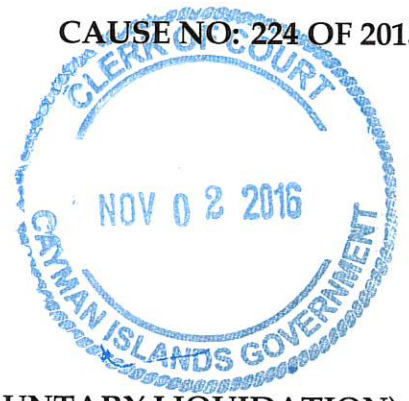
AMENDED PURSUANT TO AN ORDER OF THE COURT / GCR 0.20 R 5 ON 31 OCTOBER 2016

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 224 OF 2015



BETWEEN:

(1) WILLIAM RITTER

(2) GENEVA INSURANCE SPC LIMITED (IN VOLUNTARY LIQUIDATION)

PLAINTIFFS

AND

BUTTERFIELD BANK (CAYMAN) LIMITED

DEFENDANT

AMENDED WRIT OF SUMMONS

TO: **Butterfield Bank (Cayman) Limited**

C/o Appleby
Clifton House, 75 Fort Street
PO Box 190
Grand Cayman KY1-1104
Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next pages.

Within 14 Days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Courts Office, PO Box 495, George Town, Grand Cayman, KY1-1106 the accompanying Acknowledgment of Service stating whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment of Service within the time stated, or if you return the Acknowledgement of Service without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and Judgment may be entered against you forthwith without further notice.

Issued this 14th day of December 2015

Amended and reissued this 2nd Day of November 2016

This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by Order of the Court.

It is intended that applications will be made to the Grand Court for leave to serve those Defendants who are out of the jurisdiction.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

AMENDED

STATEMENT OF CLAIM

I: INTRODUCTION – PARTIES AND SUMMARY OF CLAIM

1. The Second ~~First~~ Plaintiff, Geneva Insurance SPC Ltd ("**Geneva"**) was incorporated in the Cayman Islands on 28 March 2000 under registration number CR 98635.

2. Geneva's sole purpose was to act as a captive insurance company, servicing the insurance needs of medical professionals practicing in the United States.

3. The First ~~Second~~ Plaintiff, William Ritter ("**Mr. Ritter**"), a resident of the United States of America, is and was at all material times, a director, sole shareholder and beneficial owner of Geneva.

4. By reason of the loss and damage sustained by Geneva due to fraud as described below, a shareholder's resolution was passed for the voluntary liquidation of Geneva on 30 April 2012 and Mr. Kenneth Krys and Ms. Margot MacInnis were appointed Joint Voluntary Liquidators ("**The JVLs"**).

5. By a Deed of Assignment dated 7 November 2012, Geneva acting through the JVLs assigned all its potential rights, remedies and claims against the Defendant Bank to Mr. Ritter ("**The Assignment**"). Geneva is joined as a nominal or relief Plaintiff in the event that the Defendant contends that the Assignment to Mr. Ritter of all

6. Ms. Margot MacInnis resigned as voluntary liquidator on 15 January 2015. Mr. Ritter was appointed voluntary liquidator on 27 February 2015, Mr. Kenneth Krys resigned on 27 February 2015, leaving Mr. Ritter as sole voluntary liquidator of Geneva.

7. The Defendant Bank was incorporated in the Cayman Islands on 22 November 1967 under registration number CR-15657 with its registered office at PO Box 705, Butterfield House, 68 Fort Street, Grand Cayman KY1-1107 Cayman Islands. The Defendant holds a class A Banking Licence registered with the Cayman Islands Monetary Authority, licence number 77003.

Summary of Claim

8. The Defendant Bank is liable to the Plaintiffs for breach of contract, negligence and dishonest assistance in facilitating the fraud carried out by David K. Self ("**DKS**") who at all materials times was a director and company secretary of Geneva.

9. DKS was also the Managing Director of Monkton Insurance Services Limited ("**Monkton**") which company was licensed as an Insurance Manager by the Cayman Islands Monetary Authority ("**CIMA**") and managed captive insurance companies in the Cayman Islands.

10. DKS/ Monkton defrauded significant sums of money from Geneva's account number 01-220-38744 at the Defendant Bank ("**The Geneva Account**") from 28 December 2008 to 14 September 2010 based on forged signatures and at all material times provided fraudulent / fake bank statements to Mr. Ritter to conceal the fraud on the Geneva Account from him.

11. DKS/ Monkton also defrauded the bank accounts of other Monkton clients at the Defendant Bank over which DKS had sole signing authority during a time frame whose exact dates are not known to the Plaintiffs.

12. On 14 February 2012 CIMA appointed Gordon MacRae and Eleanor Fisher of the firm Zolfo Cooper as controllers over Monkton. Monkton was subsequently placed in voluntary liquidation on 2 April 2012 by a shareholders' resolution and on 26 April 2012 Monkton was placed into Official Liquidation by order of the Grand Court and Gordon MacRae and Gwynn Hopkins of Zolfo Cooper were appointed as Joint Official Liquidators **("The Monkton JOLs")**.

13. CIMA revoked the Insurance Management Licence held by Monkton on 7 November 2012 on the basis that it had contravened the Insurance Law (2010); the direction and management of its business had not been conducted in a fit and proper manner and that DKS was not a fit and proper person to hold the position of director.

14. DKS was convicted of theft by the Grand Court for inter alia, theft of monies the Geneva Account and from other Monkton clients' accounts at the Defendant Bank and sentenced to five years' imprisonment on 24 December 2012. DKS is or was currently serving his custodial sentence in Northwood Prison, Grand Cayman.

15. The Defendant Bank does not dispute that Monkton / DKS defrauded significant sums of money from the Geneva Account, but has refused to compensate Geneva as a victim of fraud for the significant sums of money paid out from its account at the Defendant Bank self-evidently in breach of mandate being based on forged signatures and denies it has any liability to its defrauded customer.

II: ACCOUNT OPENING DOCUMENTS / THE BANK MANDATE

16. In or about February 2008, DKS falsely informed Mr. Ritter that the Royal Bank of Canada ("**RBC**") was closing in the Cayman Islands and in light of this purported closure, recommended to Mr. Ritter that Geneva should move all its banking activities from RBC to the Defendant since the latter served as banker to other Monkton Clients, and with whom (according to DKS) DKS and Monkton had a long-standing relationship.

17. DKS provided the Defendant with an eligible introducer's letter in respect of Geneva written on Monkton's letterhead and signed by DKS.

18. The documents to open a bank account at the Defendant Bank in 2008 and intended to govern the banker-customer relationship between the Defendant Bank and Geneva and to constitute the bank mandate ("**The Bank Mandate**") were not contained within one, cohesive contractual document with consecutively numbered pages and paragraphs, but rather were set out in a jigsaw of discrete documents or agreements, some with unnumbered pages and / or unnumbered paragraphs ("**The Account Opening Documents"**).

19. The Account Opening Documents included the following:

    (i) A Corporate Banking: Captive Insurance Company – Account Opening Checklist ("**The Checklist"**).

    (ii) A New Account Memorandum – Business ("**The Memorandum"**).

    (iii) A Resolution Authorising Banking Account, Loans and Related Matters ("**The Directors' Resolution**").

    (iv) New Account Signature Card ("**The Signature Card"**)

    (v) General Regulations and Conditions ("**The Regulations**").

(vi) Butterfield Online Business Banking Application ("**The Online Banking Application**").

The Checklist

20. The Checklist was a template / standard form of two page document with blank fields to be completed by the customer.

21. On or about 20 March 2008 DKS completed The Checklist in his handwriting on behalf of Geneva.

22. The express purpose for which the account was to be opened for Geneva as stated on the Checklist and thereby expressly notified to the Defendant Bank was "*for core cell operating funds*".

23. The anticipated transactions through the Geneva account as stated on the Checklist and thereby expressly notified to the Defendant Bank were "*cell fees and charges paid in quarterly operating expenses, licence fees, audit admin.* [sic] *fees paid out*".

24. It was accordingly an express term of The Checklist / the Bank Mandate that the Geneva Account at the Defendant Bank would be used for core cell operational funds and the Defendant could expect to see cell fees and charges paid in quarterly operating expenses, licence fee and audit administration fees being paid out of the account.

25. It was an implied term of the Checklist / The Bank Mandate that any payments from the Geneva Account other than for core cell operational funds - such as cell fees and charges paid in quarterly operating expenses, licence fee and audit administration fees would constitute out of the ordinary course of business transactions for such account.

The Memorandum

26. The Memorandum was a template /standard form of one page document with blank fields on every line to be completed by the customer detailing name, address, contact information, initial opening balance and other general information for the bank account to be opened.

27. The Memorandum dated 20 March 2008, was also completed by DKS in his handwriting and forwarded to be signed by Mr. Ritter, whose genuine, typical signature appeared on this document next to the words "*Authorised Signatures*".

28. It was an express, alternatively implied term of the Memorandum / The Bank Mandate (as being obvious) that the authorized signature of Mr. Ritter for all purposes of the Geneva account at the Defendant Bank would be identical or very closely resemble the authorized signature signed by Mr. Ritter and appearing on the Memorandum.

29. The Plaintiffs have not seen a copy of the Memorandum signed by DKS, and do not believe he signed the same as an "authorized signatory" on the Geneva account.

30. The Plaintiffs have no knowledge of the Defendant requiring DKS to sign a copy of the Memorandum even though he was to be authorized signatory on the Geneva account.

The Directors' Resolution

31. The Directors' Resolution was also a template / standard form of two page document, with a limited number of blank fields to be completed by the customer.

32. DKS also completed The Directors' Resolution dated 20 March 2008 in his own handwriting, initialed each of the two pages, signed the last page as director and company secretary of Geneva and forwarded the same to Mr. Ritter for his counter-signature.

33. Mr. Ritter saw, read and initialed each of the two pages of the Directors' Resolution and counter-signed the same as director of Geneva.

34. The following were inter alia, express terms of the Directors' Resolution / The Bank Mandate:

(i) DKS and Mr. Ritter when signing documents together were authorized for and on behalf of Geneva to open a bank account with the Defendant Bank; i.e. when the Account Opening Documents were signed by DKS and signed by Mr. Ritter and both signing together;

(ii) DKS and Mr. Ritter when signing together were authorized for and on behalf of Geneva to *"endorse checks, drafts, ..and orders with respect to any funds at any time to the credit of* [*The Geneva Account*]*"*; i.e. when the same were actually signed by DKS and actually signed by Mr. Ritter and both signing together;

(iii) The Defendant Bank was authorized to pay and debit checks, drafts and orders from The Geneva account *"without inquiry as to the circumstances of their issue or for the disposition of their proceeds …when signed by any of the above named officers or persons"* i.e. when the same were actually signed by DKS and actually signed by Mr. Ritter and both signing together;

(iv) DKS and Mr. Ritter when signing together were authorized for an on behalf of Geneva *"to enter into any agreement relating to any general or specific*

transaction at the Defendant"; i.e. when such agreement was actually signed by DKS and actually signed by Mr. Ritter and both signing together.

(v) Geneva's Secretary or Assistant secretary was authorised and directed to certify for the Defendant the names of Geneva's officers and other persons authorized to sign for it, together with specimens of their signatures (to be provided on the Signature Card).

(vi) The Defendant was to be "*fully protected in relying on such* [signature] *certifications and* [to] *be indemnified and held harmless from any claims, demands, expenses, loss or damage resulting from, or arising out of honouring any signature so certified or refusing to honour any signature not so certified*".

(vii) All business conducted between Geneva and The Defendant was to "*be subject to the* [Regulations] *for conducting business with the* [Defendant] *bank and that a copy of such Regulations..be duly executed and agreed to by the Secretary of this Company* [Geneva]."

35. The following were inter alia, implied terms of the Directors' Resolution / the Bank Mandate being the core document of the Bank Mandate between the parties, both as being obvious and/or in order to give business efficacy thereto:

(i) In order for any document to be valid in relation to any banking transaction or banking instruction, each of the joint authorized signatures required on the Geneva Account had to be genuine and actually signed by the relevant authorized person;

(ii) In order for any agreement with the Defendant relating to banking services to be binding on Geneva, such agreement needed to be actually signed by

Mr. Ritter as well as signed by DKS as authorized signatories and both signing together;

(iii) The Defendant had no authority to accept or approve any Account Opening Document or agreement supposedly forming part of the Bank Mandate unless it was signed by both Mr. Ritter and DKS; specifically:

(a) the Defendant had no authority to accept the Regulations signed only by DKS as company secretary without a counter signature of Mr. Ritter; and

(b) The Defendant had no authority to accept the Online Banking Application signed only by DKS without a counter signature of Mr. Ritter.

(iv) The Defendant Bank had no authority to pay or debit any checks, drafts or orders from the Geneva Account without inquiry as to the circumstances of the payment unless such check, draft or order was actually signed by both Mr. Ritter and DKS.

(v) In determining whether any signature was a valid signature of an authorized signatory on the Geneva Account, the Defendant's employees were required to compare such signature carefully with the certified signatures contained on the Signature Card.

(vi) The Defendant would not have any protection or indemnity in relation to any claim, demand, expense, loss or damage resulting from or arising out of it honouring a signature which was not in fact a certified signature as appearing on the Signature Card.

36. Pursuant to the Directors' Resolution, DKS, as company secretary, certified that the officers of Geneva authorized to sign on its behalf were DKS and Mr. Ritter and certified specimens of their respective genuine signatures were provided on the Signature Card.

The Signature Card

37. The Signature card was an almost entirely blank template/ standard form document, in which the customer had to complete the name of the Company, the name of signatories, and to provide specimen genuine signatures.

38. Pursuant to the express terms of the Directors' Resolution, Mr. Ritter and DKS each wrote their names and signed the Signature Card with specimen genuine signatures upon which, in accordance with the express terms of the Directors' Resolution set out above, the Defendant was entitled to rely in being authorized to pay and debit transactions from the Geneva Account.

39. It was an implied term of the Signature Card / the Bank Mandate as being obvious, that any signature on any transaction or document which did not closely resemble a genuine signature on the Signature Card or some natural variant thereof, could not be relied upon by the Defendant Bank for any purposes.

The Regulations

40. The Regulations were a single page fixed template / standard document, with text in tiny font size of 1mm in height, such that 5 lines of text fitted into 1 cm in depth on the page.

41. The Regulations did not contain any blank fields to be completed by the customer save for date and signature lines at the end of the document in the bottom right of the page.

42. The Regulations were completed and signed solely by DKS on or about 20 March 2008. Mr. Ritter did not see, initial or sign the Regulations in March 2008 and was wholly unaware of the same until approximately August 2012.

43. The express term of the Directors' Resolution (as set out above) that all business conducted between Geneva and the Defendant was to *be subject to the* Regulations and *"that a copy of such Regulations..be duly executed and agreed to by the Secretary"* of Geneva, self-evidently meant that the Regulations were to be signed and agreed to at a future point in time and not necessarily contemporaneously with the Directors' Resolution or prior to the execution of the Directors' Resolution. Thus no notice of any of the terms of the Regulations can be inferred at the time the Directors' Resolution was signed by both DKS and Mr. Ritter.

44. The requirement for Geneva's Secretary to execute and agree to the Regulations is not to be construed as meaning the signature of DKS as the company secretary alone was sufficient to execute the Regulations in order for them to binding on Geneva. The Plaintiffs will contend that any ambiguity in this wording in the Directors' Resolution is to be construed against the Defendant Bank (and they will rely on contra proferentem rule) such that whilst DKS's signature as Company Secretary was required, so too was Mr. Ritter's signature in accordance with the express terms of the Directors' Resolution (and indeed in accordance with the express wording of Regulation 10 set out below), if the Regulations were to be binding on Geneva.

45. The paragraphs containing terms of the Regulations were unnumbered. The following were inter alia express terms of the Regulations, (referenced only by a notional sequential numbering not in fact appearing on the document):

(i) Regulation 3:

"objection to the account and securities statements must be received in writing by the Bank within four weeks from the day of the mailing of the statements and as to other advises [sic] *or statements the time limits shall be ten days from the date of mailing, unless notification in the circumstances could usually be expected or is usual within a shorter period.... Upon expiration of the time limits, account and security advises* [sic], *executions, non-executions, etc shall be deemed to have been approved."*

(ii) Regulation 5:

"The Bank is entitled, but is not obliged, to rely upon and act in accordance with any notice, demand or other communication which may from time to time be given by any verbal, telephone, telegraphic, telex or electronic message if believed by the Bank to be genuine and to be presented or delivered by or on behalf of the customer, without incurring liability should it be false or there be any error or ambiguity therein."

(iii) Regulation 10:

"When more than one person has signature rights, the Bank will consider each such person as having the right to sign singly, unless the customer gives different instructions in writing. Where special instructions concerning signature rights have been issued by a customer, he is required to notify the Bank expressly when such signature rights shall be terminated."

(iv) Regulation 11:

"The Bank verifies the signature by comparing it with the specimen on file. The Bank shall be entitled but not required to go beyond such verification. The Bank shall not be liable for consequences of forgery unless such forgery should through observance of due diligence have been readily detected."

46. It was an implied term of the Regulations (as being obvious) that if the Defendant seeks to rely on Regulation 5 in avoiding all liability for its reliance on any notice or other communication supposedly on behalf of Geneva, any subjective belief held by it or its employees that such notice or communication was presented or delivered by or on behalf of Geneva, would have to be a reasonably held and honest belief that such notice or communication was in fact, made on behalf Geneva.

47. It was an implied term of the Regulations (as being obvious) that if the Defendant seeks to rely on Regulation 11 in avoiding all liability for the consequences of forgery, it must demonstrate that it had observed due diligence in its efforts to detect such forgery.

48. The Plaintiffs will contend that Geneva is not bound by the Regulations and that the Defendant is not entitled to rely upon the same for their full terms and effect in avoiding its liability to the Plaintiffs for the following reasons:

(i) DKS's signature as company secretary alone signing the Regulations was insufficient to bind the Company in the absence of the required counter-signature of Mr. Ritter signing jointly as expressly required by the Directors' Resolution, the latter term being supplemental to, and not inconsistent with, the standard provision for a Company Secretary's signature;

(ii) Mr. Ritter was never provided with a copy of the Regulations at the time he signed the other Account Opening Documents, had no prior notice of the same and never saw the Regulations document until approximately August 2012;

(iii) The Defendant knew or ought to have known that Mr. Ritter had not seen the Regulations since he neither countersigned, nor initialed this two page document which was entirely separate to the other Account Opening Documents, with no sequential page numbering;

(iv) Further or alternatively, the verification clause set out in Regulation 3 is insufficiently clear and unambiguous to relieve the Defendant of its liability for fraudulent payments made in breach of the Bank Mandate and to shift the burden of detection of such fraud from a review of Geneva's Bank Statements onto Mr. Ritter or Geneva. The Plaintiffs will invite the court to construe Regulation 3 against the Defendant in accordance with the contra proferentem rule.

(v) Further or alternatively, the wording of Regulation 5 is also insufficiently clear and unambiguous to exempt the Defendant from liability for breach of contract or negligence or the consequences of forgery and fraud. It is difficult, if not impossible, for a bank customer as counter-party to assess with any accuracy the circumstances in which the Defendant could seek to rely on such purported exclusion of liability when it is predicated on undefined subjective criteria of a) a mere belief that the notice or communication was genuine, and b) a belief that it was presented by or on behalf of the customer. The Plaintiffs will again invite the Court to construe such vague and fatally defective clause against the Defendant and will rely on the contra proferentem rule.

(vi) Further or alternatively, the wording of Regulation 11 is also insufficiently clear and unambiguous to exempt the Defendant from liability for breach of contract or negligence for "*the consequences of forgery*" and also fraud. It is not even clear what type of liability is purported to be excluded by this clause. The Plaintiffs will again invite the Court to construe such vague and fatally

defective clause against the Defendant in accordance with the proferentem rule.

49. If, which is denied for the reasons set out above, the Regulations are held to be generally binding on Geneva, the Plaintiffs will alternatively contend that Regulations 3, 5 and 11 purporting to be exemption or exclusion of liability clauses, were unusual or onerous clauses which were not properly notified to the Plaintiffs and the Defendant had taken no, or no sufficient steps to bring such onerous terms to their attention, being buried, unnumbered in tiny font, in un-spaced paragraphs with no headings in the middle of a document containing a number of more standard banking terms relating to routine banking transactions. In the circumstances, clauses 3, 5 and 11 cannot be relied upon by the Defendant as exclusion of liability clauses and enforced against the Plaintiffs.

The Online Banking Application

50. The Online Banking Application was completed and signed by DKS, nominating himself as administrator of the Geneva Account for online banking purposes and stating that he was authorized to sign the Online Banking Application.

51. Mr. Ritter did not see, initial or sign The Online Banking Application in March 2008 and was unaware of the same until approximately August 2012.

52. The Bank did not require Mr. Ritter to countersign the Online Banking Application in accordance with the express terms of the Directors' Resolution and Regulation 10.

53. For the avoidance of any doubt, the Plaintiffs do not allege that they have suffered any loss by any unauthorized online banking transaction, but have suffered loss by the Defendant's negligence in connection with the operation and

administration of the Geneva Account and by the Defendant bank's failure to ensure compliance with the terms of the Bank Mandate requiring two (genuine) signatures for every agreement or transaction.

Other General Implied Terms

54. The following terms fall to be implied into the Account Opening Documents / The Bank Mandate as being obvious, alternatively as being necessary to give business efficacy to the Banking relationship between Geneva and the Defendant:

(i) The Defendant would exercise reasonable care and skill in carrying out banking transactions for Geneva, and specifically:

a) In ensuring that any payment transaction apparently bearing an authorized signature was indeed the true and genuine signature (or a known and usual variation of a genuine signature as appearing on the Memorandum and Signature Card) of an authorized person, namely a director of the Company;

b) By verifying the authenticity of any significant payment transaction, for example, any payment which exceeded US$100,000;

c) querying any transaction which was self-evidently out of the normal course of business for Geneva particularly if it exceeded US$100,000; and

d) querying any banking transaction which was self-evidently out of the normal course of business for Monkton as a licenced insurance manager of Geneva and of other captive insurance companies whose Bank accounts were held at the Defendant.

(ii) The Defendant would contact both Mr. Ritter as well as DKS to verify the authenticity of any obviously unusual transaction concerning the operation of Geneva Account;

(iii) That the Defendant would otherwise warn both Mr. Ritter and DKS if it had reason to believe there were irregular or suspicious transactions taking place in the Geneva Account in breach of mandate.

III: BACKGROUND FACTS – THE OPERATION OF THE GENEVA ACCOUNT

Opening of the Geneva Account

55. On 28 March 2008 the Defendant bank accepted the Account Opening Documents / The Bank Mandate (respectively completed and signed as set out above) which were forwarded to them by DKS on or about 20 March 2008 when Paul Preene, a Manager of Corporate Banking at the Defendant Bank confirmed by email dated 28 March 2008 that The Geneva Account numbered 01-220-38744 had been opened.

The Shoreline Loan: 28 July 2008

56. In July 2008, when Mr. Ritter had complained to DKS about the poor investment performance of Geneva, DKS proposed the Geneva could quickly make US$30,000 being 10% interest on a loan of US$300,000 supposedly to another Monkton client who needed cash funds urgently for a policy repayment.

57. On 28 July 2008, and pursuant to a wire transfer instruction signed by both DKS and Mr. Ritter, the sum of US$300,100 was transferred by the Defendant to Shoreline Commodity Trading **("The Shoreline Loan").**

58. The Defendant did not contact Mr. Ritter to verify that the Shoreline Loan was indeed an authorized transaction prior to paying out US$300,100.00 from the Geneva Account.

Fraudulent Transactions on the Geneva Account 28 December 2008 to 14 September 2010

59. Without the knowledge, consent or subsequent ratification of the Plaintiffs, on the 28 December 2008 DKS forged Mr. Ritter's signature on a wire transfer instruction for $148,180.74 to another Monkron client, namely, Warco Insurance Corporation **("Warco")**. The recipient bank account of this fraudulent wire transfer was Warco's account # 03210/03977 which was also at the Defendant Bank (**"The Warco Account"**). This forgery was not detected by the Defendant Bank and the Defendant paid the fraudulent transfer out of the Geneva Account to the Warco Account having direct knowledge of both sides of this transaction without there being any obvious commercial purpose for the same.

60. Without the knowledge, consent or subsequent ratification of the Plaintiffs (or presumably of the beneficial owners of Warco), on 23 June 2009 DKS as sole signatory on the Warco Account caused Warco to repay the fraudulent transfer of US$148.180.74 from Geneva dated 28 December 2008 and transferred this amount from the Warco Account back into the Geneva Account, without the Defendant querying such transaction despite there being no obvious commercial purpose for the same.

61. Without the knowledge, consent or subsequent ratification of the Plaintiffs, DKS forged Mr. Ritter's signature on a wire transfer instruction for $16,250.00 to Monkton on the 31st July 2009, with the explanation of *"management fees'*, which forgery was not detected by the Defendant Bank and the Defendant paid the fraudulent transfer out of the Geneva Account.

62. Without the knowledge, consent or subsequent ratification of the Plaintiffs, DKS forged Mr. Ritter's signature on a wire transfer instruction for $30,050.00 to Monkton on the 17th August 2009, supposedly for management fees, with no explanation as to why such fees were being charged just one month after such fees had supposedly been paid in July 2009 and why such fees would be so abnormally high, which forgery was not detected by the Defendant Bank and the Defendant paid the fraudulent transfer out of the Geneva Account.

63. Without the knowledge, consent or subsequent ratification of the Plaintiffs, DKS forged Mr. Ritter's signature on a wire transfer instruction for $16,581.72 to Monkton on the 29 October 2009, with no explanation or description, which forgery was not detected by the Defendant Bank and the Defendant paid the fraudulent transfer out of the Geneva Account.

64. Without the knowledge, consent or subsequent ratification of the Plaintiffs, DKS forged Mr. Ritter's signature on a wire transfer instruction for $435,100.00 to Monkton on the 18 December 2009, which forgery was not detected by the Defendant Bank and the Defendant paid this very significant fraudulent transfer out of the Geneva Account without there being any obvious commercial purpose for the same.

65. Without the knowledge, consent or subsequent ratification of the Plaintiffs, DKS forged Mr. Ritter's signature on a fraudulent draft request for US$16,205.00 to Monkton on the 14 July 2010 with the reference of management fees, which forgery was not detected by the Defendant Bank and the Defendant paid the fraudulent draft out of the Geneva Account.

66. Without the knowledge, consent or subsequent ratification of the Plaintiffs, DKS forged Mr. Ritter's signature on a fraudulent draft request for US$15,005.00 to Monkton on the 3 August 2010 with the reference of *"Management Fees"*, which forgery was not detected by the Bank and the Defendant paid the fraudulent draft out of the Geneva Account.

67. Without the knowledge, consent or subsequent ratification of the Plaintiffs, DKS forged Mr. Ritter's signature on a fraudulent draft request for US$47, 804.56 to J.E. Elliott on the 14th September 2010 with the reference of *"Policy Loan"*, which forgery was not detected by the Defendant Bank and the Defendant paid the fraudulent draft out of the Geneva Account.

68. Monkton/ DKS did not perpetrate any other fraudulent transactions on the Geneva Account after 14 September 2010 and Geneva's direct loss from the fraud had been suffered by this date entirely without the Plaintiffs' knowledge and consent.

69. DKS concealed the existence of the fraudulent transactions set out above from December 2008 to September 2010 **("The Fraudulent Transactions")** from Mr. Ritter by providing him with fraudulent / fake bank statements until August 2011 showing the fictional balances which would have been in the Geneva Account if the fraud had not taken place.

70. A fake bank statement forged by DKS purposed to show the repayment of the Shoreline Loan on 24 November 2008 effected through a fictitious wire transfer from Shoreline. For the avoidance of any doubt, the Plaintiffs do not seek to hold the Defendant liable for the fraud relating to the Shoreline Loan since Mr. Ritter's signature authorizing the wire transfer for the Shoreline Loan was genuine.

August 2011

71. In August 2011 following some months of being dissatisfied with the level of service being provided to Geneva by Monkton but having no knowledge whatsoever of the Fraudulent Transactions, Mr. Ritter decided to wind down Geneva's operations in the Cayman Islands, to close the Geneva Account and to transfer the funds in the Geneva Account to the USA.

72. Mr. Ritter's dissatisfaction with Monkton / DKS by August 2011 that led to this decision to close the Geneva Account, was that DKS appeared to be unresponsive to emails and evasive, specifically in relation to the providing the necessary information for the completion of the 2007 and 2008 audit of Geneva by its auditors, BDO Tortuga (**"BDO"**) which had remained outstanding for a long time.

73. With a view to closing down Geneva, on 10 August 2011 Mr. Ritter notified DKS that Geneva's three Brokerage accounts at Abshier Webb Donnelly Baker (**"AWDB")** would be terminated and the proceeds paid into the Geneva Account and he asked DKS to confirm the wire transfer remittance details for the Defendant Bank.

74. By fax dated 15 August 2011, Mr. Ritter instructed AWDB to transfer the balances of Geneva's three brokerage accounts to the Geneva Account.

75. On 16 August 2011 three separate wire transfers from AWDB credited the Geneva Account with the respective sums of US$89,818.15, US$154, 304.75 and US$265, 940.

76. On a date which Mr. Ritter cannot now recall between 25 and 31 August 2011, Mr. Ritter informed DKS during a telephone call of his intention to terminate Geneva's operations, to close the Geneva Account and to transfer all its funds to the USA .

77. Based on his own records and apparently confirmed by the falsifed bank statements provided by DKS, Mr. Ritter believed the balance of the Geneva Account at that time in late August 2011 to be approximately US$1,495,000.

78. DKS informed Mr. Ritter during the said phone call in late August 2011 that due to the minimum capital requirements for captive insurance companies imposed by CIMA, the most that could be withdrawn from the Geneva Account at that time (i.e August 2011) was US$620,000. Mr. Ritter was not satisfied with this explanation but being unable to contradict the same, he told DKS that he still intended to take all necessary steps to close the Geneva Account and have the remaining balance once the US$620,000 had been debited (which he believed to be approximately US$875,000) transferred to the USA as soon as possible.

79. On 25 August 2011 DKS deposited a cheque of US$47,829.56 into the Geneva Account with a reference of *"policy loan repayment"*. The Plaintiffs have no knowledge as to this deposit, and the source of the funds for the same, and assume that DKS arranged this irregular transaction in order to bring the balance into the Geneva account to US$622,393.28 such that the sum of US$620,000 which DKS had advised could be transferred from the account immediately was available.

IV: DISCOVERY AND REPORTING OF THE FRAUD SEPTEMBER TO NOVEMBER 2011

Thursday 1 September 2011

80. Further to the late August phone call with DKS, Mr. Ritter signed a fax instruction early in the morning of Thursday 1 September 2011 for the transfer of US$620,000 from the Geneva Account to his own account in USA and forwarded the same to DKS for his countersignature.

81. The Defendant duly made the transfer US$620,000 on Thursday 1 September 2011, based (the Plaintiffs assume) upon receipt of the jointly signed written instruction which DKS must have forwarded to them.

82. Also on the morning of Thursday 1 September 2011 and in furtherance of his objective of closing the Geneva Account as soon as possible, Mr. Ritter telephoned the Defendant Bank in order to ascertain the exact balance remaining in the Geneva Account once the US$620,000 had been debited. The Defendant's employee (whose identity is unknown to Mr. Ritter) in the corporate banking department to whom he spoke, declined to confirm the balance of the Geneva Account to him and was generally uncooperative in providing any information despite Mr. Ritter confirming he was a signor on the said account.

83. Mr. Ritter verified for the Defendant's employee during the 1 September 2011 phone call that the sum of US$620,000 would be leaving the Geneva Account by wire transfer that day and informed her that he estimated a balance of approximately US$875,000 would be remaining in the account. The Defendant's employee stated that the balance was far less than this amount but refused to provide any further information to Mr. Ritter about the Geneva Account whatsoever.

PARTICULARS OF NOTICE OF FRAUD ON 1 SEPTEMBER 2011

83 A. On 1 September 2011 the Defendant knew and had actual notice of the following facts:

(i) From its own records that the balance in the Geneva Account was $2, 293.28.

(ii) From information supplied by Mr Ritter that the correct and authorized balance on the Geneva Account following the payment of the wire transfer of US$620,000 should have been approximately US$875,000, and thus the

Defendant had actual notice that $872,707 which should have been in the Geneva Account had been withdrawn at some point prior to 1 September 2011.

(iii) From discussion with Mr Ritter that he was not aware that there was US$872,707 less in the Geneva Account than there should have been on 1 September 2011 or expect there to be such short fall in the account on this date;

(iv) In light of the above, that the US$872,707 had self-evidently been withdrawn without Mr Ritter's knowledge or consent since he knew nothing about it until the Defendant's employee informed him there was an unspecified balance which was far less than US$875,000.

(v) The only person other than the employees of the Defendant who had access to the Geneva Account who could have withdrawn funds without Mr Ritter's knowledge or consent was DKS.

(vi) That within approximately two hours of the phone call on 1 September 2011 from Mr Ritter by which the Corporate Banking Department of the Defendant Bank were specifically informed by a director and sole owner of Geneva that the authorized credit balance in the Geneva Account should have been US$872,707 higher than it actually was, DKS sent a wire transfer instruction which was stamped received by the Defendant at 11.47 am to debit the account of Warco, another captive insurance company managed by Monkton / DKS, with the sum of US$550,000 (CDN$547,195) to transfer the same to Monkton's CNB account.

(vii) That within approximately three hours of the phone call on 1 September 2011 from Mr Ritter by which the Corporate Banking Department of the Defendant Bank were specifically informed by a director and sole owner of Geneva that the credit balance in the Geneva Account should have been US$872,707 higher than it actually was, DKS sent a second wire transfer instruction which was stamped received by the Defendant at 12.32 am to debit the account of Canadian Livestock Insurance Co Ltd another company managed by Monkton

/ DKS, with the sum of US$275,000 (CDN$ 273,597) to transfer the same to Monkton's CNB account.

(viii) The Corporate Banking Department of Defendant therefore knew within 3 hours of Mr Ritter's call informing them of a US$872,707 disparity in the Geneva account that US$825,000 was being transferred from other accounts by DKS to Monkton without there being any obvious commercial purpose for such transactions.

83 B. The Defendant therefore received actual notice from Mr Ritter on 1 September 2011 that US$872,707 had been withdrawn from the Geneva Account without his knowledge or consent and were on notice therefore of a reported serious irregularity in respect of the Geneva Account on this date.

83 C. Further or alternatively, and in light of the circumstances set out in paragraphs 132 to 140 below, the Defendant had actual notice or in the further alternative, constructive notice of the fraud no later than 1 September 2011.

84. Immediately after the conclusion of the phone call with the Defendant's employee on Thursday 1 September 2011, Mr. Ritter telephoned DKS to confront him with the outline information he had just received from the Defendant about the balance on the Geneva Account and to demand an explanation.

85. During the phone call with Mr. Ritter on 1 September 2011 DKS falsely stated that there was about to be a run on the Defendant Bank and that he had moved the funds from the Geneva Account to safety in another Bank. When pressed by Mr. Ritter on how he had been able to remove such funds without his signature, DKS then admitted that he had in fact "*borrowed*" the money from the Geneva Account and forged Mr. Ritter's signature.

86. DKS assured Mr. Ritter that he was able to repay in full everything he had "borrowed" from the Geneva Account from family money and would make immediate arrangements for this. Mr. Ritter informed DKS he would travel to the Cayman Islands over the weekend and arranged to meet DKS at 9.30am on Monday 5 September 2011 which was a public holiday for *Labor Day* in the USA in order to discuss the situation in person.

87. In the afternoon of 1 September 2011, Mr. Ritter contacted Paul Arbo of BDO to ask them to investigate independently all transactions on the Geneva Account to find out the true facts concerning DKS's dealings on the account. By email that same day BDO advised Mr. Ritter that there could be a perceived conflict of interest in their carrying out any forensic accounting investigation of the "*potential problem*" with DKS and he recommended three other Cayman accountancy firms, including Krys Global.

1-2 September 2011

88. On a date and time known to the Defendant on either 1 September 2011 or 2 September 2011, but wholly without the Plaintiffs' knowledge, consent or approval, DKS caused Monkton to transfer the sum of US$110,000 from the account of a Monkton client, (whose identity is not known to the Plaintiffs) at the Defendant Bank to Monkton's account at Cayman National Bank **["CNB"]**.

88 A. On a date and time known to the Defendant and revealed in discovery provided by the Defendant on 12 September 2016, and wholly without the Plaintiffs' knowledge, consent or approval, on 1 September 2011 DKS instructed the Defendant and caused Monkton to transfer the sum of US$275,000 (CDN$273,597.50) from the account of a Monkton client, Canadian Livestock Insurance Co Ltd at the Defendant Bank to Monkton's account at Cayman National Bank **["CNB"]**.

89. On a date and time known to the Defendant and revealed in discovery provided by the Defendant on 12 September 2016, ~~on either 1 September 2011 or 2 September 2011,~~ ~~but~~ and wholly without the Plaintiffs' knowledge, consent or approval, on 1 September 2011 DKS instructed the Defendant and caused Monkton to transfer the sum of US$550,000 (CDN$547,195) fraudulently from the Warco Account at the Defendant Bank to Monkton's CNB account.

90. It is averred that the last date of any fraudulent activity undertaken by DKS (without the Plaintiffs' knowledge or consent) in connection with the Fraudulent Transactions on the Geneva Account, or in order to cover up the same was 1 September 2011, alternatively 2 September 2011.

2 September 2011

91. Following BDO's recommendation, Mr. Ritter had a preliminary telephone conversation with Ms. Margot MacInnis of Krys Global in the morning of 2 September 2011 and arranged an in person meeting with Margot Macinnis and Kenneth Krys originally for Tuesday 6 September ~~December~~ 2011 (later rescheduled for Monday 5 September 2011) to discuss the forensic accountancy investigation he wanted to have undertaken in connection with the transactions on the Geneva Account.

92. Paul Arbo of BDO informed Mr. Ritter by email sent at 4.29pm on 2 September 2011 that BDO had sought legal advice from the law firm Appleby that day as to BDO's reporting obligations as Geneva's auditors in relation to the suspected fraud. Mr Ritter accordingly reasonably assumed that Geneva's auditors knew exactly to whom they were required to report or give notice of the fraud.

4 September 2011

93. Having made travel arrangements to the Cayman Islands as soon as possible, Mr. Ritter travelled to the Cayman Islands from Texas, USA, on Sunday 4 September 2011.

5 September 2011

94. Mr. Ritter met with DKS at the Monkton offices at 9.30am on Monday 5 September 2011.

95. At this meeting on 5 September 2011 DKS produced and handed to Mr. Ritter a fax instruction on Monkton letterhead dated 1 September 2011 addressed to customer services, Natwest Bank, Beckenham, UK, with the instructions to send US$800,000 by wire transfer from a/c 14277166 to an account held by Mr. Ritter in the USA. A computer printout date-stamped 1 September 2011 from the website www.theinvestingsite.com/ banks showed the contact details and opening hours of the Natwest Beckenham branch was also given to Mr. Ritter by DKS.

96. DKS informed Mr. Ritter than the repayment funds had been sent to Monkton on Friday 2 September 2011 and should have arrived that day, and agreed to call CNB to confirm the repayment had been made during the said meeting.

97. DKS expressly confirmed that the repayment money had come from family money in the UK. When directly asked by Mr. Ritter if any of the funds had come from other customers or other clients, DKS responded "No". DKS furthermore denied that there were any other customers or clients from whom he had taken money. He said he was "*100% confident*" his relatives in England had sent the money.

98. In a second telephone conversation on 5 September 2011, DKS confirmed to Mr. Ritter that the aggregate payment of US$875,000 from Monkton's CNB account would be arriving in his US account in 3 transfers.

99. On either 2 September 2011 or 5 September 2011, DKS caused Monkton to make wire transfers of US$75,000, US$225,000 and US$575,000 from its CNB account to an account held by Mr. Ritter in the USA to repay the Geneva money he had admitted to have "borrowed".

100. Following the conclusion of his morning meeting with DKS on 5 September 2011, Mr Ritter met with Paul Arbo of BDO, Geneva's auditors to discuss the situation and seek further advice from them on the action he should take.

100 A. Mr. Ritter reposed full trust and confidence in BDO, as experienced professional auditors in the Cayman Islands, with full familiarity with the legal and regulatory requirements in the jurisdiction, and reasonably anticipated following the legal advice they had received from Appleby, that they would notify CIMA, the relevant authorities and any other party who was required to be notified of the suspected fraud in September 2011.

101. At 2pm on 5 September 2011, Mr. Ritter met with Margot MacInnis, Kenneth Krys and Jonathan Murphy of Krys Global to discuss their undertaking a forensic investigation into the transactions on the Geneva Account in order to establish the true facts of the suspected fraud and to identify which banking transactions were irregular.

102. During the meeting with Krys Global, Mr. Krys assured Mr. Ritter that the Krys Global team would carry out the forensic investigation as required and thereafter take all steps necessary to notify CIMA, the relevant authorities and any other party who was required to be notified as to the fraud. The voluntary liquidation of Geneva was also discussed.

102 A. Mr. Ritter reposed full trust and confidence in the Krys Global team, as experienced professional forensic accountants in the Cayman Islands, with full familiarity with the legal and regulatory requirements in the jurisdiction, and reasonably anticipated that they would notify the relevant authorities and any other party who was required to be notified of the fraud in September 2011.

6 September 2011

103. The US$875,000 which DKS had transferred from Monkton's CNB account on either 2 or 5 September 2011 credited into Mr. Ritter's account in the USA on Tuesday 6 September 2011. At that time (and up until reading the Confidential Report of the Monkton Controllers dated 21 February 2012 and the discovery provided by the Defendant on 12 September 2016), the Plaintiffs had no knowledge of:

(a) The origin or source of the funds transferred from Monkton's CNB account to Mr. Ritter's account on either 2 or 5 September 2011.

(b) When such funds had originally been transferred into the said CNB account by DKS.

(c) The Plaintiffs knew only that such payments were supposedly being sourced from DKS's family money in England.

104. Unbeknown to Mr. Ritter at all material times, at least US$825,00 ~~657,000~~ of the US$875,000 used by DKS to repay Geneva, did not come from DKS or DKS's family as he had falsely represented (because at the material time DKS had no such funds or assets) but from funds further misappropriated by DKS from The Bank accounts of Warco and Canadian Livestock Insurance Co Ltd, other Monkton Clients at the Defendant Bank.

105. ~~As mentioned above,~~ Part of one payment to Geneva may have been ~~was~~ sourced from CA$110,000 fraudulently transferred from the Bank account of another

Monkton client on either 1 September 2011 or 2 September 2011. The name of this party is unknown to the Plaintiffs since it is redacted from the report to CIMA by the Monkton Controllers dated 21 February 2012. Based on information the Plaintiffs learned only from the report of the Monkton Controllers, when this client would have discovered such fraud (being in a wind down process), DKS sought to conceal his misappropriation by arranging a further fraudulent transfer of CA$110,000 from its other client, namely, the Warco Account.

106. The remaining ~~US$800,000~~ US$825,000 in payments to Geneva were in fact mainly derived from another fraudulent transfer from the Warco Account in the sum of US$550,000 (CDN$547,000) and US$225,000 from Canadian Livestock Insurance Co).

107. The Plaintiffs are otherwise unable to plead as to the origin of the remaining monies received by Mr. Ritter on 6 September 2011 which are facts only within the respective knowledge of DKS, CNB and the Defendant.

8 September 2011

108. Following the meeting of Mr. Ritter with Krys Global in the Cayman Islands on 5 September 2011, Krys Global sent an engagement letter dated 8 September 2011 to Mr. Ritter which confirmed, that the work they would undertake for the Plaintiffs as follows:

"Krys Global were approached by the sole shareholder and director of the Company, Mr. Bill Ritter, to perform a forensic review of the bank statements for the period of July 2007 to August 2011 to identify any irregular withdrawals or transfers. Mr. Ritter has informed us that he has concerns in regard to the accounting, and specifically that all withdrawals or transfers from the Company to third parties are properly accounted for.

Krys Global will prepare a summary of our findings that outlines the work performed and the results of our investigation specifically focused on any disbursements or transfers from the Company.

We understand that Mr. Ritter is considering his options in terms of winding up the Company voluntarily and appointing Mr. Kenneth Krys and Ms. Margot MacInnis as Joint Voluntary Liquidators".

7-30 September 2011

109. In keeping with Mr Ritter's reasonable expectation that BDO would take whatever steps were required as auditors to bring the fraud to the attention of CIMA, the relevant authorities and any other person required to be notified, on a date unknown in September 2011, and following the conversation with BDO on 2 September 2011, the law firm Appleby prepared a Suspicious Activity Report ("**the SAR**") in relation to DKS's suspected unauthorized transactions on the Geneva Account.

110. The Plaintiffs reasonably believed that ~~O~~on a date unknown to the Plaintiffs in September 2011, the SAR was filed with the Cayman Islands Reporting Authority, a department of the Royal Cayman Islands Police, Financial Crime Unit. BDO confirmed to the Plaintiffs for the first time in May 2016 after the commencement of these proceedings, that since they had notified CIMA of the fraud in September 2011 they had not in fact filed the SAR.

111. BDO sent their invoice dated 30 September 2011 to Mr. Ritter on this date for their time in dealing with the suspected Monkton/DKS fraud, which included a disbursement of US$2,313,00 for legal advice given to BDO by Appleby in relation to their duties as auditors to report the fraud, and that law firm's preparation of the SAR.

112. By email dated 11 October 2011, Paul Arbo confirmed to Mr. Ritter that in taking action on 2 September / in early September 2011 that BDO "*were simply ensuring that we complied with our duties to you, as a director, as well as the local police authorities, CIMA and other clients of* [DKS] *in our role as auditors of Geneva Insurance*".

113. The Plaintiffs will rely on the preparation of the SAR and the actions taken by BDO (as legally advised by Appleby) on or shortly after 2 September 2011 to notify CIMA and all relevant Cayman Islands authorities including the police of the then suspected DKS/ Monkton fraud on the Geneva Account as evidence that they had caused prompt and timely action to be taken in respect of the same and at no time had ratified or sought to conceal the actions of DKS.

114. The Plaintiffs aver that it would have been both premature and imprudent to have made any specific allegations of fraud about DKS/ Monkton ~~and to have notified~~ to the Defendant Bank prior to notifying Geneva's auditors, the auditors arranging the SAR and for the RCIP and CIMA to be notified, and instructing professional forensic accountants to investigate and confirm what had happened in the past and be in possession of the full facts. As set out in paragraph 83 A above, on 1 September 2011 Mr Ritter reported a serious irregularity in the Geneva Account by specifically confirming to the Bank's employee that the authorized balance should have been approximately US$875,000, by which the Bank knew that US$872,707 had been withdrawn from the account without Mr Ritter's knowledge or consent

115. By reason of the facts and matters set out above, the Plaintiffs aver that Mr. Ritter took very prompt and reasonable action upon his discovery of what in early September 2011 was only a *suspected* fraud and had directly notified the Defendant of the serious irregularity on the Geneva Account on 1 September 2011 by which they knew US$872,707 was missing from it.

116. Since DKS's / Monkton's fraud on the Geneva account had already ceased in September 2010, almost a year before Mr. Ritter suspected any irregularities on the Geneva Account whatsoever, the loss to Geneva had already been sustained prior to Mr. Ritter having any suspicion or knowledge of the same, or his causing the fraud to be reported to the Cayman authorities.

116 A. From September 2010 through to September 2011 and at all material times thereafter, DKS had insufficient or any assets or resources to repay the funds he had misappropriated from the Geneva Account prior to September 2010 which is why he was compelled to defraud at least US$825,000 from other Monkton clients on 1 September 2011 in order to attempt to repay the Plaintiffs in the futile hope of avoiding the consequences of his fraud.

116 B. In the circumstances, the Defendant has suffered no detriment in receiving notice of the serious irregularity on the Geneva Account from Mr Ritter on 1 September 2011, or such later date on which it may allege it first knew of the fraud, since it would not have been able to reverse or unwind the fraudulent transactions from almost a year previously, and would not have been able to make any recovery from DKS in light of his impoverished financial position at all material times.

116 C. Far from suffering any detriment from not being aware of the irregularity on the Geneva account prior to 1 September 2011, the Defendant's position has been improved since the Plaintiffs have reduced their claims in these proceedings by US$ 45,000 (as set out in paragraph 157 (b) below), in respect of funds received from DKS on 6 September 2011. The Defendant itself would not have been able to defraud its client accounts of US$45,000 to repay the Plaintiffs any amount on 1 or 2 September 2011.

October 2011 to February 2012

117. From September 2011 to November 2011 Krys Global reviewed Geneva's financial records, including the falsified Bank statements prepared by DKS and compared them with genuine replicated bank statements which had been obtained from the Defendant on 17 November 2011.

118. On 29 November 2011, Margot MacInnis forwarded to CIMA a copy of the draft confidential report in which Krys Global had identified fraudulent transactions amounting to US$1,024, 057 and sought to arrange a meeting / telephone conference with CIMA to discuss the report.

119. The meeting between Krys Global, CIMA officials and Mr Ritter (attending by telephone) took place on 1 December 2011.

120. From December 2011 to February 2012 CIMA undertook their own investigations into the Monkton fraud and on 14 February 2012 CIMA appointed Gordon MacRae and Eleanor Fisher as Controllers of Monkton.

121. DKS was arrested by the RCIP on or about 17 February 2012 and later convicted of theft in December 2012 and sentenced to five years' imprisonment in Northwood Prison, Grand Cayman.

V: CLAIM FOR BREACH OF CONTRACT

122. In breach of the express, alternatively implied terms of the Bank Opening Documents / Bank Mandate as set out above, the Defendant:

(i) Relied or purported to rely on DKS's sole signature on the Regulations knowing such sole signature was insufficient authorization for Geneva to enter into any agreement or specific transaction with the Defendant Bank.

(ii) Failed to reject the Regulations as being improperly executed by Geneva being signed by only DKS in breach of the Directors' Resolution requiring both directors' signatures.

(iii) Accepted DKS's sole signature on the Online Application as sufficient authorisation to implement the same on behalf of Geneva, allowing him unfettered online access to the Company's Bank account and control over the same, thereby undermining the express joint signing requirement set out in the Directors' Resolution.

(iv) Failed to contact Mr. Ritter as joint signatory on the Geneva Account to verify the authenticity of irregular or suspicious transactions for the Geneva Account before authorizing payments which were not for core cell operational funds or associated administrative fees and charges or which were otherwise not for any purpose which could reasonably be expected in the ordinary course of a captive insurance company's business.

(v) Failed to make any inquiry as to the circumstances of irregular or suspicious transactions for the Geneva Account before authorizing payments.

(vi) Failed to contact Mr. Ritter as joint signatory on the Geneva Account to verify the authenticity of transactions from the Geneva Account (which were also not in the normal course of business for a captive insurance company) well in excess of US$100,000.

(vii) Failed to warn Mr. Ritter as joint signatory on the Geneva Account that there were irregular or suspicious transactions taking place within the said account.

(viii) Authorised and paid out substantial funds from the Geneva Account which it knew were not for core cell operational funds, or associated administrative fees and charges or which were otherwise not for any other purpose which could reasonably be expected in the ordinary course of a captive insurance company's business and which the Defendant therefore knew or ought to have known were suspicious transactions for such account of a captive insurance entity.

(ix) Authorised and paid out transactions in excess of US$100,000 from the Geneva Account without verifying the authenticity of the same with Mr. Ritter as co-signatory on the Geneva Account; specifically the Defendant:

(a) Authorised a payment of US$148,180.70 to be made from the Geneva Account to the Warco Account without raising any query both as to the abnormal signature of Mr. Ritter (forged by DKS) or as to the obviously suspicious nature of one captive insurance company being caused to make a large payment directly to another captive insurance company by the insurance manager of both companies.

(b) Authorised a transfer of US$435,000 to Monkton on December 18 2009, without raising any query with Mr. Ritter both as to the abnormal signature of Mr. Ritter (forged by DKS and which did not resemble any known variant of Mr. Ritter's genuine signature) or as to the business rationale for a captive insurance company being caused to make an abnormally large payment to its insurance manager supposedly for the purpose of *"capital funds for captive"*.

(x) Failed to exercise any or any reasonable due diligence, care and skill in ensuring that Mr. Ritter's signature was genuine on all transactions and in particular failed to compare such signatures carefully with the certified signatures contained on the Signature Card;

(xi) Authorised and paid out significant sums of money from the Geneva Account based on falsified signatures of Mr. Ritter, which had been poorly forged by DKS, bearing little or no resemblance to the genuine signatures which had been provided to the Defendant in the Account Opening Documents, or the natural variations of Mr. Ritter's genuine signature which the Defendant had seen on other genuine transactions from March to December 2008 and which should have been readily detected as forgeries.

(xii) Authorised and paid out sums of money from the Geneva account based on falsified signatures of Mr. Ritter which had been forged by DKS by using a cut and pasted facsimile copy of a genuine signature of Mr. Ritter, where visible border lines of such pasted signature could be readily detected as forgeries.

(xiii) By reason of the facts and matters set out above, the Defendant authorized and paid out significant sums of money from the Geneva Account without such transactions having genuine / certified joint signatures required from both Mr. Ritter as well as DKS.

(xiv) Failed to warn Geneva or other Monkton Clients, or CIMA or the Royal Cayman Islands Police force, when it knew or ought to have known that DKS was using Monkton's clients' bank accounts as his and Monkton's

personal piggy-banks and misappropriating funds and/ transferring them into other accounts at the Defendant.

Damages for Breach of Contract / Particulars of Loss

123. By reason of the facts and matters set out above, The Plaintiffs have suffered loss and damage by the Defendant authorizing the following payments in breach of mandate based on forged signatures of Mr. Ritter (**"The Fraudulent Transfers"):**

(i) A fraudulent transfer for $148,180.74 to the Warco Account on the 28 December 2008;

(ii) A fraudulent wire transfer for $16,250.00 to Monkton on the 31st July 2009, with the explanation of management fees;

(iii) A fraudulent wire transfer for $30,050.00 to Monkton on the 17th August 2009, with no explanation as to why such fees were being charged just one month after management fees had supposedly been paid in July and why such fees would be so abnormally high;

(iv) A fraudulent wire transfer for $16,581.72 to Monkton on the 29 October 2009, with no explanation or description;

(v) A fraudulent wire transfer for $435,100.00 to Monkton on the 18 December 2009;

(vi) A fraudulent draft request for US$16,205.00 to Monkton on the 14 July 2010 with the reference of management fees; and

(vii) A fraudulent draft request for US$15,005.00 to Monkton on the 3 August 2010 with the reference of *"Management Fees"*.

(viii) A fraudulent draft request for US$47, 804.56 to J.E. Elliott on the 14th September 2010 with the reference of Policy Loan.

Total of Fraudulent Transfers: US$725,177.02

124. Since the Fraudulent Transfers as set out above were all paid in breach of mandate, without the Plaintiffs' knowledge, authority or consent the Defendant is and was at all material times prima facie liable to reimburse the same.

125. In an attempt to cover up and perpetuate the fraud, DKS caused two of the Fraudulent Transfers set out above to be repaid.

(i) As set out in paragraph 60 above, the first transfer to Warco of US$148,180.74 was authorized by The Defendant to be transferred back from the Warco Account directly into the Geneva Account on 23 June 2009.

(ii) The final fraudulent transfer, the draft of US$47,804.56 on 14 September 2010 was repaid by the deposit of an unidentified local cheque on 25 August 2011 in the sum of US$47,829.56.

The net loss which the Plaintiffs have suffered from the Fraudulent Transfers (excluding lost interest) which the Defendant is liable to reimburse as being paid in breach of mandate amount to the aggregate sum of **US$529,191.72.**

126. Since DKS provided falsified Defendant statements to Mr. Ritter, the fraud was concealed for at least 2 more years, preventing any objection from being notified to the Defendant by him.

127. The Plaintiffs are entitled to and claim interest on the unpaid and outstanding amounts defrauded from the Geneva Account from the date of each fraudulent transaction to the date of repayment by the Defendant in accordance with the applicable rates in the Judgment Debts (Rates of Interest) Rules, namely 5% from 2008 to 2010 and 2 3/8% from 2010 to 2015/ the date of payment.

VI: CLAIM IN NEGLIGENCE

Duty of Care

128. In additional to its contractual obligations to Geneva, the Defendant owed a concurrent duty of care to Geneva to exercise the same degree of skill and care as can be expected from a reasonable and prudent banker.

129. Included within the scope of the general overarching duties of care, the Defendant owed the following specific duties to Geneva:

(i) A duty to ensure that any signature on transfer request matched or was within a known range of variations of the certified signatures of the authorized signatories on Geneva Account.

(ii) A duty to verify with both persons who were authorized signatories the authenticity of all very significant payments - and in particular those in excess of US$100,000 with both authorized signatories (when the mandate required both signatures).

(iii) A duty to verify with both persons who were authorized signatories any transaction which was obviously out of the ordinary course of Geneva's business;

(iv) A duty to investigate in circumstances when any reasonable and honest banker would have considered there was a serious or real possibility its customer was bring defrauded;

(v) A duty to warn Geneva, Warco and other Monkton Clients of abnormal transfers being made from the Geneva Account, Warco Account and other Monkton client accounts with the Defendant in favour of Monkton or DKS.

Particulars of Negligence / Breaches of Duty

130. The Plaintiffs will rely on the facts and matters set out above which show the Defendant Bank's conduct in dealing with the Geneva Account (as well the Warco

Account as those of other Monkton clients) fell far short of the standard of care to be expected from a reasonable and prudent banker.

131. Furthermore, The Defendant:

(i) Failed to check carefully or at all, the signature which were purportedly Mr. Ritter's on the Fraudulent Transfers or which with reasonable diligence it would have detected such forged signatures bore little or no resemblance to those on the Account Opening Documents or any other natural variant signature shown on all genuine transactions from March to December 2008 before the fraud commenced. It is obvious that The Defendant did not fulfill its duty of care in exercising reasonable due diligence or by checking the signatures on the transaction requests against the genuine signatures of Mr. Ritter provided on the Memorandum and the Signature Card in March 2008 when the account was opened or against other known variants of Mr. Ritter's signature seen on legitimate transactions during 2008.

(ii) Failed to notice that DKS used the US$435,000 misappropriated from the Geneva Account on December 18 2009 immediately to repay amounts previously taken by it / DKS from other Monkton Clients' bank accounts at the Defendant Bank and in December 2009, approximately the same misappropriated sum was re-deposited in the bank accounts of the other defrauded Monkton clients.

(iii) Failed to notice or take any action in respect of very obvious " red flags" which would have caused any reasonable and honest banker to consider there was a serious or real possibility one or more of its customers was bring defrauded as set out below.

Particulars of "Red Flags"

132. The Defendant is and was at all material times very experienced in providing banking services for the captive insurance industry. The Defendant was aware that Geneva was operating as a captive insurance company since it provided specifically tailored account opening forms for such companies as evidenced by the fact that the Checklist was entitled *"Corporate Banking: Captive Insurance Company – Account Opening Checklist"*.

133. The Defendant was also aware that Warco and other Monkton Clients were operating as captive insurance companies, managed by Monkton as a licenced insurance manager. It is presumed such other Monkton clients completed the Defendant's own template forms for account opening by captive insurance companies.

134. The Defendant as a reasonable and prudent banker knew or ought to have known that a transfer from the Geneva Acount directly into The Warco Account of US$148,180.74 on 29 December 2008 was a highly irregular transaction for Monkton to have instructed.

135. The Defendant as a reasonable and prudent banker knew or ought to have known that DKS had been fraudulently misappropriating sums from The Warco Account prior to December 2008, such that DKS needed to defraud Geneva, another Monkton client of US$148,180.74 to make good the discrepancies caused by earlier fraud relating to the Warco Account.

136. The Defendant as a reasonable and prudent banker knew or ought to have known that a transfer from the Warco Account directly into the Geneva Account of US$148,180.74 on 23 June 2009 was a highly irregular transaction for Monkton to have instructed.

137. The Defendant as a reasonable and prudent banker knew or ought to have known that withdrawals from the Geneva Account of US$46,300 supposedly in respect of management fees within a 19 day period from 31 July 2009 to 18 August 2009 were abnormally high transactions for Monkton to have instructed.

138. The Defendant as a reasonable and prudent banker knew or ought to have known that a transfer from the Geneva Account of US$435,100 to Monkton on 21 December 2009 was a very suspicious transaction and obviously out of normal course of business transaction for Monkton as insurance manager to have instructed.

139. The Defendant as a reasonable and prudent banker knew or ought to have known that a transfer from Warco's account to Monkton of CA$110,000 in September 2011 was a highly irregular and suspicious transaction for Monkton to have requested, especially since Monkton also credited the same sum of CA$110,000 into the account of another Monkton client (which The Plaintiffs believe may well have been at The Defendant).

140. The Defendant as a reasonable and prudent banker knew or ought to have known that a transfer from Warco's account to Monkton of CA$547,000 in September 2011 was a highly irregular and suspicious transaction for Monkton to have instructed.

Causation

141. The Defendant's actions in facilitating and implementing the fraud by DKS / Monkton were an effective cause of the Plaintiffs' loss and damage.

Damages for Negligence: Reasonably Foreseeable Losses

142. In addition to those losses which arise by reason of the Defendant's breach of contract, namely the net amount of the fraudulent transfers (i.e. not previously repaid by Monkton or DKS) amounting to US$529,191.72, The Plaintiffs are entitled to and claim all the additional losses which are or were reasonably foreseeable as a consequence of the Defendant's negligence. These include:

(i) US$112, 431.82 - Fees of Ken Krys and Margot MacInnis as JVLs. The voluntary liquidation of Geneva only took place because the sub-stratum of Geneva's business as a captive insurance company had fallen away due to the fraud;

(ii) US$3,873 – Fees and disbursements paid to BDO in advising on the suspected fraud, notifying the Cayman Authorities and preparing and filing the SAR.

(iii) US$220,871.29 - Legal fees incurred in US Proceedings to mitigate losses (as described further below);

(iv) US$1,000 - Accounting fees related to the US Proceedings;

(v) US$30,143.95 as regulatory fees unnecessarily paid to CIMA as a captive insurance company which could have been saved if the fraud had been uncovered sooner and Geneva's operations terminated sooner;

(vi) US$2,966.01 – Mr. Ritter's travel expenses from 4 to 7 September 2011 to investigate the suspected fraud by Monkton / DKS;

(vii) Compound interest on all claims from the date of the each respective fraudulent disposition, in accordance with the rates in the Judgment Debt (Rates of Interest) Rules; and

(viii) Cayman legal costs.

VII: LIABILITY AS CONSTRUCTIVE TRUSTEE: DISHONEST ASSISTANCE WITH BREACH OF TRUST

143. In addition to and / or as an alternative to their claims for breach of contract and negligence, The Plaintiffs will contend that The Defendant is liable to account as constructive trustee for Geneva's losses in acting as an accessory by the Defendant's dishonest assistance of Monkton's / DKS multiple breaches of fiduciary duty from 2008 to 2011.

144. The Defendant knew that Monkton owed a fiduciary duty to Geneva as its licenced insurance manager. The Defendant further knew and had actual notice of the fact that DKS owed fiduciary duties to Geneva as director and company secretary of Geneva.

145. There is no doubt that there has been serious misfeasance and breach of trust and fiduciary duties by both Monkton and DKS, as evidenced by DKS's criminal conviction and sentencing by the Grand Court on 24 December 2012.

PARTICULARS OF DISHONESTY

146. The Defendant (acting through its employees) willfully, alternatively recklessly, closed its eyes and ears to the obvious discrepancies and the red flags outlined above in connection with the fraud, and in authorizing multiple fraudulent transactions in the Geneva Account, the Warco Account, and the Bank accounts of other Monkton clients.

147. The Defendant deliberately closed its eyes to obviously forged signatures in respect of the Geneva account.

ADDITIONAL PARTICULARS OF DISHONESTY

147 A. The Defendant:

(i) Either suspected or ought reasonably to have suspected in all the circumstances that there were irregular or fraudulent transactions on the Geneva Account and the accounts of Warco and the Canadian Livestock Insurance Co Ltd.

(ii) closed its mind, and shut its eyes and ears to the obvious indications of improper conduct by DKS in connection with the Geneva account as set out as "red flags" above, as well as in connection with the Warco Account and the account of the Canadian Livestock Insurance Co Ltd.

(iii) Closed its mind, and shut its eyes and ears to the fraud, willfully or recklessly disregarding the circumstances described as "red flags" above.

(iv) Deliberately or recklessly failed to make such inquiries or inspections as might reasonably have been made by a reasonable and honest banker with knowledge of the suspicious circumstances / the red flags.

(v) Deliberately and willfully took a commercially unacceptable risk, alternatively a reckless risk, and failed to comply with its own internal policies in authorizing wire transfers of amounts over US$100,000 from the Geneva Account without confirming the express approval of both Mr Ritter as well as DKS as directors of Geneva to ensure such transactions were authorized.

(vi) Further or alternatively, the Defendant took a commercially unacceptable risk, alternatively a reckless risk, in failing to investigate the suspicious transactions on the Geneva Account or to make appropriate inquiries in light of the suspicions it must or ought reasonably to have had.

(vii) In the circumstances the Defendant took reckless risks with the funds in the Geneva Account to the prejudice of the Plaintiffs' rights.

(viii) Further or alternatively, the Defendant's conduct amounted to commercially unacceptable conduct in the context of corporate banking and in the circumstances of the red flags set out above.

(ix) Further, the Defendant failed to comply with its own internal policy which represented the minimum standard of reasonable and honest conduct the Defendant knew to be required of a Cayman Islands bank regulated by CIMA in these circumstances.

(x) Furthermore, The Defendant knew or but for deliberately and intentionally shutting its eyes and ears to the obvious would have known, that the fraudulent transfers from the accounts of Warco and Canadian Livestock Insurance Co Ltd to Monkton instructed by DKS on 1 September 2011 were not and could not be classified as ordinary course banking transactions or for any legitimate commercial purpose, yet it authorized the same without query or notice to Warco and Canadian Livestock Insurance Co Ltd.

148. The Defendant directly assisted in and facilitated Monkton's and DSK's misfeasance and serious breaches of trust and fiduciary duties and is therefore an accessory to such fraud.

149. In the circumstances and by reasons of the facts and matters above such assistance amounted to dishonest assistance with the fraud and Monkton's and DKS misfeasance, and serious breaches of trust and fiduciary duties to Geneva and the Defendant is liable as constructive trustee to the Plaintiffs for the loss and damage they have suffered by reason of such misfeasance and fraud.

150. Furthermore, The Defendant knew or but for deliberately and intentionally shutting its eyes and ears to the obvious would have known, that these fraudulent transfers from Warco as well as the Canadian Livestock Insurance Co ~~the other Monkton clients~~ instructed by DKS on 1 September 2011 and implemented by the

Defendant on ~~or alternatively~~ 2 September 2011 were not and could not possibly be ordinary course banking transactions, yet it authorized the same without query or notice to Warco and the Canadian Livestock Insurance Co ~~the other (unknown) Monkton client.~~

151. If the Defendant had refused to authorize such plainly suspicious transactions on ~~1 or alternatively~~ 2 September 2011 The Plaintiffs' loss would have crystallised at that point – instead further loss was suffered due to the Defendant's failure take any action to stop the further fraud in September 2011.

VII: PLAINTIFFS' ATTEMPT TO MITIGATE LOSS: THE US PROCEEDINGS

152. Once the Monkton JOLs had verified that CA$657,000 of the US$875,000 received by Mr. Ritter (receiving the same as agent of, and on behalf of Geneva) on 6 September 2011 had been misappropriated from other Monkton Clients, or was otherwise a preferential payment, they commenced proceedings against Mr. Ritter In the United States District Court, Western District of Texas ("**The US Proceedings**").

153. In attempt to continue Geneva's mitigation of its loss caused by the Defendant's breach of contract, negligence and knowing assistance with Monkton's breach of fiduciary duty to Geneva, Mr. Ritter defended The US Proceedings vigorously incurring $220,871.29 in legal fees from the Texas law firm of Lynch, Chappell & Alsup P.C in doing so.

154. The Plaintiffs sought to join the Defendant bank to The US Proceedings as a third party to recover its loss and damage as sought in these proceedings. The Defendant was able to succeed in a motion of "*Forum Non Conveniens*" in The US Proceedings, and by such action has compelled the Plaintiffs to bring these

proceedings in the Grand Court of the Cayman Islands involuntarily, instead of having all matters conveniently litigated in the USA at the same time as the claims raised by the Monkton JOLs.

155. Ultimately The US proceedings were compromised with Mr. Ritter being forced to repay on behalf of Geneva to the Monkton estate the sum of US$500,000.

156. The US District Court approved the said settlement agreement between Geneva and the Monkton JOLs.

157. The Plaintiffs have applied the US$375,000 which Geneva was permitted to retain in the US Proceedings of the repayment monies under the terms of the settlement agreement with the Monkton JOLs as follows:

(a) US$330.000 against the long outstanding Shoreline loan and the agreed 10% interest on such loan, which dating from 27 July 2008 was the oldest debt due from Monkton to Geneva (and which DKS had falsely represented had been repaid), pre-dating any Fraudulent Transactions;

(b) US$45,000 has been applied to reduce the net amount defrauded from Geneva in the Fraudulent Transactions and the Plaintiffs will give credit for such payment in its claims against the Defendant.

158. The Monkton JOLs did not make any dividend distribution to Geneva or any Monkton's other creditors out of the US$500,000 settlement proceeds paid by the Plaintiffs. The entire sum was used to pay the Monkton JOLs' own fees and their disbursements including the Cayman legal fees of their attorneys Maples and Calder and US legal fees of their US attorneys Reid Collins Tsai. The Monkton liquidation has now been concluded by the Monkton JOLs without any distributions whatsoever being made to creditors including Geneva.

159. In summary, in the course of their attempts in good faith to mitigate the loss suffered by reason of the fraud, The Plaintiffs have suffered the additional consequential loss of the US legal fees in the sum of US$220,871.29.

VIII: LIMITATION PERIODS EXTENDED

160. By a Deed of Standstill dated 23 December 2014 [**"The Deed of Standstill"**] and extensions thereto dated 31 March 2015, 27 May 2015, 29 July 2015, 31 August 2015, 7 September 2015 and 30 September 2015 [**"Standstill Extensions"**] the Plaintiffs and The Defendant Bank tolled and extended by mutual consent the relevant limitation periods for the Plaintiffs' claims herein during the timeframe 23 December 2014 to 23 October 2015.

161. The Plaintiffs will rely on the Deed of Standstill and Standstill Extensions thereto for their full terms and effect.

IX: INTEREST

162. The Plaintiffs are entitled to and claim compound interest on all amounts found due to them pursuant to section 3(1) of the Judicature Law (2007) Revision and / or the equitable jurisdiction of the Court.

AND THE PLAINTIFFS CLAIM:

(i) Damages for breach of contract;

(ii) Damages for negligence / breach of duty of care;

(iii) Damages and/ or equitable compensation for breach of fiduciary duty/ dishonest assistance;

(iv) Any necessary inquiries into damages;

(v) Compound interest on all claims from the date of each respective loss in accordance with the rates in the Judgment Debt (Rates of Interest) Rules;

(vi) Costs; and

(vii) Such further and other relief as the Court thinks fit.

14th December 2015

Amended 2nd November 2016

Sinclairs

SINCLAIRS

Attorneys for the Plaintiffs