STRADLEY RONON STEVENS & YOUNG LLP
BY: Jeffrey D. Grossman, Esquire (78537)
Steven B. Davis, Esquire (73204)
Nancy L. Margolis, Esquire (66425)
Caitlin E. Oberst, Esquire (306668)
2600 One Commerce Square
Philadelphia, PA 19103
(215) 564-8000
Fax: (215) 564-8120

Attorneys for Plaintiff, Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania in his Official Capacity as Statutory Liquidator of First Sealord Surety, Inc.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MICHAEL F. CONSEDINE Insurance Commissioner of the Commonwealth of Pennsylvania, In his official capacity as Liquidator of FIRST SEALORD SURETY, INC., 1326 Strawberry Square Harrisburg, PA 17120 Plaintiff, v. KENNETH L. BRIER, 203 Clwyd Road Bala Cynwyd, PA 19004 TED A. DRAUSCHAK, 1205 Chestershire Place Pottstown, PA 19465 JOEL COOPERMAN, 3205 Lilac Court Upper Gwynedd, PA 19446 ROBERT W. GHEGAN, 6 Hylton Road Swedesboro, NJ 08085-2593 GARY L. BRAGG, ESQUIRE, 108 Rolling Hill Drive Plymouth Meeting, PA 19462	CIVIL ACTION -- LAW NO. 11 FSS 2012 JURY TRIAL DEMANDED

-9 NOV 2012 12 22

- and -

O'NEILL BRAGG & STAFFIN, P.C.
720 Johnsville Boulevard
Suite 1200
Warminster, PA 18974

Defendants.

(Ancillary to *In re First Sealord Surety, Inc. in Liquidation*)

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help. If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

Central Pennsylvania Legal Services, Inc.
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-0581

and

Public Services and Lawyers Referral Committee
Dauphin County Bar Association
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-7536

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las priviones de estda demanda. Usted puede perer dinero o sus propiedades u otros derechos importantes para usted.

Lleva esta demanda a un abogado immediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagartal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal. Si usted no puede pagar por los servicios de un abogado, es possible que esta oficina le pueda proveer informacion sobre agencias que ofrezcan servicios legales sin cargo o bajo costo a personas que cualifican.

Central Pennsylvania Legal Services, Inc.
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-0581

and

Public Services and Lawyers Referral Committee
Dauphin County Bar Association
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-7536

FIRST AMENDED COMPLAINT

Plaintiff, Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, in his official capacity as Statutory Liquidator of First Sealord Surety, Inc. ("FSSI") (the "Liquidator"), *see Consedine v. First Sealord Surety, Inc.*, No. 1 FSS 2012 (Pa. Commw. Ct.), and pursuant to his authority under the Insurance Department Act of 1921, 40 P.S. § 221.1, *et seq.* ("Article V"), files this First Amended Complaint against certain former directors and officers of FSSI, and former counsel to FSSI, as specifically identified below ("Defendants"), for, *inter alia*, breach of fiduciary duties, negligent misrepresentation, civil conspiracy, professional negligence and voidable preference payments.

INTRODUCTION

1. As former officers and/or directors of FSSI, and/or general counsel to FSSI, Defendants each owed FSSI clear and well-defined fiduciary and other duties of care under Pennsylvania law, including the obligation to serve FSSI in good faith and in the best interests of FSSI, with such care, skill and diligence as a person of ordinary prudence would use under similar circumstances.

2. Once FSSI was within the zone of insolvency, the directors and officers Defendants owed these duties not only to FSSI itself, but also to the creditors of FSSI, including but not limited to bond obligees and other bond claimants.

3. At various points beginning in 2008 and ending when these Defendants were relieved by the Liquidator of their services to FSSI in 2012, Defendants breached their aforementioned duties and obligations, to the extreme detriment of the estate of FSSI and FSSI's creditors.

4. Among the wrongful and actionable conduct detailed below, Defendants' collective breaches include and/or resulted in: (a) the diversion of more than $4,275,000.00 of FSSI's cash to an affiliate under common control, Broadlands Financial Group, LLC ("Broadlands"); (b) the wrongful raiding of over $3,500,000.00 in cash collateral and wrongful application of this collateral to operating expenses; (c) under-reserving and under-reporting to FSSI's actuaries, auditors and the Pennsylvania Insurance Department (the "Department") of known and anticipated bond claims losses and bond claims loss expenses, and the related over-valuing and erroneous reporting of FSSI's anticipated subrogation and salvage recoveries; (d) the secretive diversion of their time, attention and other resources from FSSI to the betterment of multiple real estate development and hotel companies owned and operated by certain Defendants in breach of those Defendants' fiduciary duties and express employment contracts; and (e) the wrongful payments of more than $95,000.00 from FSSI's funds to certain company insiders, including Defendants, for purported, accrued vacation pay and other services just prior to conceding insolvency, in violation of Article V.

5. All of the Defendants' actionable misconduct collectively resulted in the estate of FSSI and its creditors sustaining ascertained and identified compensatory damages in the liquidated amounts detailed below that, in the aggregate, exceed Seven Million Eight Hundred and Seventy Thousand Dollars ($7,870,000.00), as well as additional damages in amounts to be determined.

6. These Defendants have failed to exercise reasonable or responsible care in the performance of their respective officer, director and professional duties, and in the stewardship of FSSI.

7. Their individual and collective misconduct has harmed the estate of FSSI and its creditors, precipitated the financial collapse of FSSI, and made necessary the institution of liquidation proceedings under Article V.

8. The Liquidator brings these claims of FSSI on behalf of the estate of FSSI and its creditors, under the authority granted the Liquidator pursuant to Pennsylvania law, and the Liquidator seeks damages in excess of Seven Million Eight Hundred and Seventy Thousand Dollars ($7,870,000.00) and other relief to which the Liquidator is justly entitled, for the benefit of the estate of FSSI and its creditors.

JURISDICTION, VENUE AND AUTHORITY OF THE LIQUIDATOR

9. The Commonwealth Court of Pennsylvania has jurisdiction over this matter and the Defendants pursuant to 42 Pa. C.S. § 761(a) and pursuant to Article V, 40 P.S. §§ 221.4(b)(iii) and 221.4(d).

10. Venue is proper in this Court under 40 P.S. §§ 221.4(b) and (d). FSSI is a Pennsylvania domiciled surety, which had its principal place of business at 789 East Lancaster Avenue Suite 200, Villanova, Pennsylvania 19085.

11. Article V, 40 P.S. §§ 221.23, including but not limited to subsections (6), (12), (13) and (19), and § 221.26(b), empowers and authorizes the Liquidator to bring these claims against Defendants for the benefit and protection of FSSI's creditors, the estate of FSSI and other protected entities and persons.

PARTIES

12. Plaintiff, Michael F. Consedine, is the Insurance Commissioner for the Commonwealth of Pennsylvania, acting in his official capacity as statutory Liquidator of FSSI

(the "Liquidator") pursuant to an Order of this Court dated February 8, 2012 (the "Liquidation Order"). *See* Exhibit "A."

13. The Liquidator has his principal offices located at 1326 Strawberry Square, Harrisburg, Pennsylvania 17102.

14. Defendant Kenneth L. Brier ("Brier") is an adult individual residing at 203 Clwyd Road, Bala Cynwyd, Pennsylvania 19004.

15. At relevant times, Brier served as an officer of FSSI, holding the title and position of President and Chief Executive Officer, and as a director and chairman of FSSI's Board of Directors.

16. Defendant Ted A. Drauschak ("Drauschak") is an adult individual residing at 1205 Chestershire Place, Pottstown, Pennsylvania 19465.

17. At relevant times, Drauschak served as an officer of FSSI, holding the title and position of Executive Vice President. Drauschak also served as a director on FSSI's Board of Directors and as an officer and President of Broadlands.

18. Defendant Joel Cooperman ("Cooperman") is an adult individual residing at 3205 Lilac Court, Upper Gwynedd, Pennsylvania 19446.

19. At relevant times, Cooperman served as an officer of FSSI, holding the title and position of corporate Treasurer, and until approximately 2008, as FSSI's Chief Financial Officer. Also at relevant times, Cooperman also served as director on FSSI's Board of Directors.

20. Defendant Robert Ghegan ("Ghegan") is an adult individual residing at 6 Hylton Road, Swedesboro, New Jersey 08085-2593.

21. At relevant times, Ghegan served as an officer of FSSI, succeeding Cooperman in the title and position of Chief Financial Officer.

22. Defendant Gary L. Bragg, Esquire ("Bragg") is an adult individual residing at 108 Rolling Hill Drive, Plymouth Meeting, Pennsylvania 19462.

23. At all relevant times, Bragg served as outside counsel in a general capacity to FSSI, and its parent and affiliate companies. Bragg is also an employee, shareholder and agent of Defendant, O'Neill, Bragg & Staffin, P.C.

24. O'Neill, Bragg & Staffin, P.C. ("OBS, P.C.") is a Pennsylvania Professional Corporation and law firm located at 720 Johnsville Boulevard, Suite 1220, Warminster, Pennsylvania 18974.

25. At relevant times, OBS, P.C. employed Defendant Bragg, was the firm FSSI had engaged through Bragg for legal advice and assistance, and all conduct of Bragg described hereinafter was taken within the context of an agency/principal relationship between Bragg and OBS.

26. The persons identified in Paragraphs 14 - 25 above are referred to herein collectively as "Defendants."

FORMATION AND BACKGROUND OF FSSI

27. In 1992, Brier and Drauschak founded FSSI's predecessor, Mountbatten Surety Company ("Mountbatten"), with private funding.

28. Cooperman joined Mountbatten in 1994, as its Chief Financial Officer, and in August of that year, Mountbatten became a publicly held company.

29. In 1998, the Fidelity & Deposit Company of Maryland, a subsidiary of Zurich U.S. ("Zurich"), purchased all outstanding shares of Mountbatten.

30. Zurich ran Mountbatten from 1998 until 2003, during which time Brier, Drauschak, and Cooperman remained as its managers and senior officers.

31. In 2003, Zurich approached Brier and Drauschak with an opportunity for Mountbatten's management to buy back the company and, in April of 2003, with capital from investors, Sealord LLC formed and purchased Mountbatten from Zurich.

32. Sealord Holdings, Inc. was formed as a wholly owned subsidiary of Sealord LLC and FSSI was formed as wholly owned subsidiary of Sealord Holdings, Inc.

33. FSSI then became the successor to Mountbatten, with Brier installed as FSSI's President, Chief Executive Officer, and Chairman of its Board of Directors; Drauschak as its Executive Vice President and member of its Board of Directors; and Cooperman as Chief Financial Officer, Treasurer and member of its Board of Directors.

34. Throughout FSSI's existence, Bragg served, with OBS, P.C., as its outside counsel in a general counsel capacity, as well as general counsel to FSSI's parent and affiliate entities.

35. Brier, Drauschak and Cooperman, along with others, held equity in Sealord LLC, and through their ownership interests, in the subsidiaries of Sealord LLC, including FSSI and Broadlands.

36. In 2008, Ghegan replaced Cooperman as FSSI's Chief Financial Officer.

37. From its inception in 2003, FSSI operated as a surety company, issuing bonds on construction contracts which generally obligated FSSI to perform on bonded contracts and pay proper bond claimants, if and when its bonded contractors defaulted and the bond applied to the claimed losses.

38. In exchange for issuing bonds, FSSI received premium revenue.

39. FSSI employed underwriters, engineers, accountants, attorneys, claims professionals, managers and administrative staff to run its day-to-day operations.

40. Sureties domiciled in Pennsylvania, like FSSI, are regulated by the Department, and FSSI quarterly and annually filed financial statements with the Department, as well as other filings incidental to its business operations.

41. At all relevant times, as officers and/or directors and/or counsel to FSSI, Defendants owed FSSI fiduciary and other duties of care under Pennsylvania law, including the obligation to serve FSSI in good faith and in the best interests of FSSI, with such care, skill and diligence as a person or professional of ordinary prudence would use under similar circumstances. Once FSSI was within the zone of insolvency, the officer and director Defendants owed these duties not only to FSSI itself, but also to the creditors of FSSI, including but not limited to bond obligees and other bond claimants.

FORMATION AND BACKGROUND OF BROADLANDS

42. For each construction project FSSI bonded, it was important for the bonded contractor to properly pay its subcontractors and suppliers that contributed labor or materials to the bonded project.

43. If such payments were not properly made, FSSI would be at greater risk of receiving and having exposure on bond claims.

44. To mitigate this risk from time to time, FSSI implemented a program known as "funds control" whereby the monthly project funds owed its bonded contractor would be paid to FSSI or an affiliate of FSSI, so that the surety or its affiliate could monitor and coordinate the payment of project funds to ensure proper payments therefrom and minimize the risk of bond claims.

45. Broadlands, a wholly owned subsidiary of Sealord Holdings, Inc., also formed in 2003.

46. At relevant times, Broadlands operated out of its principal office located at 789 East Lancaster Avenue, Suite 200, Villanova, Pennsylvania – the same location as FSSI's principal office.

47. At the time of formation, Broadlands, or its subsidiary, HM Exchequer, LLC, primarily existed to perform funds control operations on certain FSSI bonded projects.

48. In time, Broadlands diversified its business, mainly by performing funds control operations for parties other than FSSI, including banks in connection with monitoring and mitigating risk on its banking clients' construction loans.

49. Broadlands grew its revenue stemming from funds control services for construction lenders, but in 2008 this business and associated revenue to Broadlands precipitously and dramatically dropped.

50. In an attempt to make up for this sharp loss in revenue, beginning sometime in 2008 and continuing thereafter, Broadlands marketed itself as an experienced consultant in the niche construction sector of alternative energy projects.

51. Drauschak, with the assistance of others, prospected for this business in connection with energy projects or prospects situated within the United States, Canada, Europe, Libya, India and the Middle East.

52. Brier, Cooperman, Drauschak and others referred to this marketing effort as "elephant hunting," to signify the vast revenue they had hoped these efforts on behalf of Broadlands would reap.

53. Elephant hunting quickly became very expensive with Drauschak and others traveling across the globe to generate leads and land work.

54. From this effort, spanning more than three years, Broadlands only signed a handful of engagements, and none reaped the profits that elephant hunting intended to capture.

55. Most, if not all, of the engagements conditioned significant payments to Broadlands on government approvals or project financing that never materialized.

56. None of the elephant hunting business activities of Broadlands benefitted the surety; nor did Broadlands's funds control operations for entities other than FSSI.

IMPROPER DIVERSION OF FSSI ASSETS TO BROADLANDS

57. During the elephant hunting period, beginning sometime in 2008 and continuing through 2011, Brier, Cooperman, Drauschak and Ghegan, through their actions and omissions taken in breach of their legal obligations to FSSI, periodically transferred huge sums of FSSI's cash to Broadlands and thereby developed an ever-increasing balance owed, but never satisfied, from Broadlands to FSSI.

58. For example, by the end of January of 2009, FSSI carried a receivable from Broadlands of $664,637.

59. By the end of 2009, this receivable nearly quadrupled to $2,655,323.

60. During May of 2010, the Department questioned FSSI's management about this growing debt from Broadlands, which FSSI carried on its books.

61. In a June 3, 2010 letter to the Department from Ghegan, FSSI reported that the receivable would be significantly reduced by the end of 2010.

62. Instead, by year end 2010, the receivable grew by another approximately $2 million, to a staggering $5,551,249.

63. For what purposes Broadlands required these funds – assuming it did require capital – is presently unknown. But what is certain is that, from approximately 2008 through the end of 2010, Brier, Drauschak and Cooperman diverted over $9.8 million of FSSI's cash to Broadlands, an unregulated affiliate and subsidiary of Sealord Holdings, Inc., which the Defendants controlled.

64. And by year end 2010, according to FSSI's books and records, Broadlands owed FSSI over $5.5 million.

65. Moreover, Brier, Drauschak and Cooperman orchestrated this diversion of FSSI's funds without implementing any prudent protections whatsoever for the benefit of FSSI – to which they each owed fiduciary obligations as directors and officers of FSSI.

66. Through the end of 2010 and into 2011, these Defendants failed to put into place any proper controls in connection with their diversion of FSSI's cash to Broadlands.

67. The diversion of cash from FSSI to Broadlands did not result from any arms-length transaction or arrangement between FSSI and Broadlands – for example, through this period, there was no basis for the depletion of FSSI's cash under the terms of the Sealord LLC intercompany services agreement; FSSI held no note payable from or loan contract with Broadlands; there existed no maximum amount to be diverted or loaned, no repayment schedule and no security to collateralize Broadlands's massive debt to FSSI; FSSI was not entitled to any interest as compensation for this financing and; FSSI was not entitled to any penalty payments or other remedies in the event of non-payment from Broadlands.

68. The diversion of millions of FSSI's money to Broadlands had no benefit whatsoever to FSSI, and could not be justified from the perspective of FSSI on the basis of any prudent business reason or logic.

69. No prudent Chief Financial Officer for FSSI would have allowed these conditions and circumstances to exist, yet FSSI's CFO, Ghegan, allowed Broadlands to deplete the surety's cash, at least until 2011, without placing any controls upon Broadlands or other protections favoring FSSI.

70. Indeed, the over $5.5 million owed to FSSI at the end of 2010 only became payable under a formal note in 2011, after the Department again raised concern with these

Defendants, specifically regarding FSSI's practice of treating the Broadlands receivable as an asset upon FSSI's balance sheet.

71. In the first quarter of 2011, Brier, Drauschak and Cooperman met and/or discussed with the Department the claimed ability of Broadlands to repay the debt, and the debt's impact upon FSSI's ability to meet its current and anticipated obligations.

72. Brier, Drauschak and Cooperman assured the Department that the Broadlands energy project contracts would generate more than enough revenue (as much as $8 million) for Broadlands to repay the debt.

73. These Defendants also explained to the Department their objective for FSSI to be acquired in a sale or other arrangement, and they were actively discussing acquisition scenarios with various suitors or potential suitors.

74. To address the Department's concerns regarding FSSI's balance sheet and have the Department allow FSSI an opportunity to proceed with a sale process, FSSI proposed that the debt Broadlands then owed FSSI – over $5.5 million – could be moved up to the holding company level, such that Sealord Holdings, Inc. would issue FSSI a note for the value of the receivable (the "Note") and Sealord Holdings, Inc. would secure repayment under the Note with certain of Broadlands's contract receivables.

75. FSSI filed with the Department an application for prior notice of a transaction via a "Form D," detailing the terms of this financial arrangement.

76. Upon the Form D, Cooperman and FSSI misrepresented "Surety believes the security for the Note [*i.e.* the specified Broadlands's energy project, contract receivables] is commercially reasonable."

77. On March 21, 2011, the Department approved FSSI's Form D application detailing this arrangement and allowed FSSI to treat a portion of the receivable, now owed by FSSI's holding company parent, as an asset.

78. But, it was only after the Department expressed its concern with the ongoing diversion of FSSI's funds to Broadlands that the Defendants implemented any controls upon the repayment of the balance Broadlands owed to FSSI or any collars on lending from FSSI.

79. At the Department's insistence, the Form D also imposed a cap of $437,000 on any further debt accruing before June 15, 2011, and prohibited any further lending to Broadlands by FSSI after June 15, 2011.

80. However, even the Department-imposed restrictions were not enough to dissuade Brier, Drauschak, Cooperman and Ghegan from funneling additional FSSI funds – over $700,000 – to Broadlands during 2011.

81. Soon after the Department's March 21, 2011 approval of FSSI's Form D, FSSI came under a routine rating review with A.M. Best.

82. To maintain its "A-" rating, FSSI understood that a capital infusion of $2 million would be required.

83. FSSI's management understood that a downward rating adjustment from A.M. Best would dash all hopes of FSSI being sold; and Brier, Drauschak and Cooperman convinced two of FSSI's original investors to contribute the vast majority of capital required (contributing together $1,855,000) to maintain the "A-" rating.

84. With this capital, together with modest capital paid by these three Defendants, Sealord Holdings, Inc. paid $2 million on the Note; the effect of which was to maintain FSSI's

"A-" rating and leave a balance of approximately $4.275 million remaining on the Note as presently outstanding.

85. Brier, Drauschak, Cooperman and Ghegan breached their fiduciary duties to FSSI by their willful, reckless and/or negligent actions and omissions, in causing FSSI to divert over $9,884,287 of its cash to Broadlands during 2008, 2009, 2010 and 2011, without any benefit whatsoever to FSSI.

86. As a direct and proximate result of these breaches, FSSI has suffered damages in the amount of approximately $4.275 million, which Sealord Holdings, Inc. will never repay.

WRONGFUL RAIDING OF CASH COLLATERAL

87. A surety may hold cash belonging to bonded contractors or depositors on their behalf, as collateral to secure those bonded contractors' obligations owed to the surety.

88. Under no proper circumstances may a surety apply a contractor's cash collateral to any losses other than those occasioned by the issuance of bonds for the contractor to whom the collateral applies.

89. This arrangement – and the impropriety of applying a contractor's cash collateral for any other purpose – is universally understood within the surety industry.

90. Like other sureties, FSSI held cash collateral for many of its bonded contractors.

91. To memorialize this arrangement, FSSI and the bonded contractor (or depositor on that contractor's behalf) would typically enter into a form of Collateral Agreement. A sample form of FSSI's Collateral Agreement is attached as Exhibit "B."

92. In material part, the collateral agreements between FSSI and most of the bonded contractors or depositors state: ". . . said cash . . . are deposited with the Company [FSSI] to

indemnify it against any and all claims, damages, actions, losses, liabilities, charges, expenses, demands and costs of whatsoever nature . . . arising out of the execution of any bonds . . . which the Company has heretofore executed . . . at the request of, or on the indemnity of, the Depositor or the Principal." *Id.* at p. 1.

93. In early 2011, FSSI lacked cash to meet current payable obligations of FSSI, including infusions of cash to Broadlands.

94. This was obviously concerning to the Defendants, each of whom held an interest in FSSI as a going concern, and some of whom held the objective of selling FSSI and were in various stages of discussions with potential suitors.

95. To financially engineer FSSI's sources and use of capital in order to meet then existing payable demands, Cooperman decided to transfer to FSSI's operating accounts cash collateral from segregated accounts in FSSI's name, each of which was associated with and held a sole contractor's posted collateral.

96. Once transferred into FSSI's operating accounts, Cooperman and Ghegan would then wrongfully coordinate the expenditure of this cash collateral to the business expenses of FSSI (and probably Broadlands).

97. These transfers were conducted by wire transfer instructions to the bank in which FSSI had deposited the cash collateral into segregated accounts in FSSI's name; directing that bank to transfer the cash collateral from the segregated accounts into FSSI's operating accounts.

98. Cooperman, Drauschak and Ghegan each signed, or authorized their signatures upon, some or all of these wire transfer instructions.

99. The improper transfers identified thus far began on February 28, 2011, with the transfer of collateral funds belonging to twelve bonded contractors, comprising an aggregate $1,260,821.83, from segregated bank accounts FSSI controlled to FSSI's operating accounts.

100. Similar transfers of other cash collateral amounts, from segregated accounts FSSI controlled into FSSI's operating accounts, that have been identified thus far, include the following: on April 29, 2011, an aggregate $1,050,958.12 belonging to eight bonded contractors; on May 6, 2011, an aggregate $134,175 belonging to three bonded contractors; on May 16, 2011, an aggregate $600,000 belonging to one bonded contractor; and on June 14, 2011, another $500,000 belonging to one bonded contractor.

101. These identified cash collateral transfers and subsequent expenditures through FSSI's operating accounts totaled $3,545,954.95.

102. In May of 2011, Cooperman informed Brier and Drauschak of this improper activity.

103. At Brier's instruction, on May 17, 2011 Cooperman prepared a written memorandum to Bragg detailing his misconduct.

104. Bragg, in his role as attorney and general counsel to FSSI, reviewed the circumstances to determine whether the transfer and application of cash collateral to operating expenses was improper or illegal.

105. Bragg advised the Defendants that nothing illegal or improper had occurred.

106. Bragg did not advise that Cooperman breached the collateral agreements or breached any other duties FSSI owed to the depositors of the cash collateral wrongfully taken.

107. Bragg did not advise that FSSI must return the funds to the accounts associated with the depositors whose cash was wrongfully transferred and spent.

108. Bragg did not advise that FSSI was within the zone of insolvency and that it owed fiduciary duties to the depositors and other creditors of FSSI, which Cooperman and other Defendants, by these transfers, had breached; and at no time prior to the entry of the Liquidation Order did any of the Defendants disclose to the Department that FSSI had misused cash collateral to fund operating expenses at various points through 2011.

109. Similarly, with knowledge of this wrongful activity at least as early as May of 2011, neither Brier nor Drauschak took measures to ensure the repayment of cash collateral wrongfully spent.

110. Nor did Brier or Drauschak implement any controls to ensure against the further wrongful use of cash collateral by Cooperman or others.

111. In fact, after receiving Bragg's advice, on June 14, 2011, Cooperman and Ghegan wrongfully directed the transfer of another $500,000 from the cash collateral account associated with one bonded contractor to FSSI's operating account, and FSSI subsequently and improperly spent these collateral funds as well.

112. The acts and omissions of Cooperman, Brier, Drauschak and Ghegan, as detailed above, comprise breaches of their respective fiduciary obligations, and the acts or omissions of Bragg, as detailed above, comprise breaches of his professional duties of care, all owed to FSSI.

113. These acts and omissions caused FSSI to wrongfully spend cash collateral on the operating expenses of FSSI and, probably, Broadlands.

114. In total, from February 2011 through June 2011, these Defendants' wrongful acts and omissions caused FSSI to transfer an aggregate $3,545,954.95 from the segregated, cash collateral accounts into FSSI's operating accounts.

115. By February 8, 2012, when this Court entered an Order of Liquidation against FSSI, all of these funds had been spent.

116. Of the more than $3.5 million of diverted collateral, it appears that FSSI applied little or none of that money properly to losses occasioned by FSSI having issued bonds associated with the depositors' transferred funds.

117. Accordingly, as a result of each of the Defendants' foregoing and detailed breaches of fiduciary and other duties with respect to cash collateral, FSSI and the creditors of FSSI have suffered damages in excess of $3,500,000.

DEFENDANTS' RECKLESS RESERVING PRACTICES

118. Reserving by a surety, generally, is the process through which a surety determines the amount of money needed to provide for the ultimate cost of adjusting and paying on claims related to bond losses.

119. Proper reserving and reporting to the Department is necessary to ensure compliance with minimum capital requirements for sureties under Pennsylvania law.

120. These statutory capital requirements are determined by formula and are referred to and expressed as a Risk Based Capital ("RBC") ratio.

121. A statutory formula sets forth the minimum required RBC ratio levels based on a variety of factors.

122. If a surety's RBC ratio falls below the required minimum, Departmental intervention may be required.

123. As a regulated surety under Pennsylvania law, FSSI was required to set and report to the Department its reserves and related RBC ratio.

124. In doing so, under past and current permitted practices, FSSI may offset its claim exposure reserves (losses) by anticipated salvage and subrogation recoveries (anticipated recoveries).

125. These anticipated recoveries would typically include payments FSSI expected to receive for construction work it performed following a bonded contractor's default, indemnity payments FSSI expected to receive from indemnitors to reimburse FSSI for bond-related losses, and any third-party recoveries FSSI expected to obtain in mitigation of its losses.

126. Accordingly, the reserves FSSI maintained and reported to the Department would ultimately comprise its net reserve position, *i.e.* its gross claim reserves minus its salvage and subrogation collections and anticipated recoveries.

127. As a function of this formula, either an under-estimation of claims and related expenses exposures, or an over-estimation of anticipated subrogation and salvage recoveries, would distort FSSI's proper and accurate reserve position.

128. In practice, FSSI did both.

129. FSSI reported reserves to the Department on a quarterly and annual basis.

130. During 2010 through the end of 2011, when Defendants knew FSSI was insolvent or within the zone of insolvency, rather than accurately report its reserve position, Defendants Drauschak, Cooperman and Ghegan intentionally and/or recklessly and/or negligently misled

FSSI's outside actuaries and auditors, and the Department, by under-reserving for anticipated claims and claims loss expenses, and over-reserving for anticipated subrogation and salvage recoveries.

131. Defendants Drauschak and Cooperman had an interest in maintaining and reporting an acceptable RBC ratio, so as to not trigger close Departmental scrutiny.

132. These Defendants also had an interest in FSSI appearing as a solvent enterprise, to mislead FSSI's investors and attract potential suitors to purchase the company.

133. These Defendants also had an interest in the continued diversion of FSSI's capital to Broadlands.

134. The under-reserving for claims and over-reserving for anticipated salvage and subrogation furthered each of these interests.

135. To artificially inflate FSSI's anticipated salvage and subrogation recoveries, Drauschak and Cooperman periodically reviewed the anticipated salvage or subrogation recoveries calculated by FSSI's claims department and adjusted some of these anticipated recoveries upward, without sufficient facts to justify such adjustments.

136. In 2010 and in 2011, as Defendants became focused on selling FSSI and diverted more and more of FSSI's cash to Broadlands, Cooperman and Drauschak inflated FSSI's anticipated salvage and subrogation values.

137. Cooperman and Drauschak also failed to report certain claims in certain reporting periods, improperly pushing reserving for those claims into subsequent reporting periods in order to smooth financial results.

138. One particularly egregious practice was the failure to reserve for known claims expense obligations, specifically payments FSSI owed to its outside counsel who were defending FSSI on various bond claims and suits pending around the country.

139. Indeed, even with invoices received from these firms in excess of $500,000, Cooperman insisted that these obligations be left off of FSSI's claims expense reserves.

140. But these obligations to FSSI's outside defense counsel were indisputably required to be reported in connection with FSSI's reserves, as "loss adjustment expenses," in connection with FSSI's statutory filings, both quarterly and annually, with the Department.

141. At all relevant times, Ghegan and Cooperman were both aware of the omission of unpaid attorneys' fees from FSSI's reported reserves.

142. However, both Ghegan and Cooperman each made affirmative misrepresentations on FSSI's statutory filings and/or management letters, improperly verifying that complete and accurate data had been provided.

143. These actions misled FSSI's auditors and actuaries, as well as the Department, by having the effect of inflating FSSI's anticipated recoveries and diminishing its anticipated losses.

144. To illustrate the magnitude of these reckless reserving practices, in the fall of 2011, one potential suitor conducted an independent review of randomly selected claims files and reported to FSSI that over $1,000,000 in anticipated salvage recoveries booked to FSSI's reserves had no corresponding support.

145. Similarly, another suitor ultimately reported to FSSI that FSSI's then booked salvage and subrogation recoveries, totaling $7,172,302, should be written down to $2,522,175.

146. That same suitor determined that FSSI's reported loss reserves should be strengthened from the then reported $8.9 million to $17.1 million; and loss adjustment expenses, including the then unreserved outstanding attorneys' fees obligations, ought to be set at over $3.7 million.

147. All of the foregoing improper reserving practices delayed the detection of FSSI's true financial condition by the non-Defendant members of FSSI's board, as well as FSSI's outside actuary, outside auditor, A.M. Best and the Department, until late 2011 when these improprieties were finally brought to light.

148. By failing to properly implement and set proper controls around FSSI's reserving practices for losses and loss adjustment expenses, and for anticipated salvage and subrogation recoveries, Drauschak, Cooperman and Ghegan breached their fiduciary duties to FSSI, and they masked and caused a deepening of FSSI's ultimate insolvency, expanding FSSI's debts and artificially prolonging FSSI's corporate life.

149. This reckless reserving by Drauschak, Cooperman and Ghegan also cost FSSI needless time and money in the various sale processes with potential suitors over the course of 2010 and 2011, such as attorney's fees paid to Bragg for negotiating and drafting various sale and purchase documents for deals never consummated.

150. The foregoing reserving practices implemented by Drauschak, Cooperman and Ghegan comprise breaches of their respective fiduciary obligations owed to FSSI and the creditors of FSSI and resulted in damages of a presently undetermined amount.

IMPROPER ANCILLARY BUSINESS PURSUITS OF BRIER, DRAUSCHAK AND COOPERMAN

151. During their tenure at FSSI, Brier, Drauschak and Cooperman pursued multiple business interests entirely unrelated to FSSI.

152. These ancillary business pursuits included real estate development and hotel operations.

153. Brier, Drauschak and Cooperman all have equity stakes in one or more of these ancillary businesses.

154. While employed by FSSI, Brier, Drauschak and Cooperman each individually spent substantial time, and directed other FSSI employees to spend substantial time, working for these entities.

155. FSSI's former main office, where Brier, Drauschak and Cooperman worked, housed multiple file drawers full of documents relating to these hotels and real estate development projects and prospects, including marketing materials, construction records and financial documents.

156. Drauschak even marketed hotel development projects outside of the United States, while he travelled overseas at FSSI's expense supposedly "elephant hunting" for Broadlands.

157. Drauschak's assistant, an FSSI employee, during certain extended periods spent the majority of her working days on hotel development business for Brier, Drauschak and Cooperman.

158. Other FSSI employees similarly worked substantial hours for these businesses at the direction of Brier, Drauschak or Cooperman.

159. Brier, Drauschak and Cooperman each held employment agreements with Sealord Holdings, Inc. and FSSI (attached hereto as Exhibit "C").

160. Brier and Drauschak's agreements limited the time each of them could spend on unapproved ancillary business pursuits to an average of less than five hours per week. Cooperman's agreement did not allow for any unapproved ancillary business pursuits.

161. In addition, these employment agreements did not authorize Brier, Drauschak or Cooperman to direct FSSI's other employees or apply other FSSI resources to their ancillary business pursuits; yet they each periodically directed FSSI employees and applied other FSSI resources to these ancillary businesses – without reimbursement to FSSI.

162. By their conduct, Brier, Drauschak and Cooperman violated the terms of their respective employment agreements.

163. By their conduct, Brier, Drauschak and Cooperman also diverted resources from FSSI without reimbursement to FSSI, and breached their fiduciary duties to FSSI.

164. In the period just prior to this Court entering the February 8, 2012 Order of Liquidation, Brier, Drauschak and Cooperman directed certain FSSI employees to destroy or otherwise gather and ship the majority of business records relating to these ancillary businesses off the premises of FSSI's main office; thus leaving the Liquidator with little ability to investigate the full extent of Brier, Drauschak and Cooperman's conduct and the damages FSSI and the creditors of FSSI sustained as a direct and proximate result of the breaches detailed above.

165. The wrongful conduct and breaches of Brier, Drauschak and Cooperman in this regard caused FSSI to sustain actual damages of a presently undetermined amount.

IMPROPER PRE-PETITION PAYMENTS

166. Immediately preceding this Court's institution of liquidation proceedings, Brier, Drauschak and Cooperman improperly directed payments from FSSI to themselves and another FSSI employee.

167. Specifically, on January 3, 2012, at the direction of Brier, Drauschak and Cooperman, each of them and another FSSI employee received an aggregate $87,452 from FSSI, as purported accrued vacation pay.

168. Specifically, Brier, Drauschak and Cooperman caused the payment of $31,475 to Brier; $24,380 to Drauschak; $16,380 to another FSSI employee; and $15,217 to Cooperman.

169. Cooperman also caused a payment to be made to Bragg and/or OBS, P.C., in the amount of $9,240 in February, 2012, for purported legal services rendered.

170. These payments – all to company insiders – further depleted FSSI's assets by an aggregate $96,692.00 during a period when FSSI was clearly insolvent, and just before this Court placed FSSI into liquidation.

COUNT I

Wrongful Diversion of FSSI's Assets to Broadlands In Breach of Fiduciary Duties (Liquidator v. Brier, Drauschak, Cooperman and Ghegan)

171. Paragraphs 1 through 170 are incorporated herein by reference as if fully set forth at length.

172. As directors and officers of FSSI, Brier, Drauschak, Cooperman and Ghegan had fiduciary duties to FSSI and the creditors of FSSI during the period of their respective tenure as set forth above.

173. These Defendants breached their fiduciary duties to FSSI by their willful, reckless and/or negligent actions or omissions in connection with the diversion of FSSI's cash to Broadlands, as more particularly described in Paragraphs 1 through 86, incorporated herein by reference.

174. The foregoing willful, reckless and/or negligent actions, errors and/or omissions constitute breaches of the fiduciary duties Brier, Drauschak, Cooperman and Ghegan each owed to FSSI during the time of their individual tenure as directors and/or officers of FSSI.

175. The foregoing breaches of fiduciary and other duties directly and proximately caused the estate of FSSI and FSSI's creditors to suffer ascertained and identified damages in excess of $4,275,000.00, as set forth above.

WHEREFORE, Plaintiff, Michael F. Consedine, the Insurance Commissioner of the Commonwealth of Pennsylvania, acting in his official capacity as the Statutory Liquidator of FSSI, requests that on Count I, judgment be entered in his favor and against Defendants, Brier, Drauschak, Cooperman and Ghegan, jointly and severally, in an amount in excess of $4,275,000.00, together with all other compensatory damages, exemplary and punitive damages, costs, interest, attorney's fees and such other relief as the Court deems appropriate.

COUNT II

Civil Conspiracy to Divert FSSI Assets to Broadlands In Breach of Fiduciary Duties (Liquidator v. Brier, Drauschak and Cooperman)

176. Paragraphs 1 through 175 are incorporated herein by reference as if fully set forth at length.

177. Brier, Drauschak and Cooperman conspired, combined, agreed, or assented to wrongfully deplete, divert, or waste FSSI's assets by, among other things, their individual and collective conspiracy to improperly divert FSSI assets to Broadlands, in breach of their fiduciary and other duties they owed to FSSI and the creditors of FSSI.

178. The conspiracy of Brier, Drauschak, Cooperman, and Ghegan directly and proximately caused the estate of FSSI and FSSI's creditors to suffer damages exceeding $4,275,000.00.

WHEREFORE, Plaintiff, Michael F. Consedine, the Insurance Commissioner of the Commonwealth of Pennsylvania, acting in his official capacity as the Statutory Liquidator of FSSI, requests that on Count II, judgment be entered in his favor and against Defendants Brier, Drauschak, Cooperman and Ghegan, jointly and severally, in an amount in excess of $4,275,000.00, together with all other compensatory damages, exemplary and punitive damages, costs, interest, attorney's fees and such other relief as the Court deems appropriate.

COUNT III

Raiding of Cash Collateral In Breach of Fiduciary Duties (Liquidator v. Brier, Drauschak, Cooperman and Ghegan)

179. Paragraphs 1 through 170 are incorporated herein by reference as if fully set forth at length.

180. As directors and/or officers of FSSI, Brier, Drauschak, Cooperman and Ghegan had fiduciary duties to FSSI and the creditors of FSSI during the period of their respective tenure as set forth above.

181. Brier, Drauschak, Cooperman and Ghegan orchestrated, facilitated, permitted, encouraged and/or failed to prevent the wrongful raiding of cash collateral held by FSSI, in

breach of the collateral agreements and other duties owed the depositors of cash collateral, and in breach of these Defendants' fiduciary duties to FSSI, all by their willful, reckless, and/or negligent actions or omissions described in Paragraphs 1 through 170, incorporated by reference as if fully set forth herein.

182. The foregoing actions, errors, and/or omissions constitute breaches of the fiduciary and other duties Brier, Drauschak, Cooperman and Ghegan owed to FSSI, and to the depositors of the cash collateral (also creditors of FSSI), during the time of their individual tenure as directors and/or officers of FSSI.

183. The foregoing breaches, by Brier, Drauschak, Cooperman and Ghegan's actions, errors and/or omissions, directly and proximately caused the estate of FSSI and FSSI's creditors to suffer damages in an ascertained and identified amount in excess of $3,500,000.00, as set forth above.

WHEREFORE, Plaintiff, Michael F. Consedine, the Insurance Commissioner of the Commonwealth of Pennsylvania, acting in his official capacity as the Statutory Liquidator of FSSI, requests that on Count III, judgment be entered in his favor and jointly and severally against Defendants Brier, Drauschak, Cooperman and Ghegan, in an amount in excess of $3,500,000.00, together with all other compensatory damages, exemplary and punitive damages, costs, interest, attorney's fees and such other relief as the Court deems appropriate.

COUNT IV

Civil Conspiracy to Raid Cash Collateral In Breach of Fiduciary Duties (Liquidator v. Brier, Drauschak, Cooperman and Ghegan)

184. Paragraphs 1 through 170 and 179 through 183 are incorporated herein by reference as if fully set forth at length.

185. Defendants Brier, Drauschak, Cooperman and Ghegan conspired, combined, agreed, or assented to wrongfully deplete, divert, or waste FSSI's assets by, among other things, their individual and collective conspiracy to raid cash collateral of FSSI's bonded contractors, in breach of their fiduciary and other duties they owed to FSSI and the depositors of the cash collateral wrongfully spent.

186. The conspiracy of Defendants Brier, Drauschak, Cooperman and Ghegan directly and proximately caused the estate of FSSI and FSSI's creditors to suffer ascertained and identified damages in excess of $3,500,000.00.

WHEREFORE, Plaintiff, Michael F. Consedine, the Insurance Commissioner of the Commonwealth of Pennsylvania, acting in his official capacity as the Statutory Liquidator of FSSI, requests that on Count IV, judgment be entered in his favor and against Defendants Brier, Drauschak, Cooperman and Ghegan, jointly and severally, in an amount in excess of $3,500,000.00, together with all other compensatory damages, exemplary and punitive damages, costs, interest, attorney's fees and such other relief as the Court deems appropriate.

COUNT V

Professional Negligence
(Liquidator v. Bragg and OBS, P.C.)

187. Paragraphs 1 through 170 are incorporated herein by reference as if fully set forth at length.

188. Bragg and OBS, P.C. owed a duty to provide their client, FSSI, with legal representation in accordance with the prevailing professional standards of conduct in the Commonwealth of Pennsylvania.

189. The care, skill, or knowledge exhibited by Bragg and the agents of OBS, P.C., in connection with the representation of their client, FSSI, within the context of legal advice Bragg provided concerning certain raiding of cash collateral by Defendants Brier, Drauschak, Cooperman and Ghegan, fell outside of those professional standards.

190. The professional negligence of Bragg and OBS, P.C. through its agents breached the applicable standards of care and directly and proximately caused FSSI, the estate of FSSI and FSSI's creditors to suffer damages in excess of $3,500,000.00.

191. In addition to Bragg's liability to the Liquidator for professional negligence, under *respondeat superior* and other vicarious liability principles, OBS, P.C. is independently liable to Plaintiff for all damages directly and proximately caused by the professional negligence of Bragg and the agents of OBS, P.C.

WHEREFORE, Plaintiff, Michael F. Consedine, the Insurance Commissioner of the Commonwealth of Pennsylvania, acting in his official capacity as the Statutory Liquidator of FSSI, requests that on Count V, judgment be entered in his favor and against Defendants Bragg and OBS, P.C., jointly and severally, in an amount in excess of $3,500,000.00, together with all other compensatory damages, exemplary and punitive damages, costs, interest, attorney's fees and such other relief as the Court deems appropriate.

COUNT VI

Reckless Reserving in Breach of Fiduciary Duties (Liquidator v. Cooperman, Drauschak and Ghegan)

192. Paragraphs 1 through 170 are incorporated herein by reference as if fully set forth at length.

193. As directors and officers of FSSI, Cooperman, Drauschak and Ghegan owed fiduciary duties to FSSI and creditors of FSSI during the period of their respective tenure as set forth above.

194. These Defendants wrongly diminished FSSI's loss and loss expense reserves, wrongly inflated FSSI's anticipated salvage and subrogation reserves, and/or inaccurately reported these reserves to others, all in breach of their fiduciary duties to FSSI and the creditors of FSSI by their willful, reckless and/or negligent actions or omissions.

195. The foregoing actions, errors and/or omissions constitute breaches of the fiduciary duties Cooperman, Drauschak and Ghegan owed to FSSI and the creditors of FSSI during the time of their individual tenure as directors and/or officers of FSSI.

196. The foregoing breaches, by these Defendants' actions, errors and/or omissions, directly and proximately caused the estate of FSSI and FSSI's creditors to suffer damages as set forth above, in a presently undetermined amount.

WHEREFORE, Plaintiff, Michael F. Consedine, the Insurance Commissioner of the Commonwealth of Pennsylvania, acting in his official capacity as the Statutory Liquidator of FSSI, requests that on Count VI, judgment be entered in his favor and against Defendants Cooperman, Drauschak and Ghegan, jointly and severally, in a presently undetermined amount, together with all other compensatory damages, exemplary and punitive damages, costs, interest, attorney's fees and such other relief as the Court deems appropriate.

COUNT VII

Fraudulent Reserving
(Liquidator v. Cooperman, Drauschak and Ghegan)

197. Paragraphs 1 through 170 are incorporated herein by reference as if fully set forth at length.

198. The reserving practices of Cooperman, Drauschak and Ghegan, and their disclosures on behalf of FSSI, constitute misrepresentations as to the true financial condition of FSSI.

199. The statutory filing statements submitted to the Department by Cooperman and Ghegan on behalf of FSSI, and the management letters to FSSI's actuary and auditor, contain misrepresentations as to the true financial condition of FSSI.

200. Such misrepresentations were made falsely, with knowledge of their falsity or with recklessness as to their truth or falsity.

201. Cooperman, Drauschak and Ghegan intended that FSSI's auditor, actuary and the Department rely on these misrepresentations.

202. FSSI's auditor, actuary and the Department actually did rely on these misrepresentations to their detriment and the detriment of the estate of FSSI and the creditors of FSSI.

203. The fraudulent reserving practices and statements of Cooperman, Drauschak and Ghegan directly and proximately caused the estate of FSSI and FSSI's creditors to suffer damages as set forth above, in a presently undetermined amount.

WHEREFORE, Plaintiff, Michael F. Consedine, the Insurance Commissioner of the Commonwealth of Pennsylvania, acting in his official capacity as the Statutory Liquidator of

FSSI, requests that on Count VII, judgment be entered in his favor and against Defendants, Cooperman, Drauschak and Ghegan, jointly and severally, in a presently undetermined amount, together with all other compensatory damages, exemplary and punitive damages, costs, interest, attorney's fees and such other relief as the Court deems appropriate.

COUNT VIII

Civil Conspiracy to Engage in Reckless Reserving (Liquidator v. Cooperman, Drauschak and Ghegan)

204. Paragraphs 1 through 170 and 192 through 203 are incorporated herein by reference as if fully set forth at length.

205. Cooperman, Drauschak and Ghegan conspired, combined, agreed, or assented to wrongfully misrepresent FSSI's assets and liabilities by, among other things, their individual and collective conspiracy to engage in reckless reserving practices, in breach of their fiduciary and other duties they owed to FSSI and creditors of FSSI.

206. The conspiracy of Cooperman, Drauschak and Ghegan directly and proximately caused the estate of FSSI and FSSI's creditors to suffer damages as set forth, in a presently undetermined amount.

WHEREFORE, Plaintiff, Michael F. Consedine, the Insurance Commissioner of the Commonwealth of Pennsylvania, acting in his official capacity as the Statutory Liquidator of FSSI, requests that on Count VIII, judgment be entered in his favor and against Defendants, Cooperman, Drauschak and Ghegan, jointly and severally, in a presently undetermined amount, together with all other compensatory damages, exemplary and punitive damages, costs, interest, attorney's fees and such other relief as the Court deems appropriate.

COUNT IX

Statutory Voidable Transfers
(Liquidator v. Brier, Drauschak and Cooperman)

207. Paragraphs 1 through 170 are incorporated herein by reference as if fully set forth at length.

208. The provisions of the Insurance Department Act, including 40 P.S. § 221.30, permit Plaintiff to avoid certain transfers of monies or property of FSSI to its former directors and officers and/or others that were made during the period of up to one year prior to the filing of a successful petition for liquidation under Article V, and to avoid all such transfers made within four months prior to the filing of the petition for liquidation. The successful Petition for Order of Liquidation of FSSI was filed on February 6, 2012.

209. Brier, Drauschak and Cooperman are liable to Plaintiff pursuant to the foregoing statutory provision, for both the payments they directed and actually received, due to their participation in the transfer of monies or property of FSSI during the relevant time periods.

210. Moreover, as officers and employees acting on behalf and in control of FSSI, Brier, Drauschak and Cooperman are jointly and severally liable for these preferential transfers that they caused FSSI to make during the relevant time period.

211. The foregoing acts of Brier, Drauschak and Cooperman caused FSSI to suffer damages in the amount of $96,692.00.

WHEREFORE, Plaintiff, Michael F. Consedine, the Insurance Commissioner of the Commonwealth of Pennsylvania, acting in his official capacity as the Statutory Liquidator of FSSI, requests that on Count IX, judgment be entered in his favor and against Defendants, Brier, Drauschak and Cooperman, jointly and severally, in an amount of at least $96,692, together with

all other compensatory damages, exemplary and punitive damages, costs, interest, attorney's fees and such other relief as the Court deems appropriate.

COUNT X

Statutory Voidable Transfers
(Liquidator v. Bragg and OBS, P.C.)

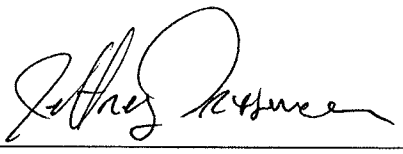
212. Paragraphs 1 through 170 are incorporated herein by reference as if fully set forth at length.

213. The provisions of the Insurance Department Act, including 40 P.S. § 221.30, permit Plaintiff to avoid certain transfers of monies or property of FSSI to its former directors and officers and/or others that were made during the period of up to one year prior to the filing of a successful petition for liquidation under Article V, and to avoid all such transfers made within four months prior to the filing of the petition for liquidation. The successful Petition for Order of Liquidation of FSSI was filed on February 6, 2012.

214. Bragg and OBS, P.C. are jointly and severally liable to Plaintiff pursuant to the foregoing statutory provision, for their receipt of funds of FSSI during the relevant time periods.

215. The foregoing acts caused FSSI to suffer damages in the amount of at least $9,240.00.

WHEREFORE, Plaintiff, Michael F. Consedine, the Insurance Commissioner of the Commonwealth of Pennsylvania, acting in his official capacity as the Statutory Liquidator of FSSI, requests that on Count X, judgment be entered in his favor and against Defendants Bragg and OBS, P.C., jointly and severally, in an amount of $9,240.00, together with all other compensatory damages, exemplary and punitive damages, costs, interest, attorney's fees and such other relief as the Court deems appropriate.



Jeffrey D. Grossman, Esquire (78537)
Steven B. Davis, Esquire (73204)
Nancy L. Margolis, Esquire (66425)
Caitlin E. Oberst, Esquire (306668)
STRADLEY RONON STEVENS & YOUNG, LLP
2600 One Commerce Square
Philadelphia, PA 19103-7098
(215) 564-8000

Attorneys for Plaintiff, Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania in his Official Capacity as Statutory Liquidator of First Sealord Surety, Inc.

Dated: November 8, 2012

CERTIFICATE OF SERVICE

I, Jeffrey D. Grossman, certify that on November 8, 2012, I caused a copy of the foregoing Amended Complaint to be served via electronic mail and overnight mail on the counsel listed below:

Mr. Robert H. Nemeroff Esquire
Shareholder
FSANM, P.C.
7848 Old York Road
Suite 200
Elkins Park, PA 19027

Counsel for Defendants:
Kenneth L. Brier
Ted A. Drauschak
Joel Cooperman
and
Robert W. Ghegan

Mr. Alan I. Becker
Litchfield Cavo
c/o 303 West Madison Street
Suite 300
Chicago, IL 60606

Counsel for Defendants:
Gary L. Bragg, Esquire
and
O'Neill Bragg & Staffin, P.C.

Jeffrey D. Grossman