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**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: February 9, 2016
COMPANY; and DOES I through X; and ROE)	Hearing Time: 2:30 p.m.
CORPORATE DEFENDANTS XI through)	
XX,)	
Defendants.)	
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**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

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, submits her Statement of Undisputed Facts

1 to accompany her Motion for Summary Judgment (the “**Motion**”) against defendants XL
2 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**”) on all claims for relief set forth in that certain adversary complaint (the
5 “**Complaint**”) filed on October 29, 2015 (Docket No. 1).

6
7 **STATEMENT OF UNDISPUTED FACTS**

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

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

13 3. The Plaintiff is the Court-appointed Chapter 7 Trustee over the Company in Case
14 No. 15-10110-LED, United States Bankruptcy Court for the District of Nevada (the “**Action**”).

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

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

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

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2 7. The Defendants provided a Real Estate Professionals Errors and Omissions
3 Policy, Policy No. PEG9145932-6 (the “**Policy**”) for the policy period of June 14, 2013, through
4 June 14, 2014, to the Company.

5 8. The Company is named as an insured and entitled to coverage under the Policy.

6
7 **COMPANY BACKGROUND**

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

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

15
16 11. Under Nevada Revised Statutes Section 645.310(1), security deposits for tenants
17 are to be retained until the termination of the underlying lease or rental transaction.

18 **THE UNAUTHORIZED TRANSFERS**

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

22
23 13. Mr. Brown subsequently discovered that significant funds had been transferred
24 from a bank account designated to hold those tenant Security Deposits on behalf of the
25 Company.

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

4 15. Specifically, on the following dates, Ms. Peladas-Brown Brown transferred
5 money from the Company's general account at JP Morgan Chase Bank (the "**General Account**")
6 and/or security deposit account at JP Morgan Chase Bank (the "**Security Deposit Account**") to
7 Unibank, Inc. Metro Philippines (the "**Philippines Bank**");
8

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 o. On December 20, 2013, Ms. Peladas-Brown transferred \$8,000 from the
14 Security Deposit Account to the Philippines Bank.
15

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

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

20 17. Neither the Company nor Mr. Brown had any knowledge of Ms. Peladas-Brown's
21 scheme; and on May 4, 2015, Mr. Brown was divorced from Ms. Peladas-Brown. The divorce
22 decree, which was uncontested, requires Ms. Peladas-Brown to indemnify Mr. Brown and the
23 Company for her unilateral embezzlement of the Security Deposits.
24

25 18. At all times relevant herein, Ms. Peladas-Brown was a member, manager and the
26 property manager for the Company. Ms. Peladas-Brown was also a licensed real estate agent
27

1 and property manager in the State of Nevada, and a member of the Greater Association of Las
2 Vegas Realtors.

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

4 19. As a licensed realtor and property manager in the State of Nevada, Ms. Peladas-
5 Brown is charged with the knowledge and responsibility of safeguarding the Security Deposits.
6 It is undeniable in light of Ms. Peladas-Brown's licenses that she knew sending the Security
7 Deposits to the Philippines would be a violation of the law, and would cause her to lose her real
8 estate licenses, which licenses are now inactive. Ms. Peladas-Brown also knew she had a duty to
9 manage the Security Deposits prudently and in a fashion that minimized risk.
10

11 20. In sum, Ms. Peladas-Brown had the knowledge and the motive to breach her
12 fiduciary duties to the Company, its customers and its tenants, and in fact did breach such duties
13 by secretly transferring the Security Deposits to the Philippines. The transfers of the Security
14 Deposits were made for no consideration at all, and Ms. Peladas-Brown understood the Security
15 Deposits could not possibly be repaid.
16

17 21. On September 16, 2015, the Nevada Real Estate Commission held a hearing
18 regarding Ms. Peladas-Brown's actions, where her attorney, Mr. Lance Maningo, stated Ms.
19 Peladas-Brown's did in fact carry out the factual allegations listed above, and admitted the funds
20 were used to support Ms. Peladas-Brown's family and friends in the Philippines after
21 catastrophic events.
22

23 22. The Security Deposits were disbursed by Ms. Peladas-Brown in the Philippines
24 and are not recoverable. Ms. Peladas-Brown disbursed the Security Deposits to friends and
25 family in need after the damage caused by catastrophic events in the Philippines.
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ADVERSARY PROCEEDING AGAINST MS. PELADAS-BROWN

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2 23. On May 21, 2015, the Trustee, in her capacity as Chapter 7 Trustee for the
3 Company, initiated that certain adversary proceeding against Ms. Peladas-Brown in the United
4 States Bankruptcy Court for the District of Nevada, Adversary Case No. 15-01087-LED.

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

10 25. On October 26, 2015, the United States Bankruptcy Court (the "**Bankruptcy**
11 **Court**") held a hearing on the Trustee's motion for summary judgment on all of the Peladas-
12 Brown Claims for Relief.
13

14 26. On October 27, 2015, the Bankruptcy Court entered an order granting summary
15 judgment on all Peladas-Brown Claims for Relief, with findings of fact and conclusions of law.
16 See Adv. Case No. 15-01087-LED, Docket Nos. 20 and 21.

17 27. The Judgment against Ms. Peladas-Brown is in the amount of \$1,174,373.63,
18 together with prejudgment interest at the rate of 5.75%, compounded annually and compounded
19 from February 1, 2013, and post-judgment interest at the rate established by 28 U.S.C. § 1961,
20 compounded annually. See Adv. Case No. 15-01087-LED, Docket No. 21.
21
22

23 **INSURANCE CLAIMS**

24 28. On April 9, 2014, Ryan J. Works, Esq., as counsel for the Company and Mr.
25 Brown, sent a Notice of Claim letter to XL America regarding the actions of Ms. Peladas-Brown.
26 A copy of the Notice of Claim Letter is attached to the Complaint as Exhibit 1.
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1 29. Pursuant to the terms of the Policy, Greenwich agreed to pay for claims, up to
2 \$1,000,000.00, resulting from an act or omission in the performance of real estate services for
3 which the insured (the Company) is obligated to pay.

4 30. Although the Policy excludes coverage under Section IV(C) for claims “based on
5 arising out of any dishonest, intentionally fraudulent, criminal or malicious act or omission by
6 the Insured,” under the facts described herein, the Company and Mr. Brown constitute “Innocent
7 Insureds” under Section VI(D) of the Policy:
8

9 D. Innocent Insureds

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

15 31. Ms. Peladas-Brown’s unilateral wrongdoings triggered Greenwich’s obligation to
16 indemnify the Company for the loss of the Security Deposits.

17 32. On April 10, 2014, Mr. Works, as counsel for the Company and Mr. Brown,
18 submitted a claim report form to the Defendants (the “**Claim**”), providing additional notice of a
19 claim under the Policy and the obligations of the Defendants to reimburse the Company based on
20 Ms. Peladas-Brown’s actions. A copy of the Claim is attached to the Complaint as Exhibit 2.

21 33. Upon initiation of the Adversary Proceeding, Defendants were once again
22 provided Notice of the Claim, particularly that Defendants were ignorant and innocent of Ms.
23 Peladas-Brown’s unilateral wrongdoings, which is attached to the Complaint as Exhibit 3.

24 34. As of the date hereof, the Defendants have not paid any monies to the Company
25 or Mr. Brown for claims made under the Policy.

26 ///

1 Dated this 22nd day of December, 2015.

2 Respectfully Submitted,

3 /s/ Samuel A. Schwartz

4 Samuel A. Schwartz, Esq.

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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 December 22, 2015, to the following:

SAMUEL A. SCHWARTZ on behalf of Plaintiff VICTORIA NELSON
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Lionel Santos
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Kimberly E. Rients Blair, Esq.
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I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via REGULAR MAIL on December 22, 2015, to the following:

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

Greenwich Insurance Company
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Registered Agent
Corporation Trust Center
1209 Orange St
Wilmington, DE 19801

XL Insurance America, Inc.
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XL Select Professional
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Pearl Insurance Group, LLC
C/O CT Corporation System, Registered
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1200 E. Glen Avenue
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XL Select Professional
c/o Lee Santos
100 Constitution Plaza, 17th Floor
Hartford, CT 06103

Pearl Insurance Group, LLC
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Chicago, IL 60604

1 XL Select Professional
2 c/o Kimberly E. Rients Blair, Esq.
3 Wilson Elser Moskowitz Edelman & Dicker LLP
4 55 West Monroe Street, Suite 3800
5 Chicago, IL 60603-5001

6 /s/ Christy L. Cahall
7 Christy L. Cahall
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