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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

In re: AMERI-DREAM REALTY, LLC, Debtor.	Case No. 2:16-cv-00060-JAD-GWF Bankruptcy Case No.: 15-10110-LED Chapter 7
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.	Adv. Proceeding No.: 15-01183-LED

PLAINTIFF'S OPPOSITION TO DEFENDANT GREENWICH INSURANCE COMPANY'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. PRO. 12(B)(6)

Victoria L. Nelson, in her capacity as the Chapter 7 Trustee (the "**Plaintiff**" or the "**Trustee**") of the bankruptcy estate of Ameri-Dream Realty, LLC (the "**Debtor**" or the "**Company**"), by and through her attorneys of record, Schwartz Flansburg PLLC, submits her

opposition to the Motion the To Dismiss the Trustee's Complaint (the "**Complaint**") Pursuant To Fed. R. Civ. Pro. 12(B)(6) (the "**Motion**")[1] of defendant Greenwich Insurance Company ("**Greenwich**" or the "**Defendant**"). In support of the Opposition, the Trustee respectfully states as follows:

Preliminary Statement

1. Greenwich's Motion seeks to dismiss the Complaint for multiple reasons, many of which narrowly construe the Policy to deny coverage in every instance. Unfortunately for Greenwich, however, because an insurance policy is a contract of adhesion, is should be "interpreted broadly, affording the greatest possible coverage to the insured." Farmers Ins. Group v. Stonik By and Through Stonik, 867 P.2d 389, 391 (Nev. 1994). Accordingly, as insurance policies are construed broadly, and coupled with the fact that in a motion to dismiss, all factual allegations are taken as true, and all reasonable inferences are drawn in favor of the non-moving party, Greenwich's Motion should be denied.

2. Specifically, Greenwich is incorrect that the Trustee is an "Insured" under the Policy and "steps into the shoes" of Ameri-Dream. Rather, the Trustee is a third-party appointed by the Court to administer assets and claims on behalf of the Chapter 7 bankruptcy estate of the company. The Trustee is separate and distinct from Ameri-Dream, and Greenwich's own cited case law supports the same.

3. Greenwich's arguments to deny coverage under the Policy are equally uncompelling. As set forth herein, Greenwich's attempts to narrowly construe and interpret the Policy in a way to deny coverage, from every possible angle, is not how insurance policies are read and construed by courts.

[1] Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the Motion.

4. Accordingly, in the context of a motion to dismiss, all facts and reasonable inferences must be construed in favor of the Trustee, as Plaintiff, and any ambiguities in the Policy must be interpreted to allow coverage where possible. As a result, the Motion should be denied.

Background Facts

5. On January 9, 2015, Ameri-Dream Realty, LLC (the "**Company**" or the "**Debtor**"), filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the "**Bankruptcy Court**"), Bankruptcy Case No. 15-10110-LED (the "**Bankruptcy Case**").

6. The Company was a real estate sales and property management company based in Las Vegas, Nevada prior to filing for relief under Chapter 7 of the United States Bankruptcy Code.

7. The Plaintiff is the Court-appointed Chapter 7 Trustee over the bankruptcy estate of the Company in Case No. 15-10110-LED, United States Bankruptcy Court for the District of Nevada (the "**Action**").

8. On May 21, 2015, the Trustee, in her capacity as Chapter 7 Trustee for the Company, initiated that certain adversary proceeding against Elise Peladas-Brown ("**Ms. Peladas-Brown**"), a former manager of the Company, in the United States Bankruptcy Court for the District of Nevada, Adversary Case No. 15-01087-LED, due to Ms. Peladas-Brown's secret embezzlement of over $1 million in security deposits from the Company.

9. In her complaint, the Trustee asserted four claims for relief against Ms. Peladas-Brown: (i) breach of fiduciary duty; (ii) common law misrepresentation; (iii) negligent misrepresentation; and (iv) declaratory relief that the Company and Mr. John Brown, Ms.

Peladas-Brown's ex-husband and former manager of the Company, are innocent and had no knowledge of Ms. Peladas-Brown's wrongdoings (collectively, the "**Peladas-Brown Claims for Relief**").

10. The Defendants, with notice, elected not to participate in the Action, or in the Peladas-Brown adversary proceeding.

11. On October 26, 2015, the United States Bankruptcy Court held a hearing on the Trustee's motion for summary judgment on all of the Peladas-Brown Claims for Relief.

12. On October 27, 2015, the bankruptcy court entered an order granting summary judgment on all Peladas-Brown Claims for Relief, with findings of fact and conclusions of law. See Adv. Case No. 15-01087-LED, Docket Nos. 20 and 21. Both the Company and Mr. John Brown were found to be innocent.

13. The Judgment against Ms. Peladas-Brown is in the amount of $1,174,373.63, together with prejudgment interest at the rate of 5.75%, compounded annually starting February 1, 2013, and post-judgment interest at the rate established by 28 U.S.C. § 1961, compounded annually. See Adv. Case No. 15-01087-LED, Docket No. 21.

14. Shortly after the entry of summary judgment against Ms. Peladas-Brown, the Plaintiff initiated the above-captioned adversary proceeding (the "**Adversary Proceeding**") against the Defendants/Insurers. The Trustee's Complaint is related to the actions of Ms. Peladas-Brown, which triggered the Policy and required the Defendants to reimburse the Company for the theft of the security deposits by Ms. Peladas-Brown.

15. The Complaint seeks various claims for relief against the Defendants for their failure to comply with the Policy, including claims for: (1) breach of contract; (2) breach of the

implied covenant of good faith and fair dealing; (3) breach of fiduciary duty; (4) violations of NRS 686A.310; and (5) declaratory relief.

16. In December 2015, the Plaintiff filed her Motion for Summary Judgment on the Complaint, while the Defendants filed Motions to Dismiss the Complaint, along with the instant Motion.

17. On November 14, 2016, this Court granted Defendants' Motion to Withdraw the Reference from the Bankruptcy Court to this Court. See Docket No. 9. As a result, at the status hearing on December 5, 2016, this Court instructed the parties to refile their pending motions in this Court.

18. On December 22, 2016, the Trustee re-filed her Complaint in this Court. See Docket Nos. 11 and 19 (Docket No. 19 consisting of an errata to the filed Complaint).

19. On December 22, 2016, the Trustee also filed her Motion for Summary Judgment against all Defendants. See Docket No. 12.

20. On December 27, 2016, Defendants XL America, Inc., XL Insurance America, Inc., XL Select Professional and Pearl Insurance Group, LLC filed their Motion to Dismiss the Complaint. See Docket No. 15. That same day, Defendant Greenwich filed its Motion to Dismiss the Complaint. See Docket No. 16.

Argument

A. Relevant Legal Standard.

21. Federal Rule of Civil Procedure 12(b)(6) authorizes the Court to dismiss the Complaint for failure to state a claim upon which relief can be granted. Dismissal is only proper under Rule 12(b)(6) where it appears beyond doubt that the complaining party can prove no set of facts to support its claims. Adams v. Johnson, 355 F.3d 1179, 1183 (9th Cir. 2004).

22. To discharge his or her burden, the plaintiff must show his or her entitlement to relief on the face of the complaint. Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1664-66 (2007).

23. The court must accept all factual allegations in the complaint as true and draw reasonable inferences in the plaintiff's favor, though speculation, conjecture, labels, legal conclusions, bald contentions, unsupported characterizations, and a formulaic recitation of the elements of a cause of action are insufficient. Id.; Tellabs, Inc. v. Makor Issues & Rights. Ltd., 127 S.Ct. 2499, 2509 (2007); G.K. Las Vegas Ltd. P'ship v. Simon Prop. Group. Inc., 460 F.Supp.2d 1246, 1261 (D. Nev. 2006); Sprewell v. Golden State Warriors, 266 F.3d 978, 988 (9th Cir. 2001). Here, Plaintiff has demonstrated the facts necessary to support the claims for relief as alleged in the Complaint. Therefore, the Motion must be denied.

B. The Insured Versus Insured Exclusion Does Not Apply Because the Chapter 7 Trustee Represents the Bankruptcy Estate of the Company, which is Wholly Separate and Apart from the Defunct Debtor.

1. A Chapter 7 Trustee Represents the Bankruptcy Estate, Not the Chapter 7 Debtor.

24. Greenwich first seeks to dismiss the Trustee's Complaint because it believes the Trustee "stands in the shoes of Ameri-Dream Realty, is seeking payment from Greenwich directly to Ameri-Dream Realty." Based on this allegation, Greenwich believes the Trustee is an "Insured" under the Policy, and cannot collect from Greenwich. Simply put, Greenwich swings and misses with this argument based on one fatal flaw – the Trustee does not "stand in the shoes" of the Company, but rather, represents the "bankruptcy estate" of the Company, and not the Company itself.

25. It is well established that when "an individual files a bankruptcy petition, a separate bankruptcy estate is created which is comprised of all legal or equitable interests of the

debtor in property as of the commencement of the case." In re Pegram, 395 B.R. 692, 695 (Bankr. D. Idaho 2008) (internal quotations and citations omitted). Moreover, chapter 7 trustees hold a position that is unique relative to trustees in a chapter 11 and chapter 13. A chapter 7 trustee:

> [H]olds all of the rights and responsibility for property of the Estate. The Trustee is the sole representative of the bankruptcy estate. 11 U.S.C. § 323(a). As the representative of the estate, the Chapter 7 trustee's duties include collecting and reducing to money the property of the estate. 11 U.S.C. § 704(a)(1). It is the Chapter 7 trustee who disposes of property of the estate in which another person has an interest which is not otherwise disposed of under the Bankruptcy Code. 11 U.S.C. § 725. No provision is made for the Chapter 7 debtor to co-administer property of the estate . . . .

In re Zavala, 444 B.R. 181, 189 (Bankr. E.D. Cal. 2011).

26. Indeed, in a chapter 7 case, the debtor's ability to affect the bankruptcy estate is intentionally limited; specifically, "[d]ebtors may not assert rights of the bankruptcy estate against third-parties, such as the alleged claim for violating the automatic stay as it applies to property of the estate." Id. at 191. Thus, if a claim belongs to the bankruptcy estate, the trustee has sole authority to assert that claim and collect upon it for the benefit of the bankruptcy estate. Id.

27. In addition to a chapter 7 trustee being distinct from the actual Chapter 7 debtor, the chapter 7 trustee's role is not for the benefit of the debtor, but rather, the chapter 7 trustee's role is to "maximize the estate" for the benefit of the debtor's creditors. In re Henson, 98-51326 ASW, 2006 WL 3861370, at *5 (Bankr. N.D. Cal. Apr. 21, 2006); accord In re Harper, 557 B.R. 171, 176–77 (Bankr. D. Ariz. 2016) (allowing the chapter 7 trustee to pursue claims on behalf on the bankruptcy estate for the benefit of the creditors when the debtor was barred from pursing the same claims).

28. Here, the Trustee is a legal representative of the Chapter 7 bankruptcy estate of Ameri-Dream Realty, not a legal representative of Ameri-Dream Realty itself. Indeed, the Trustee's role in this matter is to administer claims and assets of the bankruptcy estate of the Company, including the prosecution of claims under the Policy, on behalf of nearly 1,000 individuals whose security deposits were stolen. Importantly, 931 individuals filed claims in the Bankruptcy Case. See Case No. 15-10110, Claim Nos. 1 through 931 (collectively, the "**Individual Claims**"). The Trustee is charged for pursuing claims under the Policy for the benefit of these individuals - hard-working people who lost their security deposits and other funds, losses which are covered by the Policy.

2. The Biltmore Case is Distinguishable.

29. In support of its argument that the Trustee "steps into the shoes" of Ameri-Dream Realty, Greenwich relies heavily on Biltmore Associates, LLC v. Twin City Fire Ins. Co., 572 F.3d 663, 670 (9th Cir. 2009). The fatal miscomprehension of Greenwich's reliance on Biltmore, however, is that Biltmore involved a Chapter 11 debtor-in-possession, where no trustee is appointed, as compared to a Chapter 7 case, where a trustee is appointed and a separate Chapter 7 bankruptcy estate is created.

30. In Biltmore, the debtor company, Visitalk, filed a Chapter 11 bankruptcy petition and remained a debtor-in-possession. Biltmore, 572 F.3d at 666. Pursuant to its Chapter 11 plan, the debtor assigned its claims to a creditor trust, and the trustee for the creditor trust, Biltmore, pursued the insurance claims the debtor had assigned to the creditor trust. Id. at 667 (emphasis added). In determining that the "insured versus insured" exclusion barred suit, the Ninth Circuit stated:

> We conclude that insured versus insured exclusion in the relevant policies bars coverage for Biltmore's claims, because a post-bankruptcy **debtor in possession**

> acts in the same capacity as the pre-bankruptcy debtor for the purpose of directors and officers liability insurance.

Id. at 668 (emphasis added).

31. In fact, the Ninth Circuit's bankruptcy analysis in Biltmore focused entirely on the debtor's status of a debtor-in-possession in Chapter 11, and concluded that "the prefiling company and the company as debtor in possession in chapter 11 are the same entity." Id. at 671 (emphasis added).

32. Importantly, the Biltmore court also noted that there are several courts, including the Ninth Circuit, that treat a post-bankruptcy entity as different from the debtor when a trustee is appointed. Id. at 670-71, n. 15, citing, e.g. Unified W. Grocers, Inc. v. Twin City Fire Ins. Co., 457 F.3d 1106, 1116-17 (9th Cir. 2006) (bankruptcy trustee of subsidiary different entity than subsidiary itself); Grafenaur v. Mukamal (In re Laminate Kingdom, LLC), 2008 WL 704396 at *3-4 (Bankr. S.D.Fla. Mar. 13, 2008) (Chapter 7 trustee is distinct entity from debtor); Cohen v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA (In re County Seat Stores, Inc.), 280 B.R. 319, 324-26 (Bankr. S.D.N.Y. 2002) (trustee legal distinct entity from debtor, distinguishing trustee from debtor in possession); Rieser v. Baudendistel (In re Buckeye Countrymark, Inc.), 251 B.R. 835, 840-41 (Bankr. S.D. Ohio 2000) (Chapter 7 trustee not the same entity as debtor); Rigby v. Underwriters at Lloyd's, London, 907 So.2d 1187, 1188-89 (Fla.Dist.Ct.App. 2005) (Chapter 7 trustee, listed an insured, still different entity from debtor).

33. Simply put, the Biltmore court's decision was based on a Chapter 11 debtor-in-possession being the same as the pre-filing debtor company. In this matter, and as acknowledged by the Biltmore court, the Company did not filed a Chapter 11 bankruptcy case and remain a debtor-in-possession, but rather, filed a Chapter 7 bankruptcy case where the Trustee was appointed over the bankruptcy estate.

34. Furthermore, in 2015, the United States Supreme Court in Baker Botts L.L.P. v. ASARCO, LLC, recently held that the Bankruptcy Code does not permit bankruptcy courts to award attorney fees to counsel or other professionals employed by the bankruptcy estate for work performed in defending their fee applications. Baker Botts L.L.P. v. ASARCO, LLC, 135 S.Ct. 2158 (2015). While the Baker Botts case primarily stands for the proposition that a bankruptcy estate should not have to pay for fees attorneys' incur in defending their fee application, it also confirms the central difference between a debtor and a bankruptcy estate. Id.

35. Importantly, Chapter 7 Trustee here is appointed to liquidate the assets of the debtor, thereby maximizing the value of the bankruptcy estate in order to pay the creditors the maximum value of their claims. The purpose of a chapter 11 debtor-in-possession, on the other hand, is different as the goal is not liquidate assets and maximize the bankruptcy estate, but instead, is to reorganize debts to allow the debtor to continue functioning. Indeed, it is essential to acknowledge the "case law recognizing the legal distinction between a bankruptcy trustee and the defunct Chapter 7 debtor." In re C. Louisiana Grain Co-op., Inc., 467 B.R. 390, 397 (Bankr. W.D. La. 2012).

36. In turn, the purpose of an "insured vs. insured exclusion in directors and officers policy is to protect insurance companies against collusive suits between the insured corporation and its insured officers and directors. When the plaintiff is not the corporation but a bankruptcy trustee acting as a genuinely adverse party to the defendant officers and directors, there is no threat of collusion." In re Buckeye Countrymark, Inc., 251 B.R. 835, 841 (Bankr. S.D. Ohio 2000) (internal quotations and citations omitted).

37. Accordingly, the Insured versus Insured Exclusion I of the Policy does not apply in this instance. The Trustee is a court-appointed Chapter 7 Trustee over the bankruptcy estate

of the Company, and did not "step into the shoes" of the Company. Consequently, dismissal of the Complaint under Rule 12(b)(6) is not appropriate based on application of the Insured versus Insured Exclusion.

C. Exclusion D of the Policy Does Not Preclude Coverage.

38. Greenwich next argues the Complaint should be dismissed because Exclusion D of the Policy precludes coverage, both defense and indemnity, for any claims "based on or arising out of"

> 1. the conversion, commingling, defalcation, misappropriation or improper use of funds or other property;
>
> 2. the gaining of any personal profit or advantage to which the Insured is not legally entitled; or
>
> 3. the inability or failure to pay, collect or safeguard funds held for others, unless the insured is acting in the capacity of a short term escrow agent.

See Policy, Section IV, D.

39. Importantly, however, and as admitted by Greenwich's Motion, under Nevada law, any exclusion must be narrowly tailored so that it "clearly and distinctly communicates to the insured the nature of the limitation, and specifically delineates what is and is not covered." Griffin v. Old Republic Ins. Co., 133 P.3d 251, 255 (Nev. 2006). To preclude coverage under an insurance policy's exclusion provision, an insurer must (1) draft the exclusion in "obvious and unambiguous language," (2) demonstrate that the interpretation excluding coverage is the only reasonable interpretation of the exclusionary provision, and (3) establish that the exclusion plainly applies to the particular case before the court. Id. In order for an exclusion in an insurance policy to be effective, the provision purporting to exclude coverage must be drafted in

language that unambiguously conveys the insurer's intent to limit its contractual obligation. Benchmark Ins. Co. v. Sparks, 254 P.3d 617, 621 (Nev. 2011).

40. Based on Nevada case law cited above, Greenwich simply states the language of the Policy is written in an obvious and unambiguous manner and states coverage is not afforded for theft or conversion of security deposits. See Motion, p. 14. Importantly, however, despite Greenwich's assertions, the language of the policy is not that clear and simple.

41. Specifically, Exclusion C of the Policy also excludes coverage:

> "based on or arising out of any dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission by the Insured;

See Policy, Section IV, C.

42. Importantly, however, as set forth in the Complaint, both the Company and Mr. Brown were found to be innocent of the wrongful acts by Ms. Peladas Brown. See Complaint, ¶ 32. The Policy, in turn, excludes the denial of coverage under Exclusion C for innocent insureds, as follows:

> D. Innocent Insureds.
>
> If coverage of this policy would not apply because of Exclusion C, or because of noncompliance with Condition B, such Exclusion or Condition will not apply to any Insured who did not commit, participate in, or have knowledge of any of the acts described in Exclusion C and whose conduct did not violate Condition B.

See Policy, Section VI, D.

43. Accordingly, Greenwich does not appear to dispute that it cannot deny coverage based on the clear language of Exclusion C (i.e. the wrongful acts of Ms. Peladas Brown).

44. Greenwich appears to imply, however, that because the claims made against Greenwich could fit inside of Exclusion D, then that is sufficient to deny all types of claims for any bad acts (i.e. wrongful, intentional and fraudulent acts). In other words, despite the fact that

Exclusion C and the Innocent Insureds provision does not preclude the Trustee's claims based on the wrongful and intentional acts of Ms. Peladas-Brown, Greenwich would have this Court believe that because the wrongful acts relate to money, which could then fit inside Exclusion D, the Trustee cannot recover under the Policy.

45. Greenwich's argument should be rejected for several reasons. First, the Policy is not that clear. Nowhere in the Policy is it stated that if Exclusion D applies, all other claims under the Policy are precluded, regardless of whether they fall outside of Exclusion D.

46. Second, because the conduct of Ms. Peladas-Brown falls under Exclusion C of the Policy, if the Court is also inclined to find that Ms. Peladas-Brown's conduct also falls under Exclusion D of the Policy, then the Policy is ambiguous. An insurance policy is considered ambiguous when "it creates multiple reasonable expectations of coverage as drafted," and "a seemingly clear policy can be rendered ambiguous when applying the policy to the facts leads to multiple reasonable interpretations." Cent. Sur. Co. v. Casino W., Inc., 329 P.3d 614, 616 (Nev. 2014).

47. Third, Greenwich's reading of Exclusion D is an exclusion that would swallow the entire policy. Simply put, Ameri-Dream Realty was a real estate management company, which safeguarded deposits and collected rents. Greenwich's interpretation of Exclusion D as applying to all acts, whether or not such acts could also fall outside of Exclusion D, would cause coverage under the Policy to be denied in every instance. Indeed, an insurance policy's interpretation should not lead to an absurd or unreasonable result." Cent. Sur. Co. v. Casino W., Inc., 329 P.3d 614, 616 (Nev. 2014) (quotations and citations omitted).

48. Simply put, the language of Exclusion D, coupled with the language of Exclusion C, and applied to the facts of this matter, makes the application of Exclusion D ambiguous.

When an insurance policy is determined to be ambiguous "[a] court will interpret the policy to effectuate the insured's reasonable expectations," and a court will "construe[] any ambiguities in an insurance policy in favor of the insured." Cent. Sur. Co. v. Casino W., Inc., 329 P.3d 614, 616 (Nev. 2014); Allstate Ins. Co. v. Fackett, 206 P.3d 572, 575 (Nev. 2009). The courts goal when interpreting an ambiguous policy is to give effect to every word, and to "not interpret a contract so as to make meaningless its provisions." Bielar v. Washoe Health Sys., Inc., 306 P.3d 360, 364 (Nev. 2013).

49. Finally, because an insurance policy is a contract of adhesion, is should be "interpreted broadly, affording the greatest possible coverage to the insured." Farmers Ins. Group v. Stonik By and Through Stonik, 867 P.2d 389, 391 (Nev. 1994). Accordingly, the Complaint cannot be dismissed under Exclusion D if it fails to meet any of the required elements of the Griffin case, that is, (i) it is not drafted in obvious and unambiguous language; (ii) Greenwich has not demonstrated that the only reasonable interpretation of Exclusion D would be to preclude all of the Trustee's claims under the Policy; and (iii) Greenwich failed to establish that the exclusion plainly applies to the facts at hand.

D. The Prior Knowledge Provision of the Policy Does Not Apply.

50. Next, Greenwich attempts to dismiss the Complaint because the period of coverage under the Policy ran from June 14, 2013, to June 14, 2014. As the wrongful acts of Ms. Peladas-Brown began as early as February 2013, Greenwich argues there was no coverage prior to June 14, 2013, and therefore, coverage must be denied under the prior knowledge provision of the Policy.

51. Simply put, Greenwich appears to forget that it issued an identical policy to the Company for the policy period of June 14, 2012, through June 14, 2013, Policy No. PEG914932-

5. A copy of this Policy is attached to the Trustee's statement of undisputed facts in support of her motion for summary judgment, Docket No. 13-1.[2] Accordingly, Greenwich's "prior knowledge" argument is not sufficient to dismiss the Complaint, as Greenwich provided insurance coverage at all relevant times.

E. Coverage is not Precluded Because the Ameri-Dream and the Company Were Never Legally Obligated to Pay.

52. Finally, Greenwich makes a last ditch effort to dismiss the Trustee's Complaint under a theory that because the Company and Mr. Brown do not have judgments against them for Ms. Peladas-Brown's actions, they are parties that were never "legally obligated to pay" and as a result, the duty to provide coverage is not triggered. See Motion, pp. 16-17. In essence, Greenwich argues that unless all possible insureds under the policy become legally obligated to pay, Greenwich does not have to provide coverage. Once again, Greenwich's argument is without merit.

53. Specifically, Section A (Coverage) of the Insuring Agreements section of the Policy reads as follows:

> The Company will pay on behalf of the Insured all sums in excess of the deductible that the Insured becomes legally obligated to pay as damages and claims expenses by reason of an act or omission including personal injury in the performance of real estate services by the Insured…

See Policy, Section I, A.

[2] While the 2012-2013 Policy is not attached to the Complaint, the Complaint asserts that the Company had insurance coverage under the time periods at issue. Moreover, the 2012-2013 Policy is now filed with the Court at Docket No. 13-1, for which this Court may take judicial notice. Wensley v. First Nat. Bank of Nevada, 874 F.Supp.2d 95 (D. Nev. 2012) ("A court may, however, consider certain materials – documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice – without converting the motion to dismiss into a motion for summary judgment.").

54. In turn, the definition of "Insured" under the Policy includes "any present or former partner, member, officer, director or employee for real estate services performed on behalf of the Named Insured." See Policy, Section III, Definitions.

55. Accordingly, under the terms of the Policy, Ameri-Dream Realty, Ms. Peladas-Brown and Mr. Brown each fall under the definition of "Insured." While each of the aforementioned parties may fall under the "Insured" definition, Greenwich's reading of the coverage section of the Policy that Ameri-Dream Realty and Mr. Brown must also become "legally obligated to pay" is without merit.

56. First, the Insuring Agreements section simply states that the "Insured" must become legally obligated to pay. It does not state that "every possible Insured" or "all Insureds" must become legally obligated to pay, it simply used the word "Insured."

57. Second, Greenwich's interpretation of the Insuring Agreements section flies in the face of the "Innocent Insured" provision of the Policy, which provides for coverage even though some of the Insureds may be innocent. Indeed, one cannot be an "Innocent Insured" but then always become "legally obligated to pay" to trigger coverage under the Policy. Such a reading of the Policy would make the "Innocent Insured" provision meaningless. The court's goal when interpreting an ambiguous policy is to give effect to every word, and to "not interpret a contract so as to make meaningless its provisions." Bielar v. Washoe Health Sys., Inc., 306 P.3d 360, 364 (Nev. 2013).

58. As set forth above, to the extent the Policy is ambiguous by failing to make clear all "Insureds" must become legally obligated to pay to trigger the Policy, the Court should construe any ambiguities in favor of the insured. Cent. Sur. Co., 329 P.3d at 616; Allstate Ins. Co., 206 P.3d at 575.

59. Greenwich's argument also fails because insurance policies are contracts of adhesion, which should be "interpreted broadly, affording the greatest possible coverage to the insured." Farmers Ins. Group, 867 P.2d at 391.

60. Finally, to the extent the Court finds the Insuring Agreements provision of the Policy to require Ameri-Dream to be legally obligated to pay, there are 931 claims in the Bankruptcy Case, totally $2,497,635.38.

61. Indeed, under 11 U.S.C. § 502, a proof of claim filed in a bankruptcy proceeding is deemed allowed unless a party in interest objects. Gran v. Internal Revenue Serv., 964 F.2d 822, 827 (8th Cir. 1992). Under Federal Rule of Bankruptcy Procedure 3001(f), a proof of claim executed and filed in accordance with the bankruptcy rules shall constitute prima facie evidence of the validity and amount of the claim.

62. Importantly, there are no current objections pending to these claims, and as a result, each claim is currently deemed allowed (the Chapter 7 Trustee is planning to object to certain duplicate and overstated claims in the Bankruptcy Case). Accordingly, Ameri-Dream is currently obligated to pay such these Individual Claims, thereby triggering coverage under the Policy. Therefore, Greenwich's Motion should be denied.

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Conclusion

WHEREFORE, the Trustee respectfully requests that the Court deny Greenwich's Motion in its entirety.

Dated this 13th day of January, 2017.

Respectfully Submitted,

/s/ Samuel A. Schwartz
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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 13, 2017, to the following:

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/s/ Lori Kennedy
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