*, No. 2:19-cv-601-SPC-MRM, 2021 U.S. Dist. LEXIS 142298, at *17 (M.D. Fla. May 24, 2021), report and recommendation adopted, No. 2:19-cv-601-SPC-MRM, 2021 U.S. Dist. LEXIS 141563 (M.D. Fla. July 29, 2021), "[t]he law is clear in that

the Court may not substitute its judgment for that of the panel” . . . “[r]ather, the amount of loss is a question for the appraisal panel” . . . and, “a determination of the accuracy of the award is beyond the authority of the Court.”

In any event, even if the Court determined that the pricing needed to be quantified based on costs that existed for a certain date, that should not invalidate such a lengthy and expensive appraisal and the accompanying appraisal awards as that would be a significant waste of resources. As such, and alternatively, the appraisal awards could be amended by the appraisal panel to correct any deficiency to the extent it exists.

23. An insurer “is bound by the authorized acts of its agent whether it has knowledge of such acts or not.” *Indian River State Bank v. Hartford Fire Ins. Co.*, 35 So. 228, 332 (Fla. 1903). “The acts of an agent, performed within the scope of his real or apparent authority, are binding upon his principal.” *Id.* at 333 (citations omitted). “The public have a right to rely upon an agent’s apparent authority, and are not bound to inquire as to his special powers unless the circumstances are such as to put them upon inquiry.” *Id.* The Market Insurers waived any rights to avoid appraisal of the entire amount of the loss as counsel for the Market Insurers required that the entire amount of the loss be determined via the appraisal process pursuant to paragraph 50 of the Master Policy Form. As such, the Market Insurers waived any rights as to any preconditions to appraisal or to require that such

appraisal proceed under any follow-form policies that may have differed in terms with paragraph 50 of the Master Policy Form. They also waived any rights as to the selection of the appraisal panel as that was done by them or their agent.

Furthermore, Portofino, in reliance on the requirement for an appraisal of the entire amount of loss, embarked on an appraisal process that took the better part of two years. And during that process, Portofino was forced to expend millions of dollars in expert costs and expenses in reliance on the representation that the entire amount of the loss was being appraised (with all insurers) and would result in a binding appraisal that would bring the claims process to a closure. The Market Insurers should not now be permitted to avoid appraisal just because they don't like the result—especially if any one or more of them remained silent during the process. Consequently, the Market Insurers are estopped from avoiding the appraisal, the outcome of the appraisal, the binding nature of the appraisal awards, and any liability that stems from the appraisal.

To the extent that the Market Insurers allege any failure on their counsel, such loss must be borne by the Market Insurers. “If any one must suffer for the negligence or wrong doing of the agent of an insurance company, it should be the company and not its patron who has relied upon the promise and conduct of the agent.” *Eagle Fire Co. v. Lewallen*, 47 So. 947, 954 (Fla. 1908).

24. The Market Insurers, including Arch Specialty Insurance Company, AXIS Surplus Insurance Company, Colony Insurance Company, Evanston Insurance Company, Aspen Specialty Insurance Company, Independent Specialty Insurance Company, Interstate Fire & Casualty Company, Certain Underwriters at Lloyd's, London (Consortium # 9226), James River Insurance Company, and Maxum Indemnity Company, allege that Portofino failed to properly invoke appraisal. The Market Insurers' allegations fail entirely because *it was the Market Insurers who required appraisal as to the entire amount of the loss* for all the Market Insurers. Portofino incorporates herein the facts and arguments from the preceding affirmative defenses above.

25. Plaintiff, Landmark, claims Portofino failed to comply with Landmark's appraisal provision. This allegation fails based on the facts and arguments from the preceding affirmative defenses above, which are incorporated herein.

26. To the extent certain Market Insurers have paid the appraisal awards, they waived their rights to challenge coverage or the appraisal awards, and to seek to void the policies.

27. Appraisal was ripe (not premature) as to all of the Market Insurers not only because they required appraisal of the entire amount of the loss, but because coverage had been acknowledged under the policies and there was a dispute as to

the amount of the loss. *See J.P.F.D. Inv. Corp. v. United Specialty Ins. Co.*, No. 6:17-cv-1415-Orl-40GJK, 2017 U.S. Dist. LEXIS 171583 (M.D. Fla. Sep. 29, 2017) (holding “when an insurer acknowledges a covered loss, any dispute regarding the amount of such loss is appropriate for appraisal.”).

28. Any allegations related to vacating the appraisal awards pursuant to Florida Statutes § 682.13 fail to the extent they were not timely pursued.

29. Any allegations related to vacating the appraisal awards pursuant to Florida Statutes § 682.13 fail because the Market Insurers have not shown that the awards are flawed in any way or were affected by the alleged actions or nonactions of Portofino’s appraiser.

30. Any allegations related to vacating the appraisal awards pursuant to Florida Statutes § 682.13 fail because the awards were not procured by corruption, fraud, or other undue means, and there was no evident partiality, corruption, or misconduct by Portofino’s appraiser. Rather, Portofino’s appraiser’s opinions were supported by several well-respected and experienced experts and consultants, and incurred costs, and all were subject to the scrutiny of the other two members of the appraisal panel.

31. Any allegations related to vacating the appraisal awards pursuant to Florida Statutes § 682.13 fail because there wasn’t sufficient cause for the postponement of the appraisal hearing, and the failure to postpone the hearing did

not substantially prejudice the rights of the Market Insurers or their appraiser who had at least six months to provide additional documents, information, and arguments to the panel for consideration after the hearing was completed. The Umpire acted within his discretion to deny a continuance when more than 20 experts from multiple states had travel arrangements and cleared their calendars for a two-week evidentiary hearing. The Umpire expressly provided for the submission of any documents obtained, from whatever source, even though not requested by the appraisal panel, and delayed his ruling for months to have allowed for any such submission of documents, and/or additional evidence.

32. To the extent that there are any allegations that suggest that some parts of the awards are not covered, those issues of coverage are exclusively for the Court to determine. *See First Protective Ins. Co. v. Hess*, 81 So. 3d 482 (Fla. 1st DCA 2011) (holding that issues concerning coverage challenges are exclusively for the courts.”).

33. In Florida, an appraisal clause is considered a waiver of a party’s access to courts and right to trial as to the determination of the amount of the loss. *See Progressive Am. Ins. Co. v. Glassmetics*, 343 So. 3d 613, 625 (Fla. 2d DCA 2022). Any attempt by the Market Insurers to have this Court determine the amount of the loss fails because they waived their right to access to the courts and trial as to the determination of the amount of the loss.

34. To the extent that any aspect of the amount of the loss determined in appraisal is set aside, vacated, or not otherwise enforced, the remaining determinations of the appraisal panel (and the associated awards and/or parts of the awards) should remain binding and enforceable. *Mont Claire at Pelican Marsh Condo. Ass'n v. Empire Indem. Ins. Co.*, No. 2:19-cv-601-SPC- MRM, 2021 U.S. Dist. LEXIS 141563, at *5 (M.D. Fla. July 29, 2021) (holding that the intended purpose of appraisal is “enforceability and finality.”).

35. To the extent that any aspect of the amount of the loss determined in appraisal is set aside, vacated, or not otherwise enforced, such disputed issues regarding the amount of the loss should be remanded back to the appraisal panel to determine.

36. Any challenge to any appraisal or the appraisal awards outside of the parameters of “whole loss” defenses fails. *See Three Palms Pointe, Inc. v. State Farm Fire & Cas. Co.*, 362 F.3d 1317 (11th Cir. 2004) (holding that pursuant to Florida law, “if an insurer and an insured party go to appraisal, the insurer can only dispute coverage for the ‘loss as a whole.’”); *Mont Claire at Pelican Marsh Condo. Ass'n v. Empire Indem. Ins. Co.*, 2022 U.S. Dist. LEXIS 154291 (M.D. Fla. Aug. 11, 2022), report adopted, 2022 U.S. Dist. LEXIS 154153 (M.D. Fla. Aug. 26, 2022); *State Farm Fire & Cas. Co. v. Licea*, 685 So. 2d 1285 (Fla. 1996).

DEMAND FOR JURY TRIAL

Portofino demands trial by jury to the extent the claim is not fully resolved by appraisal.

COUNTERCLAIM

Portofino Master Homeowners Association, Inc. d/b/a Portofino Master Homeowners Association at Pensacola Beach, Inc. (“Master”), Portofino Tower One Homeowners Association at Pensacola Beach, Inc. (“Tower One”), Portofino Tower Two Homeowners Association at Pensacola Beach, Inc. (“Tower Two”), Portofino Tower Three Homeowners Association at Pensacola Beach, Inc. (“Tower Three”), Portofino Tower Four Homeowners Association at Pensacola Beach, Inc. (“Tower Four”), and Portofino Tower Five Homeowners Association at Pensacola Beach, Inc. (“Tower Five”), (collectively, “Portofino”) files this Counterclaim against Westchester Surplus Lines Insurance Company (“Westchester”), Arch Specialty Insurance Company (“Arch”), AXIS Surplus Lines Insurance Company (“Axis”), Colony Insurance Company (“Colony”), Evanston Insurance Company (“Evanston”), Aspen Specialty Insurance Company (“Aspen”), Independent Specialty Insurance Company (“Independent”), Interstate Fire & Casualty Company (“Interstate”), Certain Underwriters at Lloyd’s of London (Consortium #9226) (“Lloyd’s”), James River Insurance Company (“James River”), Maxum

Indemnity Company (“Maxum”), Landmark American Insurance Company (“Landmark”), and Homeland Insurance Company of New York (“Homeland”) (collectively the “Market Insurers”), stating as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. This is a counterclaim for damages in excess of \$75,000, exclusive of interest, fees, and costs, and for which this Court has ancillary jurisdiction.
2. Portofino sought and obtained policies of insurance from the Market Insurers to cover, *inter alia*, the replacement cost value of damages and losses to five 22-story towers containing 765 individual condominium units, a Lifestyle Center with indoor pool, spa and restaurant, tennis courts, several swimming pools, surface area parking, parking decks, and various other properties that will be hereafter referred to, collectively, as the “Insured Properties.” True and accurate copies of those policies (“Policies”), which are written on what the Market Insurers describe as the Master Policy Form, are attached to the Market Insurers’ First Amended Complaint for Declaratory Judgment and Damages as Composite Exhibit “1” (Doc. 104-1). The Policies are all-risk policies, which provide coverage for damages and losses caused by hurricanes (and other perils).
3. These Policies were in force at the time of Hurricane Sally, a covered peril.

4. Hurricane Sally made landfall in the Pensacola area as a strong category 2 hurricane.

5. The Market Insurers have not contested that there was a covered loss that occurred while the Policies were in effect.

6. The Market Insurers have not contested that Hurricane Sally (a covered peril) caused damages to the Insured Properties.

7. The Market Insurers unilaterally established the premiums to be paid by Portofino, and Portofino timely paid those premiums.

8. The Market Insurers established the rates to be charged for undertaking the risks they assumed after inspecting the property, having knowledge of the condition of the property from such inspection, as well as having insured the property during prior years, and having visited the property through their agents over the years in adjusting smaller claims.

9. In the alternative, the Market Insurers had the opportunity, before setting premiums, and before issuing the Policies, to inspect the insured premises, and to review any documents they wished to review in deciding to accept the duty to promptly and fully adjust, and pay, all losses caused by the insured event at issue in this case—Hurricane Sally.

10. The Policies did not require Portofino to have determined the amount of the loss at the time of giving notice of loss.

11. The amount of the loss should have been promptly and fully determined by the Market Insurers.

12. Market Insurers failed to promptly and fully determine the amount of the loss, as they failed to promptly and fully adjust the claim.

13. The Market Insurers, in fact, elected not to complete their duty to promptly and fully adjust the claim through their Designated Adjuster.

14. Market Insurers, pursuant to paragraph 45 of the Master Policy, named Jeff Hellman, of McLaren Young International, as the Designated Loss Adjuster (hereafter “Designated Adjuster”) for any loss. (Doc. 104-1, p. 32).

15. As the Designated Adjuster, Jeff Hellman had the duty on behalf of the Market Insurers to promptly and fully identify damages caused by the covered loss. And the Market Insurers had the duty to timely pay the claim and otherwise indemnify the insureds consistent with the adjustment of the claim

16. The Designated Adjuster was the agent for the Market Insurers for carrying out his duties under Florida Law to promptly and fully adjust the claim.

17. The Designated Adjuster also was the agent for the Market Insurers for carrying out his ethical duties under the Florida Administrative Code.

18. On or about September 16, 2020, a category 2 hurricane⁸ (hereafter “Hurricane Sally”) struck Pensacola Beach, Florida, causing substantial damages to the Insured Properties.

19. Portofino timely gave notice of the loss to the Market Insurers. The Market Insurers’ Designated Adjuster was immediately aware of the storm, and was promptly advised on the day of the storm that substantial damages had occurred. This Designated Adjuster had a duty to notify the Market Insurers as to the amount of the loss.

20. Mr. Hellman, on behalf of the Market Insurers, arranged for contractors, engineers, and other agents to inspect the Insured Properties for damages caused by Hurricane Sally.

21. The Market Insurers, or some portion of those Insurers, spent, upon information and belief, millions of dollars in examining the Portofino properties for damages, and knew or should have known that the amount of damages involved all but the very last “tier” of insurers; i.e., those who undertook risks above \$200 million collectively.

⁸ Hurricane Sally lingered over the Insured Properties for more than 20 hours, and caused substantial damages due to both its intensity and duration.

22. The Market Insurers had a duty to promptly determine what damages had been caused by the insured event (Hurricane Sally) to the Insured Properties, and to report their findings to Portofino. While they sent dozens of inspectors, including engineers, using drone and other inspection techniques, they failed and refused to report their findings to Portofino, claiming that those findings were “work product.”

23. The agent of the Market Insurers, the Designated Adjuster and his agents, had a duty to complete their adjustment of the claim, and communicate their findings to Portofino. But they failed to honor that duty under Florida law, and/or the Policies.

24. The Market Insurers had a duty to promptly review and approve for payment invoices for work performed, but failed to do so.

25. The Market Insurers had a duty to promptly pay for work performed to repair and replace property damaged by the insured event, but failed to do so.

26. The Market Insurers, through their Designated Adjuster, were invited to participate, and did participate, in inspections to establish the scope of repairs needed to remediate interior damages.

27. The Market Insurers, through their Designated Adjuster, were invited to observe the work being performed, and to notify Portofino of any objections as to the scope of the work, or the means and methods being employed.

28. The Market Insurers, through their Designated Adjuster, were asked to review Portofino's contract with its General Contractor, Phoenix Coatings, Inc. (hereafter "General Contractor"), and to object to any provisions within that contract, including the rates to be charged, if they had objections. They had no objections to the rates to be charged, and approved the scope of the work before it began.

29. The Market Insurers, through their Designated Adjuster, were invited to participate, and did participate, in daily meetings held by Portofino's General Contractor to coordinate the work, and to resolve any issues as to scope, means, or manner of the performance of the work. Any issues raised were immediately resolved to the satisfaction of the Designated Adjuster and his team.

30. Itemized invoices were provided by Portofino's General Contractor to the Market Insurers' Designated Adjuster for reimbursement.

31. The Market Insurers, through their Designated Adjuster, failed to either approve, or disapprove, the itemized invoices. The Designated Adjuster, on occasion, asked for additional information, which was promptly provided, but failed to approve or disapprove a single invoice.

32. The Market Insurers, through their Designated Adjuster, failed to pay for a single invoice submitted either by the General Contractor, or the initial emergency response contractor, BMS CAT.

33. As a result of the Market Insurers' failure to timely pay for work they oversaw, and approved as to scope, means, and method, and which was performed pursuant to an approved contract, Portofino was placed in substantial default as to its payment obligations to its General Contractor.

34. Portofino, to avoid its General Contractor demobilizing from the project and filing a construction lien for the millions of dollars it was owed, was forced to borrow money to pay the outstanding invoices of its General Contractor.

35. When the Market Insurers continued to refuse to pay for the work performed, and when their agents were questioned as to why, their agent(s) told Portofino that they had determined that the total amount of the claim would be less than the \$4.7 million deductible. The Market Insurers knew, at the time that representation was made, that it was a false representation, as work they had approved and overseen, work clearly necessary to repair or replace property damaged by the insured event, far exceeded (by millions of dollars) the \$4.7 million deductible.

36. As a result of the dispute as to payment of incurred-costs invoices, pursuant to paragraph 50 of the Master Policy, Portofino demanded appraisal.

37. At the time of Portofino's demand for appraisal, the dispute involved less than the \$15 million covered by first-tier carriers.

38. The Market Insurers knew, however, at the time of that initial demand for appraisal, that the incurred costs did not include the cost of repairing/replacing the roofs that were clearly damaged by the insured event, or the railings, or the windows, doors, tennis court, fresco, Lifestyle Center or other properties substantially damaged by the insured event.

39. When Portofino asked the Market Insurers for the results of their investigation as to the damage to the roof, cladding, railings, windows, doors, and other exterior components, the Market Insurers, through their attorney, J.D. Dickenson and the Cozen O'Connor firm, refused to provide that information, claiming that it was "work product."

40. When Portofino informed Mr. Dickenson that the only dispute that had been submitted to appraisal at that time was the incurred costs, Mr. Dickenson disagreed, said there was "one loss" and "one appraisal," and that all losses were in dispute—not just the incurred costs.

41. When Portofino objected to appraisal of anything other than the incurred costs, Mr. Dickenson demanded appraisal as to the "entire loss," pursuant to paragraph 50 of the Policies, said the entire loss would be established by the Appraisal Panel, and appointed appraiser Patrick E. Lewis of Lewis Claim Solutions.

42. Mr. Dickenson said that it would be assumed that Portofino would name George W. Keys, Jr. of Keys Claims Consultants, LLC, as its appraiser absent notice to the contrary, and made no objection as to Mr. Keys as an appraiser for the “entire loss.” Thus, the party-appointed appraisers for the appraisal of the entire loss proceeded.

43. Mr. Dickenson stated that the Appraisal Panel, and the Appraisal Panel alone, would establish the “entire loss.”

44. The two party-appointed appraisers then agreed on Jon W. Doan as the Umpire.

45. Mr. Doan has been an appraiser in more than 1,000 appraisals, teaches appraisal procedure, and has been praised by a federal judge for his qualifications and expertise. In more than 1,000 appraisals, the appraiser selected by the insurance company or companies approved Mr. Doan as the Umpire. When the party-appointed appraisers were unable to agree on the amount of the loss (i.e., they reached differing conclusions on that subject), the amount of the loss was submitted to Mr. Doan.

46. The Appraisal Panel decided on all procedure to be followed by the Panel. The Appraisal Panel established deadlines for documents to be produced and exchanged, deadlines for expert witness reports, dates for the appraisal hearing, and other parameters for the appraisal process.

47. The Market Insurers are required by Florida law to promptly and fully adjust a loss.

48. Market Insurers were to have carried out the duty to promptly and fully adjust this loss through the use of an independent adjuster (or adjusters).

49. In the case now before the Court, the Market Insurers used the adjuster specified in the Master Policy as the “Designated Adjuster.” While a few of the Market Insurers could have selected adjusters other than the one agreed to by the parties in the policies of insurance, none of the Market Insurers elected to do so.

50. Given the large number of Market Insurers who created a “market” to share the risks at issue, the Market Insurers designated one or more of the Market Insurers to play a lead role in carrying out their duties for the loss.

51. Based on knowledge and belief, the lead insurer designated to coordinate the adjustment of this loss, in whole or in part, was Westchester Surplus Lines Insurance Company (hereafter “Westchester”).

52. The lead insurer, whether Westchester or someone else, was to have kept the other insurers informed as to the status of the adjustment of the loss, including—without limitation—any disputes, and dispute resolution. The attorney representing Westchester and other Market Insurers, whom the Designated Adjuster represented to Market Insurers was the “Market” attorney, coordinated

regular meetings, by “Zoom” or otherwise, to discuss the status of the claim, and status of the appraisal proceedings.

53. The first objections to the appraisal proceeding came after and only after the insurers knew that the evidence developed during those proceedings refuted the positions taken by the Market Insurers, and that it was likely that a substantial appraisal award was to be issued by the mutually-agreed-to Umpire.

54. The Market Insurers sought to have this Court derail the appraisal process after a two-week appraisal hearing did not go their way, and to prevent the work of the Appraisal Panel from being completed. This Court rejected that attempt. (Doc. 78).

55. The first of the seven Appraisal Awards was issued on February 15, 2023. A true and accurate copy of those Appraisal Awards are attached as Composite Exhibit “1.”

56. Under the Policies, the Market Insurers were to have paid Appraisal Awards within thirty (30) days from their date of issuance. Three of the Insurers (no longer before this Court) paid what they deemed to be their portion of the awards (without interest or attorneys’ fees), and dropped out of this lawsuit. (Doc. 84, 85, and 86). None of the Market Insurers who are currently parties to this action have paid any portion of the second through the seventh Appraisal Awards.

57. Under the Policies, deductibles are applied against the total loss, which was not determined until the last of the seven Appraisal Awards were issued. The deductible is not allocated solely to the first-tier carriers, as alleged by the Market Insurers, when the amounts of the Appraisal Awards far exceed the amounts insured by the first-tier carriers.

58. Under Florida law, interest has been accruing on the Appraisal Awards from the date of loss. That occurred when the Market Insurers filed this Declaratory Judgment action seeking to avoid payment of any portion of the Appraisal Awards, and asking for a “refund” of the \$6 million advance payments that were made (which effectively served to deny the claim).

59. All conditions precedent to the filing of this counterclaim have been met, have occurred, or have been waived.

60. Portofino is entitled to recover costs, attorneys’ fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

61. Portofino has retained the services of the undersigned attorneys and is obligated to pay them a reasonable fee.

COUNT ONE: BREACH OF CONTRACT
(Westchester)

62. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

63. This is breach-of-contract action seeking damages in excess of \$75,000.

64. The insurance policy issued by Westchester and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, Westchester will be referred to as "this Market Insurer."

65. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

66. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

67. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

68. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

69. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

70. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

71. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

72. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16, 2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

73. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

74. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy Form.

75. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

76. This Market Insurer has materially breached the contract (this Market Insurer’s policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer’s:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;
- (d) failure to communicate its findings as to the amount of the loss to its insured;
- (e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;
- (f) failure to designate “advance” payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;
- (g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;

- (h) failure to timely pay the appraisal awards; and
- (i) failure to otherwise fully and timely indemnify Portofino

pursuant to the Policies as a result of the covered loss.

77. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney's fees) as a result of the breach of contract by this Market Insurer.

78. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an "open" claim not paid by this Market Insurer and the other Market Insurers; being "black-balled" by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys' fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

79. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against Westchester Surplus Lines Insurance Company for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

COUNT TWO: BREACH OF CONTRACT
(Arch)

80. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

81. This is breach-of-contract action seeking damages in excess of \$75,000.

82. The insurance policy issued by Arch and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, Arch will be referred to as "this Market Insurer."

83. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

84. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

85. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

86. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

87. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

88. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

89. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

90. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16, 2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

91. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

92. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy.

93. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

94. This Market Insurer has materially breached the contract (this Market Insurer's policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer's:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;
- (d) failure to communicate its findings as to the amount of the loss to its insured;
- (e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;

(f) failure to designate “advance” payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;

(g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;

(h) failure to timely pay the appraisal awards; and

(i) failure to otherwise fully and timely indemnify Portofino pursuant to the Policies as a result of the covered loss.

95. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney’s fees) as a result of the breach of contract by this Market Insurer.

96. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an “open” claim not paid by this Market Insurer and the other Market Insurers; being “black-balled” by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys’ fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have

been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

97. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against Arch Specialty Insurance Company for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

COUNT THREE: BREACH OF CONTRACT
(Axis)

98. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

99. This is breach-of-contract action seeking damages in excess of \$75,000.

100. The insurance policy issued by Axis and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, Axis will be referred to as "this Market Insurer."

101. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

102. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

103. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

104. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

105. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

106. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

107. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

108. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16,

2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

109. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

110. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy.

111. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

112. This Market Insurer has materially breached the contract (this Market Insurer's policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer's:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;

(d) failure to communicate its findings as to the amount of the loss to its insured;

(e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;

(f) failure to designate “advance” payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;

(g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;

(h) failure to timely pay the appraisal awards; and

(i) failure to otherwise fully and timely indemnify Portofino pursuant to the Policies as a result of the covered loss.

113. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney’s fees) as a result of the breach of contract by this Market Insurer.

114. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an “open” claim not paid by this Market Insurer and the other Market Insurers; being “black-balled” by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this

Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys' fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

115. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against AXIS Surplus Lines Insurance Company for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

COUNT FOUR: BREACH OF CONTRACT
(Colony)

116. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

117. This is breach-of-contract action seeking damages in excess of \$75,000.

118. The insurance policy issued by Colony and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, Colony will be referred to as "this Market Insurer."

119. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

120. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

121. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

122. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

123. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

124. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

125. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

126. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16, 2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

127. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

128. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy.

129. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

130. This Market Insurer has materially breached the contract (this Market Insurer's policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer's:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;
- (d) failure to communicate its findings as to the amount of the loss to its insured;
- (e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;
- (f) failure to designate "advance" payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;
- (g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;
- (h) failure to timely pay the appraisal awards; and
- (i) failure to otherwise fully and timely indemnify Portofino pursuant to the Policies as a result of the covered loss.

131. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney's fees) as a result of the breach of contract by this Market Insurer.

132. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an "open" claim not paid by this Market Insurer and the other Market Insurers; being "black-balled" by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys' fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

133. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against Colony Insurance Company for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§

626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

COUNT FIVE: BREACH OF CONTRACT
(Evanston)

134. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

135. This is breach-of-contract action seeking damages in excess of \$75,000.

136. The insurance policy issued by Evanston and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, Evanston will be referred to as "this Market Insurer."

137. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

138. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

139. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered

damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

140. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

141. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

142. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

143. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

144. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16, 2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

145. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

146. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy.

147. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

148. This Market Insurer has materially breached the contract (this Market Insurer’s policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer’s:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;
- (d) failure to communicate its findings as to the amount of the loss to its insured;
- (e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;
- (f) failure to designate “advance” payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;

(g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;

(h) failure to timely pay the appraisal awards; and

(i) failure to otherwise fully and timely indemnify Portofino pursuant to the Policies as a result of the covered loss.

149. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney's fees) as a result of the breach of contract by this Market Insurer.

150. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an "open" claim not paid by this Market Insurer and the other Market Insurers; being "black-balled" by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys' fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

151. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against Evanston Insurance Company for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

COUNT SIX: BREACH OF CONTRACT
(Aspen)

152. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

153. This is breach-of-contract action seeking damages in excess of \$75,000.

154. The insurance policy issued by Aspen and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, Aspen will be referred to as "this Market Insurer."

155. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

156. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

157. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

158. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

159. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

160. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

161. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

162. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16,

2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

163. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

164. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy.

165. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

166. This Market Insurer has materially breached the contract (this Market Insurer's policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer's:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;

(d) failure to communicate its findings as to the amount of the loss to its insured;

(e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;

(f) failure to designate “advance” payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;

(g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;

(h) failure to timely pay the appraisal awards; and

(i) failure to otherwise fully and timely indemnify Portofino pursuant to the Policies as a result of the covered loss.

167. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney’s fees) as a result of the breach of contract by this Market Insurer.

168. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an “open” claim not paid by this Market Insurer and the other Market Insurers; being “black-balled” by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this

Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys' fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

169. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against Aspen Specialty Insurance Company for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

COUNT SEVEN: BREACH OF CONTRACT
(Independent)

170. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

171. This is breach-of-contract action seeking damages in excess of \$75,000.

172. The insurance policy issued by Independent and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, Independent will be referred to as "this Market Insurer."

173. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

174. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

175. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

176. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

177. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

178. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

179. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

180. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16, 2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

181. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

182. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy.

183. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

184. This Market Insurer has materially breached the contract (this Market Insurer's policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer's:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;
- (d) failure to communicate its findings as to the amount of the loss to its insured;
- (e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;
- (f) failure to designate "advance" payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;
- (g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;
- (h) failure to timely pay the appraisal awards; and
- (i) failure to otherwise fully and timely indemnify Portofino pursuant to the Policies as a result of the covered loss.

185. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney's fees) as a result of the breach of contract by this Market Insurer.

186. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an "open" claim not paid by this Market Insurer and the other Market Insurers; being "black-balled" by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys' fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

187. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against Independent Specialty Insurance Company for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to

Florida Statutes §§ 626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

COUNT EIGHT: BREACH OF CONTRACT
(Interstate)

188. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

189. This is breach-of-contract action seeking damages in excess of \$75,000.

190. The insurance policy issued by Interstate and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, Interstate will be referred to as "this Market Insurer."

191. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

192. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

193. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered

damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

194. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

195. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

196. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

197. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

198. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16, 2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

199. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

200. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy.

201. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

202. This Market Insurer has materially breached the contract (this Market Insurer's policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer's:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;
- (d) failure to communicate its findings as to the amount of the loss to its insured;
- (e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;
- (f) failure to designate “advance” payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;

(g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;

(h) failure to timely pay the appraisal awards; and

(i) failure to otherwise fully and timely indemnify Portofino pursuant to the Policies as a result of the covered loss.

203. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney's fees) as a result of the breach of contract by this Market Insurer.

204. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an "open" claim not paid by this Market Insurer and the other Market Insurers; being "black-balled" by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys' fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

205. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against Interstate Fire & Casualty Company for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

COUNT NINE: BREACH OF CONTRACT
(Lloyd's)

206. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

207. This is breach-of-contract action seeking damages in excess of \$75,000.

208. The insurance policy issued by Lloyd's and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, Lloyd's will be referred to as "this Market Insurer."

209. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

210. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

211. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

212. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

213. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

214. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

215. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

216. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16,

2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

217. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

218. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy.

219. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

220. This Market Insurer has materially breached the contract (this Market Insurer's policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer's:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;

(d) failure to communicate its findings as to the amount of the loss to its insured;

(e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;

(f) failure to designate “advance” payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;

(g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;

(h) failure to timely pay the appraisal awards; and

(i) failure to otherwise fully and timely indemnify Portofino pursuant to the Policies as a result of the covered loss.

221. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney’s fees) as a result of the breach of contract by this Market Insurer.

222. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an “open” claim not paid by this Market Insurer and the other Market Insurers; being “black-balled” by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this

Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys' fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

223. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against Certain Underwriters at Lloyd's of London (Consortium #9226) Specialty Insurance Company for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

COUNT TEN: BREACH OF CONTRACT
(James River)

224. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

225. This is breach-of-contract action seeking damages in excess of \$75,000.

226. The insurance policy issued by James River and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, James River will be referred to as "this Market Insurer."

227. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

228. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

229. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

230. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

231. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

232. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

233. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

234. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16, 2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

235. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

236. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy.

237. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

238. This Market Insurer has materially breached the contract (this Market Insurer's policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer's:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;
- (d) failure to communicate its findings as to the amount of the loss to its insured;
- (e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;
- (f) failure to designate "advance" payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;
- (g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;
- (h) failure to timely pay the appraisal awards; and
- (i) failure to otherwise fully and timely indemnify Portofino pursuant to the Policies as a result of the covered loss.

239. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney's fees) as a result of the breach of contract by this Market Insurer.

240. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an "open" claim not paid by this Market Insurer and the other Market Insurers; being "black-balled" by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys' fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

241. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against James River Insurance Company for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida

Statutes §§ 626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

COUNT ELEVEN: BREACH OF CONTRACT
(Maxum)

242. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

243. This is breach-of-contract action seeking damages in excess of \$75,000.

244. The insurance policy issued by Maxum and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, Maxum will be referred to as "this Market Insurer."

245. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

246. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

247. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered

damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

248. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

249. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

250. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

251. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

252. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16, 2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

253. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

254. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy.

255. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

256. This Market Insurer has materially breached the contract (this Market Insurer’s policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer’s:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;
- (d) failure to communicate its findings as to the amount of the loss to its insured;
- (e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;
- (f) failure to designate “advance” payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;

(g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;

(h) failure to timely pay the appraisal awards; and

(i) failure to otherwise fully and timely indemnify Portofino pursuant to the Policies as a result of the covered loss.

257. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney's fees) as a result of the breach of contract by this Market Insurer.

258. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an "open" claim not paid by this Market Insurer and the other Market Insurers; being "black-balled" by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys' fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

259. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against Maxum Indemnity Company for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

COUNT TWELVE: BREACH OF CONTRACT
(Landmark)

260. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

261. This is breach-of-contract action seeking damages in excess of \$75,000.

262. The insurance policy issued by Landmark and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, Landmark will be referred to as "this Market Insurer."

263. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

264. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

265. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

266. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

267. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

268. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

269. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

270. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16,

2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

271. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

272. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy.

273. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

274. This Market Insurer has materially breached the contract (this Market Insurer's policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer's:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;

(d) failure to communicate its findings as to the amount of the loss to its insured;

(e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;

(f) failure to designate “advance” payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;

(g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;

(h) failure to timely pay the appraisal awards; and

(i) failure to otherwise fully and timely indemnify Portofino pursuant to the Policies as a result of the covered loss.

275. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney’s fees) as a result of the breach of contract by this Market Insurer.

276. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an “open” claim not paid by this Market Insurer and the other Market Insurers; being “black-balled” by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this

Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys' fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

277. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against Landmark American Insurance Company for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

COUNT THIRTEEN: BREACH OF CONTRACT
(Homeland)

278. Portofino re-alleges and incorporates by reference paragraphs 1 through 62 as if fully set forth herein.

279. This is breach-of-contract action seeking damages in excess of \$75,000.

280. The insurance policy issued by Homeland and attached to the Market Insurers' Amended Complaint is a valid and binding contract, and covers damages and losses covered by hurricanes. For purposes of this Count, Homeland will be referred to as "this Market Insurer."

281. This Market Insurer obligated itself to pay Portofino for the costs of repair and/or replacement in the event of a covered loss for damage to properties it insured and for other covered losses.

282. By issuing the insurance policy, this Market Insurer became bound to the terms and conditions of the insurance policy.

283. Subject to the terms, conditions, and exclusions of the insurance policy, the insurance policy obligated this Market Insurer to pay for all covered damages resulting from Hurricane Sally, as set forth with more particularity in the insurance policy, up to the policy limits of this Market Insurer.

284. A covered peril (Hurricane Sally) occurred on September 16, 2020, causing substantial damages to the Insured Properties.

285. This Market Insurer's policy was in full force and effect when Hurricane Sally damaged the Insured Properties.

286. Portofino complied with all post-loss obligations to entitle Portofino to recover under the Policies, or those obligations have been waived.

287. Prior to the initiation of this Counterclaim, this Market Insurer was afforded every opportunity to investigate Portofino's losses and otherwise indemnify Portofino.

288. Jeff Hellman, the Designated Appraiser for the Market Insurers and this Market Insurer, was aware on the date of the insured event, September 16, 2020, that Hurricane Sally caused substantial damages to the Insured Properties. Mr. Hellman, in fact, immediately dispatched agents for the Market Insurers and this Market Insurer to start the adjustment process mandated by both contract, and Florida law.

289. The Market Insurers and this Market Insurer agreed that in the event of a dispute as to the amount of the loss, the dispute would be submitted to an Appraisal Panel selected in the manner dictated by the Master Policy Form.

290. The Market Insurers (through their agent) demanded appraisal of the entire amount of the loss pursuant to Paragraph 50 of the Master Policy.

291. This Market Insurer was aware, well before the Appraisal Panel met to hear evidence as to the amount of the loss, that the dispute as to the amount of the loss had been submitted to appraisal, and—in fact—participated in numerous conferences regarding that appraisal well before the hearing by the Appraisal Panel.

292. This Market Insurer has materially breached the contract (this Market Insurer's policy) for reasons delineated in the Allegations Common to all Counts; such breaches include, without limitation, this Market Insurer's:

- (a) failure to promptly adjust the claim;
- (b) failure to complete the adjustment of the claim;
- (c) failure to fully adjust the claim;
- (d) failure to communicate its findings as to the amount of the loss to its insured;
- (e) failure to approve or disapprove invoices submitted for the repair and/or replacement of property damaged by the insured event;
- (f) failure to designate "advance" payments made to specific damages, thereby leaving Portofino to guess as to how those advanced payments were to be applied;
- (g) failure to fully and timely pay the amount of the loss once it was determined under the appraisal process;
- (h) failure to timely pay the appraisal awards; and
- (i) failure to otherwise fully and timely indemnify Portofino pursuant to the Policies as a result of the covered loss.

293. Portofino has suffered damages (in the form of, without limitation, insurance proceeds that have not been paid, interest, costs, fees, attorney's fees) as a result of the breach of contract by this Market Insurer.

294. In addition to general damages, Portofino has incurred special damages which has included, without limitation, higher insurance premiums as a result of there being an "open" claim not paid by this Market Insurer and the other Market Insurers; being "black-balled" by the Market Insurers from market insurance; incurring interest on loans obtained to pay for incurred costs that this Market Insurer and the other Market Insurers have failed and refused to pay in a timely manner, attorneys' fees, the costs of the appraisal, expert witness fees, costs of temporary repairs, and loss of use of the property, none of which would have been incurred had this Market Insurer honored its contractual and legal obligations to promptly, fully and completely pay this loss.

295. Portofino is entitled to recover costs, attorneys' fees and paralegal / legal assistant fees pursuant to Florida Statutes §§ 626.9373 and/or 626.911 and 57.104, and 57.041.

WHEREFORE, Portofino prays for a judgment against Homeland Insurance Company of New York for damages, including general and special damages, interest, costs, attorneys' fees and paralegal / legal assistant fees pursuant to

Florida Statutes §§ 626.9373 and/or 626.911, and 57.104, and 57.041, and such other and further relief as this Court finds just and proper.

DEMAND FOR JURY TRIAL

Portofino demands trial by jury to the extent the claim is not fully resolved by appraisal.

Respectfully Submitted,

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