



1 through her attorneys of record, Schwartz Flansburg PLLC, submits her Response to defendants,  
2 XL America, Inc., XL Insurance America, Inc., XL Select Professional, Pearl Insurance Group,  
3 LLC, and Greenwich Insurance Company (each a “**Defendant**” and collectively, the  
4 “**Defendants**”), Additional Statement of Material Facts In Support Of Defendants’ Opposition To  
5 Plaintiff’s Motion For Summary Judgment.  
6

7  
8 Pursuant to LR 7056(c), Plaintiff submits her response to Defendants’ statement of undisputed  
9 facts. Concurrently herewith, the Plaintiff files her: (i) Reply to the Defendants’ Opposition to the  
10 Plaintiff’s Motion for Summary Judgment.  
11

12  
13 **SCHWARTZ FLANSBURG, PLLC**

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

24  
25 **RESPONSES TO DEFENDANTS’ ADDITIONAL STATEMENT OF MATERIAL FACTS**

26  
27 1. Greenwich issued a claims made and reported third party real estate agent errors and  
28 omissions policy to Named Insured Ameri-Dream Realty, LLC, numbered PEG9145932-6 and  
29 effective from June 14, 2013 through June 14, 2014 (the “**Greenwich Policy**”). Greenwich Insurance  
30 Policy is attached hereto as Exhibit A.

31  
32 **Response to Paragraph 1**

33  
34 **Deny** that the policy numbered PEG9145932-6 and effective from June 14, 2013 through June  
14, 2014 was the only relevant policy issued by Greenwich to Named Insured Ameri-Dream Realty,

1 LLC. The Defendants provided a Real Estate Professionals Errors and Omissions Policy, Policy No.  
2 PEG9145932-5, for the policy period of June 14, 2012, through June 14, 2013 (the “**2012-2013**  
3 **Policy**”) to the Company. A copy of the 2012-2013 Policy was previously filed with this Court at  
4 Docket No. 13-1. The Defendants provided an identical Real Estate Professionals Errors and  
5 Omissions Policy, Policy No. PEG9145932-6 for the policy period of June 14, 2013, through June 14,  
6 2014 (the “**2013-2014 Policy**”) to the Company. A copy of the 2013-2014 Policy was previously  
7 filed with this Court at Docket No. 13-2.  
8  
9  
10

11 2. The Insuring Agreement of the Policy agrees to "pay on behalf of the **Insured** all sums  
12 in excess of the deductible that the **Insured** becomes legally obligated to pay as **damages and claims**  
13 **expenses** by reason of an act or omission including **personal injury** in the performance of **real estate**  
14 **services** by the **Insured**, provided that:  
15

- 16 1) The **claim** arising out of the act or omission must first be made against the  
17 **Insured** during the **policy period** or any applicable **extended reporting**  
18 **period**;
- 19 2) The **claim** must be reported in writing to the **Company** during the **policy**  
20 **period** or within 60 days after the end of the **policy period** unless an  
21 **extended reporting period applies**;
- 22 3) Such act or omission was committed on or subsequent to the **retroactive date**  
23 specified in the Declarations; and
- 24 4) Prior to the inception date of this policy, no **Insured** had a basis to believe  
25 that such act or omission, or any related act or omission, might reasonably be  
26 expected to by the basis of a **claim**.

27 Except as provided in Section V.D., below, **claims expenses** are in addition to the  
28 limit of liability.

29 *See Exhibit A*

### 30 **Response to Paragraph 2**

31 **Admit** the Policy contains the above language; however **Deny** the quotation above adds  
32 emphasis that was not in the original and is argumentative.  
33  
34

1           3.       The Greenwich Policy defines "**Claim**" as "a demand for money or services naming  
2 the **Insured** by reason of an act or omission in the performance of **real estate services.**" *See* Exhibit  
3 A.  
4

5 **Response to Paragraph 3**

6           **Admit** in that a claim is defined in part by the quote above, however, **Deny** that a "Claim"  
7 may only include the above quote. The Policy also defines "Claim" as "the service of suit or the  
8 institution of an arbitration proceedings against the Insured."  
9

10           4.       The Greenwich Policy is also subject to several exclusions including the following  
11 applicable exclusion:  
12

13           D.       based on or arising out of:

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

20           I.       by or on behalf of any **Insured** against any other **Insured.**  
21 *See* Exhibit A.

22 **Response to Paragraph 4**

23           **Admit** in that the content of the quote is verbatim from the Policy. **Deny** in that Plaintiff's  
24 position is that this exclusion is inapplicable.

25           5.       The Policy also contains Condition D "Innocent Insureds" which provides "If coverage  
26 of this policy would not apply because of Exclusion C or because of noncompliance with Condition  
27 B, such Exclusion or Condition will not apply to any **Insured** who did not commit, participate in, or  
28 have knowledge of any of the acts described in Exclusion C. and whose conduct did not violate  
29 Condition B." *See* Exhibit A.  
30  
31  
32  
33  
34

1 **Response to Paragraph 5**

2 **Admit.**

3  
4 5. On May 21, 2015, the Trustee, in her capacity as Chapter 7 Trustee for Ameri-Dream  
5 Realty initiated an adversary proceeding against Ms. Peladas-Brown in the United States Bankruptcy  
6 Court for the District of Nevada, Adversary Case No. 15-01087-LED (the "Peladas-Brown  
7 Adversary Complaint"). The Peladas-Brown Adversary Complaint is attached as Exhibit B.

8  
9 **Response to Paragraph 5**

10  
11 **Deny** in that the Trustee is acting in her capacity as Chapter 7 Trustee for the bankruptcy  
12 estate of Ameri-Dream Realty, not for Ameri-Dream Realty the debtor. **Admit** the remaining  
13 statements in this Paragraph.

14  
15 6. The Peladas-Brown Adversary Complaint did not name Mr. Brown or Ameri-Dream  
16 Realty as defendants. *See* Exhibit B. However, the Peladas-Brown Complaint did contain a request  
17 for a declaratory judgment that Ameri-Dream Realty and Mr. Brown were innocent and had no  
18 knowledge of Ms. Peladas-Brown's wrongdoings. *See* Exhibit B at\_

19  
20  
21 **Response to Paragraph 6**

22 **Admit.**

23  
24 7. On October 27, 2015, the Bankruptcy Court entered an order granting summary  
25 judgment on all claims the Trustee had brought against Peladas-Brown, with findings of fact and  
26 conclusions of law. A copy of the Findings of Fact and Conclusions of Law from the Peladas-Brown  
27 Adversary Action is attached as Exhibit C.

28  
29  
30 **Response to Paragraph 7**

31 **Admit.**

1           8.     The Bankruptcy Court made several conclusions of law in the Peladas-Brown  
2 Adversary Action including the following:  
3

- 4           5)     Through improper action or wrongful conduct and without privilege, the  
5 Defendant (Ms. Peladas-Brown) breached her fiduciary duties to the  
6 Company.  
7           6)     The Defendant had knowledge she was breaching her fiduciary duties, and  
8 acted purposely and with malice and intent to injure the Company.  
9           7)     The tortious conduct of the Defendant proximately caused the damage to the  
10 Company, because the Security Deposits were transferred for no  
11 consideration, and the Defendant knew it.  
12           8)     The Defendant had a duty to the Company to use ordinary care when  
13 representing the reasons for transferring the Security Deposits.  
14           9)     The Defendant breached her duty of care to the Company by falsely  
15 representing the transfer of the Security Deposits was an appropriate  
16 transaction for the Company to undertake.  
17           10)    Under Nevada law, the Defendant is required to safeguard the Security  
18 Deposits on behalf of the tenants.  
19           11)    As a result of the Defendant's false representations of the appropriateness of  
20 the wire transfers of the Security Deposits, the Company transferred the  
21 Security Deposits for no consideration.  
22           12)    The Company suffered damages as a result of the transfer of the Security  
23 Deposits, and those damages were caused by the Defendant's  
24 misrepresentations.  
25           13)    The tenants managed by the Company relied on the representations of the  
26 Defendant that the Security Deposits were safe. As a result of those false  
27 representations of the safety of the Security Deposits, nearly 1,000 tenants  
28 transferred their money to the Company, even though the Defendant knew or  
29 should have known that those payments would never be repaid, given the  
30 Defendant's plan to abscond with the money.  
31           14)    The Company suffered damages as a result of the transfer of the Security  
32 Deposits and those damages were proximately caused by the Defendant's  
33 misrepresentations regarding the safety of the Security Deposits.  
34           15)    The Company was unaware at all times relevant to the Complaint that the  
            Defendant conspired to abscond with the Security Deposits to the Philippines.  
            16)    Mr. Brown was unaware at all times relevant to the Complaint that the  
            Defendant conspired to abscond with the Security Deposits to the Philippines.  
            17)    The Company and Mr. Brown are innocent of all claims asserted in the  
            Complaint against the Defendant.

See Exhibit C.

1 **Response to Paragraph 8**

2 **Admit.**

3  
4 9. Prior to the institution of the Peladas-Brown Adversary matter, on April 9, 2014  
5 counsel for Ameri-Dream and Mr. Brown sent a Notice of Claim letter to XL America regarding the  
6 actions of Ms. Peladas-Brown. A copy of the April 9, 2014 letter is attached as Exhibit D.  
7

8 **Response to Paragraph 9**

9 **Admit.**

10  
11 10. After initiation of the Adversary Proceeding a Notice of Claim was once again  
12 provided under the Greenwich Policy on May 27, 2015.  
13

14 **Response to Paragraph 10**

15 **Admit.**

16  
17 11. In correspondence dated March 30, 2015 and May 28, 2015, and June 1, 2015  
18 Greenwich denied coverage to the Insured for the Peladas-Brown Adversary matter. A copy of the  
19 May 28,2015 and June 1, 2015 denial emails are attached as Exhibit E.  
20

21 **Response to Paragraph 11**

22 **Admit.**

23  
24 12. Pearl Insurance Group, LLC ("Pearl") was not a party to the Real Estate Errors &  
25 Omissions Policy issued to Ameri-Dream Realty, LLC. *See* Exhibit A.  
26

27 **Response to Paragraph 12**

28 **Deny.** Despite Defendants' contentions, the actual face of the Policy supports the Plaintiff's  
29 claims. Specifically, the top of page 1 of the Policy indicates "[t]he company providing insurance  
30 afforded by this coverage is indicated above." See Policy, p. 1. Above this line are two companies,  
31 "XL Insurance" and "Greenwich Insurance Company – Members of the XL America Companies."  
32  
33  
34

1 Id. Moreover, the face of the Policy lists the Producer of the Policy as “Pearl Insurance Group.” Id.

2 Page 1 of the Policy also requires “Notices to be Sent to:

3 Report a Claim: XL Select Professional Claims

4 Material Changes: Pearl Insurance Group, LLC”

5 See Policy, p. 1, Item 8.

6  
7  
8 In addition, the bottom of p. 1 of the Policy is signed by Gary P. Pearl, as President and CEO  
9 of Pearl. Id. The bottom of p. 1 of the Policy also lists XL America, Inc. Id. Finally, the Defendants  
10 attached their coverage denial letter to their pending motion to dismiss as Exhibit D, which is signed  
11 by Lee Santos, on behalf of XL Select Professional. See Docket No. 16-4. The coverage denial letter  
12 also bears the letterhead of XL Group Insurance. Id. Therefore, the face of the Policy indicates that  
13 all of the Defendants were involved with the issuance and management of the Policy, and as a result,  
14 all are in contractual privity with the Plaintiff.  
15  
16  
17

18 13. Pearl never entered into any contract directly with Ameri-Dream, LLC. *See* Exhibit A.

19 **Response to Paragraph 13**

20  
21 **Deny.** See the explanation provided in Response to Paragraph 12.

22  
23 14. Pearl did not make any coverage decisions, including but not limited to accepting or  
24 denying any claim, under the Greenwich Policy. *See* Exhibit A and E

25 **Response to Paragraph 14**

26  
27 **Deny.** See the explanation provided in Response to Paragraph 12.

28  
29 15. XL America, Inc., XL Insurance America, Inc. and XL Select Professional  
30 (collectively referred to as the "XL Entities") are not parties to the Greenwich Policy issued to Ameri-  
31 Dream Realty. *See* Exhibit A.  
32  
33  
34



**Response to Paragraph 15**

**Deny.** See the explanation provided in Response to Paragraph 12.

16. The XL Entities never entered into any contract directly with Ameri-Dream, LLC. The XL Entities did not make any coverage decisions, including but not limited to accepting or denying any claims under the Greenwich Policy. See Exhibit A and D.

**Response to Paragraph 16**

**Deny.** See the explanation provided in Response to Paragraph 12.

17. The Policy states that if coverage is afforded, only Greenwich "agreed to pay for claims" under the Policy. See Exhibit A and Compl. at ¶33

**Response to Paragraph 17**

**Deny.** See the explanation provided in Response to Paragraph 12.

DATED this 31st day of January, 2017.

By: /s/ Samuel A. Schwartz  
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Attorneys for the Chapter 7 Trustee, Victoria L. Nelson

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent electronically via the Court's CM/ECF on January 31, 2017, to the following:

Lionel Santos  
Lee.santos@xlcatlin.com

Kimberly E. Rients Blair, Esq.  
[Kimberly.Blair@wilsonelser.com](mailto:Kimberly.Blair@wilsonelser.com)

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

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail, postage prepaid, on January 31, 2017, to the following:

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

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

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

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

1 Greenwich Insurance Company  
2 c/o The Corporation Trust Company, Registered Agent  
3 Corporation Trust Center  
4 1209 Orange St  
5 Wilmington, DE 19801

6 XL Select Professional  
7 c/o The Corporation Trust Company, Registered Agent  
8 Corporation Trust Center  
9 1209 Orange Street  
10 Wilmington, DE 19801

11 XL Select Professional  
12 c/o Lee Santos  
13 100 Constitution Plaza, 17<sup>th</sup> Floor  
14 Hartford, CT 06103

15 XL Select Professional  
16 c/o Kimberly E. Rients Blair, Esq.  
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18 55 West Monroe Street, Suite 3800  
19 Chicago, IL 60603-5001

20 /s/ Lori Kennedy

21 Lori Kennedy, an employee of Schwartz Flansburg, PLLC  
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