

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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UNITED STATES SECURITIES AND	:	
EXCHANGE COMMISSION,	:	
	:	Case No. : 11-cv-574 (MJD/FLN)
Plaintiff,	:	
	:	
- against-	:	
	:	AFFIDAVIT IN SUPPORT
JASON BO-ALAN BECKMAN, et al.,	:	OF EVEREST'S MOTION TO
	:	<u>LIFT ASSET FREEZE</u>
-against-	:	
	:	
R.J. ZAYED,	:	
	:	
Receiver.	:	
-----X	:	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Mary Jo Barry, being duly sworn, deposes and says:

1. I am a member of the law firm of D'Amato & Lynch, LLP. I submit this affidavit in support of Everest Indemnity Insurance Company's ("Everest") Motion to Lift the Asset Freeze Order to Permit Payment of Defense Costs to date, and going forward, pursuant to the terms and conditions of the Everest Excess Liability Policy No.: FL5EE 00006-091 issued to Western International Securities for the policy period 3/1/09-3/1/10 ("Everest Policy"). This affidavit is based upon my personal knowledge and is true and correct to the best of my knowledge and belief.

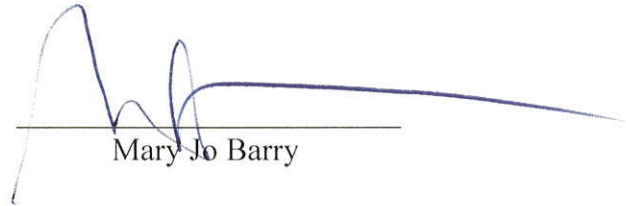
2. I was retained by Everest National Insurance Company in connection with the Claims for which Everest received notice under the Everest Policy. In connection with this

representation, I contacted Samuel Lockner of Carlson, Caspers, Vandenburg & Lindquist, who I understood was acting as counsel to R.J. Zayed in his capacity as Receiver for the estate of Jason Bo-Alan Beckman and others. On July 5, 2011 I spoke with Mr. Lockner by telephone and explained to him that I represented Everest in connection with the policy issued to Western International Securities, Inc. (“Western”); that the Everest Policy contains a “duty to defend” with respect to covered Claims for which notice is provided under the Everest Policy; that counsel for various Insureds under the Everest Policy had provided Everest with invoices for fees and costs incurred in the defense of Claims; and, that certain Insureds continue as defendants in a number of Claims and that Everest has a duty to continue the defense of such Insureds.

3. In my telephone discussion with Mr. Lockner, I referred to the March 8, 2011 “Order Imposing Asset Freeze and Other Ancillary Relief and Setting Hearing on Motion for Preliminary Injunction” (“Freeze Order”) and noted that the Freeze Order appeared to preclude Everest from making defense cost payments under the Everest Policy. I advised Mr. Lockner that the existence of the order may require Everest to seek relief from the Court and I questioned whether the Receiver was amenable to a discussion of potential resolution of the issue and potentially a joint stipulation to allow Everest to fulfill its policy obligations.

4. On July 6, 2011 I received an email from Mr. Lockner in response to our telephone conversation stating that “the Receiver is not willing to consider any potential agreement or resolution without written assurances from Everest that any and all money available for liability under any and all insurances policies that cover Mr. Beckman will not be depleted.” A copy of the email is attached hereto as Exhibit “A”. After reading Mr. Lockner’s email I requested clarification of his position; in our previous telephone conversation, I had made it clear that any payments under the Policy would, by virtue of the contract terms and conditions,

reduce the available limit of liability. Accordingly, Mr. Lockner's position that there be no depletion of the policy appeared to preclude any possibility of reaching a negotiated resolution of the issue. Mr. Lockner clarified his position in an email of July 7, 2011 in which he indicated that the Receiver's position was "no erosion of the policy". A copy of the July 7, 2011 email is attached hereto as Exhibit "B".



Mary Jo Barry

Sworn to before me this
31st day of August, 2011



Notary Public

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BILL V. KAKOULLIS
Notary Public, State of New York
No. 02KA4783566
Qualified in Queens County
Commission Expires 10/31/20 13