

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

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 In re:) Case No. 2:16-cv-00060-JAD-GWF
)
10 AMERI-DREAM REALTY, LLC,) Bankruptcy Case No.: 15-10110-LED
)
11 Debtor.) Chapter 7
)

12 _____)
)
13 VICTORIA NELSON, In Her Capacity As The)
)
14 Chapter 7 Trustee Of AMERI-DREAM)
)
15 REALTY, LLC,) Adv. Proceeding No.: 15-01183-LED
)
16 Plaintiff,)
)

17 vs.) **PLAINTIFF’S MOTION FOR**
) **SUMMARY JUDGMENT**
)

18)
)
19 XL AMERICA, INC.; XL INSURANCE)
)
20 AMERICA, INC.; XL SELECT)
)
21 PROFESSIONAL; PEARL INSURANCE)
)
22 GROUP, LLC; GREENWICH INSURANCE)
)
23 COMPANY; and DOES I through X; and ROE)
)
24 CORPORATE DEFENDANTS XI through)
)
25 XX,)
)
26 Defendants.)
)
27 _____)

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

1 Victoria Nelson, in her capacity as the Chapter 7 Trustee (the “**Plaintiff**” or the
2 “**Trustee**”) of the bankruptcy estate of Ameri-Dream Realty, LLC (the “**Debtor**” or the
3 “**Company**”), by and through her attorneys of record, Schwartz Flansburg PLLC, submits her
4 Motion for Summary Judgment (the “**Motion**”) against defendants, XL America, Inc., XL
5 Insurance America, Inc., XL Select Professional, Pearl Insurance Group, LLC, and Greenwich
6 Insurance Company (each a “**Defendant**” and collectively, the “**Defendants**”) on all claims for
7 relief set forth in that certain adversary complaint (the “**Complaint**”) filed on October 29, 2015
8 in the United States Bankruptcy Court for the District of Nevada, Adversary Proceeding No.
9 15-01183-LED, and filed in this Court on December 22, 2016. The Trustee respectfully asks
10 this Court for an order granting summary judgment on the grounds there are no genuine
11 material issues of fact in dispute regarding the claims set forth in the Complaint filed by the
12 Trustee against Defendants.
13

14
15 This Motion is made and based on Rule 56 of the Federal Rules of Civil Procedure,
16 made applicable to this adversary proceeding by Rule 7056 of the Federal Rules of Bankruptcy
17 Procedure, the points and authorities which follow, the Statement of Undisputed Facts in
18 Support of the Trustee’s Motion for Summary Judgment (the “**SOF**”)’ and exhibits attached
19 thereto, filed contemporaneously with the Motion, the pleadings and papers and other records
20 contained in the Court’s file, judicial notice of which is hereby requested, and any evidence or
21 oral argument presented at the time of the hearing on this matter. In support of the Motion, the
22 Trustee respectfully states as follows:
23
24
25
26

27 ¹ Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the Statement of Undisputed Facts in Support of this Motion.

Factual Background

1
2 1. Ameri-Dream Realty, LLC (the “**Company**”) was a real estate sales and property
3 management company based in Las Vegas, Nevada prior to filing for relief under Chapter 7 of
4 the United States Bankruptcy Code.

5 2. The Company is a resident of the State of Nevada and conducted significant
6 business activities in the District of Nevada.

7
8 3. The Plaintiff is the Court-appointed Chapter 7 Trustee over the bankruptcy estate
9 of the Company in Case No. 15-10110-LED, United States Bankruptcy Court for the District of
10 Nevada (the “**Action**”). The Plaintiff, as trustee of the bankruptcy estate of the Company, is
11 charged with obtaining recoveries and maximizing the value of the bankruptcy estate for the
12 benefit of thousands of creditors of the Company.

13 4. XL America, Inc., XL Insurance America, Inc. and XL Select Professional
14 (collectively, “**XL America**”) are U.S. based insurers offering insurance and reinsurance
15 coverages and services.
16

17 5. Pearl Insurance Group, LLC (“**Pearl**”) is an Illinois limited liability company
18 which operates as an insurance broker, administrator, and marketer of custom insurance solutions
19 in the United States.

20 6. Greenwich Insurance Company (“**Greenwich**”) is a member of XL America and
21 a domestic insurance company which offers a variety of insurance coverage to individuals and
22 corporations throughout the United States.
23

24 ///

25 ///

26 ///

INSURANCE POLICY

1
2 7. The Defendants provided a Real Estate Professionals Errors and Omissions
3 Policy, Policy No. PEG9145932-5, for the policy period of June 14, 2012, through June 14, 2013
4 (the “**2012-2013 Policy**”) to the Company. The Defendants provided an identical Real Estate
5 Professionals Errors and Omissions Policy, Policy No. PEG9145932-6 for the policy period of
6 June 14, 2013, through June 14, 2014 (the “**2013-2014 Policy**”) to the Company. The 2012-
7 2013 Policy and the 2013-2014 Policy shall be collectively referred to as the “**Policy**.”
8

9 8. On page 1, the Policy indicates the company providing the insurance afforded by
10 the Policy is: (i) XL Insurance; and (ii) Greenwich Insurance Company (Members of the XL
11 America Companies. The Company is named as an insured and entitled to coverage under the
12 Policy.
13

COMPANY BACKGROUND

14 9. The Company was managed by John M. Brown (“**Mr. Brown**”) and his former
15 spouse, Elsie Pelada-Brown (“**Ms. Peladas-Brown**”).
16

17 10. As part of its business, the Company managed residential rental properties (the
18 “**Business**”). In the normal course of its Business, the Company received and held rental
19 security deposits on behalf of its customers’ tenants. At the time of the wrongful actions asserted
20 herein, the Company held in excess of \$1,200,000 of tenant security deposit money (the
21 “**Security Deposits**”).
22

23 11. Under Nevada Revised Statutes Section 645.310(1), security deposits for tenants
24 are to be retained until the termination of the underlying lease or rental transaction.
25
26
27

THE UNAUTHORIZED TRANSFERS

1
2 12. In late March 2014, the Company discovered that significant funds were missing
3 from the bank account designated to hold tenant security deposits. At the time of the discovery,
4 the Company held security deposits for more than 1,000 tenants.

5 13. Mr. Brown subsequently discovered that significant funds had been transferred
6 from a bank account designated to hold those tenant Security Deposits on behalf of the
7 Company.
8

9 14. Unknown to Mr. Brown or the Company, Ms. Pelada-Brown orchestrated various
10 unauthorized transactions, which transactions included the wire transfers of the majority of the
11 Security Deposits to the Philippines.

12 15. Specifically, on the following dates, Ms. Peladas-Brown transferred
13 money from the Company's general account at JP Morgan Chase Bank (the "**General Account**")
14 and/or security deposit account at JP Morgan Chase Bank (the "**Security Deposit Account**") to
15 Unibank, Inc. Metro Philippines (the "**Philippines Bank**"):
16

17 a. On February 27, 2013, Ms. Peladas-Brown transferred \$25,000 from the
18 General Account to the Philippines Bank;

19 b. On May 14, 2013, Ms. Peladas-Brown transferred \$50,000 from the
20 Security Deposit Account to the Philippines Bank;

21 c. On April 10, 2013, Ms. Peladas-Brown transferred \$49,263 from the
22 Security Deposit Account to the Philippines Bank;

23 d. On April 17, 2013, Ms. Peladas-Brown transferred \$24,600 from the
24 Security Deposit Account to the Philippines Bank;
25
26
27

1 e. On May 17, 2013, Ms. Peladas-Brown transferred \$97,930 from the
2 Security Deposit Account to the Philippines Bank;

3 f. On May 24, 2013, Ms. Peladas-Brown transferred \$49,000 from the
4 Security Deposit Account to the Philippines Bank;

5 g. On June 25, 2013, Ms. Peladas-Brown transferred \$71,500 from the
6 Security Deposit Account to the Philippines Bank;

7 h. On July 18, 2013, Ms. Peladas-Brown transferred \$35,000 from the
8 security deposit account to the Philippines Bank;

9 i. On September 10, 2013, Ms. Peladas-Brown transferred \$7,670 from the
10 Security Deposit Account to the Philippines Bank;

11 j. On September 23, 2013, Ms. Peladas-Brown transferred \$18,700 from the
12 Security Deposit Account to the Philippines Bank;

13 k. On September 27, 2013, Ms. Peladas-Brown transferred \$23,255 from the
14 Security Deposit Account to the Philippines Bank;

15 l. On October 9, 2013, Ms. Peladas-Brown transferred \$10,020 from the
16 Security Deposit Account to the Philippines Bank;

17 m. On October 22, 2013, Ms. Peladas-Brown transferred \$13,960 from the
18 Security Deposit Account to the Philippines Bank;

19 n. On October 24, 2013, Ms. Peladas-Brown transferred \$11,700 from the
20 Security Deposit Account to the Philippines Bank; and

21 o. On December 20, 2013, Ms. Peladas-Brown transferred \$8,000 from the
22 Security Deposit Account to the Philippines Bank.
23
24
25
26
27

1 16. Including, but not limited to, the specific transactions listed above, Ms. Peladas-
2 Brown embezzled a total of \$1,174,373.63 in Security Deposits from the Company.

3 **THE INNOCENCE OF THE COMPANY AND MR. BROWN**

4 17. Neither the Company nor Mr. Brown had any knowledge of Ms. Peladas-Brown's
5 scheme; and on May 4, 2015, Mr. Brown was divorced from Ms. Peladas-Brown. The divorce
6 decree, which was uncontested, requires Ms. Peladas-Brown to indemnify Mr. Brown and the
7 Company for her unilateral embezzlement of the Security Deposits.
8

9 18. At all times relevant herein, Ms. Peladas-Brown was a member, manager and the
10 property manager for the Company. Ms. Peladas-Brown was also a licensed real estate agent
11 and property manager in the State of Nevada, and a member of the Greater Association of Las
12 Vegas Realtors.

13 **THE PROSECUTION OF MS. PELADAS-BROWN**

14 19. As a licensed realtor and property manager in the State of Nevada, Ms. Peladas-
15 Brown is charged with the knowledge and responsibility of safeguarding the Security Deposits.
16 It is undeniable in light of Ms. Peladas-Brown's licenses that she knew sending the Security
17 Deposits to the Philippines would be a violation of the law, and would cause her to lose her real
18 estate licenses, which licenses are now inactive. Ms. Peladas-Brown also knew she had a duty to
19 manage the Security Deposits prudently and in a fashion that minimized risk.
20

21 20. In sum, Ms. Peladas-Brown had the knowledge and the motive to breach her
22 fiduciary duties to the Company, its customers and its tenants, and in fact did breach such duties
23 by secretly transferring the Security Deposits to the Philippines. The transfers of the Security
24 Deposits were made for no consideration at all, and Ms. Peladas-Brown understood the Security
25 Deposits could not possibly be repaid.
26
27

1 21. On September 16, 2015, the Nevada Real Estate Commission held a hearing
2 regarding Ms. Peladas-Brown's actions, where her attorney, Mr. Lance Maningo, admitted Ms.
3 Peladas-Brown did carry out the factual allegations listed above, and admitted the funds were
4 used to support Ms. Peladas-Brown's family and friends in the Philippines after catastrophic
5 events.

6 22. The Security Deposits were disbursed by Ms. Peladas-Brown in the Philippines
7 and are not recoverable. Ms. Peladas-Brown disbursed the Security Deposits to friends and
8 family in need after the damage caused by catastrophic events in the Philippines.
9

10 **ADVERSARY PROCEEDING AGAINST MS. PELADAS-BROWN**

11 23. On May 21, 2015, the Trustee, in her capacity as Chapter 7 Trustee for the
12 Company, initiated that certain adversary proceeding against Ms. Peladas-Brown in the United
13 States Bankruptcy Court for the District of Nevada, Adversary Case No. 15-01087-LED (the
14 "**Peladas-Brown Complaint**").
15

16 24. In her complaint, the Trustee asserted four claims for relief against Ms. Peladas-
17 Brown: (i) breach of fiduciary duty to the Company; (ii) common law misrepresentation to the
18 Company; (iii) negligent misrepresentation to the Company; and (iv) declaratory relief that the
19 Company and Mr. Brown are innocent and had no knowledge of Ms. Peladas-Brown's
20 wrongdoings (collectively, the "**Peladas-Brown Claims for Relief**").
21

22 25. On October 26, 2015, the United States Bankruptcy Court (the "**Bankruptcy**
23 **Court**") held a hearing on the Trustee's motion for summary judgment on all of the Peladas-
24 Brown Claims for Relief.
25
26
27

1 will not apply to any Insured who did not commit, participate in, or have
2 knowledge of any of the acts described in Exclusion C. and whose conduct
did not violate Condition B.

3 32. While the Policy also excludes coverage under Section IV(D) for claims “based
4 on or arising out of the conversion, commingling, defalcation, misappropriation or improper use
5 of funds or other property,” the Company and Mr. Brown, as set forth above, are Innocent
6 Insureds. Importantly, the Bankruptcy Court’s Findings of Fact and Conclusions of Law in the
7 Peladas-Brown adversary proceeding specifically state the following:
8

9 ¶ 15. The Company was unaware at all times relevant to the Complaint
10 that the Defendant conspired to abscond with the Security Deposits in the
Philippines.

11 ¶ 16. Mr. Brown was unaware at all times relevant to the Complaint that
12 the Defendant conspired to abscond with the Security Deposits to the
Philippines.

13 ¶ 17. The Company and Mr. Brown are innocent of all claims asserted in
14 the Complaint against the Defendant.

15 See Adv. Pro. No. 15-01087-LED, Docket No. 21, ¶¶ 15-17.

16 33. Accordingly, the Bankruptcy Court’s Findings of Fact and Conclusions of Law in
17 the Peladas-Brown proceeding specifically indicate that Mr. Brown and the Company were
18 unaware of any acts giving rise to the acts which would prevent coverage under Exclusion D of
19 the Policy. Therefore, based on the Bankruptcy Court’s findings and the Innocent Insureds
20 provision of the Policy, the Company and Mr. Brown are innocent of all acts that would give rise
21 to the triggering of Exclusion D of the Policy.
22

23 34. Ms. Peladas-Brown’s unilateral wrongdoings triggered Greenwich’s obligation to
24 indemnify the Company for the loss of the Security Deposits.
25

26 35. On April 10, 2014, Mr. Works, as counsel for the Company and Mr. Brown,
27 submitted a claim report form to the Defendants (the “**Claim**”), providing additional notice of a

1 claim under the Policy and the obligations of the Defendants to reimburse the Company based on
2 Ms. Peladas-Brown's actions. A copy of the Claim is attached to the Complaint as Exhibit 2.

3 36. Upon initiation of the Adversary Proceeding, Defendants were once again
4 provided Notice of the Claim, particularly that Defendants were ignorant and innocent of Ms.
5 Peladas-Brown's unilateral wrongdoings, which is attached to the Complaint as Exhibit 3.

6 37. As of the date hereof, the Defendants have not paid any monies to the Company
7 or Mr. Brown for claims made under the Policy.

8
9 **Jurisdiction**

10 38. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
11 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. §§
12 157(b)(2)(A), and (O). Venue of the Debtor's Chapter 7 case in this District is proper pursuant
13 to 28 U.S.C. §§ 1408 and 1409.

14 39. This Court also has supplemental jurisdiction over all claims in this case
15 because they are asserted in connection with the Trustee's duties to recover assets on behalf of
16 the estate, and because the allegations in this lawsuit share a common nexus of facts with those
17 in the Action.

18 40. This Court has personal jurisdiction over the Defendants and venue is proper in
19 the Bankruptcy Court for the District of Nevada because: a) the Defendants engaged in
20 significant business in this District; b) the Defendants' wrongful conduct occurred in
21 significant part in this District; and c) the Company is a debtor before this Court, and holds the
22 claims asserted in this Complaint.
23
24

25 ///

26 ///

Argument

Standards for Summary Judgment

1
2
3 41. Fed. R. Civ. P. 56(c) provides for summary judgment on a claim when “the
4 pleadings, discovery, and disclosure materials on file, and any affidavits show that there is no
5 genuine issue to any material fact and the moving party is entitled to judgment as a matter of
6 law. Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). The
7 substantive law determines which facts are material for purposes of summary judgment, and
8 disputes over facts that are irrelevant or unnecessary will not be counted. Anderson v. Liberty
9 Lobby, Inc., 477 U.S. at 248. The non-moving party may not rest on “the mere allegations or
10 denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue
11 for trial,” i.e., that the evidence is such that a rational trier of fact could return a verdict for the
12 non-moving party. Id. at 248, 251-52.

13
14
15 42. “There is no genuine issue of material fact if the party opposing the motion ‘fails
16 to make an adequate showing sufficient to establish the existence of an element essential to that
17 party’s case, and on which that party will bear the burden of proof at trial.’” Taylor, 880 F.2d at
18 1045, quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); see also Ray, 920 F. Supp at
19 1097. Issues of material fact must be supported by evidence, and conclusory allegations that are
20 unsupported cannot defeat a motion for summary judgment. Taylor, at 880 F.2d at 1045; Ray,
21 920 F. Supp. at 1097.

22
23 43. A party seeking summary judgment always bears the initial responsibility of
24 informing the court of the basis for its motion, and identifying those portions of the pleadings,
25 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
26
27

1 any, which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp.
2 v. Catrett, 477 U.S. 317 (1986).

3 44. In this matter, there are no genuine issues of material fact with respect to all
4 claims set forth in the Complaint. Indeed, “[w]hen the facts are not in dispute, contract
5 interpretation is a question of law.” Federal Ins. Co. v. American Hardware Mut. Ins. Co., 124
6 Nev. 319, 322, 184 P.3d 390,392 (Nev, 2008) (citing Grand Hotel Gif Shop v. Granite St. Ins.,
7 108 Nev. 811, 815, 839 P.2d 599, 602 (1992)). Importantly, as set forth herein, the exhibits
8 attached hereto, the accompanying Statement of Undisputed Facts, and the Court’s Docket
9 demonstrate that the Trustee is entitled to summary judgment on all claims set forth in the
10 Complaint.
11

12 **The Trustee is Entitled to Summary Judgment on Count I**
13 **of the Complaint Against the Defendants for Breach of Contract**

14 45. Under Nevada law, a defendant is liable for breach of a contract when: (i) there is
15 a valid and existing contract; (ii) defendant breached the contract or failed to render performance
16 when it became due; (iii) defendant’s breach or failure of performance was unexcused; (iv)
17 plaintiff was damaged by the breach; and (v) damages were a foreseeable consequence of a
18 particular breach. Cohen-Breen v. Gray Tel. Grp., Inc., 661 F.Supp. 2d 1158, 1171 (D. Nev.
19 2009); Brown v. Kinross Gold U.S.A., Inc., 531 F.Supp. 2d 1234, 1240 (D. Nev. 2008).
20

21 46. Here, the Defendants wrote the Policy of insurance naming the Company as an
22 insured under the Policy. As an insured, the Policy constituted a contract between the Company
23 and Defendants, and the Company satisfied all conditions precedent to the Policy.
24

25 47. On April 9, 2014, and April 10, 2014, the Company submitted its Claim under the
26 Policy. To date, the Defendants have not reimbursed the Company for the loss of Security
27 Deposits as required under the Policy.

1 48. The Defendants' failure to reimburse the Company pursuant to the terms of the
2 Policy is a material breach of the Defendants' obligations under the Policy. The Company, on
3 the other hand, reasonably relied on the representations of the Defendants that they would honor
4 the terms of the Policy.

5 49. Despite paying significant insurance premiums for the Policy, the Defendants
6 orchestrated a strategy in order to deprive the Company of its rightful claim to be reimbursed
7 under the Policy. As a direct result of the Defendants' actions, the Company was damaged.
8 Accordingly, the Trustee is entitled to summary judgment on her first claim for relief as set forth
9 in the Complaint.
10

11 **The Trustee is Entitled to Summary Judgment on Count II of the Complaint Against**
12 **the Defendants for Breach of Implied Covenant of Good Faith and Fair Dealing**

13 50. The implied covenant of good faith and fair dealing is required in every contract
14 under Nevada law. Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc., 971 P.2d
15 1251 (Nev. 1998). Where a defendant deliberately countervenes the intention and spirit of the
16 contract, the defendant can incur liability for the breach of implied covenant of good faith and
17 fair dealing. Morris v. Bank of America Nevada, 886 P.2d 454 (Nev. 1994).
18

19 51. As set forth above, by purposefully denying the claim under the Policy and not
20 reimbursing the Company for the loss of Security Deposits, the Defendants deliberately
21 countervened the intention and spirit of the Policy and breached the implied covenant of good
22 faith and fair dealing.

23 52. Moreover, the Company detrimentally relied on the representations of the
24 Defendants in the Policy that they would reimburse the Company for claims made under the
25 Policy. Consequently, the Defendants' actions damaged the Company. Accordingly, the Trustee
26 is entitled to summary judgment on her second claim for relief as set forth in the Complaint.
27

1 **The Trustee is Entitled to Summary Judgment on Count III of the Complaint Against the**
2 **Defendants for Breach of Fiduciary Duty**

3 53. “A claim for breach of fiduciary duty under Nevada law requires a plaintiff to
4 demonstrate a fiduciary duty exists, that duty was breached, and the breach proximately caused
5 the damages.” J.P. Morgan Chase Bank, N.A. v. KB Home, 632 F.Supp. 2d 1013, 1024 (D. Nev.
6 2009), citing Brown v. Kinross Gold U.S.A., Inc., 531 F.Supp. 2d 1234, 1245 (D. Nev. 2008).
7 “[A] fiduciary relationship is deemed to exist when one party is bound to act for the benefit of
8 the other party. Such a relationship imposes a duty of the utmost good faith.” Giles v. Gen.
9 Motors Acceptance Corp., 494 F.3d 865, 880-81 (9th Cir. 2007), quoting Hoopes v.
10 Hammargren, 725 P.2d 238, 242 (Nev. 1986).

11
12 54. Moreover, when a party breaches his fiduciary duty arising from a contract, the
13 breach is a tortious act that is subject to punitive damages. Clark v. Lubritz, 113 Nev. 1089,
14 1098, 944 P.2d 861, 866-67 (1997).

15 55. Here, the Defendants owe a fiduciary duty to the Company, as the Defendants
16 sold the Policy to the Company and entered into a fiduciary relationship as the insurer for the
17 Company. The Defendants owed the Company fiduciary duties of the utmost good faith and fair
18 dealing, and to put the Defendants’ interests above their own.

19
20 56. By failing to reimburse the Company for the loss of Security Deposits and failing
21 to pay any monies to the Company under the terms of the Policy, the Defendants breached their
22 fiduciary duties to the Company. Accordingly, the Trustee is entitled to summary judgment on
23 her third claim for relief as set forth in the Complaint.

24 **The Trustee is Entitled to Summary Judgment on Count IV**
25 **of the Complaint Against the Defendants for Violations of NRS 686A.310**

26 57. NRS 686A.310 provides:
27

1 Engaging in any of the following activities is considered to be
2 an unfair practice:

3 (a) Misrepresenting to insureds or claimants pertinent facts or
4 insurance policy provisions relating to any coverage at issue.

5 (b) Failing to acknowledge and act reasonably promptly upon
6 communications with respect to claims arising under insurance
7 policies.

8 (c) Failing to adopt and implement reasonable standards for
9 the prompt investigation and processing of claims arising under
10 insurance policies.

11 (d) Failing to affirm or deny coverage of claims within a
12 reasonable time after proof of loss requirements have been
13 completed and submitted by the insured.

14 (e) Failing to effectuate prompt, fair and equitable settlements
15 of claims in which liability of the insurer has become reasonably
16 clear.

17 (f) Compelling insureds to institute litigation to recover
18 amounts due under an insurance policy by offering substantially
19 less than the amounts ultimately recovered in actions brought by
20 such insureds, when the insureds have made claims for amounts
21 reasonably similar to the amounts ultimately recovered.

22 (g) Attempting to settle a claim by an insured for less than the
23 amount to which a reasonable person would have believed he or
24 she was entitled by reference to written or printed advertising
25 material accompanying or made part of an application.

26 (h) Attempting to settle claims on the basis of an application
27 which was altered without notice to, or knowledge or consent of,
the insured, or the representative, agent or broker of the insured.

(i) Failing, upon payment of a claim, to inform insureds or
beneficiaries of the coverage under which payment is made.

(j) Making known to insureds or claimants a practice of the
insurer of appealing from arbitration awards in favor of insureds or
claimants for the purpose of compelling them to accept settlements
or compromises less than the amount awarded in arbitration.

(k) Delaying the investigation or payment of claims by
requiring an insured or a claimant, or the physician of either, to
submit a preliminary claim report, and then requiring the
subsequent submission of formal proof of loss forms, both of
which submissions contain substantially the same information.

(l) Failing to settle claims promptly, where liability has
become reasonably clear, under one portion of the insurance policy
coverage in order to influence settlements under other portions of
the insurance policy coverage.

(m) Failing to comply with the provisions of NRS 687B.310 to
687B.390, inclusive, or 687B.410.

1 (n) Failing to provide promptly to an insured a reasonable
2 explanation of the basis in the insurance policy, with respect to the
3 facts of the insured's claim and the applicable law, for the denial of
4 the claim or for an offer to settle or compromise the claim.

5 (o) Advising an insured or claimant not to seek legal counsel.

6 (p) Misleading an insured or claimant concerning any
7 applicable statute of limitations.

8 2. In addition to any rights or remedies available to the
9 Commissioner, an insurer is liable to its insured for any damages
10 sustained by the insured as a result of the commission of any act
11 set forth in subsection 1 as an unfair practice.

12 Nevada Revised Statutes 686A.310.

13 58. Here, the Defendants each violated NRS 686A.310 in various ways, including but
14 not limited to:

15 a. Failing to acknowledge and act reasonably promptly upon
16 communications with respect to claims arising under the Policy;

17 b. Failing to adopt and implement reasonable standards for the prompt
18 investigation and processing of claims arising under the Policy;

19 c. Failing to effectuate prompt, fair and equitable settlements of claims in
20 which liability of the insurer has become reasonably clear;

21 d. Failing to participate or defend in the underlying case against its insured;
22 and

23 e. Compelling insureds to institute litigation to recover amounts due under
24 the Policy.

25 59. As a direct and proximate cause of the Defendants' breaches, the Company has
26 been damaged. By their actions, the Defendants are guilty of oppression, fraud and/or malice,
27 express or implied. Accordingly, the Company, in addition to compensatory damages, may
recover punitive damages for the sake of example and by way of punishing the Defendants.

1 Accordingly, the Trustee is entitled to summary judgment on her fourth claim for relief as set
2 forth in the Complaint.

3 **The Trustee is Entitled to Summary Judgment on Count V of the Complaint and**
4 **a Declaration that the Defendants are Liable to the Company Under the Policy**

5 60. As set forth above, the Defendants represented to the Company it would be
6 reimbursed for losses as set forth in the Policy. Moreover, based on this Court’s prior findings of
7 fact and conclusions of law entered in the Plaintiff’s adversary case against Ms. Elsie Peladas-
8 Brown, the Company and Mr. John Brown were innocent of Ms. Peladas-Brown’s actions.
9 Accordingly, the Company and Mr. Brown constitute “Innocent Insureds” under Section VI(D)
10 of the Policy.
11

12 61. Accordingly, the Company is entitled to a declaration from this Court that the
13 Company and Mr. Brown are “Innocent Insureds” under Section VI(D) of the Policy.
14 Consequently, the Company is also entitled to a declaration from this Court that Ms. Peladas-
15 Brown’s unilateral wrongdoings triggered the Defendants’ obligation to indemnify the Company
16 for the loss of the Security Deposits. Therefore, the Trustee is entitled to summary judgment on
17 her fifth claim for relief as set forth in the Complaint.
18

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

Conclusion

1
2 62. For the reasons stated herein, the Trustee is entitled to Summary Judgment on all
3 claims for relief set forth in her Complaint.

4 Dated this 22nd day of December, 2016.

5 Respectfully Submitted,

6 /s/ Samuel A. Schwartz

7 Samuel A. Schwartz, Esq.

8 Nevada Bar No. 10985

9 Bryan A. Lindsey, Esq.

10 Nevada Bar No. 10662

11 Schwartz Flansburg PLLC

12 6623 Las Vegas Blvd. South, Suite 300

13 Las Vegas, Nevada 89119

14 Telephone: (702) 385-5544

15 Facsimile: (702) 385-2741

16 Attorneys for the Chapter 7 Trustee, Victoria L. Nelson
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

1
2 I HEREBY CERTIFY that a true and correct copy of the foregoing was sent
3 electronically on December 22, 2016, to the following:

4 SAMUEL A. SCHWARTZ on behalf of Plaintiff VICTORIA NELSON
5 sam@schwartzlawyers.com, ecf@schwartzlawyers.com;schwartzecf@gmail.com

6 Lionel Santos
7 Lee.santos@xlcatlin.com

8 Kimberly E. Rients Blair, Esq.
9 Kimberly.Blair@wilsonelser.com

10 Jennifer Willis Arledge, Esq.
11 Jennifer.Arledge@wilsonelser.com

12 I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via
13 REGULAR MAIL on December 22, 2016, to the following:

14 XL America, Inc.
15 c/o The Corporation Trust Company, Registered Agent
16 Corporation Trust Center
17 1209 Orange St
18 Wilmington, DE 19801

19 XL Insurance America, Inc.
20 c/o The Corporation Trust Company, Registered Agent
21 Corporation Trust Center
22 1209 Orange Street
23 Wilmington, DE 19801

24 Pearl Insurance Group, LLC
25 c/o CT Corporation System, Registered Agent
26 1200 E. Glen Avenue
27 Peoria Heights, IL 61616

Pearl Insurance Group, LLC
c/o CT Corporation Systems, Registered Agent
208 South Lasalle St, Ste 814
Chicago, IL 60604

Greenwich Insurance Company
c/o The Corporation Trust Company, Registered Agent
Corporation Trust Center

1 1209 Orange St
2 Wilmington, DE 19801

3 XL Select Professional
4 c/o The Corporation Trust Company, Registered Agent
5 Corporation Trust Center
6 1209 Orange Street
7 Wilmington, DE 19801

8 XL Select Professional
9 c/o Lee Santos
10 100 Constitution Plaza, 17th Floor
11 Hartford, CT 06103

12 XL Select Professional
13 c/o Kimberly E. Rients Blair, Esq.
14 Wilson Elser Moskowitz Edelman & Dicker LLP
15 55 West Monroe Street, Suite 3800
16 Chicago, IL 60603-5001

17 /s/ Christy L. Cahall
18 Christy L. Cahall
19
20
21
22
23
24
25
26
27