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6 XL AMERICA, INC., XL INSURANCE AMERICA, INC.,  
XL SELECT PROFESSIONAL, PEARL INSURANCE GROUP, LLC,  
7 GREENWICH INSURANCE GROUP

8 **UNITED STATES BANKRUPTCY COURT**

9 **FOR THE DISTRICT OF NEVADA**

10 In re:  
11 AMERI-DREAM REALTY, LLC  
12  
13 Debtor.

Case No.: 15-10110-led  
Chapter 7  
Adversary Proceeding No. 15-01183-led

14 VICTORIA NELSON, In Her Capacity As The  
Chapter 7 Trustee Of AMERI-DREAM  
15 REALTY, LLC,

16 Plaintiff,

17 v.

18 XL AMERICA, INC.; XL INSURANCE  
19 AMERICA, INC.; XL SELECT  
PROFESSIONAL; PEARL INSURANCE  
20 GROUP, LLC; GREENWICH INSURANCE  
COMPANY; and DOES I through X; and ROE  
21 CORPORATE DEFENDANTS XI through XX,

22 Defendants.

**DEFENDANTS' MOTION TO WITHDRAW  
THE REFERENCE OF THIS ADVERSARY  
PROCEEDING PURSUANT TO 28 U.S.C. §  
157(d) AND FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 5011, JURY  
DEMAND, AND SUPPORTING  
MEMORANDUM OF LAW**

**Hearing Date: OST Requested  
Hearing Time: OST Requested**

23 XL AMERICA, INC., XL INSURANCE AMERICA, INC., XL SELECT PROFESSIONAL,  
24 PEARL INSURANCE GROUP, LLC, and GREENWICH INSURANCE COMPANY (collectively  
25 "Insurers" or "Defendants") by and through their counsel, WILSON ELSER MOSKOWITZ  
26 EDELMAN & DICKER, hereby submits this Motion to Withdraw Reference of this Adversary  
27 Proceeding Pursuant to 28 U.S.C. § 157(d) and Federal Rule Of Bankruptcy Procedure 5011  
28 ("Motion"), Jury Demand, and Memorandum of Law in support of their Motion to Withdraw the

1 Reference of this Adversary Proceeding Pursuant to 28 U.S.C. § 157(d) and Federal Rule of  
2 Bankruptcy Procedure 5011 and its Jury Demand. In support of their Motion and Jury Demand, the  
3 Insurers respectfully state as follows.

#### 4 INTRODUCTION

5 The Complaint alleges causes of action for Breach of Contract, Breach of Implied Covenant  
6 of Good Faith and Fair Dealing, Breach of Fiduciary Duty, Violations of NRS 686A.310, and  
7 Declaratory Relief. The Complaint alleges that the Insurers are required to reimburse the Debtor for  
8 the loss of certain “Security Deposits” (as defined below). The causes of action asserted in the  
9 Complaint arise out of state law. The causes of action fall within the non-core, related-to jurisdiction  
10 of the Bankruptcy Court because they do not arise under the Bankruptcy Code and could arise  
11 outside of a bankruptcy case. Contemporaneously herewith, the Insurers have filed a Motion to  
12 Dismiss. The Motion to Dismiss also raises issues of state coverage law that fall within the  
13 Bankruptcy Court’s non-core, related-to jurisdiction. Further, in the event the Motion to Dismiss is  
14 denied, the Insurers hereby demand a jury trial on all issues. If the Motion to Dismiss is denied, the  
15 Insurers intend to file an Answer and Counterclaim.

16 The Court should grant the Defendants’ Motion to Withdraw the Reference because the  
17 Complaint sets forth causes of action for non-core matters and the Defendants can show cause for the  
18 withdrawal of the reference because they have a right to a jury trial on all factual issues to be decided  
19 in this case. The Insurers submit that the Court should withdraw the reference *now* because: (1) the  
20 claims fall within the Bankruptcy Court’s non-core/related-to jurisdiction; (2) the Insurers have not  
21 consented to the entry of final orders or judgments by the Bankruptcy Court; and (3) the Insureds  
22 have made the Jury Demand contained herein. Thus, the Bankruptcy Court can only make proposed  
23 findings of fact and conclusions of, which the District Court must review *de novo*. The Bankruptcy  
24 Court does not possess any special knowledge or training with respect to the insurance coverage  
25 issues in this case; which arise under Nevada state law. Thus, if the Motion to Withdraw the  
26 Reference is not granted, the Bankruptcy Court and District Court could both be required to use their  
27 limited resources decide this case. Such a duplication of effort contradicts the principles of judicial  
28 economy. Further, if the Motion to Withdraw the Reference is denied, the Bankruptcy estate would

1 be required to use its limited resources to brief issues for the Bankruptcy Court, and to re-brief issues  
2 for the District Court's *de novo* review. Thus, the Insurers submit that the Court should grant the  
3 Motion to Withdraw the Reference, now.

#### 4 **BACKGROUND**

5 On January 9, 2015, the Debtor filed voluntary petition for relief under Chapter 7 of Title 11  
6 of the United States Code. ("Bankruptcy Code"). On October 29, 2015, the Trustee filed the  
7 Complaint in the United States Bankruptcy Court for the District of Nevada against the Insurers. The  
8 Complaint asserts five causes of action against the Insurers that are all related to that certain Real  
9 Estate Professionals Errors and Omissions Policy, Policy No. PEG9145932-6 (the "Policy") for the  
10 policy period of June 14, 2013, through June 14, 2014. The Policy was delivered in the State of  
11 Nevada and is governed by Nevada law.

12 The Complaint is related to the actions of Ms. Pelada-Brown a licensed real estate agent. The  
13 Complaint alleges that Ms. Pelada Brown was a member, manager, and property manager for the  
14 Debtor. The Complaint alleges the Debtor managed residential real properties (the "Business") and  
15 that the Debtor held certain security deposits (the "Security Deposits") on behalf of its customers'  
16 tenants. The Security Deposits were held in a separate bank account (the "Security Deposit  
17 Account"). The Complaint also alleges that Ms. Pelada-Brown orchestrated various unauthorized  
18 transactions, which transactions included the wire transfers of the majority of the Security Deposits  
19 to the Philippines in breach of her fiduciary duties.

20 The Complaint further alleges that the Policy constituted a contract between the Debtor and  
21 the Insurers. The First Claim for Relief in the Complaint alleges that the Insurers breached the  
22 contract by not reimbursing the Debtor for the loss of Security Deposits as required under the Policy.  
23 The Complaint also alleges, that by not reimbursing the Debtor for the loss of the Security Deposits,  
24 the Insurers: (1) breached the Implied Covenant of Good Faith and Fair Dealing with respect to the  
25 Policy; (2) breached certain fiduciary duties to Debtor; and (3) engaged in unfair business practices  
26 in settling claims in violation of NRS 686A.310. Finally, the Complaint seeks Declaratory Relief  
27 and requests that the Court determine "whether the Policy requires the Insurers to reimburse the  
28 [Debtor] for the actions of Ms. Pelada-Brown and the loss of the Security Deposits.

1 Contemporaneously with this motion, the Insurers have filed a Motion to Dismiss pursuant to  
2 Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Insurers do not consent to a jury trial in  
3 Bankruptcy Court and have made the Jury Demand set forth herein. If the Motion to Dismiss is  
4 denied, the Insurers will file their Answer and Counterclaim. If the Insurers are required to file an  
5 Answer and Counterclaim, they will seek a ruling that the Policy does not require the Insurers to  
6 reimburse the Debtor for the loss of the Security Deposits.

7 **RELIEF REQUESTED**

8 The Insurers request that the Court grant the Motion to Withdraw the Reference of this  
9 Adversary Proceeding and that it accept the Insured's Jury Demand contained herein.

10 **ARGUMENT**

11 "The district court may withdraw, in whole or in part, any case or proceeding referred under  
12 this section, on its own motion or on timely motion of any party, for cause shown." 28 U.S.C. §  
13 157(d). The Motion is timely filed because it is being filed contemporaneously with the Rule  
14 12(b)(6) Motions to Dismiss and the Jury Demand.

15 The Bankruptcy Code does not define what constitutes cause under 28 § 157(d). However,  
16 courts have looked at a number of factors, including, (1) whether action is core or non-core; (2)  
17 judicial economy, (3) uniform bankruptcy administration, (4) reduction of forum shopping, (5)  
18 economical use of debtors' and creditors['] resources, (6) expediting the bankruptcy process, and (7)  
19 the presence of a jury demand"). See *In re Access Insurance Services, Inc.* 2014 WL 6065641  
20 (U.S.D.C Nev. 2014)(citing *Sec. Farms v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen &*  
21 *Helpers*, 124 F.3d 999, 1008 (9th Cir.1999))(citing *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101  
22 (2d Cir.1993)).

23 In the case at bar, cause exists to withdraw the reference because the Insurers would be  
24 entitled to a jury trial on numerous factual issues if the Court denies the Insurers' Motion to Dismiss.  
25 The Insurers submit that the Court should withdraw the reference, now, because the causes of action  
26 set forth in the Complaint are non-core, and the Bankruptcy Court cannot enter final orders or  
27 judgments on such matters without the Insurers' consent. The Insurers have not consented and will  
28 not consent. Therefore, if this case proceeds in the Bankruptcy Court, the District Court would have

1 to review the Bankruptcy Court's findings and conclusions *de novo*. This would result in a  
2 duplication of judicial effort. Withdrawing the reference now, promotes judicial economy and also  
3 conserves the assets of the bankruptcy estate.

4 **I. The Motion Is Timely**

5 A motion for withdrawal of the reference pursuant to 28 § 157(d) must be timely filed in  
6 accordance with Local Rule 5011. Local Rule 5011 provides that “[a] motion to withdraw the  
7 reference of an adversary proceeding, in whole or in part, must be served and filed on or before the  
8 date on which an answer, reply, or motion under Fed. R. Bankr. P. 7012 or 7015 is first due.” *See*  
9 *also, In re McPherson*, 2014 WL 6611432 (USDC Nev. 2014) The Insurers were served on  
10 November 25, 2015 and they have until December 26, 2015 to respond. Thus, the Court should find  
11 that the Motion is timely filed.

12 **II. The Insurers' Right to a Jury Trial Is Sufficient Cause to Withdraw the Reference**

13 The Insurers have a right to a jury trial on factual issues in this Adversary Proceeding. That  
14 fact alone provides cause for the Court to withdraw the reference.

15 **A. There Are a Number of Factual Issues that Might Be Raised in this Case**

16 The Complaint asserts several non-core causes of action arising under state law. If the  
17 Insurers do not prevail on their Motion to Dismiss, then the Insurers would be required to contest  
18 multiple factual issues. For example, the Insurers may be required to contest that the Trustee is  
19 entitled to recover under an “Innocent Insured” theory. There would likely be factual issues of  
20 whether Mr. Brown assisted Ms. Peladas-Brown. There would likely be factual issues of whether  
21 Mr. Brown remained passive after having knowledge of the dishonest/fraudulent conduct of Ms.  
22 Peladas-Brown.

23 **B. The Insurers Are Entitled to Jury Trial on Any Factual Issues in this Case**

24 The Insurers would be entitled to a jury trial on the factual issues discussed above, among  
25 others. There can be no doubt that the Insurers are entitled to a jury trial on the Plaintiff's claims for  
26 breach of contract, breach of fiduciary duty, and engaging in unfair business practices in settling  
27 claims in violation of NRS 686A.310. *See e.g. In re PW Supermarkets, Inc.*, 2015 WL 4456213  
28 (USBC N.D. Cal. 2015). As the Insurers have not consented to a jury trial in the Bankruptcy Court,

1 the jury trial must be conducted in the District Court and the case must be certified to the District  
2 Court in accordance with Local Rule 9015.

3 **III. Because the Claims in this Case Are Non-Core, Withdrawal of the Reference, Now,  
4 Would Serve Judicial Economy**

5 The claims in this case are non-core. Therefore, the Bankruptcy Court cannot enter final  
6 order or judgments with respect to such claims, but only findings of fact and conclusions of law. 28  
7 U.S.C. § 157(c)(1). This Court must review the Bankruptcy Court's findings and conclusions *de*  
8 *novo*, *i.e.*, conduct its own independent assessment of the facts and provide its own independent  
9 review of the law. *Id.* That duplication of judicial effort can be avoided if the Court withdraws the  
10 reference at this time. Withdrawal of the reference, now, would eliminate the multiple rounds of  
11 briefing that would be necessary should this case proceed in the Bankruptcy Court.

12 **A. The Claims at Issue in this Case Fall Within the Bankruptcy Court's Non-Core,  
13 Related-To Jurisdiction**

14 One of the most important of the factors that courts use in determining whether there is cause  
15 to withdraw the reference is whether the claims sought to be withdrawn are core or non-core. *In re*  
16 *PW Supermarkets, Inc.*, 2015 WL 4456213 (USBC N.D. Cal. 2015).

17 Bankruptcy courts may issue final judgments and orders in connection with "core  
18 proceedings." 28 U.S.C. § 157(b)(1). 28 U.S.C. § 157(b)(2)(A)-(P) contains a non-exhaustive list of  
19 "core proceedings." The United States Supreme Court has held that in certain cases, bankruptcy  
20 courts lack constitutional authority to enter final judgments on "core" claims. *Stern v. Marshall*, 131  
21 S.Ct. 2594, 2608–20 (2011). A bankruptcy court may also hear "non-core" proceedings that are  
22 otherwise related to the bankruptcy case. 28 U.S.C. § 157(c)(1). A bankruptcy court cannot,  
23 however, enter a final order or judgment on non-core claims without the consent of all parties. 28  
24 U.S.C. § 157(c)(2). In lieu of entering a final order on non-core claims that are otherwise related to  
25 the bankruptcy case, a bankruptcy court "shall submit proposed findings of fact and conclusions of  
26 law to the district court, and any final order or judgment shall be entered by the district judge after  
27 considering the bankruptcy court's proposed findings and conclusions and after reviewing *de novo*  
28 those matters to which any party has timely and specifically objected." 28 U.S.C. § 157(c)(1).

1 The Complaint sets forth claims for relief that arise entirely under Nevada law and are non-  
2 core. The Insurers have not consented to this court entering a final judgment herein. 28 U.S.C. §  
3 157(e) authorizes the bankruptcy court to conduct a jury trial only with the express consent of the  
4 parties, and the Insurers have not consented. The Insurers are entitled to a jury trial on each of the  
5 claims set forth in the Complaint. Thus, the Insurers contend that the Motion to Withdraw the  
6 Reference Must be Granted.

7 **B. Withdrawal of the Reference, Now, Would Promote Judicial Economy, Conserve**  
8 **Judicial and Estate Resources, and Reduce Delay and Costs**

9 Because the claims in this case are non-core, prompt withdrawal of the reference would serve  
10 judicial economy and conserve the bankruptcy estate's resources.

11 Because this is a non-core proceeding, the Bankruptcy Court cannot enter final orders or  
12 judgments without the consent of the parties; it can enter only findings of fact and conclusions of  
13 law that would be subject to *de novo* review by the District Court. 28 U.S.C. § 157(c); The Insurers  
14 have not consented (and will not consent) to the entry of final orders or a judgment by the  
15 Bankruptcy Court.

16 This case is only now beginning. The Bankruptcy Court has scheduled its first pre-trial  
17 conference in this case for January 25, 2016. No discovery deadline has been set. No dispositive  
18 motion deadline has been set. No final pretrial conference has been set. To date, no motion other  
19 than this Motion and the Motion to Dismiss has been filed. Thus, the Bankruptcy Court has no  
20 particular familiarity with the insurance coverage law at issue in this case, the facts relevant to  
21 determining insurance coverage, or any of the issues that will be briefed by the parties. Moreover,  
22 because there is no bankruptcy law at issue in this case, the Bankruptcy Court's expertise is not  
23 required. Thus, there is nothing to be gained by delaying withdrawal in anticipation of Bankruptcy  
24 Court rulings that will not be forthcoming for some time and which would be subject to *de novo*  
25 review by this Court in any event. *Bulk Petroleum Corp.*, 2011 U.S. Dist. LEXIS 21495, \*2 (citing  
26 *Travelers Ins. Co. v. Goldberg*, 135 B.R. 788, 792 (D. Md. 1992); *In re CIS Corp.*, 172 B.R. 748,  
27 760 (S.D.N.Y. 1994); *Coe-Truman Techs.*, 214 B.R. at 187)).

28 Several courts have granted motions to withdraw references in cases involving insurance

1 coverage issues and similar non-core matters. For example, in *In re ARCHDIOCESE OF*  
2 *MILWAUKEE*, 2013 WL 660018 (USDC E.D. Wisc. 2013), the Court granted the Defendant  
3 Insurer's motion to withdraw the reference. In so doing, the Court stated that it was better to  
4 withdraw the reference early on in the case as opposed to awaiting the outcome of lengthy and  
5 largely duplicative proceedings in bankruptcy court. *Id.* The Court also pointed out that the issues  
6 presented by the underlying claims were separate and distinct from insurance coverage issues. *See,*  
7 *e.g.*, *In re Allied Prods.*, No. 02 C 8436, 2003 WL 503805, at \*2 (N.D.Ill. Feb. 24, 2003) ("the  
8 bankruptcy court is in no better position to resolve the insurance dispute than a district court because  
9 its familiarity with the bankruptcy case has no bearing on the insurance issues").

10 Similarly, in *INNOVASYSTEMS, INC., v. PROVERIS SCIENTIFIC CORPORATION*,  
11 2013 WL 5539288 (U.S.D.C. Dist. NJ 2013), the Court promptly granted the Defendant's Motion  
12 for Withdrawal of the Reference. In so doing, the Court primarily relied on two factors. First,  
13 withdrawal was necessary to preserve Defendant's right to a jury trial, as bankruptcy courts are  
14 prohibited from holding jury trials in non-core matters. *Id.* (citing *Orion Pictures Corp. v. Showtime*  
15 *Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1101 (2d Cir.1993). Further, the Court  
16 held that judicial resources "would be most efficiently allocated by withdrawal, given the expertise  
17 and presence of magistrate judges in district court proceedings. Magistrate judges are well  
18 experienced in the discovery issues that arise in non-core proceedings, and litigants and the Court are  
19 well served by their involvement. Given the fact the Bankruptcy Court lacks this recourse,  
20 withdrawal is appropriate."

21 As these cases demonstrate, withdrawing the reference now would mean that only one Court  
22 must familiarize itself with the relevant facts and law in this case, rather than two, thus preserving  
23 scarce judicial resources. Similarly, because this Court is required to review the Bankruptcy Court's  
24 findings and conclusions *de novo*, withdrawing the reference now would preserve estate resources as  
25 the parties would not have to re-litigate issues. Thus, the Court should grant the Motion at this time.

26 **C. The Other Factors Relied Upon by Courts in Determining Whether There Is**  
27 **Cause to Withdraw the Reference Are Irrelevant Here**

28 The other factors used by courts in analyzing whether cause exists to withdraw the



1 reference are irrelevant here. The uniformity and efficiency of bankruptcy administration  
2 would be unaffected by withdrawal, as this adversary proceeding addresses issues of state  
3 law that would not otherwise be addressed in the bankruptcy case. Moreover, the fact that  
4 the Insurers are not forum shopping, having not previously litigated any matters in front of  
5 Judge Davis, should make that factor irrelevant to the Court's decision.

6 **CONCLUSION**

7 The Defendants respectfully request that the Court grant the Motion and withdraw the  
8 reference to this Adversary Proceeding at this time.

9 DATED this 23rd day of December, 2015.

10 WILSON ELSER MOSKOWITZ EDELMAN &  
11 DICKER LLP

12 /s/ Vernon A. Nelson, Jr.

Vernon A. Nelson, Jr., Esq.

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17 XL AMERICA, INC., XL INSURANCE

AMERICA, INC.,

18 XL SELECT PROFESSIONAL, PEARL

INSURANCE GROUP, LLC,

19 GREENWICH INSURANCE GROUP

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**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that I am an employee of WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP, and that on this 23rd day of December, 2015, I served a true and correct copy of the foregoing **DEFENDANTS’ MOTION TO WITHDRAW THE REFERENCE OF THIS ADVERSARY PROCEEDING PURSUANT TO 28 U.S.C. § 157(d) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 5011, JURY DEMAND, AND SUPPORTING MEMORANDUM OF LAW** as follows:

- by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
  - via electronic means by operation of the Court’s electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;
- Samuel A. Schwartz, Esq.  
Schwartz Flansburg PLLC  
Email: sam@nvfirm.com  
Attorney for Chapter 7 Trustee, Victoria L. Nelson
- via hand-delivery to the addressees listed below;
  - via facsimile;
  - by transmitting via email the document listed above to the email address set forth below on this date:

BY: /s/ Lani Maile  
An Employee of  
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

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GREENWICH INSURANCE GROUP

**UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF NEVADA**

In re:  
AMERI-DREAM REALTY, LLC  
  
Debtor.

Case No.: 15-10110-led  
  
Chapter 7  
  
Adversary Proceeding No. 15-01183-led

VICTORIA NELSON, In Her Capacity As The  
Chapter 7 Trustee Of AMERI-DREAM  
REALTY, LLC,

Plaintiff,

v.

XL AMERICA, INC.; XL INSURANCE  
AMERICA, INC.; XL SELECT  
PROFESSIONAL; PEARL INSURANCE  
GROUP, LLC; GREENWICH INSURANCE  
COMPANY; and DOES I through X; and ROE  
CORPORATE DEFENDANTS XI through XX,

Defendants.

**ERRATA TO DEFENDANTS' MOTION TO  
WITHDRAW THE REFERENCE OF THIS  
ADVERSARY PROCEEDING PURSUANT  
TO 28 U.S.C. § 157(d) AND FEDERAL  
RULE OF BANKRUPTCY PROCEDURE  
5011, JURY DEMAND, AND SUPPORTING  
MEMORANDUM OF LAW**

***[RELIEF SOUGHT FROM A UNITED  
STATES DISTRICT JUDGE]***

**Hearing Date: January 11, 2016  
Hearing Time: 1:30 p.m.**

XL AMERICA, INC., XL INSURANCE AMERICA, INC., XL SELECT PROFESSIONAL,  
PEARL INSURANCE GROUP, LLC, and GREENWICH INSURANCE COMPANY (collectively  
“Insurers” or “Defendants”) by and through their counsel, WILSON ELSER MOSKOWITZ  
EDELMAN & DICKER, hereby submits this Errata to its Motion to Withdraw (DE #20) to clarify

///

///

1 that relief is sought from a United States District Judge.

2 DATED this 28th day of December, 2015.

3 WILSON ELSER MOSKOWITZ EDELMAN &  
4 DICKER LLP

5 /s/ Vernon A. Nelson, Jr.  
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12 XL SELECT PROFESSIONAL, PEARL  
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GREENWICH INSURANCE GROUP

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XL SELECT PROFESSIONAL, PEARL INSURANCE GROUP, LLC,  
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**UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF NEVADA**

In re:  
AMERI-DREAM REALTY, LLC  
Debtor.

Case No.: 15-10110-led  
Chapter 7  
Adversary Proceeding No. 15-01183-led

VICTORIA NELSON, In Her Capacity As The  
Chapter 7 Trustee Of AMERI-DREAM  
REALTY, LLC,

Plaintiff,

v.

XL AMERICA, INC.; XL INSURANCE  
AMERICA, INC.; XL SELECT  
PROFESSIONAL; PEARL INSURANCE  
GROUP, LLC; GREENWICH INSURANCE  
COMPANY; and DOES I through X; and ROE  
CORPORATE DEFENDANTS XI through XX,

Defendants.

**DESIGNATION OF THE RECORD TO  
DEFENDANTS' MOTION TO WITHDRAW  
THE REFERENCE OF THIS ADVERSARY  
PROCEEDING PURSUANT TO 28 U.S.C. §  
157(d) AND FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 5011, JURY  
DEMAND, AND SUPPORTING  
MEMORANDUM OF LAW**

***[RELIEF SOUGHT FROM A UNITED  
STATES DISTRICT JUDGE]***

Pursuant to Local Rule 5011, Defendants XL AMERICA, INC., XL INSURANCE AMERICA, INC., XL SELECT PROFESSIONAL, PEARL INSURANCE GROUP, LLC, and GREENWICH INSURANCE COMPANY (collectively "Insurers" or "Defendants") by and through their undersigned counsel, WILSON ELSER MOSKOWITZ EDELMAN & DICKER, hereby submits its Designation of the Record for its Motion to Withdraw the Reference of this Adversary Proceeding Pursuant to 28 U.S.C. § 157(d) And Federal Rule Of Bankruptcy Procedure 5011, Jury

1 Demand, And Supporting Memorandum Of Law.

2 **DESIGNATION OF THE RECORD**

- 3 1. Adversary Complaint (Dkt. No. 1).
- 4 2. Plaintiff's Motion for Summary Judgment (Dkt No. 16).
- 5 3. Plaintiff's Statement of Undisputed Facts (Dkt. No. 17).
- 6 4. Notice of Hearing on Plaintiff's Motion for Summary Judgment (Dkt. No. 18).
- 7 5. Defendants' Motion to Withdraw the Reference of this Adversary Proceeding  
8 Pursuant to 28 U.S.C. § 157(d) And Federal Rule Of Bankruptcy Procedure 5011, Jury Demand,  
9 And Supporting Memorandum Of Law (Dkt. No. 20).
- 10 6. Ex Parte Motion for Order Shortening Time (Dkt. No. 22).
- 11 7. Greenwich Insurance Company's Motion to Dismiss Case Pursuant to Fed. R. Civ.  
12 Pro. 12(B)(6) (Dkt. No. 24).
- 13 8. XL America, Inc., XL Insurance America, Inc., XL Select Professional, Pearl  
14 Insurance Group, LLC's Motion to Dismiss Case Pursuant to Fed. R. Civ. Pro. 12(B)(6) (Dkt. No.  
15 25).
- 16 9. Jury Demand (Dkt. No. 26).
- 17 10. Notice of Hearing on XL America, Inc., XL Insurance America, Inc., XL Select  
18 Professional, Pearl Insurance Group, LLC's Motion to Dismiss Case Pursuant to Fed. R. Civ. Pro.  
19 12(B)(6) (Dkt. No. 27).
- 20 11. Notice of Hearing on Greenwich Insurance Company's Motion to Dismiss Case  
21 Pursuant to Fed. R. Civ. Pro. 12(B)(6) (Dkt No. 28).
- 22 12. Order Granting Motion for Order Shortening Time (Dkt. No. 30).
- 23 13. Errata to Defendants' Motion to Withdraw the Reference of this Adversary  
24 Proceeding Pursuant to 28 U.S.C. § 157(d) And Federal Rule Of Bankruptcy Procedure 5011, Jury  
25 Demand, And Supporting Memorandum Of Law (Dkt. No. 32).

26 Defendants' respectfully request that the Court consider this Designation and that the Clerk  
27 transmit the appropriate documents to the United States District Court of the District of Nevada for  
28 the entry of an order granting its Motion to Withdraw the Reference and such other and further relief

1 as may be just and proper.

2 DATED this 28th day of December, 2015.

3 WILSON ELSER MOSKOWITZ EDELMAN &  
4 DICKER LLP

5 /s/ Vernon A. Nelson, Jr.  
6 Vernon A. Nelson, Jr., Esq.  
7 Nevada Bar No. 6434  
8 300 South 4<sup>th</sup> Street, 11<sup>th</sup> Floor  
9 Las Vegas, Nevada 89101  
10 Telephone: (702) 727-1400

11 Attorneys for Defendants  
12 XL AMERICA, INC., XL INSURANCE  
13 AMERICA, INC.,  
14 XL SELECT PROFESSIONAL, PEARL  
15 INSURANCE GROUP, LLC,  
16 GREENWICH INSURANCE GROUP

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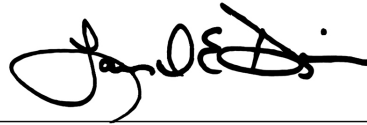
**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that I am an employee of WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP, and that on this 28th day of December, 2015, I served a true and correct copy of the foregoing **DESIGNATION OF THE RECORD TO DEFENDANTS' MOTION TO WITHDRAW THE REFERENCE OF THIS ADVERSARY PROCEEDING PURSUANT TO 28 U.S.C. § 157(d) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 5011, JURY DEMAND, AND SUPPORTING MEMORANDUM OF LAW** as follows:

- by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;
 

Samuel A. Schwartz, Esq.  
Schwartz Flansburg PLLC  
Email: sam@nvfirm.com  
Attorney for Chapter 7 Trustee, Victoria L. Nelson
- via hand-delivery to the addressees listed below;
- via facsimile;
- by transmitting via email the document listed above to the email address set forth below on this date:

BY: /s/ Lani Maile  
An Employee of  
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP



Honorable Laurel E. Davis  
United States Bankruptcy Judge



Entered on Docket  
December 31, 2015

Samuel A. Schwartz, Esq.  
Nevada Bar No. 10985  
Bryan A. Lindsey, Esq.  
Nevada Bar No. 10662  
Schwartz Flansburg PLLC  
6623 Las Vegas Blvd. South, Suite 300  
Las Vegas, Nevada 89119  
Telephone: (702) 385-5544  
Facsimile: (702) 385-2741  
Attorneys for the Chapter 7 Trustee, Victoria L. Nelson

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re:	)	Case No.: 15-10110-LED
	)	
AMERI-DREAM REALTY, LLC,	)	Chapter 7
	)	
Debtor.	)	
	)	
<u>VICTORIA NELSON, In Her Capacity As The</u>	)	
Chapter 7 Trustee Of AMERI-DREAM	)	
REALTY, LLC,	)	Adv. Proceeding No.: 15-01183-LED
Plaintiff,	)	
	)	
vs.	)	
	)	
XL AMERICA, INC.; XL INSURANCE	)	
AMERICA, INC.; XL SELECT	)	
PROFESSIONAL; PEARL INSURANCE	)	
GROUP, LLC; GREENWICH INSURANCE	)	Hearing Date: January 11, 2016
COMPANY; and DOES I through X; and ROE	)	Hearing Time: 1:30 p.m.
CORPORATE DEFENDANTS XI through	)	
XX,	)	
Defendants.	)	
	)	

**ORDER APPROVING STIPULATION REGARDING DEFENDANTS’ MOTION TO WITHDRAW THE REFERENCE AND OTHER PENDING MOTIONS**

Victoria L. Nelson, in her capacity as the Chapter 7 Trustee (the “**Plaintiff**” or the “**Trustee**”) of Ameri-Dream Realty, LLC (the “**Debtor**” or the “**Company**”), by and through her attorneys of record, Schwartz Flansburg PLLC, and XL America, Inc., XL Insurance America, Inc., XL Select Professional, Pearl Insurance Group, LLC and Greenwich Insurance Company (collectively, the “**Defendants**”), by and through their attorneys of record, Wilson, Elser, Moskowitz, Edelman & Dicker LLP, having stipulated and agreed as provided in that certain Stipulation Regarding Defendants’ Motion to Withdraw the Reference and Other Pending Motions (the “**Stipulation**”); and the Court having considered the Stipulation and finds that the relief requested in the Stipulation is appropriate and sufficient cause exists to grant the relief; and for good cause appearing, it is hereby:

**ORDERED** that the Stipulation, attached hereto as **Exhibit A**, is approved; and it is further

**ORDERED** that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Submitted by:

Schwartz Flansburg PLLC

By /s/ Samuel A. Schwartz  
SAMUEL A. SCHWARTZ, ESQ. #10985  
Attorneys for the Chapter 7 Trustee, Victoria L. Nelson

# Exhibit A

Samuel A. Schwartz, Esq.  
Nevada Bar No. 10985  
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Nevada Bar No. 10662  
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6623 Las Vegas Blvd. South, Suite 300  
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Attorneys for the Chapter 7 Trustee, Victoria L. Nelson

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re:	)	Case No.: 15-10110-LED
	)	
AMERI-DREAM REALTY, LLC,	)	Chapter 7
	)	
Debtor.	)	
	)	
<hr/>	)	
VICTORIA NELSON, In Her Capacity As The	)	
Chapter 7 Trustee Of AMERI-DREAM	)	
REALTY, LLC,	)	Adv. Proceeding No.: 15-01183-LED
Plaintiff,	)	
	)	
vs.	)	
	)	
XL AMERICA, INC.; XL INSURANCE	)	
AMERICA, INC.; XL SELECT	)	
PROFESSIONAL; PEARL INSURANCE	)	
GROUP, LLC; GREENWICH INSURANCE	)	Hearing Date: January 11, 2016
COMPANY; and DOES I through X; and ROE	)	Hearing Time: 1:30 p.m.
CORPORATE DEFENDANTS XI through	)	
XX,	)	
Defendants.	)	
<hr/>	)	

**STIPULATION REGARDING DEFENDANTS’ MOTION TO  
WITHDRAW THE REFERENCE AND OTHER PENDING MOTIONS**

Victoria L. Nelson, in her capacity as the Chapter 7 Trustee (the “**Plaintiff**” or the “**Trustee**”) of Ameri-Dream Realty, LLC (the “**Debtor**” or the “**Company**”), by and through her attorneys of record, Schwartz Flansburg PLLC, and XL America, Inc., XL Insurance

1 America, Inc., XL Select Professional, Pearl Insurance Group, LLC and Greenwich Insurance  
2 Company (collectively, the “**Defendants**”), by and through their attorneys of record, Wilson,  
3 Elser, Moskowitz, Edelman & Dicker LLP, hereby stipulate and agree to the following:

4 WHEREAS, on January 9, 2015, the Company filed a voluntary petition for relief  
5 under Chapter 7 of the United States Bankruptcy Code, whereby the Trustee was appointed as  
6 Chapter 7 Trustee;

7  
8 WHEREAS, on October 29, 2015, the Trustee initiated the above-captioned adversary  
9 complaint (the “**Complaint**”) against the Defendants, thereby commencing this adversary  
10 proceeding (the “**Adversary Proceeding**”);

11  
12 WHEREAS, December 22, 2015, the Trustee filed her Motion for Summary Judgment  
13 (the “**MSJ**”);

14  
15 WHEREAS, on December 23, 2015, the Defendants filed their Motion to Withdraw  
16 the Reference of this Adversary Proceeding (the “**Withdrawal Motion**”);

17  
18 WHEREAS, on December 23, 2015, Defendants XL America, Inc., XL Insurance  
19 America, Inc., XL Select Professional and Pearl Insurance Group, LLC filed their Motion to  
20 Dismiss the Complaint, and that same day, Defendant Greenwich Insurance Company filed its  
21 Motion to Dismiss the Complaint (collectively, the “**MTDs**”);

22  
23 WHEREAS, on December 28, 2015, this Court entered an order shortening time (the  
24 “**OST**”) for hearing on the Withdrawal Motion, setting a hearing for January 11, 2016, at 1:30  
25 p.m., and setting opposition and reply briefing deadlines for January 4, 2016, and January 8,  
26 2016, respectively;

1 WHEREAS, as the Withdrawal Motion needs to be heard by a district court judge, the  
2 parties hereby desire to stipulate and agree that all briefing deadlines for the Withdrawal  
3 Motion will be set by the district court; and

4 WHEREAS, the parties also desire to stipulate and agree that once the Withdrawal  
5 Motion is heard and decided by the district court, the parties will agree to appropriate hearing  
6 dates and briefing deadlines for the MSJ and MTDs, either before the district court or the  
7 bankruptcy court, pending the outcome of the Withdrawal Motion.  
8

9 NOW, THEREFORE, the Trustee and Defendants hereby stipulate and agree to the  
10 following, and concurrently seek this Court's approval of the same.

11 IT IS HEREBY STIPULATED AND AGREED that the all briefing deadlines with  
12 respect to the Withdrawal Motion shall be set by the district court; and  
13

14 IT IS FURTHER STIPULATED AND AGREED that this Court's hearing on the  
15 Withdrawal Motion, currently scheduled for January 11, 2016, at 1:30 p.m., along with all  
16 related briefing deadlines set forth in the OST, shall be vacated; and  
17

18 IT IS FURTHER STIPULATED AND AGREED that pending the district court's  
19 decision on the Withdrawal Motion, the parties shall address appropriate hearing dates and  
20 briefing deadlines for the MSJ and MTDs; and

21 IT IS FURTHER STIPULATED AND AGREED that at the Scheduling Conference  
22 on January 25, 2016, at 1:30 p.m., the parties shall discuss the status of the Withdrawal  
23 Motion before the district court and if appropriate, address appropriate hearing dates and  
24 briefing deadlines for the MSJ and MTD.  
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1 Date: December 30, 2015

Date: December 30, 2015

2 /s/ Samuel A. Schwartz

/s/ Vernon A. Nelson

3 Samuel A. Schwartz, Esq.

Vernon A. Nelson, Esq.

4 Nevada Bar No. 10985

Nevada Bar No. 6434

5 Bryan A. Lindsey, Esq.

Wilson, Elser, Moskowitz,

6 Nevada Bar No. 10662

Edelman & Dicker LLP

7 The Schwartz Law Firm, Inc.

300 South 400 Street, Suite 1100

8 6623 Las Vegas Blvd. South, Suite 300

Las Vegas, Nevada 89101

9 Las Vegas, Nevada 89119

Attorneys for the Defendants

10 Attorneys for Chapter 7 Trustee

11 Submitted by:

12 Schwartz Flansburg PLLC

13 By /s/ Samuel A. Schwartz

14 SAMUEL A. SCHWARTZ, ESQ. #10985

15 Attorneys for the Chapter 7 Trustee, Victoria L. Nelson



E-Filed: January 7, 2016

Samuel A. Schwartz, Esq.  
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Bryan A. Lindsey, Esq.  
Nevada Bar No. 10662  
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Las Vegas, Nevada 89119  
Telephone: (702) 385-5544  
Facsimile: (702) 385-2741  
Attorneys for the Plaintiff,  
Victoria L. Nelson, Chapter 7 Trustee

**THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA**

In re:	)	Case No.: 15-10110-LED
	)	
AMERI-DREAM REALTY, LLC,	)	Chapter 7
	)	
Debtor.	)	
	)	
_____	)	Adversary Case No. 15-01183-LED
VICTORIA NELSON, In Her Capacity As The	)	
Chapter 7 Trustee Of AMERI-DREAM	)	<b>SUPPLEMENTAL DESIGNATION OF</b>
REALTY, LLC,	)	<b>RECORD TO DEFENDANTS' MOTION</b>
	)	<b>TO WITHDRAW THE REFERENCE OF</b>
Plaintiff,	)	<b>THIS ADVERSARY PROCEEDING</b>
	)	<b>PURSUANT TO 28 U.S.C. § 157(d) AND</b>
vs.	)	<b>FEDERAL RULE OF BANKRUPTCY</b>
	)	<b>PROCEDURE 5011, JURY DEMAND, AND</b>
	)	<b>SUPPORTING MEMORANDUM OF LAW</b>
ELSIE PELADAS-BROWN,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff, Victoria L. Nelson, by and through her attorneys, Schwartz Flansburg PLLC, hereby designates the following Supplemental Designation of Record:

///

///

**PLEADINGS FROM ADVERSARY CASE NO. 15-01087-LED**

<b>Docket No.</b>	<b>Dated</b>	<b>Title of Pleading</b>
1	05/21/2015	Adversary Complaint
11	08/28/2015	Motion for Summary Judgment
13	08/31/2015	Request for Default
14	08/31/2015	Declaration of Bryan A. Lindsey, Esq. in Support of Ex Parte Request for Entry of Default
15	09/01/2015	Statement of Undisputed Facts in Support of Plaintiff's Motion for Summary Judgment
17	09/01/2015	Clerk's Entry of Default Against Elsie-Peladas-Brown
18	10/08/2015	Amended Statement of Undisputed Facts in Support of Motion for Summary Judgment
20	10/27/2015	Findings of Fact and Conclusions of Law
21	10/27/2015	Order Granting Motion for Summary Judgment
22	10/28/2015	Notice of Entry of Order/Judgment of Findings of Fact and Conclusions of Law

Dated this 7th day of January, 2016

Respectfully Submitted,

/s/Samuel A. Schwartz

Samuel A. Schwartz, Esq., NBN #10985

Bryan A. Lindsey, Esq., NBN #10662

Schwartz Flansburg PLLC

6623 Las Vegas Blvd. South, Suite 300

Las Vegas, Nevada 89119

Telephone: (702) 385-5544

Facsimile: (702) 385-2741

Attorneys for the Plaintiff,

Victoria L. Nelson, Chapter 7 Trustee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent electronically via the Court's CM/ECF System on January 7, 2016, to the following:

VERNON A NELSON, JR on behalf of Defendant GREENWICH INSURANCE COMPANY  
vernon.nelson@wilsonelser.com,  
lani.maile@wilsonelser.com;karissa.neff@wilsonelser.com;EfileLasVegas@wilsonelser.com;annemarie.gourley@wilsonelser.com

VERNON A NELSON, JR on behalf of Defendant PEARL INSURANCE GROUP, LLC  
vernon.nelson@wilsonelser.com,  
lani.maile@wilsonelser.com;karissa.neff@wilsonelser.com;EfileLasVegas@wilsonelser.com;annemarie.gourley@wilsonelser.com

VERNON A NELSON, JR on behalf of Defendant XL AMERICA, INC.  
vernon.nelson@wilsonelser.com,  
lani.maile@wilsonelser.com;karissa.neff@wilsonelser.com;EfileLasVegas@wilsonelser.com;annemarie.gourley@wilsonelser.com

VERNON A NELSON, JR on behalf of Defendant XL INSURANCE AMERICA, INC.  
vernon.nelson@wilsonelser.com,  
lani.maile@wilsonelser.com;karissa.neff@wilsonelser.com;EfileLasVegas@wilsonelser.com;annemarie.gourley@wilsonelser.com

VERNON A NELSON, JR on behalf of Defendant XL SELECT PROFESSIONAL  
vernon.nelson@wilsonelser.com,  
lani.maile@wilsonelser.com;karissa.neff@wilsonelser.com;EfileLasVegas@wilsonelser.com;annemarie.gourley@wilsonelser.com

/s/Christy L. Cahall  
Christy L. Cahall