

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-015089-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

In Re:

Champlain Towers South Collapse Litigation.

**RECEIVER'S MOTION TO CONFIRM COMPLIANCE WITH
ARTICLE 3 OF THE SETTLEMENT AGREEMENT
IN CONTEMPLATION OF DISTRIBUTION**

Michael I. Goldberg (the “Receiver”), pursuant to Rule 4 of the Complex Business Litigation Rules, moves to confirm the CTSCA’s compliance with Article 3.1 of the Settlement Agreement¹ and the WDC Representatives’ compliance Article 3.2.2 such that the Settlement Administrator will be authorized to disburse funds from the Settlement Fund without the CTSCA providing any additional Insurer Waivers or the WDC Representatives being required to redo any additional WDC Representative Releases (“Releases”). The Settling Parties’ challenges to the Releases and assertions that additional Insurer Waivers are required serve to prevent any disbursement of funds from the Settlement Fund. All are unfounded and contrary to the express terms of the Settlement Agreement and/or Florida law. Accordingly, the Court should overrule the Settling Parties’ assertions, confirm the compliance with Article 3, and direct the Receiver in his capacity as Settlement Administrator to disburse awards from the Settlement Funds forthwith.

In support of this motion, the Receiver states as follows:

¹ Capitalized terms not defined herein are defined in the “In Re: Champlain Towers South Collapse Litigation Class Action Settlement Agreement” (the “Settlement Agreement”), finally approved by the Court on June 24, 2022. All references to “Article” or “Art.” are to Articles of the Settlement Agreement.

INTRODUCTION

Article 3.2.2 requires that the PSC provide a Release from each WDC Representative as a condition precedent to disbursement of any Settlement Funds. *See id.* Accordingly, the Receiver, on behalf of the PSC, provided all of the required Releases on behalf of the 98 Wrongful Death Claimants' estates to the Settling Parties' counsel.² The Settling Parties raised a host of challenges to some 44 of the Releases.³ The Receiver, working with the PSC, has addressed some of these issues and provided corrected Releases where the Settling Parties' concerns were well founded. However, the vast majority of the challenges raised by the Settling Parties do not merit requiring victims of this tragedy to re-execute Releases to address irrelevant and inconsequential issues – which would cause further delay in disbursement of any award.

For example, the Settling Parties claim that a typographical error in Nicole Langesfeld's name in the first paragraph of that Release – it is misspelled “Langsfeld” – requires Andrea Langesfeld to re-execute that Release and, similarly, that the misspelling “Lady” instead of “Leidy” in that Release's first paragraph requires Juana Villalba Rojas to re-execute the Release. Although the Settlement Agreement lacks any such prohibition and no other legal basis is cited,

² As the Court is aware, counsel for the “Terra Defendants” (8701 Collins Development, LLC, Terra Group, LLC, and Terra World Investments, LLC) has served as lead negotiator and the primary contact point on behalf of the Settling Parties during this settlement process. On September 6, 2022, the Receiver's counsel sent a link to 85 Releases covering 89 “Wrongful Death Claimants” (“WDC”) to the Terra Defendants' counsel. That link was sent to all Settling Parties' counsel on September 12. On September 13, links to (i) the remaining 9 Releases and (ii) the required CTSCA Insurer Waivers and one SCM Insurer's Insurer Waiver (Universal) were sent to all Settling Parties' counsel.

³ On September 15, 2022, challenges to 44 of the Releases and all of the Insurer Waivers (addressed below) were received from the Settling Parties. An annotation of the chart provided by the Settling Parties regarding their challenges containing responses to each challenge is attached as Exhibit 1. Of the 44 challenges, only three are valid because the Releases were missing portions; all have been corrected and the corrected Releases have been provided to counsel for the Settling Parties. In addition, the Settling Parties noted that three co-Personal Representatives (one for the Estate of Simon Segal and two for the Estate of Maria Torre) had not executed Releases. Those have also been provided to the Settling Parties.

they claim that a Personal Representative for multiple estates executing a single Release is invalid and the Personal Representative(s) should be required to re-execute one Release for each estate. Despite the fact that the Settlement Agreement only requires that the Releases be “executed,” they claim that multiple Releases must be re-signed with ink signatures. They claim that certain Releases are invalid because the orders of appointment “expired” before the Releases were executed, but the only requirement in such orders is that the Estate in question be “closed” – which does not expunge a Personal Representative’s authority. They claim that omission of middle names in Releases invalidates certain Releases. Finally, although Florida law clearly establishes that imperfections in a notary block does not invalidate the notarization of a signature, they raise a host of hypertechnical challenges to notarizations – and two that are simply incorrect. *See generally* Ex. 1. As explained in detail below, none of these issues warrants – much less requires – re-execution of any Release.

Similarly, Article 3.1 requires that the Receiver cause “each CTSCA Insurer to execute and deliver to each Settling Party’s counsel an Insurer Waiver in substantially the form of Exhibit D,” which is “a condition precedent to the disbursement of any funds from the Settlement Fund.” *Id.* (bold omitted). The five required Insurer Waivers were provided to the Settling Parties’ counsel on September 13, along with an Insurer Waiver by Universal Property & Casualty Insurance Company, which is an SCM Insurer.⁴ Although the Insurer Waivers were on the exact form required by the Settlement Agreement, the Settling Parties challenged five of the six and demanded that a different form be used.⁵ The Receiver has cured these claimed problems and provided the

⁴ An SCM Insurer is defined as one who has paid funds to a Settlement Class Member before the Effective Date. *See* Art. 2.1.123. These waivers are tied to the Subrogation Holdback Sum of \$30,000,000. *See* Art. 2.1.144.

⁵ A copy of the e-mail stating the challenges is attached as Exhibit 2. The release for James River was in the correct form, but Paragraph 3 was erroneously cut off. The claim that all of the Insurer Waivers required “re-execution” was largely substantively meritless because the primary

five required CTSCA Insurer Waivers and the two required SCM Insurer Waivers to the Settling Parties' counsel. However, without valid basis, the Settling Parties contend that additional Insurer Waivers are required from three insurance companies⁶ which do not meet the definition of "CTSCA Insurers" and, therefore, no waivers are required from them. Moreover, each of these insurers has refused to execute the Insurer Waiver form and directly informed the Terra Defendants' counsel that it will not execute an Insurer Waiver.⁷ Thus, obtaining these waivers, which are not even required by the Settlement Agreement, is impossible.

Accordingly, and as set forth more fully below, the Court should overrule the Settling Parties' challenges to the Releases and demands for additional Insurer Waivers and establish that Article 3's requirements have been met such that the Receiver, in his capacity as Settlement Administrator, is authorized and directed to proceed to disburse awards from the Settlement Fund.

ARGUMENT

I. THE RELEASES PROVIDED TO THE SETTLING PARTIES FULFILL THE PSC'S OBLIGATION UNDER ARTICLE 3.2.2

The Settling Parties' challenges to the Releases are almost-entirely unfounded. Article 3.2.2 sets forth the Release requirement:

3.2.2 As a condition to participation in the Claims Administration Process, each WDC Representative that is not a Non-Participating WDC shall execute a WDC Representative Release in substantially the form of Exhibit E attached hereto. As a

basis was that the usage of the exact form required by the Settlement Agreement somehow rendered the waivers deficient. *See* Ex. 2. Exhibit D to the Settlement Agreement begins, "This Insurer Waiver (this 'Waiver') is executed as of the Effective Date (as defined herein) by _____, a _____ (the 'Releasor')." In the alternative versions demanded, the language was changed to, "This Insurer Waiver (this 'Waiver') is executed as of the Effective Date (as defined herein) by [name of insurer] (the 'Releasor')." "

⁶ The three insurers are AmTrust International Underwriters Limited ("AmTrust"), Arch Specialty Insurance Co. ("Arch Specialty" or "Arch"), and Endurance American Specialty Insurance Co. ("Endurance").

⁷ Copies of the e-mail correspondence from counsel for AmTrust, Arch Specialty, and Endurance is attached as Composite Exhibit 3.

condition precedent to the disbursement of any funds from the Settlement Fund to any Settlement Class Member, the PSC shall deliver to counsel for each Settling Party executed WDC Representative Releases from all WDC Representatives that are not Non-Participating WDCs.

It is written as a double-negative; therefore, since the estate of every “Wrongful Death Claimant” – *i.e.*, “WDC” – participated in the Claims Administration Process, a Release covering each estate is required to satisfy Art. 3.2.2’s requirement before Settlement Funds may be disbursed. Contrary to the Settling Parties’ assertions, this requirement has been satisfied – in full.

A. The Settling Parties’ Various Challenges to Slight Name Inconsistencies (at Best) in Releases Should Be Rejected.

The Settling Parties hypertechnical challenges are epitomized by their challenges to slight name inconsistencies in Releases, which in no way could affect the validity of the Release:

- The Releases on behalf of the Estate of Alfredo Leone and the Estate of Lorenzo Oliviera Leone are challenged because the Releases are executed by the “Raquel Oliviera” – who is the Personal Representative – but the appointment orders use her full name, “Raquel Azevedo De Oliviera.” *See* Ex. 1.
- The Release on behalf of the Estate of Leidy Vanessa Luna Villalba is challenged because “Leidy” is spelled “Lady” in the first paragraph of the Release; however, the Personal Representative – *i.e.*, the Releasor – is properly identified. *See* Ex. 1.
- The Release on behalf of the Estate of Nicole Langesfeld is challenged because “Langesfeld” is spelled “Langsfeld” in the first paragraph of the Release; however, the Personal Representative – *i.e.*, the Releasor – is properly identified. *See* Ex. 1.
- The Release on behalf of the Estate of Sofia Galfrascoli Nuñez is challenged because the probate case style is *In re: Sofia Nunez*; however, the Personal Representative – *i.e.*, the Releasor – is properly identified. *See* Ex. 1.

None of these challenges provides a colorable basis to bother victims of this tragedy by requesting that they re-execute and replace an existing Release which is binding and fully serves the purposes for which it is intended.

Accordingly, these challenges should be overruled.

B. Nothing in the Settlement Agreement Prohibits a Personal Representative from Executing a Release on Behalf of Multiple Estates.

The Settling Parties challenge certain Releases as not compliant with the Settlement Agreement because the personal representative executed a single Release encompassing multiple estates for which s/he is the personal representative.⁸ However, nothing in the Settlement Agreement or applicable law prohibits execution in this manner.

The Settlement Agreement defines “WDC Representative Release” as the document “substantially the form of Exhibit E attached hereto and made a part hereof, to be executed by each WDC Representative.” *Id.*, Art. 2.1.164 (original bold omitted). Similarly, in Article 6’s listing of events that must occur before the Settlement Administrator may disburse a Monetary Award, one is that “all Settling Parties receive all executed WDC Representative Releases from all WDC Representatives” *Id.*, Art. 6.6.2. The Release form begins with a fill-in-the-blanks paragraph:

This Release and Covenant Not to Sue (this “Release”) is executed as of the Effective Date (as defined herein) by _____ (“Releasor”) as the personal representative of the estate of _____ (the “Decedent’s Estate”).

See id. at 1. Nothing in this language or the Settlement Agreement itself bars a personal representative – such as Marcelo Cattarossi, who is the personal representative of the Estates of Graciela Ponce de Leon de Cattarossi, Gino Cesar Cattarossi, Andrea Maria Cattarossi, and Graciela Maria Cattarossi – from using a single form to provide the Release required by the Settlement Agreement.

Accordingly, this challenge by the Settling Parties should also be rejected.

⁸ This challenge is made to the Releases for the Estate of Andrea Cattarossi, the Estate of Gino Cattarossi, the Estate of Graciela Maria Cattarossi, the Estate of Graciela Ponce de Leon Cattarossi, the Estate of Bonnie Epstein, the Estate of David Epstein, the Estate of Maria Teresa Rovirosa, and the Estate of Richard Rovirosa.

C. An “Ink” Signature on a Release Not Required by the Settlement Agreement.

The Settling Parties’ challenge to Releases because they are “Electronically signed” has no basis.⁹ Several provisions of the Settlement Agreement compel this conclusion.

First, as noted above, “WDC Representative Release” is defined as the document “substantially the form of Exhibit E attached hereto and made a part hereof, to be **executed** by each WDC Representative.” *Id.*, Art. 2.1.164 (original bold omitted; other emphasis added). Similarly, as also noted, Article 6’s listing of events preceding disbursement of a Monetary Award includes that “all Settling Parties receive all **executed** WDC Representative Releases from all WDC Representatives” *Id.*, Art. 6.6.2 (all emphasis added).¹⁰

Second, the Settlement Agreement states explicitly where a “Personal Signature” – which cannot be certain types of electronic signature – is required.

2.1.108 “Personal Signature” means the actual signature by the person whose signature is required on the document. Unless otherwise specified in this Settlement Agreement, a document requiring a Personal Signature may be submitted by an actual original “wet ink” signature on hard copy, or a PDF or other electronic image of an actual signature, but cannot be submitted by an electronic signature within the meaning of the Electronic Records and Signatures in Commerce Act, 15 U.S.C. §§7001, et seq., the Uniform Electronic Transactions Act, or their successor acts.

The only place in the entire Settlement Agreement where a “personal signature” is required is in Art. 9.2, which governs Opt-Outs from the then-proposed Settlement Class. *See id.* The phrase “personal signature” is not used in the WDC Representative Release definition (Art. 2.1.164) or

⁹ This challenge is asserted as to the Releases for the Estate of Aishani Gia Patel, the Estate of Alexia Maria Pettengill Lopez Moreira, the Estate of Alfredo Leone, the Estate of Andrea Cattarossi, the Estate of Anna Sophia Pettengill Lopez Moreira, the Estate of Beatriz Rodriguez Guerra, the Estate of Bhavna Patel, the Estate of Elena Chavez Blasser, the Estate of Estelle Hedaya, the Estate of Fabian Nuñez, the Estate of Gino Cattarossi, the Estate of Graciela Maria Cattarossi, the Estate of Graciela Ponce de Leon Cattarossi, the Estate of Lorenzo de Oliveira Leone, the Estate of Luis Pettengill Lopez Moreira, III, the Estate of Sofia Galfrascoli Nuñez, the Estate of Sophia Lopez Moreira, the Estate of Stacie Dawn Fang, and the Estate of Vishal Patel.

¹⁰ This requirement that the Releases be “executed” directly parallels the requirement in Art. 6.6.3 that Insurer Waivers be “executed.”

the requirement that all Releases be provided prior to disbursement (Art. 6.6.2) or – notably – anywhere in the Release form.¹¹

Third, to the extent the Settling Parties are relying on an inapplicable sentence buried in the Release form (discussed below), the Settlement Agreement resolves that argument against them. While the exhibits to the Settlement Agreement are incorporated into it, that incorporation is expressly circumscribed by Article 20.4:

20.4 Incorporation of Exhibits. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, **any inconsistency between this Settlement Agreement and any attachments, exhibits, or appendices hereto will be resolved in favor of this Settlement Agreement.**

Id. (title underline in original; bold emphasis added). Thus, even if the Settling Parties could validly argue that the form contains an “ink” signature requirement – and they cannot – it would be superseded by the Settlement Agreement’s explicit requirement in multiple places that the Releases must be “executed” and express lack of the requirement of a “personal signature.” The claim that an “ink” signature is required is, at minimum, “inconsisten[t]” with the Settlement Agreement and arguably directly contrary to the simple “execut[ion]” requirement governing Releases.

In requesting re-execution of these Releases, the Settling Parties appear to be relying upon a single sentence found on the fifteenth page of the sixteen-page Release form. Paragraph 3 states:

3.5. General. Releasor must execute this Release by signing on the designated signature block below, before a qualified notary public. Releasor agrees that, for

¹¹ As an aside, it is not exactly clear what the Settling Parties are challenging here. Section 15 U.S.C. 7006(5) provides, “(5) Electronic signature – The term ‘electronic signature’ means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.” *See id.* The Settlement Agreement explicitly authorizes “a PDF or other electronic image of an actual signature” even where a “personal signature” is required. *See id.*, Art. 2.1.1.08. None of the Releases challenged on the “electronic signature” basis is signed by “/s/” or the equivalent; every one is signed with a PDF or image equivalent of an actual signature.

the purpose of executing this Release, a wet or ink signature is required to be considered an original signature.

Id. (title underline in original; other emphasis added). All of the WDC Representatives did “sign on the designated signature block” as required; even so, the Settling Parties appear to be arguing that signing in a manner other than a “ink” signature invalidates the Release – which has no basis (and would certainly be rejected by any Settling Party as well as any of the Released Parties were a WDC Representative to make such a claim).

The phrase “original signature” is nowhere defined in the Settlement Agreement – much less used in the Release form. And, even form Paragraph 3 requires that the Releasor must “execute” the Release; it does not expressly provide that the only way to “execute” the Release is through an “original signature.” Similarly, the form repeatedly references only an obligation to “execute” the Release – but does not state that the only valid manner to “execute” the Release is through an “ink” signature:

- First paragraph: “This Release and Covenant Not to Sue (this ‘Release’) is **executed** as of the Effective Date (as defined herein) by _____ (‘Releasor’) as the personal representative of the estate of _____ (the ‘Decedent’s Estate’).” (original bold omitted; emphasis added).
- Recital D: “The Settlement Agreement requires all personal representatives of persons who died as a result of the CTS Collapse (as defined herein) to **execute** this Release as a condition precedent to the distribution of any settlement proceeds under the Settlement Agreement, whether to Releasor or any other person or entity.” (emphasis added).
- Paragraph 2.2.3: “Releasor intends to be legally bound by the releases set forth in this Release. Releasor represents and warrants that no promise or inducement has been offered or made for the releases contained in this Release, except as set forth in this Release, and that this Release is **executed** without reliance on any statements or any representations not contained in this Release.” (emphasis added).
- Paragraph 3.1: “Representations and Warranties. Releasor represents and warrants to the Released Parties that (a) Releasor **executes** this Release knowingly and willingly, (b) the person **executing** this Release on behalf of Releasor has the right, power, and authority to do so, ...” (underline in original; emphasis added).

- Paragraph 3.3: “Consideration. Releasor shall deliver this Release in consideration for receipt of settlement proceeds pursuant to the Settlement Agreement. As a condition precedent to receiving any disbursement of settlement proceeds pursuant to the Settlement Agreement, Releasor warrants that he, she, or it has honestly disclosed all information required as part of his, her, its, or their participation in the Settlement, and must deliver this Release in **a properly executed form**. Releasor further stipulates that the settlement proceeds Releasor has received is sufficient consideration for the **execution** and delivery of this Release, independent of Releasor’s participation in the Settlement.” (underline in original; emphasis added).
- Paragraph 4.1: “Releasor agrees that, to the extent a trust agreement, probate order, guardianship order, or other similar legal document is necessary to establish the Releasor’s **authority to execute** this Release, then such document(s) are incorporated into this Release as the following Exhibits attached hereto (if applicable)[.]” (emphasis added).

In sum, the Court should not require these WDC Representatives – some of whom are in far-distant countries – to re-execute Releases fully compliant with every material obligation of the Settlement Agreement simply because they lack an “ink” signature, especially where execution in that manner is not expressly required by the Settlement Agreement.

D. The Notarizations Challenged by the Settling Parties Are Fully Valid Under Florida Law

The Settling Parties challenge twelve Releases on the basis that the notary block is somehow “incomplete.”¹² See Ex. 1. An example of one of these challenges is to the Release by Joshua Kleiman as the personal representative for the Estate of Frank Kleiman (copy attached as Exhibit 4); the challenge is that “notary block contains an error (commission date),” see Ex. 1. The “fatal” error is that the notary’s written commission date is “2/17/22” but the notary-stamp date is “2/17/25.” See Ex. 4 (execution page). Others are challenged – despite the fact that all necessary information is included in the notary block or evident from the signature page – because the notary

¹² This challenge is made to the Releases by the personal representatives of the Estate of Anastasiya Gromova, the Estate of Andreas Giannitsopoulos, the Estate of Andres Levine, the Estate of Elena Chavez, the Estate of Frank Kleiman, the Estate of Gary Cohen, the Estate of Marcus Joseph Guara, the Estate of Moises Rodan, the Estate of Nicole Langesfeld, the Estate of Stacie Dawn Fang, the Estate of Valeria Barth Gomez, and the Estate of Vishal Patel.

neglected to check one or the other boxes for “physical presence” or “online notarization.” *See generally* Ex. 1. None of these challenges is valid under Florida law.

The Settling Parties’ hypertechnical challenges should be rejected because Florida law requires only substantial compliance with the notarization requirements. Thus, in *Crotty v. State*, 568 So. 2d 1328 (Fla. 4th DCA 1990), the Fourth DCA rejected the argument that the notary’s failure to identify the signatory as the person taking the oath – one of the challenges made by the Settling Parties – invalidated the notarization. The court stated:

The motion did contain an oath, but the notary public who notarized appellant’s oath did not identify appellant as the one taking the oath. This hypertechnical argument is without merit. A plain review of the language identifies the one taking the oath as the defendant in the rule 3.850 proceedings. Appellant is the only defendant, thus leaving no doubt that it is his oath being notarized.

Id. at 1328-29 (emphasis added). *See also Kendall v. State*, 619 So. 2d 515, 516 (Fla. 4th DCA 1993) (reversing summary denial of a rule 3.850 motion on the grounds that “the notary section of the motion did not comport with the technical requirements of section 117.05(16), Florida Statutes (Supp.1992), which require the notary to state whether the affiant was personally known to him or her, or whether the affiant produced identification. ... We find no case law support for the trial court’s summary rejection of the motion for this reason.”) (citing *Crotty*). Similarly here, as to every single Release, there is “no doubt that it is the [Releasor’s] signature being notarized.” *Crotty*, 568 So. 2d at 1329. That is all that matters.

In re Henry, 200 B.R. 59 (Bankr. M.D. Fla. 1996), is instructive. Applying Florida law, the court addressed a challenge to a notarization where the notary did not identify whether the person was personally known or whether identification was provided in notarizing a mortgage. *See id.* at 63. The court laid out the general principles of Florida law governing this question:

The Florida Supreme Court, ... has long held that if the intention of the parties to a mortgage is clear from the document when construed as a whole, clerical and technical errors should be disregarded. *Summer v. Mitchell*, 29 Fla. 179, 10 So. 562 (1892). Other Florida courts have held that a defective notary acknowledgement

does not eliminate the obligations of the parties signing a mortgage. *Raymar Development Corporation v. Barbara*, 404 So. 2d 813, 814 (Fla. 2d DCA 1981) (holding that “[t]he liability of the parties to mortgage, *inter se*, is not affected by the absence of notarization or the other forms of proof of execution permitted by section 695.03, Florida Statutes.”). Additionally, courts have generally held that parties who sign a mortgage in the absence of fraud or duress are estopped from denying the validity of the mortgage due to a technical defect. *Harris v. Walbridge*, 488 So. 2d 881 (Fla. 1st DCA 1986).

Id. The *Henry* court held that the error did not impair the validity of the document because “the omission of party identification from the notary acknowledgment is a clerical error which does not affect the rights or obligations of the parties[.]” *Id.* at 63 (emphasis added).

Similarly, in *Matter of Barrido*, 69 B.R. 316 (Bankr. M.D. Fla. 1987), the court noted that “[i]n *House of Lyons v. Marcus*, 72 So. 2d 34 (Fla.1954), the Florida Supreme Court set forth a policy to uphold acknowledgments which substantially comply with statutory requirements.” *Id.* at 317. Accordingly, the court rejected a challenge similar to the ones raised by the Settling Parties:

[T]he notary public placed his raised notarial seal on the signature page, stated the expiration date of his commission, and signed the signature page, albeit, not on the line that was reserved for his signature. [T]his Court is satisfied that the notary public substantially complied with the statutory requirements for acknowledgment of instruments ... and the acknowledgment is therefore valid under Florida law.

Id. (emphasis added).

As these cases show, the core question to be addressed is whether the notarization sufficiently shows that the document was signed under oath – and not whether a box check was omitted. Under the applicable standard, none of the Settling Parties’ challenges to notarizations has merit, and this basis for challenging Releases should also be rejected.

E. Nothing in the Settlement Agreement Requires an Apostille.

The Settling Parties also challenge several of the Releases on the basis that “[r]elease was notarized outside of U.S. and is missing apostille.” *See* Ex. 1.¹³ Nothing in the Settlement

¹³ This challenge is made to the Releases by the personal representatives of the Estate of Andres Galfrascoli, the Estate of Catalina Gomez Ramirez, the Estate of Claudio Bonnefoy, the

Agreement requires an apostille, the form of the Release does not even mention an apostille, and neither Florida law, which governs the Settlement Agreement, *see id.*, Art. 20.17, nor the Florida Rules of Civil Procedure requires an apostille.

All of these Releases contain proper authentication.¹⁴ Nothing further is required by the Settlement Agreement. Therefore, this challenge should also be rejected.

F. The Settling Parties' Misreading of Personal Representative Appointment Orders Is No Basis to Contend That Those Releases Are Invalid.

Another common challenge to the Releases is the assertion, "Order conferring authority to personal representative expired prior to execution of release." *See generally* Ex. 1. That is a misreading of the appointment orders. The language on which the Settling Parties appear to base their assertion states some version of, "This Estate must be closed within 12 months, unless it is contested or its closing date is extended by court order."¹⁵ However, that language does not *ipso facto* terminate the personal representative's status. Moreover, all that the Release form requests – notably, not "requires" – right before the signature page is that the person executing the Release, "Please attach a copy of the order appointing you Personal Representative of the Decedent's Estate." *See id.* (bold omitted).

Estate of Leidy Vanessa Luna Villalba, the Estate of Michelle Anna Pazos, and the Estate of Miguel Pazos. As an example of the complications this unwarranted demand raises, the personal representative of the Estate of Miguel Pazos is in Dubai.

¹⁴ Section 92.50(3), Fla. Stat., provides, "Oaths, affidavits, and acknowledgments, required or authorized by the laws of this state, may be taken or administered in any foreign country, by or before any judge or justice of a court of last resort, any notary public of such foreign country, any minister, consul general, charge d'affaires, or consul of the United States resident in such country. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of the officer or person taking or administering the same; provided, however, when taken or administered by or before any judge or justice of a court of last resort, the seal of such court may be affixed as the seal of such judge or justice." To the extent such authentication is required, each of the Releases challenged on this basis contains a form of proper authentication.

¹⁵ An example of the typical language is found in the Release for the Estate of Frank Kleiman (Ex. 4) with its accompanying Letter of Administration.

In all of the challenged Releases, the requested appointment order is attached. The Settlement Agreement has no greater requirement. The definition of “Representative Claimant” is “the authorized representative ordered or appointed by a court or other official of competent jurisdiction under applicable law[.]” Art. 2.1.119. All of the appointment orders do exactly that – nothing further is properly required.

Accordingly, this challenge by the Settling Parties also should be overruled.

II. NO ADDITIONAL INSURER WAIVERS ARE REQUIRED AND THE RECEIVER HAS FULFILLED THE OBLIGATION UNDER ARTICLE 3.1

The Settling Parties’ demand for additional Insurer Waivers from AmTrust, Arch Specialty, and Endurance should be rejected. None is a “CTSCA Insurer” as defined in the Settlement Agreement because they either have not paid “insurance proceeds to” the CTSCA and/or they have no subrogation rights to waive because their rights have been extinguished or transferred to the Receiver as part of settlement agreements with the CTSCA.

One of the preconditions to disbursement of funds from the Settlement Fund is stated in Article 3.1:

3.1 CTSCA Insurer Waivers. As a condition precedent to the disbursement of any funds from the Settlement Fund to any Settlement Class Member, the Receiver shall cause each CTSCA Insurer to execute and deliver to each Settling Party’s counsel an Insurer Waiver

“CTSCA Insurer” is defined in Article 2.1.51:

2.1.51 “CTSCA Insurer” means any insurer of the CTSCA that has paid or pays **insurance proceeds to**, or on behalf of, the CTSCA on or before the Effective Date, including those insurers listed on the Schedule of CTSCA Insurers attached as Exhibit A hereto and made a part hereof.

(original bold omitted; emphasis added). The “Schedule of CTSCA Insurers” (copy attached as Exhibit 5) lists five “CTSCA Insurers”: (i) “Fireman’s Fund Insurance Company (an Allianz Company)”, (ii) “Great American Insurance Company”, (iii) James River Insurance Co., (iv) “Philadelphia Indemnity Insurance Company”, and (v) “QBE” – the Schedule does not include

either Arch Specialty Insurance Company (“Arch”) or Endurance American Specialty Insurance Company (“Endurance”). *See id.* This was not an accidental omission.

As the Court is well aware, the Settlement Agreement was tortuously negotiated over the course of many weeks. In the course of the discussions of the Schedule of CTSCA Insurers, the Receiver, his counsel, and counsel for the Terra Defendants – who, as the Court is aware, served as lead negotiator for the Settling Parties – directly addressed excluding Arch and Endurance from the draft. Removal of Arch and Endurance was sought because Arch and Endurance had entered into settlement agreements with the CTSCA nullifying the policies and, accordingly, could raise no claims against the Released Parties (or anyone else). These particular discussions directly involved counsel Endurance. *See* Comp.Ex. 3 (Endurance).

On May 19 and 20, 2022, modifications to the Schedule of CTSCA Insurers were discussed, removal of Arch and Endurance was directly requested and agreed, and they were removed from the Schedule. *See generally* Comp.Ex. 3. Notably, during these discussions, Endurance’s counsel independently made a direct written request to confirm removal of Endurance from the Schedule of CTSCA Insurers, copying counsel for the Terra Defendants and counsel for JMAF, and the Receiver’s counsel confirmed that Endurance was to be removed. *See id.* (Endurance).

In the finally-approved Settlement Agreement, the Schedule of CTSCA Insurers did not include either Arch or Endurance. *See* Ex. 5.

However, on September 14, 2022, in the context of contending that the CTSCA’s Insurer’s Waivers that had been provided to the Settling Parties “require[d] re-execution by the CTSCA’s insurers,” the Terra Defendants’ counsel stated, “We are missing waivers from Arch Insurance Company and Endurance American Specialty Insurance Company ... Please let us know when we can expect those additional waivers.” *See* Ex. 2.

In response to this demand, the Receiver's counsel reached out to counsel for AmTrust, Arch Specialty, and Endurance. None of AmTrust, Arch Specialty, or Endurance will execute the Insurer Waiver; their consistent position is that each is not a "CTSCA Insurer" as that phrase is defined and they have no existing subrogation rights to waive by virtue of their respective settlements with the CTSCA. Each insurer has explained their position in detail to the Settling Defendants' point person directly. *See* Comp. Ex. 3 (email from counsel, respectively, for AmTrust (Gary Khutorsky), Arch Specialty (Alexandra Schultz), and Endurance (Aaron Konstam), to the Terra Defendants' counsel on September 16, 2022). Notably, the discussions leading to the removal of Arch Specialty and Endurance from the Schedule of CTSCA Insurers are specifically noted in these e-mails, on top of the insurers' baseline position that no insurer can waive rights it does not have. *See generally id.*

Endurance's position is summarized in its counsel's (Aaron Konstam) e-mail to the Terra Defendants' counsel:

Putting aside all of these arguments, we also point out that Endurance cannot sign the CTSCA Insurer waiver presented to it for the first time yesterday. The waiver includes inaccuracies that is directly contradictory to its agreement with the association. To start, the document waives rights of subrogation, that Endurance does not have. To be clear, no rights of subrogation will arise out of the transaction between Endurance and the Association, because it has not agreed to pay a claim but instead is buying back and rescinding the policy. The document also states that the waiver concerns any right relating to: (1) the CTS Collapse; and (2) the payment under its policies. However, as discussed above, Endurance does not have any subrogation rights arising out of the collapse and it is not making any payment under these policies, as it has agreed to buy them back and rescind them.

See id. (Endurance) (emphasis added).

Arch's position parallels Endurance's position. In response to the assertion that "the Settling Parties' position has always been that Arch is a CTSCA Insurer and the CTSCA owes a subrogation waiver from Arch," Arch's counsel (Alexandra Schultz) responded:

I have reviewed Aaron Konstam's email which was sent earlier this morning and Arch Specialty is in agreement with everything he stated. Arch Specialty is not a

CTSCA Insurer. To respond to your point that “the Settling Parties’ position has always been that Arch Specialty is a CTSCA Insurer and the CTSCA owes a subrogation waiver from Arch,” this does not appear to be the case. Your office removed Arch Specialty from Exhibit A at our request and with the support and agreement of the Receiver’s counsel. This was done at the same time that Endurance was removed and for the same reason. We did not receive any opposition at all from any of the Settling Parties after that change was made.

Arch Specialty did not pay any “insurance proceeds” to CTSCA. It paid to buy back the policies. As I indicated in my prior email, there is no contractual relationship between Arch Specialty and CTSCA and there are no subrogation rights for Arch Specialty to assert or waive.

See id. (Arch) (emphasis added). Similarly, AmTrust’s position communicated to the Terra Defendants’ counsel by AmTrust’s counsel (Gary Khutorsky) is:

All, for the record, my client, AmTrust, takes the same position as the one taken by Endurance and Arch. I also would like to note the following. The class action settlement was finalized on 6/17/2022 and a fully executed settlement agreement was filed with the court at that time. At the time the class action settlement was negotiated, AmTrust was involved in an active coverage lawsuit with the Association. That lawsuit was resolved when AmTrust and the Association agreed to enter into a buy-back agreement. The only settlement agreement AmTrust is part of and is bound by is the agreement negotiated with the Association as part of the coverage lawsuit, which definitely does not require AmTrust to execute any waivers as part of the class action settlement.

See id. (Amtrust).

The relevant provisions in the agreements with AmTrust, Arch, and Endurance confirm their respective positions and show why they cannot properly be required to execute an Insurer Waiver.¹⁶

With respect to AmTrust, the *Mutual Release Agreement and Policy Release* between the Receiver, on behalf of the CTSCA, and AmTrust, expressly recognizes that the Receiver and AmTrust agreed that “the Parties agree that the Policies do not provide coverage for the bodily injury claims asserted in the Collapse Lawsuits. The Parties further agree that the Policies do not

¹⁶ The complete agreements are confidential. If necessary, they will be submitted to the Court for *in camera* review.

provide coverage for the property damage sustained on June 24, 2021, and asserted in the Collapse Lawsuits.” *Id.* at Recital K (emphasis added). “However, the Parties ... disagreed on Insurer’s obligations under the Policies and coverage associated with the Collapse Lawsuits.” *Id.*

As part of the resolution of their dispute, “the Parties agree[d] to voluntarily terminate any and all past, present and future rights, obligations and liabilities (whether known or unknown) between them arising under or relating to the Policies and go their separate ways.” *Id.* at Recital Q. In addition, “[t]he Parties agree[d] that, effective upon receipt of the Settlement Payment, the Policy [wa]s hereby extinguished, terminated, and rescinded, along with the Parties’ past, present and future obligations to each other as set forth in the Policy. From and after the Receiver’s receipt of the Settlement Payment, no person or entity shall have any further obligations, duties, or responsibilities under or related to the Policy.” *Id.* at ¶ 6 (emphasis added). Finally, AmTrust assigned to the Receiver all rights it may have had “against any person or entity including insurers arising out of or related to the Collapse Lawsuits,” which assignment expressly included, but was not limited to, claims based upon “subrogation, contribution, equitable subrogation, equitable contribution[.]” *Id.* at ¶ 4(a).

Accordingly, there is no basis for the Settling Parties to demand that AmTrust execute an Insurer Waiver, because AmTrust has no rights it can waive.

Similarly, with respect to Arch Specialty, the *Mutual Release Agreement and Policy Release* between Receiver, on behalf of the CTSCA, and Arch contains the essentially-identical provisions, including Recital K (agreement to no coverage), Recital O (which parallels AmTrust Recital Q on voluntary termination of rights and obligations under the Policies), Paragraph 6 (extinguishing the Policies), and Paragraph 4(a) (assignment to the Receiver of all rights, including subrogation and contribution).

Accordingly, there is likewise no basis for the Settling Parties to demand that Arch execute an Insurer Waiver, because Arch has no rights it can waive.

Although the agreement with Endurance is a slightly-different form, the effect is the same such that no Insurer Waiver can properly be required of Endurance. The *General Release Agreement and Full Policy Buyout and Release* between the Receiver, on behalf of the CTSCA, and Endurance contains the equivalent Recital K (agreement to no coverage) and Recital O (which, as does Arch Recital O, parallels AmTrust Recital Q on voluntary termination of rights and obligations under the Policies). And, in language paralleling AmTrust and Arch Paragraph 6, Endurance and the Receiver agreed that “any and all past, present and future rights, obligations and liabilities (whether known or unknown) between them arising under or relating to the Policies” are extinguished and that the “Policies are extinguished, terminated, and rescinded.” *Id.* at ¶ 2. And, the parties agreed that “no person or entity shall have any further obligations, duties, or responsibilities under or related to the Policy.” *Id.* at ¶ 5 (emphasis added).

As explained in detail by Endurance’s counsel to the Terra Defendants’ counsel (in language that is equally applicable to AmTrust and Arch), Endurance is not a “CTSCA Insurer” because:

Section 2.1.51 of the settlement agreement, which Endurance is not a party to, defines a CTSCA Insurer as:

2.1.51 “CTSCA Insurer” means any insurer of the CTSCA that has paid or pays insurance proceeds to, or on behalf of, the CTSCA on or before the Effective Date, including those insurers listed on the Schedule of CTSCA Insurers attached as Exhibit A hereto and made a part hereof.

Based on this definition, a CTSCA Insurer is (1) an insurer of the CTSCA; (2) that has paid or pays insurance proceeds; (3) the insurance proceeds is paid to, or on behalf of, the CTSCA on or before the Effective Date; and (4) includes those insurers on Exhibit A. As discussed below, Endurance does not satisfy any of these elements.

- (1) **An insurer of the CTSCA**: The Association and Endurance have agreed to rescind the policy and terminate all past, future, and present obligations under the document. As a result, Endurance is not an insurer of the Association.
- (2) **That has paid or pays insurance proceeds**: The agreement was to buyback the policy and rescind it. Absolutely no insurance proceeds were paid or intend to be paid. Additionally, see next element regarding the payment.
- (3) **The insurance proceeds is paid to, or on behalf of, the CTSCA on or before the Effective Date**: At this point, Endurance has not paid anything to the Association for the buyback of the policy. Per discussions with the Association's counsel, the motion to confirm the settlement will not be filed until the master settlement is finalized. Therefore, any payment to the Association by Endurance could only occur after the effective date and not "on or before" it, as required by the definition.
- (4) **Includes those insurers on Exhibit A**: It is undisputed that Endurance is not listed on the exhibit as a CTSCA Insurer. In fact, any statement that Endurance or any of the other similarly situated insurers were not listed but always intended to be classified as CTSCA Insurers is simply incorrect and unsupported by your actions during the negotiation of the terms of the settlement agreement.

Comp.Ex. 3 (Endurance) (all emphasis in original).

Thus, Endurance does not fall within the definition of "CTSCA Insurer" and neither AmTrust nor Arch falls within that definition either. Therefore, no Insurer Waiver is properly required from any of AmTrust, Arch, or Endurance.

* * *

In sum, there is no basis for the Settling Parties to contend that the CTSCA must obtain an Insurer Waiver from AmTrust, Arch Specialty, or Endurance, all which refuse to provide an Insurer Waiver on the grounds that there is nothing for them to "waive" because all claims with respect to their insurance policies with the CTSCA have been extinguished and/or transferred to the Receiver. The required Insurer Waivers have been provided to the Settling Parties; no further waivers should be required or, in fact, can be obtained. Therefore, the Court should find that the CTSCA has fulfilled its obligation under Article 3.1.

CONCLUSION

The Settling Parties' few legitimate challenges to Releases and Insurer Waivers have been resolved. Their remaining challenges to Releases should be overruled. Their demand that Insurer Waivers be obtained from AmTrust, Arch Specialty, and Endurance should be rejected. Article 3 has been satisfied and the Receiver, in his capacity as Settlement Administrator, should be authorized and directed to disburse awards from the Settlement Fund at this time.

WHEREFORE, the Receiver respectfully requests that the Court (i) grant this motion, (ii) find that the CTSCA has fully complied with Art. 3.1 of the Settlement Agreement, (iii) find the PSC has fully complied with Article 3.2.2 of the Settlement Agreement, (iv) authorize and direct the Receiver, in his capacity as Settlement Administrator, to disburse awards from the Settlement Fund, and (v) grant the Receiver such other and further relief as the Court deems just and proper.

Respectfully submitted;

Date: September 22, 2022

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By: /s/ Christopher S. Carver

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Counsel for Receiver Michael I. Goldberg

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 22, 2022, a copy of the *Receiver's Motion to Confirm Compliance with Article 3 of the Settlement Agreement in Contemplation of Distribution*

was electronically filed with the Clerk of Court by using the Florida Courts E-Filing Portal and furnished a copy of same to all counsel of record through the Florida Court's E-Filing Portal.

By: /s/ Christopher S. Carver

Exhibit 1

Decedent Name	Issue	Response
Aishani Gia Patel	Electronically signed.	The Settlement Agreement's only requirement is that the Release be "executed."
Alexia Maria Pettengill Lopez Moreira	Electronically signed.	The Settlement Agreement's only requirement is that the Release be "executed."
Alfredo Leone	Electronically signed; name of personal representative appears to be incorrect on release (see court order).	The Settlement Agreement's only requirement is that the Release be "executed"; the Release is executed by "Raquel Oliveira" - who is the Personal Representative - and the court's order's inclusion of "Azevedo De" in identifying her (<i>i.e.</i> , her middle name) is does not invalidate the Release.
Anastasiya Gromova	Incomplete notary block.	The notary block is not incomplete.
Andrea Cattarossi	Electronically signed; personal representative executed on behalf of multiple estates.	The Settlement Agreement's only requirement is that the Release be "executed"; nothing in the Settlement Agreement prohibits a Personal Representative from executing one Release for multiple estates.
Andreas Giannitsopoulos	Notary block does not identify signatory.	This is correct in that one notary mistakenly wrote his name in the identification line, not the signatory's name, for the notarization of Fatima Baghat Giannitsopoulos' signature (the other Personal Representative's notarization is correct); this does not invalidate the notarization under Florida law.

Decedent Name	Issue	Response
Andres Galfрасoli	Order conferring authority to personal representative was issued outside of the U.S. and is missing apostille.	An apostille is not required by the Settlement Agreement (and, in any event, the attached document may constitute an apostille).
Andres Levine	Incomplete notary block.	The absence of a check in the boxes for "physical presence" or "online notarization" does not invalidate the notarization under Florida law.
Anna Sophia Pettengill Lopez Moreira	Electronically signed.	The Settlement Agreement's only requirement is that the Release be "executed."
Beatriz Rodriguez Guerra	Electronically signed.	The Settlement Agreement's only requirement is that the Release be "executed."
Bhavna Patel	Order conferring authority to personal representative expired prior to execution of release; electronically signed.	This is a misreading of the order, which only states, "This Estate must be closed within 12 months, unless it is contested or its closing date is extended by court order"; the Settlement Agreement's only requirement is that the Release be "executed."
Bonnie Epstein	Personal representative executed on behalf of multiple estates.	Nothing in the Settlement Agreement prohibits a Personal Representative from executing one Release for multiple estates.
Cassie Billedeau Stratton	Order conferring authority to personal representative expired prior to execution of release.	That appears to be a misreading of the order, which only states, "This Estate must be closed within 12 months, unless it is contested or its closing date is extended by court order."

Decedent Name	Issue	Response
Catalina Gomez Ramirez	Release was notarized outside of U.S. and is missing apostille.	An apostille is not required and, in any event, the document is officially stamped front and back.
Claudio Bonnefoy	Release was notarized outside of U.S. and is missing apostille.	An apostille is not required and, in any event, the document is officially stamped and has a thumbprint.
David Epstein	Personal representative executed on behalf of multiple estates.	Nothing in the Settlement Agreement prohibits a Personal Representative from executing one Release for multiple estates.
Deborah Berezdivin	No court order conferring authority to the personal representative is attached to release; notary block is incomplete.	The order has been provided; the absence of a check in the boxes for "physical presence" or "online notarization" does not invalidate the notarization under Florida law.
Elena Chavez	Notary block is incomplete.	The notary block is not incomplete.
Elena Chavez Blasser	Electronically signed.	The Settlement Agreement's only requirement is that the Release be "executed."
Estelle Hedaya	Electronically signed.	The Settlement Agreement's only requirement is that the Release be "executed."
Fabian Nunez	Electronically signed.	The Settlement Agreement's only requirement is that the Release be "executed."

Decedent Name	Issue	Response
Frank Kleiman	Order conferring authority to personal representative expired prior to execution of release; notary block contains an error (commission date).	That appears to be a misreading of the order, which only states, "This Estate must be closed within 12 months, unless it is contested or its closing date is extended by court order"; the notary block error is inconsequential, at best (it is a difference between the written date and the stamped date), which does not invalidate the notarization under Florida law.
Gary Cohen	Notary block does not identify signatory.	This is correct in that the notary mistakenly wrote his name in the identification line, not the signatory's name (Mindy Cohen); this does not invalidate the notarization under Florida law.
Gino Cattarossi	Electronically signed; personal representative executed on behalf of multiple estates.	The Settlement Agreement's only requirement is that the Release be "executed"; nothing in the Settlement Agreement prohibits a Personal Representative from executing one Release for multiple estates.
Graciela Maria Cattarossi	Electronically signed; personal representative executed on behalf of multiple estates; missing court order appointing personal representative.	The Settlement Agreement's only requirement is that the Release be "executed"; nothing in the Settlement Agreement prohibits a Personal Representative from executing one Release for multiple estates; the court order is attached (for the Estate of Andrea Maria Cattarosi, the order is for a "Curator" but expressly authorizes Marcelo Cattarossi to act as a Personal Representative).

Decedent Name	Issue	Response
Graciela Ponce de Leon Cattarossi	Electronically signed; personal representative executed on behalf of multiple estates.	The Settlement Agreement's only requirement is that the Release be "executed"; nothing in the Settlement Agreement prohibits a Personal Representative from executing one Release for multiple estates.
Leidy Vanessa Luna Villalba	Name of decedent is incorrect on release (see court order); release was notarized outside of the U.S. and is missing apostille.	The "incorrect" aspect is that the decedent's name is misspelled "Lady" in the first paragraph of Release and the court order has it spelled "Leidy," but the Release is properly executed by the Personal Representative; no apostille is required.
Lorenzo De Oliveira Leone	Electronically signed; name of decedent and name of personal representative appear to be incorrect on release (see court order).	The Settlement Agreement's only requirement is that the Release be "executed"; the decedent name includes "de" in the probate style, but the Release is in the name of "Loreznzo Oliviera Leone," and the Release is executed by "Raquel Oliviera" - who is the Personal Representative - but the court's order's includes of "Azevedo De" in identifying her (i.e., her middle name); nether invalidates the Release.
Luis Pettingill Lopez Moreira III	Electronically signed.	The Settlement Agreement's only requirement is that the release be "executed."

Decedent Name	Issue	Response
Marcus Joseph Guara	Incomplete notary block.	Correct in that the notary did check the box for "physical presence" or "online notarization" and not circle personally known or fill in the blank in the line, but the block does state that the signatory provided his "FL license"; none of this invalidates the notarization under Florida law.
Maria Popa	Order conferring authority to personal representative expired prior to execution of release.	That appears to be a misreading of the order, which only states, "This Estate must be closed within 12 months, unless it is contested or its closing date is extended by court order."
Maria Teresa Rovirosa	Personal representative executed release on behalf of multiple estates.	Nothing in the Settlement Agreement prohibits a Personal Representative from executing one Release for multiple estates.
Michelle Anna Pazos	Order conferring authority to personal representative was issued outside of the U.S. and is missing apostille.	An apostille is not required.
Miguel Pazos	Scanned copy is missing half of release; order conferring authority to personal representative was issued outside of the U.S. and is missing apostille.	The first page was cut off, which has been corrected; an apostille is not required.
Mihai Radulescu	Order conferring authority to personal representative expired prior to execution of release.	That appears to be a misreading of the order, which only states, "This Estate must be closed within 12 months, unless it is contested or its closing date is extended by court order."

Decedent Name	Issue	Response
Moises Rodan	Both personal representatives signed same signature block; incomplete notary block.	Both personal representatives are defined as "Releasor" in the first paragraph, the absence of a check in the boxes for "physical presence" or "online notarization" does not invalidate the notarization under Florida law.
Nicole Langesfeld	Name of decedent appears to be incorrect on release (see court order); notary block is incomplete.	The misspelling "Langsfield" in the identification of the Estate in the first paragraph does not affect the validity of the Release by the Personal Representative; the absence of a check in the boxes for "physical presence" or "online notarization" does not invalidate the notarization under Florida law.
Richard Augustine	No court order conferring authority to personal representative was attached.	This is correct and the correction has been made.
Richard Rovirosa	Personal representative executed release on behalf of multiple estates.	Nothing in the Settlement Agreement prohibits a Personal Representative from executing one Release for multiple estates.
Sofia Galfrascoli Nunez	Electronically signed; name of decedent appears to be incorrect on release (see court order).	The Settlement Agreement's only requirement is that the Release be "executed"; "Sofia Galfrascoli Nunez" (identified as decedent in Release) and "Sofia Nunez" (identified in probate case style <i>In re: Sofia Nunez</i>) are the same person and, in any event, the Release is properly executed by the Personal Representative.

Decedent Name	Issue	Response
Sophia Lopez Moreira	Electronically signed.	The Settlement Agreement's only requirement is that the release be "executed."
Stacie Dawn Fang	Electronically signed; incomplete notary block	The Settlement Agreement's only requirement is that the release be "executed"; the absence of a check in the boxes for "physical presence" or "online notarization" does not invalidate the notarization under Florida law.
Valeria Barth Gomez	Incomplete notary block	The notary wrote "physical presence" in the line for the name on Julia Gomez' signature notarization; this does not invalidate the notarization under Florida law.
Vishal Patel	Order conferring authority to personal representative expired prior to execution of release; electronically signed; incomplete notary block	That appears to be a misreading of the order, which only states, "This Estate must be closed within 12 months, unless it is contested or its closing date is extended by court order"; the Settlement Agreement's only requirement is that the Release be "executed"; the notary's failure to mark either "physical presence" or write in the type of identification does not invalidate the notarization under Florida law.

Exhibit 2

CTS

thomasmic@gtlaw.com

Wed 9/14/2022 9:27 PM

To: Carver, Christopher (Ptnr-Ftl) <christopher.carver@akerman.com>;

Cc: leabucciero@gmail.com <leabucciero@gmail.com>; rwf@grossmanroth.com <rwf@grossmanroth.com>; hst@kttl.com <hst@kttl.com>; Goldberg, Michael (Ptnr-Ftl) <michael.goldberg@akerman.com>; 8701GroupAtty@gtlaw.com <8701GroupAtty@gtlaw.com>; Aaron.Konstam@kennedyslaw.com <Aaron.Konstam@kennedyslaw.com>; ASchultz@cozen.com <ASchultz@cozen.com>; alvin.lindsay@hoganlovells.com <alvin.lindsay@hoganlovells.com>; Akdaechsel@carltonfields.com <Akdaechsel@carltonfields.com>; andrew.krappa@squirepb.com <andrew.krappa@squirepb.com>; tony@emersonelder.com <tony@emersonelder.com>; trecio@wsh-law.com <trecio@wsh-law.com>; Ariella.ederi@pillsburylaw.com <Ariella.ederi@pillsburylaw.com>; ALi@vpm-legal.com <ALi@vpm-legal.com>; barnettch@gtlaw.com <barnettch@gtlaw.com>; bret.feldman@phelps.com <bret.feldman@phelps.com>; bmonroe@lgwmlaw.com <bmonroe@lgwmlaw.com>; browninga@gtlaw.com <browninga@gtlaw.com>; baeibel@bankerlopez.com <baeibel@bankerlopez.com>; johnson@jambg.com <johnson@jambg.com>; bwb@derreverelaw.com <bwb@derreverelaw.com>; 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LGunn@gunnlawgroup.com <LGunn@gunnlawgroup.com>; LABramson@gunnlawgroup.com <LABramson@gunnlawgroup.com>; litigationgroup@lgwmlaw.com <litigationgroup@lgwmlaw.com>; lkantor@hightowerlaw.net <lkantor@hightowerlaw.net>; mguerrero@rlattorneys.com <mguerrero@rlattorneys.com>; MWilliams@therlawfirm.com <MWilliams@therlawfirm.com>; sullivanm@kleinpark.com <sullivanm@kleinpark.com>; JMM@macfar.com <JMM@macfar.com>; mlavisky@butler.legal <mlavisky@butler.legal>; mfs@kubickidraper.com <mfs@kubickidraper.com>; michael.hooker@phelps.com <michael.hooker@phelps.com>; mhornreich@wwhgd.com <mhornreich@wwhgd.com>; MKD@zdlaw.com <MKD@zdlaw.com>; mchusid@ritterchusid.com <mchusid@ritterchusid.com>; mkatz@ritterchusid.com <mkatz@ritterchusid.com>; nsambursky@pmtlawfirm.com <nsambursky@pmtlawfirm.com>; nicauda@gtlaw.com <nicauda@gtlaw.com>; nicole.marsade@phelps.com <nicole.marsade@phelps.com>; phernandez@hinshawlaw.com <phernandez@hinshawlaw.com>; pglatzer@marlowadler.com <pglatzer@marlowadler.com>; ARaskas@gunster.com <ARaskas@gunster.com>; RCA@gartnerbloom.com <RCA@gartnerbloom.com>; kleinr@kleinpark.com <kleinr@kleinpark.com>; rcovitz@falkwaas.com <rcovitz@falkwaas.com>; rkammer@hinshawlaw.com <rkammer@hinshawlaw.com>; rginsberg@wwhgd.com <rginsberg@wwhgd.com>; Ryan.Charlson@csklegal.com <Ryan.Charlson@csklegal.com>; ryan.sooohoo@csklegal.com <ryan.sooohoo@csklegal.com>; ryan.tuley@troutman.com <ryan.tuley@troutman.com>; sarah.cohen@hoganlovells.com <sarah.cohen@hoganlovells.com>; srembold@therlawfirm.com <srembold@therlawfirm.com>; Scott.Davis@huschblackwell.com <Scott.Davis@huschblackwell.com>; seth.schimmel@phelps.com <seth.schimmel@phelps.com>; shari.poppe@pillsburylaw.com <shari.poppe@pillsburylaw.com>; sbrodie@carltonfields.com <sbrodie@carltonfields.com>; Tara.McCormack@kennedyslaw.com <Tara.McCormack@kennedyslaw.com>; TBishoff@gunnlawgroup.com <TBishoff@gunnlawgroup.com>; toglesby@rlattorneys.com <toglesby@rlattorneys.com>; thomasmic@gtlaw.com <thomasmic@gtlaw.com>; vanburenI@gtlaw.com <vanburenI@gtlaw.com>; viviane@dldlawyers.com <viviane@dldlawyers.com>; weinsteind@gtlaw.com <weinsteind@gtlaw.com>; DWells@gunster.com <DWells@gunster.com>; wsteinfulton@moundcotton.com <wsteinfulton@moundcotton.com>; wes@wespa.us <wes@wespa.us>; william.tinsley@phelps.com <william.tinsley@phelps.com>; yolanda.vazquez@phelps.com <yolanda.vazquez@phelps.com>;

📎 5 attachments

Universonal - Insurer Waiver.pdf; Philadelphia - Insurer Waiver.pdf; QBE - Insurer Waiver.pdf; James River - Insurer Waiver.pdf; Fireman's - Insurer Waiver.pdf;

[External to Akerman]

Chris,

We reviewed the executed Insurer Waivers you provided.

We are missing waivers from Arch Insurance Company and Endurance American Specialty Insurance Company, which paid insurance proceeds prior to the Effective Date of the Settlement Agreement. Please let us know when we can expect those additional waivers.

Moreover, the following waivers require re-execution by the CTSCA's insurers:

- Philadelphia Indemnity Insurance Company – Document signed is not the form required by the Settlement Agreement
- QBE Insurance Corp – “Releaser” is not properly populated in the preamble and the signature block. Document also has “DEMONSTRATION ONLY” stamped on it, suggesting it is a sample and not a legally enforceable document.
- James River – “Releaser” is not properly populated in the preamble and the signature block. Notary expiration date is also inaccurate (3024 instead of 2024).
- Fireman's Fund Insurance Company – “Releaser” is not properly populated in the preamble and the signature block.

The waiver by Universal also requires re-execution because (i) "Releasor" was not populated correctly in the preamble and signature block, and (ii) the "Waiver of Subrogation" was left entirely blank and did not provide policy numbers.

For your convenience, we prepared corrected Insurer Waivers for each of the above insurers (attached). For purposes of the Universal waiver, we contemplated a schedule of insurance policies given that there are likely numerous policies that Universal issued and paid indemnity from relating to CTS (or its tenants/unit owners).

We are still reviewing the WDC Representative Releases and intend to provide you with a list of issues tomorrow. We also have not received any executed waivers from any SCM Insurers.

Michael J. Thomas

Co-Chair, National Construction Law Practice

Board Certified in Construction Law

Shareholder

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Composite Exhibit 3

Correspondence from counsel for AmTrust
International Underwriters Limited

Re: CTS [KEN-LEGAL.FID43443140]

Khutorsky, Gary <khutorsky@litchfieldcavo.com>

Fri 9/16/2022 1:03 PM

To: Aaron Konstam <Aaron.Konstam@kennedyslaw.com>; thomasmic@gtlaw.com <thomasmic@gtlaw.com>; Andy Yoho <AYoho@Insurance-Counsel.com>;

Cc: Amanda Anderson <aanderson@insurance-counsel.com>; Carver, Christopher (Ptnr-Ftl) <christopher.carver@akerman.com>; Eric A. Hiller <Eric.Hiller@kennedyslaw.com>; Schultz, Alexandra J. <ASchultz@cozen.com>;

[External to Akerman]

All, for the record, my client, AmTrust, takes the same position as the one taken by Endurance and Arch. I also would like to note the following. The class action settlement was finalized on 6/17/2022 and a fully executed settlement agreement was filed with the court at that time. At the time the class action settlement was negotiated, AmTrust was involved in an active coverage lawsuit with the Association. That lawsuit was resolved when AmTrust and the Association agreed to enter into a buy-back agreement. The only settlement agreement AmTrust is part of and is bound by is the agreement negotiated with the Association as part of the coverage lawsuit, which definitely does not require AmTrust to execute any waivers as part of the class action settlement.

Gary Khutorsky

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Fort Lauderdale, FL 33334

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954-689-3000 Main

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khutorsky@litchfieldcavo.com

www.litchfieldcavo.com

From: Aaron Konstam <Aaron.Konstam@kennedyslaw.com>

Sent: Friday, September 16, 2022 11:36 AM

To: thomasmic@gtlaw.com <thomasmic@gtlaw.com>; Andy Yoho <AYoho@Insurance-Counsel.com>

Cc: Amanda Anderson <aanderson@insurance-counsel.com>; christopher.carver@akerman.com <christopher.carver@akerman.com>; Eric A. Hiller <Eric.Hiller@kennedyslaw.com>; Schultz, Alexandra J. <ASchultz@cozen.com>; Khutorsky, Gary <khutorsky@litchfieldcavo.com>

Subject: RE: CTS [KEN-LEGAL.FID43443140]

Caution: External Email Warning - This email originated outside the firm. Please do not click links or open attachments unless you were expecting this communication. Contact Help Desk with questions - HelpDesk@LitchfieldCavo.com or 312.781.6666.

Michael and Andy,

As we discussed yesterday, Endurance is not a CTSCA insurer and not required to sign the CTSCA waiver, which includes incorrect statements regarding Endurance.

Section 2.1.51 of the settlement agreement, which Endurance is not a party to, defines a CTSCA Insurer as:

2.1.51 "CTSCA Insurer" means any insurer of the CTSCA that has paid or pays insurance proceeds to, or on behalf of, the CTSCA on or before the Effective Date, including those insurers listed on the Schedule of CTSCA Insurers attached as Exhibit A hereto and made a part hereof.

Based on this definition, a CTSCA Insurer is (1) an insurer of the CTSCA; (2) that has paid or pays insurance proceeds; (3) the insurance proceeds is paid to, or on behalf of, the CTSCA on or before the Effective Date; and (4) includes those insurers on Exhibit A. As discussed below, Endurance does not satisfy any of these elements.

- (1) **An insurer of the CTSCA:** The Association and Endurance have agreed to rescind the policy and terminate all past, future, and present obligations under the document. As a result, Endurance is not an insurer of the Association.
- (2) **That has paid or pays insurance proceeds:** The agreement was to buyback the policy and rescind it. Absolutely no insurance proceeds were paid or intend to be paid. Additionally, see next element regarding the payment.
- (3) **The insurance proceeds is paid to, or on behalf of, the CTSCA on or before the Effective Date:** At this point, Endurance has not paid anything to the Association for the buyback of the policy. Per discussions with the Association's counsel, the motion to confirm the settlement will not be filed until the master settlement is finalized. Therefore, any payment to the Association by Endurance could only occur after the effective date and not "on or before" it, as required by the definition.

- (4) **Includes those insurers on Exhibit A:** It is undisputed that Endurance is not listed on the exhibit as a CTSCA Insurer. In fact, any statement that Endurance or any of the other similarly situated insurers were not listed but always intended to be classified as CTSCA Insurers is simply incorrect and unsupported by your actions during the negotiation of the terms of the settlement agreement.

As you know, we represented other Endurance entities in the 8701 CCIP and the JMA practice tower. On or about **May 19**, during the negotiations for the terms of the master settlement agreement we were provided a copy of Exhibit A that included Endurance and Arch as a CTSCA Insurer. We immediately objected and sent a redline deleting these carriers to you (Michael Thomas), Seth Schimmel, and Amanda Anderson. Within 15 minutes Amanda Anderson responded that she also made these edits.

After receiving the revised settlement agreement on **May 20** that continued to name Endurance and Arch, we sent another email to you (Michael Thomas), Seth Schimmel, and Amanda Anderson demanding that Endurance be removed and that you (Michael Thomas) and Seth Schimmel direct all discussions to Amanda Anderson regarding why it is improper to name Endurance on this list, i.e. why they are not CTSCA Insurers.

From: Aaron Konstam <Aaron.Konstam@kennedyslaw.com>
Sent: Friday, May 20, 2022 5:12 PM
To: aanderson@insurance-counsel.com
Cc: thomasmic@etlaw.com; Seth.Schimmel@phelps.com; Eric A. Hiller <Eric.Hiller@kennedyslaw.com>
Subject: Re: Champlain Towers Release - Exhibit A [KEN-LEGAL.FID43409448]

Amanda, We just received the newest version of the release from Michael Thomas (copied here) and Endurance is still listed as an insurer for the Association. Once again, please make sure that Endurance is removed.

Michael and Seth, please direct all questions to Amanda for why Endurance should not be listed on that exhibit.

Thank you,
Aaron

That same day, Amanda Anderson responded indicating that Chris Carver was “taking the lead for [the] association” on this issue and requested that Chris “confirm that Endurance will be removed based on our separate executed agreement with the receiver.” Within a half hour of our initial May 20 email, Chris Carver responded that he already discussed deleting Endurance's name from Exhibit A with “**Michael Thomas' team.**” Each of these emails copied you (Michael Thomas), Seth Schimmel, and Amanda Anderson.

From: "christopher.carver@akerman.com" <christopher.carver@akerman.com>
Date: Friday, May 20, 2022 at 5:29:30 PM
To: "Aaron Konstam" <Aaron.Konstam@kennedyslaw.com>, "aanderson@insurance-counsel.com" <aanderson@insurance-counsel.com>
Cc: "thomasmic@etlaw.com" <thomasmic@etlaw.com>, "Seth.Schimmel@phelps.com" <Seth.Schimmel@phelps.com>, "Eric A. Hiller" <Eric.Hiller@kennedyslaw.com>, "christopher.carver@akerman.com" <christopher.carver@akerman.com>
Subject: Re: Champlain Towers Release - Exhibit A [KEN-LEGAL.FID43409448]

Aaron,

Endurance is currently listed on Exhibit A - Schedule of CTSCA Insurers in the most current draft I have. I discussed with Michael Thomas' team yesterday deleting Endurance's name from Exhibit A, along with another insurer.

I will stay on top of that.

Sincerely,
Christopher S. Carver

Pursuant to Chris Carver's discussions with you (Michael Thomas), Endurance was then removed from all future revisions of the settlement agreement.

These facts clearly indicate that any intention to consider Endurance a CTSCA Insurer is directly contradicted by your (Michael Thomas) actions as the principal party drafting the settlement agreement. In addition, to the extent any such intention ever existed, it clearly ceased on or about May 20, when Endurance was purposefully removed from the list of CTSCA Insurers. For this reason and all of the others addressed above, Endurance is not a CTSCA Insurer and is not required by the settlement agreement (for which it is not a party and is not binding) to sign the CTSCA Insurer waiver.

Putting aside all of these arguments, we also point out that Endurance cannot sign the CTSCA Insurer waiver presented to it for the first time yesterday. The waiver includes inaccuracies that is directly contradictory to its agreement with the association.

To start, the document waives rights of subrogation, that Endurance does not have. To be clear, no rights of subrogation will arise out of the transaction between Endurance and the Association, because it has not agreed to pay a claim but instead is buying back and rescinding the policy. The document also states that the waiver concerns any right relating to: (1) the CTS Collapse; and (2) the payment under its policies. However, as discussed above, Endurance does not have any subrogation rights arising out of the collapse and it is not making any payment under these policies, as it has agreed to buy them back and rescind them.

For all of these reasons, Endurance is not a CTSCA Insurer and cannot sign the requested waiver. Due to religious observance, I will be unavailable to answer and calls or e-mails beginning at 7 pm today until around 8 pm tomorrow. **I therefore ask that you confirm that you are withdrawing the request for Endurance to sign the waiver by 3 pm today.**

Sincerely,

Aaron

Aaron Konstam
Associate
for Kennedys

Kennedys

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M +1 845 494 5173
www.kennedyslaw.com

From: Aaron Konstam
Sent: Thursday, September 15, 2022 3:03 PM
To: 'thomasmic@gtlaw.com' <thomasmic@gtlaw.com>
Subject: RE: CTS [KEN-LEGAL.FID43409449]

Michael, Thank you for taking the time to discuss Endurance's policy buyback. As we discussed, we have yet to speak with our client about the waiver, but the waiver is not necessary under the terms of the settlement agreement. Endurance was purposefully not added on Exhibit A and does not qualify as a CTSCA Insurer under section 2.1.51 for a host of reasons, some of which I mentioned on our call.

After you speak with the group, please let us know if you need any additional information or if they agree to no longer require Endurance to sign a CTSCA Insurer waiver.

Sincerely,

Aaron

From: thomasmic@gtlaw.com <thomasmic@gtlaw.com>
Sent: Thursday, September 15, 2022 12:20 PM
To: Aaron Konstam <Aaron.Konstam@kennedyslaw.com>; ASchultz@cozen.com; alvin.lindsay@hoganlovells.com; Akdaechsel@carltonfields.com; andrew.kruppa@sqirepb.com; tony@emersonelder.com; trecio@wsh-law.com; Ariella.ederi@pillsburylaw.com; ALi@vpm-legal.com; barnettch@gtlaw.com; bret.feldman@phelps.com; bmonroe@lgwmlaw.com; browninga@gtlaw.com; baebel@bankerlopez.com; johnson@jambg.com; bwb@derreverelaw.com; Chanell.botshekan@dentons.com; cheryl.mingo@kaplanzeena.com; christine.welstead@bowmanandbrooke.com; cbrown@wfmblaw.com; djs@insurancedefense.net; disrael@israelawfl.com; Drosinsky@insurancedefense.net; Debbie.Kim@troutman.com; dee@emersonelder.com; dmcintosh@smsm.com; EHernandez@falkwaas.com; erb@deutschblumberg.com; ehockman@wsh-law.com; fryan@butler.legal; khutorsky@litchfieldcavo.com; Gary S. Kull <Gary.Kull@kennedyslaw.com>; george.truitt@csklegal.com; GFalk@falkwaas.com; gbarr@dldlawyers.com; grettig@lgwmlaw.com; HLangIII@wwhgd.com; hopperr@gtlaw.com; iolman@smsm.com; ilibanoff@flblawyers.com; jfrometa@flblawyers.com; jnardiello@zdlaw.com; jshaw@torresvictor.com; james.kaplan@kaplanzeena.com; Jessica.Collier@huschblackwell.com; JHernandez@falkwaas.com; jdickenson@cozen.com; joseph.jean@pillsburylaw.com; Talcovitz@kleinpark.com; kmaus@butler.legal; keith.moskowitz@dentons.com; kendrake@dldlawyers.com; khirschman@therhlawfirm.com; kimberly.heifferman@kaplanzeena.com; larangodelahoz@wsh-law.com; lbesvinick@stroock.com; LGunn@gunnlawgroup.com; LAbramson@gunnlawgroup.com; litigationgroup@lgwmlaw.com; lkantor@hightowerlaw.net; mguerrero@rlattorneys.com; MWilliams@therhlawfirm.com; sullivanm@kleinpark.com; JMM@macfar.com; mlavisky@butler.legal; mfs@kubickidraper.com; michael.hooker@phelps.com; mhornreich@wwhgd.com; MKD@zdlaw.com; mchusid@ritterchusid.com; mkatzz@ritterchusid.com; nsambursky@pmtlawfirm.com; nicauda@gtlaw.com; nicole.marsade@phelps.com; phernandez@hinshawlaw.com; pglatzer@marlowadler.com; ARaskas@gunster.com; RCA@gartnerbloom.com; kleinr@kleinpark.com; rcovitz@falkwaas.com; rkammer@hinshawlaw.com; rginsberg@wwhgd.com; Ryan.Charlson@csklegal.com; ryan.sooahoo@csklegal.com; ryan.tuley@troutman.com; sarah.cohen@hoganlovells.com; srembold@therhlawfirm.com; Scott.Davis@huschblackwell.com; seth.schimmel@phelps.com; shari.poppe@pillsburylaw.com; sbrodie@carltonfields.com; Tara E. McCormack <Tara.McCormack@kennedyslaw.com>; TBishoff@gunnlawgroup.com; toglesby@rlattorneys.com; thomasmic@gtlaw.com; vanburen1@gtlaw.com; viviane@dldlawyers.com; weinsteind@gtlaw.com; DWells@gunster.com; wsteinfulton@moundcotton.com; wes@wespa.us; william.tinsley@phelps.com; yolanda.vazquez@phelps.com

Subject: FW: CTS

FYI-

Michael J. Thomas
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From: Thomas, Michael J. (Shld-Mia-RE) <thomasmic@gtlaw.com>
Sent: Thursday, September 15, 2022 12:15 PM
To: Amanda Anderson <aanderson@insurance-counsel.com>
Cc: Andy Yoho <AYoho@Insurance-Counsel.com>; Jeffrey Harris <jharris@insurance-counsel.com>; 8701GroupAtty <8701GroupAtty@gtlaw.com>
Subject: RE: CTS

Amanda/Andy-

I'm sorry to say this but the insurers will have to re-execute the Insurer Waivers. The previously executed waivers have in several instances a few problems that would preclude the use of the signature page on the correct waiver. For example, the QBE Insurer Waiver states on every page, including the signature page, "Demonstration Document Only." The Philadelphia Indemnity Waiver was modified so appending a signature to different document presents different issues and concerns. The best solution for all involved is to have the CTSCA Insurers listed in my email from last night to properly sign the correct Insurer Waiver.

Also, Arch and Endurance will need to execute the Insurer Waiver. The Settlement Agreement defines "CTSCA Insurer" as "any insurer of the CTSCA that has paid or pays insurance proceeds to, or on behalf of, the CTSCA on or before the Effective Date, including those insurers listed on Schedule of CTSCA Insurers attached as Exhibit A hereto..."

Michael J. Thomas

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From: Amanda Anderson <aanderson@insurance-counsel.com>

Sent: Wednesday, September 14, 2022 11:34 PM

To: Thomas, Michael J. (Shld-Mia-RE) <thomasmic@gtlaw.com>

Cc: Andy Yoho <AYoho@Insurance-Counsel.com>; Jeffrey Harris <jharris@insurance-counsel.com>

Subject: Re: CTS

EXTERNAL TO GT

Michael-

If we obtained permission from each of the insurers to use their existing signature pages on each of the revised forms your provided with the exception of James river - there we'd correct the notary date issue- would that be acceptable? We've been at this for weeks and candidly people have moved on, rightly or wrongly so getting their attention has been shall we say, challenging.

Sent from my iPhone. Please excuse any typos.

Amanda K. Anderson, Esq.

Boyle, Leonard & Anderson, P. A.

9111 W. College Point Drive

Fort Myers, FL 33919

(239) 337-1303

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From: thomasmic@gtlaw.com <thomasmic@gtlaw.com>

Sent: Wednesday, September 14, 2022 9:26 PM

To: Carver, Christopher (Ptnr-Ftl)

Cc: leabucciero@gmail.com; rwf@grossmanroth.com; hst@kttlaw.com; Goldberg, Michael (Ptnr-Ftl); 8701GroupAtty@gtlaw.com;

Aaron.Konstam@kennedyslaw.com; ASchultz@cozen.com; alvin.lindsay@hoganlovells.com; Akdaechsel@carltonfields.com;

andrew.kruppa@squirepb.com; tony@emersonelder.com; trecio@wsh-law.com; Ariella.ederi@pillsburylaw.com; ALi@vpm-legal.com;

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Subject: CTS

[External to Akerman]

Chris,

We reviewed the executed Insurer Waivers you provided.

We are missing waivers from Arch Insurance Company and Endurance American Specialty Insurance Company, which paid insurance proceeds prior to the Effective Date of the Settlement Agreement. Please let us know when we can expect those additional waivers.

Moreover, the following waivers require re-execution by the CTSCA's insurers:

- Philadelphia Indemnity Insurance Company – Document signed is not the form required by the Settlement Agreement
- QBE Insurance Corp – “Releasor” is not properly populated in the preamble and the signature block. Document also has “DEMONSTRATION ONLY” stamped on it, suggesting it is a sample and not a legally enforceable document.
- James River – “Releasor” is not properly populated in the preamble and the signature block. Notary expiration date is also inaccurate (3024 instead of 2024).
- Fireman's Fund Insurance Company – “Releasor” is not properly populated in the preamble and the signature block.

The waiver by Universal also requires re-execution because (i) “Releasor” was not populated correctly in the preamble and signature block, and (ii) the “Waiver of Subrogation” was left entirely blank and did not provide policy numbers.

For your convenience, we prepared corrected Insurer Waivers for each of the above insurers (attached). For purposes of the Universal waiver, we contemplated a schedule of insurance policies given that there are likely numerous policies that Universal issued and paid indemnity from relating to CTS (or its tenants/unit owners).

We are still reviewing the WDC Representative Releases and intend to provide you with a list of issues tomorrow. We also have not received any executed waivers from any SCM Insurers.

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Correspondence from counsel for Arch
Specialty Insurance Co.

FW: CTS

Schultz, Alexandra J. <ASchultz@cozen.com>

Fri 9/16/2022 3:38 PM

To: Carver, Christopher (Ptrn-Ftl) <christopher.carver@akerman.com>;

Cc: Dickenson, John David <jdickenson@cozen.com>;

Importance: High

 2 attachments

2021 11 30 Joint Motion to Approve Confidential Settlement (Receiver-Arch).PDF; Mediation Order.PDF;

[External to Akerman]

Chris, please see below. We are counsel for Arch Specialty Insurance Company. I understand you spoke to Aaron Konstam about this earlier with respect to the Endurance buyback agreement. Hoping you can help us put this to bed. Can you please let us know what the Receiver's position is on this?

<http://www.cozen.com/cozendocs/cozen-connor-logo.gif>

Alexandra Schultz

Member | Cozen O'Connor

One North Clematis Street, Suite 510 | West Palm Beach, FL 33401

P: 561-515-5205

[Email](#) | [Map](#) | [cozen.com](#)

From: thomasmic@gtlaw.com <thomasmic@gtlaw.com>

Sent: Friday, September 16, 2022 2:54 PM

To: Schultz, Alexandra J. <ASchultz@cozen.com>

Cc: Dickenson, John David <jdickenson@cozen.com>; vanburen1@gtlaw.com; hopperr@gtlaw.com; nicauda@gtlaw.com; joseph.jean@pillsburylaw.com; LGunn@gunnlawgroup.com; weinsteind@gtlaw.com

Subject: RE: CTS

****EXTERNAL SENDER****

Alexandra –

As I explained last night, the absence of Arch on the Exhibit does not mean that Arch is not a CTSCA Insurer. The Exhibit lists examples of CTSCA Insurers – it does not define the universe of CTSCA Insurers. To be a CTSCA Insurer, Arch (i) must have been an insurer of CTSCA (and it was and perhaps still is) and (ii) paid insurance proceeds before the Effective Date. I hope we can get past this point.

More importantly, the Settlement Agreement between Arch and the Receiver states “the Settlement Payment constitutes full performance of its obligations under the Policies.” The Settlement Payment is clearly proceeds paid by an insurer and that payment was also clearly made a result of the claims made against its insured.

Finally, the Court has already expressed its views that Arch is a CTSCA Insurer by virtue of the attached Order requiring Arch to attend the mediation if it doesn't waive its subrogation rights in advance.

I'm happy to discuss further if need be, but we're expecting Arch to execute the Insurer Waiver. Keep in mind that no money can be paid to any Settlement Class Member unless and until all CTSCA Insurers execute an Insurer Waiver. I don't think Judge Hanzman will be thrilled if the payment to the SCM's is delayed because Arch refuses to execute an Insurer Waiver waiving any subrogation rights that it may have as a result of a payment that it made to the CTSCA in this case – before the Effective Date -- and in satisfaction of Arch's indemnity obligations pursuant to a settlement agreement that the Court approved.

We'll send you the Insurer Waiver for your client's execution and urge you to reconsider your position.

Michael J. Thomas

Co-Chair, National Construction Law Practice

Board Certified in Construction Law

Shareholder

Greenberg Traurig, P.A.

333 S.E. 2nd Avenue | Miami, FL 33131

From: Schultz, Alexandra J. <ASchultz@cozen.com>

Sent: Friday, September 16, 2022 11:25 AM

To: Thomas, Michael J. (Shld-Mia-RE) <thomasmic@gtlaw.com>

Cc: Dickenson, John David <jdickenson@cozen.com>; Van Buren, Lauren R. (Assoc-MIA-RE) <vanburen1@gtlaw.com>; Hopper, Ryan (Shld-TPA-LT) <hopperr@gtlaw.com>; Nicaud, Aureore A. (Assoc-MIA-RE) <nicauda@gtlaw.com>; joseph.jean@pillsburylaw.com; LGunn@gunnlawgroup.com

Subject: RE: CTS

Hi Michael,

I have been out of pocket this morning. I have reviewed Aaron Konstam's email which was sent earlier this morning and Arch Specialty is in agreement with everything he stated. Arch Specialty is not a CTSCA Insurer. To respond to your point that "the Settling Parties' position has always been that Arch Specialty is a CTSCA Insurer and the CTSCA owes a subrogation waiver from Arch," this does not appear to be the case. Your office removed Arch Specialty from Exhibit A at our request and with the support and agreement of the Receiver's counsel. This was done at the same time that Endurance was removed and for the same reason. We did not receive any opposition at all from any of the Settling Parties after that change was made.

Arch Specialty did not pay any "insurance proceeds" to CTSCA. It paid to buy back the policies. As I indicated in my prior email, there is no contractual relationship between Arch Specialty and CTSCA and there are no subrogation rights for Arch Specialty to assert or waive.

Alexandra

Alexandra Schultz

Member | Cozen O'Connor

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P: 561-515-5205

[Email](#) | [Map](#) | cozen.com

From: thomasmic@gtlaw.com <thomasmic@gtlaw.com>

Sent: Thursday, September 15, 2022 8:20 PM

To: Schultz, Alexandra J. <ASchultz@cozen.com>

Cc: Dickenson, John David <jdickenson@cozen.com>; vanburen1@gtlaw.com; hopperr@gtlaw.com; nicauda@gtlaw.com; joseph.jean@pillsburylaw.com; LGunn@gunnlawgroup.com

Subject: Re: CTS

****EXTERNAL SENDER****

Alexandra-

Addressing your last point first, the term "including" includes "but limited to" or "without limitation" under case law and the terms of our settlement agreement. See section 1 of the settlement agreement. Did Arch pay the CTSCA or anyone else to extinguish the policies? If so, it likely meets the definition of CTSCA Insurer.

Happy to discuss tomorrow. But the Settling Parties' position has always been that Arch is a CTSCA Insurer and the CTSCA owes a subrogation waiver from Arch.

Sent from my iPhone. Please excuse any typos.

On Sep 15, 2022, at 1:53 PM, Schultz, Alexandra J. <ASchultz@cozen.com> wrote:

Hi Michael,

JD and I are counsel for Arch Specialty Insurance Company and are in receipt of your email regarding the waiver as well as one from Amanda. We were not able to be on the 1:00 call which I assume was about this issue.

I am not sure what you and Amanda have discussed about the reason Arch was not included on the CTSCA Insurer Schedule so I wanted to make sure you were aware that Arch and CTSCA entered into a policy buyback agreement last year. Arch's policies issued to CTSCA were terminated as part of that agreement, so Arch does not have any subrogation rights since the policies were terminated. Arch did not pay any funds toward the claim on behalf of CTSCA. Arch bought out its policies so they do not exist anymore, and Arch is not a CTSCA Insurer.

Also, the definition of CTSCA Insurer is "any insurer of the CTSCA that has paid or pays insurance proceeds to, or on behalf of, the CTSCA on or before the Effective Date, **including** those insurers listed on Schedule of CTSCA Insurers attached as Exhibit A hereto." It doesn't say "including but not limited to." So we would disagree that that definition would actually require an executed waiver from Arch. We purposely had Arch removed from the Schedule of CTSCA Insurers contained on exhibit A for the reasons set forth above.

If we were to have Arch sign this I think it would in fact be contrary to the agreement that was reached with CTSCA.

Let me know if this clarifies or if you would like to discuss further.

Thanks,
Alexandra

Alexandra Schultz
Member | Cozen O'Connor

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P: 561-515-5205

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From: thomasmic@gtlaw.com <thomasmic@gtlaw.com>

Sent: Thursday, September 15, 2022 12:20 PM

To: Aaron.Konstam@kennedyslaw.com; Schultz, Alexandra J. <ASchultz@cozen.com>; alvin.lindsay@hoganlovells.com; Akdaechsel@carltonfields.com; andrew.kruppa@squirepb.com; tony@emersonelder.com; recio@wsh-law.com; Ariella.ederi@pillsburylaw.com; ALi@vpm-legal.com; barnettch@gtlaw.com; bret.feldman@phelps.com; bmonroe@lgwmlaw.com; browninga@gtlaw.com; baebel@bankerlopez.com; johnson@jambg.com; bwb@derreverelaw.com; Chanell.botshekan@dentons.com; cheryl.mingo@kaplanzeena.com; christine.welstead@bowmanandbrooke.com; cbrown@wfmblaw.com; djs@insurancedefense.net; disrael@israelawfl.com; Drosinsky@insurancedefense.net; Debbie.Kim@troutman.com; dee@emersonelder.com; dmcintosh@smsm.com; EHernandez@falkwaas.com; erb@deutschblumberg.com; ehockman@wsh-law.com; fryan@butler.legal; khutorsky@litchfieldcavo.com; Gary.Kull@kennedyslaw.com; george.truitt@csklegal.com; GFalk@falkwaas.com; gbarr@dldlawyers.com; grettig@lgwmlaw.com; HLangIII@wwhgd.com; hopperr@gtlaw.com; iolman@smsm.com; ilibanoff@flblawyers.com; jfrometa@flblawyers.com; jnardiello@zdlaw.com; jshaw@torresvictor.com; james.kaplan@kaplanzeena.com; Jessica.Collier@huschblackwell.com; JHernandez@falkwaas.com; Dickenson, John David <jdickenson@cozen.com>; joseph.jean@pillsburylaw.com; Talcovitz@kleinpark.com; kmaus@butler.legal; keith.moskowitz@dentons.com; kendrake@dldlawyers.com; khirschman@therhlawfirm.com; kimberly.heifferman@kaplanzeena.com; larangodelahoz@wsh-law.com; lbesvinick@stroock.com; LGunn@gunnlawgroup.com; LAbramson@gunnlawgroup.com; litigationgroup@lgwmlaw.com; lkantor@hightowerlaw.net; mguerrero@rlattorneys.com; MWilliams@therhlawfirm.com; sullivanm@kleinpark.com; JMM@macfar.com; mlavisky@butler.legal; mfs@kubickidraper.com; michael.hooker@phelps.com; mhornreich@wwhgd.com; MKD@zdlaw.com; mchusid@ritterchusid.com; mkatz@ritterchusid.com; nsambursky@pmtlawfirm.com; nicauda@gtlaw.com; nicole.marsade@phelps.com; phernandez@hinshawlaw.com; pglatzer@marlowadler.com; ARaskas@gunster.com; RCA@gartnerbloom.com; kleinr@kleinpark.com; rcovitz@falkwaas.com; rkammer@hinshawlaw.com; rginsberg@wwhgd.com; Ryan.Charlson@csklegal.com; ryan.sooahoo@csklegal.com; ryan.tuley@troutman.com; sarah.cohen@hoganlovells.com; srembold@therhlawfirm.com; Scott.Davis@huschblackwell.com; seth.schimmel@phelps.com; shari.poppe@pillsburylaw.com; sbrodie@carltonfields.com; Tara.McCormack@kennedyslaw.com; TBishoff@gunnlawgroup.com; togglesby@rlattorneys.com; thomasmic@gtlaw.com; vanburen@gtlaw.com; viviane@dldlawyers.com; weinsteind@gtlaw.com; DWells@gunster.com; wsteinfulton@moundcotton.com; wes@wespa.us; william.tinsley@phelps.com; yolanda.vazquez@phelps.com

Subject: FW: CTS

****EXTERNAL SENDER****

FYI-

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From: Thomas, Michael J. (Shld-Mia-RE) <thomasmic@gtlaw.com>

Sent: Thursday, September 15, 2022 12:15 PM

To: Amanda Anderson <aanderson@insurance-counsel.com>

Cc: Andy Yoho <AYoho@Insurance-Counsel.com>; Jeffrey Harris <jharris@insurance-counsel.com>; 8701GroupAtty <8701GroupAtty@gtlaw.com>

Subject: RE: CTS

Amanda/Andy-

I'm sorry to say this but the insurers will have to re-execute the Insurer Waivers. The previously executed waivers have in several instances a few problems that would preclude the use of the signature page on the correct waiver. For example, the QBE Insurer Waiver states on every page, including the signature page, "Demonstration Document Only." The Philadelphia Indemnity Waiver was modified so appending a signature to different document presents different issues and concerns. The best solution for all involved is to have the CTSCA Insurers listed in my email from last night to properly sign the correct Insurer Waiver.

Also, Arch and Endurance will need to execute the Insurer Waiver. The Settlement Agreement defines "CTSCA Insurer" as "any insurer of the CTSCA that has paid or pays insurance proceeds to, or on behalf of, the CTSCA on or before the Effective Date, including those insurers listed on Schedule of CTSCA Insurers attached as Exhibit A hereto..."

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From: Amanda Anderson <aanderson@insurance-counsel.com>
Sent: Wednesday, September 14, 2022 11:34 PM
To: Thomas, Michael J. (Shld-Mia-RE) <thomasmic@gtlaw.com>
Cc: Andy Yoho <AYoho@Insurance-Counsel.com>; Jeffrey Harris <jharris@insurance-counsel.com>
Subject: Re: CTS

EXTERNAL TO GT

Michael-

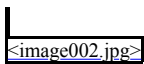
If we obtained permission from each of the insurers to use their existing signature pages on each of the revised forms your provided with the exception of James river - there we'd correct the notary date issue- would that be acceptable? We've been at this for weeks and candidly people have moved on, rightly or wrongly so getting their attention has been shall we say, challenging.

Sent from my iPhone. Please excuse any typos.

Amanda K. Anderson, Esq.

Boyle, Leonard & Anderson, P. A.
9111 W. College Point Drive
Fort Myers, FL 33919
(239) 337-1303

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From: thomasmic@gtlaw.com <thomasmic@gtlaw.com>
Sent: Wednesday, September 14, 2022 9:26 PM
To: Carver, Christopher (Ptnr-Ftl)
Cc: leabucciero@gmail.com; rwf@grossmanroth.com; hst@kttl.com; Goldberg, Michael (Ptnr-Ftl); 8701GroupAtty@gtlaw.com; Aaron.Konstam@kennedyslaw.com; ASchultz@cozen.com; alvin.lindsay@hoganlovells.com; Akdaechsel@carltonfields.com; andrew.kruppa@squirepb.com; tony@emersonelder.com; trecio@wsh-law.com; Ariella.ederi@pillsburylaw.com; ALi@vpm-legal.com; barnettch@gtlaw.com; bret.feldman@phelps.com; bmonroe@lgwmlaw.com; browninga@gtlaw.com; baebel@bankerlopez.com; johnson@jambg.com; bwb@derreverelaw.com; Chanell.botshekan@dentons.com; cheryl.mingo@kaplanzeena.com; christine.welstead@bowmanandbrooke.com; cbrown@wfmblaw.com; djs@insurancedefense.net; disrael@israellawfl.com; Drosinsky@insurancedefense.net; Debbie.Kim@troutman.com; dee@emersonelder.com; dmcintosh@smsm.com; EHernandez@falkwaas.com; erb@deutschblumberg.com; ehockman@wsh-law.com; fryan@butler.legal; khutorsky@litchfieldcavo.com; Gary.Kull@kennedyslaw.com; george.truitt@csklegal.com; GFalk@falkwaas.com; gbarr@dldlawyers.com; grettig@lgwmlaw.com; HLangill@wwhgd.com; hopperr@gtlaw.com; iolman@smsm.com; ilibanoff@flblawyers.com; jfrometa@flblawyers.com; jnardiello@zdlaw.com; jshaw@torresvictor.com; james.kaplan@kaplanzeena.com; Jessica.Collier@huschblackwell.com; JHernandez@falkwaas.com; jdickenson@cozen.com;

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Subject: CTS

[External to Akerman]

Chris,

We reviewed the executed Insurer Waivers you provided.

We are missing waivers from Arch Insurance Company and Endurance American Specialty Insurance Company, which paid insurance proceeds prior to the Effective Date of the Settlement Agreement. Please let us know when we can expect those additional waivers.

Moreover, the following waivers require re-execution by the CTSCA's insurers:

1. Philadelphia Indemnity Insurance Company – Document signed is not the form required by the Settlement Agreement
2. QBE Insurance Corp – “Releasor” is not properly populated in the preamble and the signature block. Document also has “DEMONSTRATION ONLY” stamped on it, suggesting it is a sample and not a legally enforceable document.
3. James River – “Releasor” is not properly populated in the preamble and the signature block. Notary expiration date is also inaccurate (3024 instead of 2024).
4. Fireman's Fund Insurance Company – “Releasor” is not properly populated in the preamble and the signature block.

The waiver by Universal also requires re-execution because (i) “Releasor” was not populated correctly in the preamble and signature block, and (ii) the “Waiver of Subrogation” was left entirely blank and did not provide policy numbers.

For your convenience, we prepared corrected Insurer Waivers for each of the above insurers (attached). For purposes of the Universal waiver, we contemplated a schedule of insurance policies given that there are likely numerous policies that Universal issued and paid indemnity from relating to CTS (or its tenants/unit owners).

We are still reviewing the WDC Representative Releases and intend to provide you with a list of issues tomorrow. We also have not received any executed waivers from any SCM Insurers.

Michael J. Thomas

Co-Chair, National Construction Law Practice

Board Certified in Construction Law

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Correspondence from counsel for Endurance
American Specialty Insurance Co.

RE: CTS [KEN-LEGAL.FID43443140]

Aaron Konstam <Aaron.Konstam@kennedyslaw.com>

Fri 9/16/2022 11:37 AM

To: thomasmic@gtlaw.com <thomasmic@gtlaw.com>; Andy Yoho <AYoho@Insurance-Counsel.com>;

Cc: Amanda Anderson <aanderson@insurance-counsel.com>; Carver, Christopher (Ptnr-FtI) <christopher.carver@akerman.com>; Eric A. Hiller <Eric.Hiller@kennedyslaw.com>; Schultz, Alexandra J. <ASchultz@cozen.com>; Khutorsky, Gary <khutorsky@litchfieldcavo.com>;

Importance: High

[External to Akerman]

Michael and Andy,

As we discussed yesterday, Endurance is not a CTSCA insurer and not required to sign the CTSCA waiver, which includes incorrect statements regarding Endurance.

Section 2.1.51 of the settlement agreement, which Endurance is not a party to, defines a CTSCA Insurer as:

2.1.51 "CTSCA Insurer" means any insurer of the CTSCA that has paid or pays insurance proceeds to, or on behalf of, the CTSCA on or before the Effective Date, including those insurers listed on the Schedule of CTSCA Insurers attached as Exhibit A hereto and made a part hereof.

Based on this definition, a CTSCA Insurer is (1) an insurer of the CTSCA; (2) that has paid or pays insurance proceeds; (3) the insurance proceeds is paid to, or on behalf of, the CTSCA on or before the Effective Date; and (4) includes those insurers on Exhibit A. As discussed below, Endurance does not satisfy any of these elements.

- (1) **An insurer of the CTSCA:** The Association and Endurance have agreed to rescind the policy and terminate all past, future, and present obligations under the document. As a result, Endurance is not an insurer of the Association.
- (2) **That has paid or pays insurance proceeds:** The agreement was to buyback the policy and rescind it. Absolutely no insurance proceeds were paid or intend to be paid. Additionally, see next element regarding the payment.
- (3) **The insurance proceeds is paid to, or on behalf of, the CTSCA on or before the Effective Date:** At this point, Endurance has not paid anything to the Association for the buyback of the policy. Per discussions with the Association's counsel, the motion to confirm the settlement will not be filed until the master settlement is finalized. Therefore, any payment to the Association by Endurance could only occur after the effective date and not "on or before" it, as required by the definition.
- (4) **Includes those insurers on Exhibit A:** It is undisputed that Endurance is not listed on the exhibit as a CTSCA Insurer. In fact, any statement that Endurance or any of the other similarly situated insurers were not listed but always intended to be classified as CTSCA Insurers is simply incorrect and unsupported by your actions during the negotiation of the terms of the settlement agreement.

As you know, we represented other Endurance entities in the 8701 CCIP and the JMA practice tower. On or about **May 19**, during the negotiations for the terms of the master settlement agreement we were provided a copy of Exhibit A that included Endurance and Arch as a CTSCA Insurer. We immediately objected and sent a redline deleting these carriers to you (Michael Thomas), Seth Schimmel, and Amanda Anderson. Within 15 minutes Amanda Anderson responded that she also made these edits.

After receiving the revised settlement agreement on **May 20** that continued to name Endurance and Arch, we sent another email to you (Michael Thomas), Seth Schimmel, and Amanda Anderson demanding that Endurance be removed and that you (Michael Thomas) and Seth Schimmel direct all discussions to Amanda Anderson regarding why it is improper to name Endurance on this list, i.e. why they are not CTSCA Insurers.

From: Aaron Konstam <Aaron.Konstam@kennedyslaw.com>
Sent: Friday, May 20, 2022 5:12 PM
To: aanderson@insurance-counsel.com
Cc: thomasmic@gtlaw.com; Seth.Schimmel@phelps.com; Eric A. Hiller <Eric.Hiller@kennedyslaw.com>
Subject: Re: Champlain Towers Release - Exhibit A [KEN-LEGAL.FID43409448]

Amanda, We just received the newest version of the release from Michael Thomas (copied here) and Endurance is still listed as an insurer for the Association. Once again, please make sure that Endurance is removed.

Michael and Seth, please direct all questions to Amanda for why Endurance should not be listed on that exhibit.

Thank you,

Aaron

That same day, Amanda Anderson responded indicating that Chris Carver was "taking the lead for [the] association" on this issue and requested that Chris "confirm that Endurance will be removed based on our separate executed agreement with the receiver." Within a half hour of our initial May 20 email, Chris Carver responded that he already discussed deleting Endurance's name from Exhibit A with "Michael Thomas' team." Each of these emails

copied you (Michael Thomas), Seth Schimmel, and Amanda Anderson.

From: "christopher.carver@akerman.com" <christopher.carver@akerman.com>
Date: Friday, May 20, 2022 at 5:29:30 PM
To: "Aaron Konstam" <Aaron.Konstam@kennedyslaw.com>, "aanderson@insurance-counsel.com" <aanderson@insurance-counsel.com>
Cc: "thomasmic@gtlaw.com" <thomasmic@gtlaw.com>, "Seth.Schimmel@phelps.com" <Seth.Schimmel@phelps.com>, "Eric A. Hiller" <Eric.Hiller@kennedyslaw.com>, "christopher.carver@akerman.com" <christopher.carver@akerman.com>
Subject: Re: Champlain Towers Release - Exhibit A [KEN-LEGAL.FID43409448]

Aaron,

Endurance is currently listed on Exhibit A - Schedule of CTSCA Insurers in the most current draft I have. I discussed with Michael Thomas' team yesterday deleting Endurance's name from Exhibit A, along with another insurer.

I will stay on top of that.

Sincerely,

Christopher S. Carver

Pursuant to Chris Carver's discussions with you (Michael Thomas), Endurance was then removed from all future revisions of the settlement agreement.

These facts clearly indicate that any intention to consider Endurance a CTSCA Insurer is directly contradicted by your (Michael Thomas) actions as the principal party drafting the settlement agreement. In addition, to the extent any such intention ever existed, it clearly ceased on or about May 20, when Endurance was purposefully removed from the list of CTSCA Insurers. For this reason and all of the others addressed above, Endurance is not a CTSCA Insurer and is not required by the settlement agreement (for which it is not a party and is not binding) to sign the CTSCA Insurer waiver.

Putting aside all of these arguments, we also point out that Endurance cannot sign the CTSCA Insurer waiver presented to it for the first time yesterday. The waiver includes inaccuracies that is directly contradictory to its agreement with the association.

To start, the document waives rights of subrogation, that Endurance does not have. To be clear, no rights of subrogation will arise out of the transaction between Endurance and the Association, because it has not agreed to pay a claim but instead is buying back and rescinding the policy. The document also states that the waiver concerns any right relating to: (1) the CTS Collapse; and (2) the payment under its policies. However, as discussed above, Endurance does not have any subrogation rights arising out of the collapse and it is not making any payment under these policies, as it has agreed to buy them back and rescind them.

For all of these reasons, Endurance is not a CTSCA Insurer and cannot sign the requested waiver. Due to religious observance, I will be unavailable to answer and calls or e-mails beginning at 7 pm today until around 8 pm tomorrow. I therefore ask that you confirm that you are withdrawing the request for Endurance to sign the waiver by 3 pm today.

Sincerely,

Aaron

Aaron Konstam
Associate
for Kennedys

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M +1 845 494 5173
www.kennedyslaw.com

From: Aaron Konstam
Sent: Thursday, September 15, 2022 3:03 PM
To: 'thomasmic@gtlaw.com' <thomasmic@gtlaw.com>
Subject: RE: CTS [KEN-LEGAL.FID43409449]

Michael, Thank you for taking the time to discuss Endurance's policy buyback. As we discussed, we have yet to speak with our client about the waiver, but the waiver is not necessary under the terms of the settlement agreement. Endurance was purposefully not added on Exhibit A and does not qualify as a CTSCA Insurer under section 2.1.51 for a host of reasons, some of which I mentioned on our call.

After you speak with the group, please let us know if you need any additional information or if they agree to no longer require Endurance to sign a CTSCA Insurer waiver.

Sincerely,

Aaron

From: thomasmic@gtlaw.com <thomasmic@gtlaw.com>

Sent: Thursday, September 15, 2022 12:20 PM

To: Aaron Konstam <Aaron.Konstam@kennedyslaw.com>; ASchultz@cozen.com; alvin.lindsay@hoganlovells.com; Akdaechsel@carltonfields.com; andrew.kruppa@squirepb.com; tony@emersonelder.com; trecio@wsh-law.com; Ariella.ederi@pillsburylaw.com; ALi@vpm-legal.com; barnettch@gtlaw.com; bret.feldman@phelps.com; bmonroe@lgwmlaw.com; browninga@gtlaw.com; baebel@bankerlopez.com; johnson@jambg.com; bwb@derreverelaw.com; Chanell.botshekan@dentons.com; cheryl.mingo@kaplanzeena.com; christine.welstead@bowmanandbrooke.com; cbrown@wfmblaw.com; djs@insurancedefense.net; disrael@israelawfl.com; Drosinsky@insurancedefense.net; Debbie.Kim@troutman.com; dee@emersonelder.com; dmcintosh@smsm.com; EHernandez@falkwaas.com; erb@deutschblumberg.com; ehockman@wsh-law.com; fryan@butler.legal; khutorsky@litchfieldcavo.com; Gary S. Kull <Gary.Kull@kennedyslaw.com>; george.truitt@csklegal.com; GFalk@falkwaas.com; gbarr@dldlawyers.com; grettig@lgwmlaw.com; HLangIII@wwhgd.com; hopperr@gtlaw.com; iolman@smsm.com; ilibanoff@flblawyers.com; jfrometa@flblawyers.com; jnardiello@zdlaw.com; jshaw@torresvictor.com; james.kaplan@kaplanzeena.com; Jessica.Collier@huschblackwell.com; JHernandez@falkwaas.com; jdickenson@cozen.com; joseph.jean@pillsburylaw.com; Talcovitz@kleinpark.com; kmaus@butler.legal; keith.moskowitz@dentons.com; kendrake@dldlawyers.com; khirschman@therhlawfirm.com; kimberly.heifferman@kaplanzeena.com; larangodelahoz@wsh-law.com; lbesvinick@stroock.com; LGunn@gunnlawgroup.com; LAbramson@gunnlawgroup.com; litigationgroup@lgwmlaw.com; lkantor@hightowerlaw.net; mguerrero@rlattorneys.com; MWilliams@therhlawfirm.com; sullivanm@kleinpark.com; JMM@macfar.com; mlavisky@butler.legal; mfs@kubickidraper.com; michael.hooker@phelps.com; mhornreich@wwhgd.com; MKD@zdlaw.com; mchusid@ritterchusid.com; mkat@ritterchusid.com; nsambursky@pmtlawfirm.com; nicauda@gtlaw.com; nicole.marsade@phelps.com; phernandez@hinshawlaw.com; pglatzer@marlowadler.com; ARaskas@gunster.com; RCA@gartnerbloom.com; kleinr@kleinpark.com; rcovitz@falkwaas.com; rkammer@hinshawlaw.com; rginsberg@wwhgd.com; Ryan.Charlson@csklegal.com; ryan.sooahoo@csklegal.com; ryan.tuley@troutman.com; sarah.cohen@hoganlovells.com; srembold@therhlawfirm.com; Scott.Davis@huschblackwell.com; seth.schimmel@phelps.com; shari.poppe@pillsburylaw.com; sbrodie@carltonfields.com; Tara E. McCormack <Tara.McCormack@kennedyslaw.com>; TBishoff@gunnlawgroup.com; toglesby@rlattorneys.com; thomasmic@gtlaw.com; vanburen@gtlaw.com; viviane@dldlawyers.com; weinsteind@gtlaw.com; DWells@gunster.com; wsteinfulton@moundcotton.com; wes@wespa.us; william.tinsley@phelps.com; yolanda.vazquez@phelps.com

Subject: FW: CTS

FYI-

Michael J. Thomas

Co-Chair, National Construction Law Practice

Board Certified in Construction Law

Shareholder

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333 S.E. 2nd Avenue | Miami, FL 33131

T 305.579.0511 | F 305-961-5740

thomasmic@gtlaw.com | www.gtlaw.com | [View GT Biography](#)

From: Thomas, Michael J. (Shld-Mia-RE) <thomasmic@gtlaw.com>

Sent: Thursday, September 15, 2022 12:15 PM

To: Amanda Anderson <aanderson@insurance-counsel.com>

Cc: Andy Yoho <AYoho@Insurance-Counsel.com>; Jeffrey Harris <jharris@insurance-counsel.com>; 8701GroupAtty <8701GroupAtty@gtlaw.com>

Subject: RE: CTS

Amanda/Andy-

I'm sorry to say this but the insurers will have to re-execute the Insurer Waivers. The previously executed waivers have in several instances a few problems that would preclude the use of the signature page on the correct waiver. For example, the QBE Insurer Waiver states on every page, including the signature page, "Demonstration Document Only." The Philadelphia Indemnity Waiver was modified so appending a signature to different document presents different issues and concerns. The best solution for all involved is to have the CTSCA Insurers listed in my email from last night to properly sign the correct Insurer Waiver.

Also, Arch and Endurance will need to execute the Insurer Waiver. The Settlement Agreement defines "CTSCA Insurer" as "*any* insurer of the CTSCA that has paid or pays insurance proceeds to, or on behalf of, the CTSCA on or before the Effective Date, including those insurers listed on Schedule of CTSCA Insurers attached as Exhibit A hereto..."

Michael J. Thomas

Co-Chair, National Construction Law Practice

Board Certified in Construction Law

Shareholder

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T 305.579.0511 | F 305-961-5740

thomasmic@gtlaw.com | www.gtlaw.com | [View GT Biography](#)

From: Amanda Anderson <aanderson@insurance-counsel.com>

Sent: Wednesday, September 14, 2022 11:34 PM

To: Thomas, Michael J. (Shld-Mia-RE) <thomasmic@gtlaw.com>

Cc: Andy Yoho <AYoho@Insurance-Counsel.com>; Jeffrey Harris <jharris@insurance-counsel.com>

Subject: Re: CTS

EXTERNAL TO GT

Michael-

If we obtained permission from each of the insurers to use their existing signature pages on each of the revised forms you provided with the exception of James river - there we'd correct the notary date issue- would that be acceptable? We've been at this for weeks and candidly people have moved on, rightly or wrongly so getting their attention has been shall we say, challenging.

Sent from my iPhone. Please excuse any typos.

Amanda K. Anderson, Esq.

Boyle, Leonard & Anderson, P. A.
9111 W. College Point Drive
Fort Myers, FL 33919
(239) 337-1303

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From: thomasmic@gtlaw.com <thomasmic@gtlaw.com>

Sent: Wednesday, September 14, 2022 9:26 PM

To: Carver, Christopher (Ptnr-Ftl)

Cc: leabucciero@gmail.com; rwf@grossmanroth.com; hst@kttlaw.com; Goldberg, Michael (Ptnr-Ftl); 8701GroupAtty@gtlaw.com; Aaron.Konstam@kennedyslaw.com; ASchultz@cozen.com; alvin.lindsay@hoganlovells.com; Akdaechsel@carltonfields.com; andrew.kruppa@squirepb.com; tony@emersonelder.com; trecio@wsh-law.com; Ariella.ederi@pillsburylaw.com; ALi@vpm-legal.com; barnettch@gtlaw.com; bret.feldman@phelps.com; bmonroe@lgwmlaw.com; browninga@gtlaw.com; baebel@bankerlopez.com; johnson@jambg.com; bwb@derreverelaw.com; Chanell.botshekan@dentons.com; cheryl.mingo@kaplanzeena.com; christine.welstead@bowmanandbrooke.com; cbrown@wfmblaw.com; djs@insurancedefense.net; disrael@israellawfl.com; Drosinsky@insurancedefense.net; Debbie.Kim@troutman.com; dee@emersonelder.com; dmcintosh@smsm.com; EHernandez@falkwaas.com; erb@deutschblumberg.com; ehockman@wsh-law.com; fryan@butler.legal; khutorsky@litchfieldcavo.com; Gary.Kull@kennedyslaw.com; george.truitt@csklegal.com; GFalk@falkwaas.com; gbarr@dldlawyers.com; grettig@lgwmlaw.com; HLangIII@wwhgd.com; hopperr@gtlaw.com; iolman@smsm.com; ilibanoff@flblawyers.com; jfrometa@flblawyers.com; jnardiello@zdlaw.com; jshaw@torresvictor.com; james.kaplan@kaplanzeena.com; Jessica.Collier@huschblackwell.com; JHernandez@falkwaas.com; jdickenson@cozen.com; joseph.jean@pillsburylaw.com; Talcovitz@kleinpark.com; kmaus@butler.legal; keith.moskowitz@dentons.com; kendra@kennedyslaw.com; khirschman@therhlawfirm.com; kimberly.heifferman@kaplanzeena.com; larangodelahoz@wsh-law.com; lbesvinick@stroock.com; LGunn@gunnlawgroup.com; LAbramson@gunnlawgroup.com; litigationgroup@lgwmlaw.com; lkantor@hightowerlaw.net; mguerrero@rlattorneys.com; MWilliams@therhlawfirm.com; sullivanm@kleinpark.com; JMM@macfar.com; mlavisky@butler.legal; mfs@kubickidraper.com; michael.hooker@phelps.com; mhornreich@wwhgd.com; MKD@zdlaw.com; mchusid@ritterchusid.com; mkat@ritterchusid.com; nsambursky@pmtlawfirm.com; nicauda@gtlaw.com; nicole.marsade@phelps.com; phernandez@hinshawlaw.com; pglatzer@marlowadler.com; ARaskas@gunster.com; RCA@gartnerbloom.com; kleinr@kleinpark.com; rcovitz@falkwaas.com; rkammer@hinshawlaw.com; rginsberg@wwhgd.com; Ryan.Charlson@csklegal.com; ryan.sooohoo@csklegal.com; ryan.tuley@troutman.com; sarah.cohen@hoganlovells.com; srembold@therhlawfirm.com; Scott.Davis@huschblackwell.com; seth.schimmel@phelps.com; shari.poppe@pillsburylaw.com; sbrodie@carltonfields.com; Tara.McCormack@kennedyslaw.com; TBishoff@gunnlawgroup.com; toglesby@rlattorneys.com; thomasmic@gtlaw.com; vanburen@gtlaw.com; viviane@dldlawyers.com; weinsteind@gtlaw.com; DWells@gunster.com; wsteinfulton@moundcotton.com; wes@wespa.us; william.tinsley@phelps.com; yolanda.vazquez@phelps.com

Subject: CTS

[External to Akerman]

Chris,

We reviewed the executed Insurer Waivers you provided.

We are missing waivers from Arch Insurance Company and Endurance American Specialty Insurance Company, which paid insurance proceeds prior to the Effective Date of the Settlement Agreement. Please let us know when we can expect those additional waivers.

Moreover, the following waivers require re-execution by the CTSCA's insurers:

- Philadelphia Indemnity Insurance Company – Document signed is not the form required by the Settlement Agreement
- QBE Insurance Corp – “Releasor” is not properly populated in the preamble and the signature block. Document also has “DEMONSTRATION ONLY” stamped on it, suggesting it is a sample and not a legally enforceable document.
- James River – “Releasor” is not properly populated in the preamble and the signature block. Notary expiration date is also inaccurate (3024 instead of 2024).
- Fireman's Fund Insurance Company – “Releasor” is not properly populated in the preamble and the signature block.

The waiver by Universal also requires re-execution because (i) “Releasor” was not populated correctly in the preamble and signature block, and (ii) the “Waiver of Subrogation” was left entirely blank and did not provide policy numbers.

For your convenience, we prepared corrected Insurer Waivers for each of the above insurers (attached). For purposes of the Universal waiver, we contemplated a schedule of insurance policies given that there are likely numerous policies that Universal issued and paid indemnity from relating to CTS (or its tenants/unit owners).

We are still reviewing the WDC Representative Releases and intend to provide you with a list of issues tomorrow. We also have not received any executed waivers from any SCM Insurers.

Michael J. Thomas
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Exhibit 4

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION,

CLASS REPRESENTATION

CBL DIVISION

CASE NO: 2021-015089-CA-01

RELEASE AND COVENANT NOT TO SUE

This **Release** and Covenant Not to Sue (this “**Release**”) is executed as of the Effective Date (as defined herein) by Joshua Kleiman (“**Releasor**”) as the personal representative of the estate of Frank Kleiman (the “**Decedent’s Estate**”).

RECITALS

A. On June 24, 2021, the twelve-story Champlain Towers South Condominium located at 8777 Collins Avenue, Surfside, Florida 33154 (“**Champlain Towers South**”), partially collapsed and caused the death of ninety-eight individuals.

B. Various plaintiffs filed lawsuits against the Released Parties (as defined herein) and others, which were consolidated into a class action lawsuit styled *In Re: Champlain Towers South Collapse Litigation*, Case No. 2021-15089 CA 01 (the “**Litigation**”), pending before the Honorable Michael A. Hanzman in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the “**Court**”).

C. The parties in the Litigation and others resolved the Litigation and entered into that certain In Re: Champlain Towers South Collapse Litigation Class Action Settlement Agreement (the “**Settlement Agreement**”), which was finally approved by the Court.

D. The Settlement Agreement requires all personal representatives of persons who died as a result of the CTS Collapse (as defined herein) to execute this Release as a condition precedent to the distribution of any settlement proceeds under the Settlement Agreement, whether to Releasor or any other person or entity.

E. Releasor is bound by the terms of the Settlement Agreement and Releasor desires to receive a distribution of settlement proceeds in accordance with the terms and conditions of the Settlement Agreement.

NOW, THEREFORE, for the consideration expressed herein, the receipt and sufficiency of which Releasor acknowledges, Releasor agrees as follows:

1. **Definitions.** The following terms (designated by initial capitalization throughout this Release) will have the meanings set forth in this Section, which are applicable to both the

singular and plural thereof. Unless the context requires otherwise, (a) words expressed in the masculine will include the feminine and neuter gender and vice versa; (b) the word "will" shall be construed to have the same meaning and effect as the word "shall"; (c) the word "or" will not be exclusive; (d) the word "extent" in the phrase "to the extent" will mean the degree to which a subject or other thing extends, and such phrase will not simply mean "if"; and (e) the terms "include," "includes," and "including" will be deemed to be followed by "without limitation," whether or not they are in fact followed by such words or words of similar import.

1.1. **"8701 Collins"** means 8701 Collins Development, LLC, a Delaware limited liability company.

1.2. **"8701 Releasees"** means 8701 Collins, Terra Construction Management, LLC, and all of their respective past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, investors, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, members of members, members of any management committee, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.3. **"8701 Unit Owner"** means and refers to a "Unit Owner," as such quoted term is used and defined in that certain Declaration of 8701 Collins Avenue Condominium filed and recorded November 15, 2019 in Official Records Book 31691, at Page 1664, of the Public Records of Miami-Dade County, Florida, as amended and supplemented from time to time.

1.4. **"87 Park"** means and refers to the "Condominium," as such quoted term is used and defined in that certain Declaration of 8701 Collins Avenue Condominium filed and recorded November 15, 2019 in Official Records Book 31691, at Page 1664, of the Public Records of Miami-Dade County, Florida, as amended and supplemented from time to time.

1.5. **"87 Park Association Releasees"** means 8701 Collins Avenue Condominium Association, Inc., a Florida not-for-profit corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, the 8701 Unit Owners, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.6. **"87 Park Site"** means the "Land," as such quoted term is used and defined in that certain Declaration of 8701 Collins Avenue Condominium filed and recorded November 15, 2019 in Official Records Book 31691, at Page 1664, of the Public Records of Miami-Dade County, Florida, as amended and supplemented from time to time.

1.7. **“Affiliate”** means, with respect to any person or entity, any other person or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person or entity, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting shares, by contract, or otherwise.

1.8. **“ASAP Installations Releasees”** means ASAP Installations LLC, a Florida limited liability company, **and** its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.9. **“Batista Releasees”** means R.E.E. Consulting, LLC, a Florida limited liability company d/b/a G. Batista & Associates, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.10. **“Becker Releasees”** means Becker & Poliakoff, P.A., a Florida professional corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities.

1.11. **“B&PD Releasees”** means Bizzi & Partners Development LLC, a Delaware limited liability company, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.12. **“Beach Access Improvements”** means and refers to the “87th Terrace Easement Improvements,” as such quoted term is used and defined in the Development Agreement

between the City of Miami Beach and 8701 Collins Development, LLC dated November 24, 2014, and recorded in Official Records Book 29415, at Pages 4360-4411, of the Public Records of Miami-Dade County, Florida, together with the "87th Terrace Improvements," as such quoted term is used and defined in the Grant of Perpetual Easement (87th Terrace) by 8701 Collins Development, LLC in favor of the City of Miami Beach dated November 24, 2014, and recorded in Official Records Book 29913, at Page 3123, of the Public Records of Miami-Dade County, Florida.

1.13. "**CCIP**" means the Contractor Controlled Insurance Program that provides commercial general liability insurance and excess liability insurance for the construction of 87 Park performed on the 87 Park Site.

1.14. "**CDPW Releasees**" means CDPW, Inc., a Florida corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.15. "**Champlain Towers South**" has the meaning ascribed to it in the recitals to this Release.

1.16. "**Chuck's Backhoe Releasees**" means Chuck's Backhoe Service, Inc., a Florida corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.17. "**Class Action Complaint**" means the Consolidated Third Amended Class Action Complaint filed in the Litigation on March 10, 2022, and any subsequent amendments thereto.

1.18. "**Court**" has the meaning ascribed to it in the recitals to this Release.

1.19. "**CP&R Releasees**" means Concrete Protection and Restoration, Inc., a Maryland corporation, Concrete Protection and Restoration, LLC, a Florida limited liability company, and all of their respective past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors,

lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.20. **“CRM Releasees”** means Campany Roof Maintenance, LLC, a Florida limited liability company, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.21. **“CTS Collapse”** means the partial collapse of Champlain Towers South and subsequent demolition of the remainder of Champlain Towers South.

1.22. **“CTS Site”** means the real property located at 8777 Collins Avenue, Surfside, Florida 33154.

1.23. **“CTS Vendor”** means Securitas Security Services USA, Inc., a Delaware corporation, Morabito Consultants, Inc., a Maryland corporation, Becker & Poliakoff, P.A., a Florida professional corporation, Concrete Protection and Restoration, Inc., a Maryland corporation, Concrete Protection and Restoration, LLC, a Florida limited liability company, Campany Roof Maintenance, LLC, a Florida limited liability company, R.E.E. Consulting, LLC, a Florida limited liability company d/b/a G. Batista & Associates, Willcott Engineering, Inc., a Florida corporation, Western Waterproofing Company of America, a Missouri corporation d/b/a Western Specialty Contractors of America, Western Holding Group, Inc. a/k/a Western Group, Inc., a Missouri corporation, Sammet Pools, Inc., a Florida corporation, and Scott R. Vaughn, PE, LLC, a Florida limited liability company.

1.24. **“CTS Vendor Services”** means work or services performed, or allegedly failed to have been performed, by any CTS Vendor prior to the CTS Collapse for or on behalf of the Champlain Towers South Condominium Association, Inc., or any Unit Owner, or otherwise for the benefit of Champlain Towers South.

1.25. **“Decedent’s Estate”** has the meaning ascribed to it in the recitals to this Release.

1.26. **“Design Professionals”** means any architect, engineer, or consultant that furnished design services, engineering services, professional services, or consulting services in connection with the design, development, or construction, of 87 Park. The term “Design Professional” includes Kobi Karp Architecture & Interior Design, Inc., Steven Feller, P.E., SLS Consulting, Inc., VSN Engineering, Inc., West 8 Urban Design & Landscape Architecture, P.C., Aquadynamics Design Group, Inc., Lux Populi SA de CV, and Renzo Piano Building Workshop, Inc.

1.27. **"DeSimone Releasees"** means DeSimone Consulting Engineering, DPC, a New York design professional corporation, DeSimone Consulting Engineers, LLC, a Delaware limited liability company, DeSimone Consulting Engineering Group, LLC, DeSimone Consulting Engineers, and all of their respective past, present, and future administrators, Affiliates, fictitious names (including any "doing business as", "formerly known as", or "now known as" names), heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.28. **"Effective Date"** means the date that this release is signed by Releasor, as indicated by the date below Releasor's signature.

1.29. **"Florida Civil Releasees"** means Florida Civil, Inc., a Florida corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.30. **"Geosonics Releasees"** means Geosonics, Inc., a Pennsylvania corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.31. **"HVA Releasees"** means H. Vidal & Associates, Inc., a Florida corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.32. “**JMAF**” means John Moriarty & Associates of Florida, Inc., a Massachusetts corporation.

1.33. “**JMAF Releasees**” means JMAF and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities related by whole or partial common ownership, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.34. “**Litigation**” has the meaning ascribed to it in the recitals to this Release.

1.35. “**Morabito Releasees**” means Morabito Consultants, Inc., a Maryland corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.36. “**NV5 Releasees**” means NV5, Inc., a Delaware corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.37. “**OSA Releasees**” means O & S Associates, Inc., a New York corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.38. “**Related Action**” means any past, present, or future action or claim brought against any Released Party in the Court (other than the Litigation and the Universal Action) or any

other state court, federal court, foreign court, international tribunal, regulatory agency, or other tribunal or forum arising out of, or related to, or based upon, the CTS Collapse, or the allegations, transactions, facts, matters, occurrences, representations, or omissions involved, set forth, alleged, or referred to, in the Class Action Complaint or otherwise in the Litigation.

1.39. **“Released Claim”** has the meaning ascribed to it in this Release.

1.40. **“Released Party(ies)”** means the Town of Surfside, Florida, the Securitas Releasees, the JMAF Releasees, the Stantec Releasees, the Becker Releasees, the DeSimone Releasees, the NV5 Releasees, the Morabito Releasees, the B&PD Releasees, the 8701 Releasees, the TG Releasees, the TWI Releasees, the Florida Civil Releasees, the HVA Releasees, the ASAP Installations Releasees, the Chuck’s Backhoe Releasees, the Rhett Roy Releasees, the CP&R Releasees, the SPI Releasees, the CRM Releasees, the Willcott Releasees, the Batista Releasees, the Western Group Releasees, the CDPW Releasees, the Vaughn PE Releasees, the Geosonics Releasees, the OSA Releasees, the Tanenbaum Releasees, the Subcontractors, all “Indemnitees” (as such quoted term is used and defined in Section 1.2.51 of the Construction Agreement dated February 25, 2016, by and between 8701 Collins and JMAF), the 87 Park Association Releasees, TGSV Enterprises, Inc., a Florida corporation, all CTS Vendors, all Design Professionals, all Vendors, and all of their respective past, present, and future administrators, Affiliates, heirs, legatees, executors, trusts, personal representatives, conservators, transferees, insurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, members of any management committee, shareholders, trustees, employees, employers, contractors, subcontractors, laborers, materialmen, suppliers, lienholders, subrogees, accountants, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, and managers of any of the foregoing).

1.41. **“Releasor”** has the meaning ascribed to it in the preamble to this Release.

1.42. **“Rhett Roy Releasees”** means Rhett Roy Landscape Architecture LLC, a Florida limited liability company, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.43. **“Securitas Releasees”** means Securitas Security Services USA, Inc., a Delaware corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers,

reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.44. “**Settlement**” means the settlement set forth in the Settlement Agreement.

1.45. “**Settlement Agreement**” has the meaning ascribed to it in the recitals to this Release.

1.46. “**SPI Releasees**” means Sammet Pools, Inc., a Florida corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers (including Mid-Continent Casualty Insurance Company, Amerisure Mutual Insurance Company, and Amerisure Insurance Company), reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, laborers, materialmen, suppliers, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.47. “**Stantec Releasees**” means Stantec Architecture Inc., a North Carolina corporation, Stantec Inc., Stantec Consulting Services Inc., and all of their respective past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, design license holders or qualifiers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.48. “**Subcontractor**” means any person or entity that furnished labor, equipment, materials, or services in connection with the construction of 87 Park pursuant to a direct or indirect contract with JMAF.

1.49. “**Tanenbaum Releasees**” means Tanenbaum Harber of Florida, LLC, a Florida limited liability company, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.50. “**TG Releasees**” means Terra Group, LLC, a Florida limited liability company, and all of its respective past, present, and future administrators, Affiliates, heirs,

legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, members of any management committee, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.51. **“TWI Releasees”** means Terra World Investments, LLC, a Florida limited liability company, and all of its respective past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, members of any management committee, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.52. **“Unit Owner”** means the record owner of a “Condominium Unit” (as such quoted term is used and defined in **that certain Declaration of Champlain Towers South Condominium filed and recorded August 19, 1981, in Official Records Book 11191, at Page 35**, of the Public Records of Miami-Dade County, Florida, as amended and supplemented from time to time) at the time of the CTS Collapse. The term “Unit Owner” includes a Unit Owner that owned personal property that was lost, damaged, or destroyed as a result of the CTS Collapse.

1.53. **“Universal”** means Universal Property & Casualty Insurance Company.

1.54. **“Universal Action”** means the lawsuit filed by Universal styled *Universal Property & Casualty Insurance Company a/s/o Max Friedman and Ellen Friedman, et al., vs. Champlain Towers South Condominium Association, Inc., et al.*, Case No.: 2022-001944-CA-01, pending in the Court.

1.55. **“Vaughn PE Releasees”** means Scott R. Vaughn, PE, LLC, a Florida limited liability company, Scott R. Vaughn, PE, an individual, and all of their respective past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.56. “**Vendor**” means any person or entity (other than JMAF or a Subcontractor) that furnished labor, equipment, materials, or services in connection with the design, development, construction, operation, maintenance or repair of 87 Park or the 87 Park Site.

1.57. “**Western Group Releasees**” means Western Waterproofing Company of America, a Missouri corporation d/b/a Western Specialty Contractors of America, Western Holding Group, Inc. a/k/a Western Group, Inc., a Missouri corporation, and its past, present, and future administrators, Affiliates, fictitious names, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

1.58. “**Willcott Releasees**” means Willcott Engineering, Inc., a Florida corporation, and its past, present, and future administrators, Affiliates, heirs, legatees, insurers, reinsurers, sureties, predecessors, successors, assigns, attorneys, insureds, agents, servants, managers, legal representatives, consultants, partners, officers, board members, directors, members, shareholders, trustees, employees, employers, contractors, subcontractors, lienholders, creditors, receivers, divisions, related entities, predecessor-, successor-, Affiliated-, subsidiary-, and parent-entities (and the officers, directors, employees, employers, attorneys, insurers, reinsurers, retrocessionaires, shareholders, partners, members, managers, predecessor-, successor-, Affiliated-, subsidiary-, related-, and parent-entities of any of the foregoing).

2. Release and Covenant Not to Sue

2.1. **Release.** Releasor, on his, her, its, or their own behalf, and on behalf of his, her, its, or their respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, indemnitors, heirs, next of kin, estates, beneficiaries, conservators, trustees, trusts, executors, administrators, personal representatives, and any natural, legal, or juridical person or entity to the extent he, she, or it is entitled to assert any claim on behalf of the Decedent’s Estate, or anyone claiming by, through, or on behalf of any of them, hereby releases, acquits, forever discharges, and holds harmless the Released Parties, and each of them, of and from any and all past, present and future claims, counterclaims, crossclaims, actions, lawsuits, administrative proceedings, rights or causes of action, liabilities, suits, demands, liens, damages, losses, punitive damages, payments, judgments, debts, dues, sums of money, costs and expenses (including attorneys’ fees and costs), accounts, reckonings, bills, covenants, contracts, controversies, warranties, indemnities, agreements, responsibilities, obligations, or promises, whether in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, latent or patent, discovered or undiscovered, whether existing prior to, on, or arising after, the Effective Date, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, in any forum, that the Releasor had, has, may or will have in the future, arising out of, concerning, in any way connected with, or in any way relating, directly or indirectly, to (i) the CTS Collapse, (ii) Champlain Towers South, (iii) the CTS Vendor Services, (iv) the vacation of the public right-of-

way that was formerly located on the portion of the 87 Park Site formerly known as 87th Terrace, Miami Beach, Florida, (v) the design, development, construction, maintenance, operation, management, or repair of 87 Park, (vi) 8701 Collins' acquisition of the 87 Park Site, (vii) the design, development, construction, maintenance, installation, or repair of the Beach Access Improvements, (viii) the allegations, transactions, facts, matters, occurrences, representations, or omissions involved, set forth, referred to, or relating to, the Litigation (including the Class Action Complaint), any Related Action, the Universal Action, or this Settlement (each of the foregoing and those below are a "Released Claim" and collectively, the "Released Claims"), or (ix) Released Claims:

(a) arising out of, concerning, in any way connected with, or in any way relating, directly or indirectly, to the Construction Contract or any demolition work or activities that occurred on any part of the 87 Park Site;

(b) that have, could have been, or could be made in the Litigation, any Related Action, or the Universal Action;

(c) arising out of, concerning, in any way connected with, or in any way relating, directly or indirectly, to any allegation in the Class Action Complaint;

(d) arising out of, concerning, in any way connected with, or in any way relating, directly or indirectly, to any activity or inherently dangerous activity, ultrahazardous activity, or abnormally dangerous activity conducted at or near the 87 Park Site;

(e) arising out of, concerning, in any way connected with, or in any way relating, directly or indirectly, to the design, planning, proposals for, construction, improvements, additions, amelioration, repairs, replacement, remediation, restoration, investigations, inspections, evaluations, and testing at Champlain Towers South or the CTS Site;

(f) arising out of, concerning, in any way connected with, or in any way relating, directly or indirectly, to the design, development, construction, maintenance, operation, management, or repair of Champlain Towers South;

(g) arising out of, concerning, in any way connected with, or in any way relating, directly or indirectly, to loss of support, services, consortium, companionship, society, love or affection, or damage to familial relations (including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life);

(h) arising out of, concerning, in any way connected with, or in any way relating, directly or indirectly, to bodily injury, personal injury, wrongful death, emotional distress, or property damage, remediation and/or clean-up of property, diminution of property value, fraud, misrepresentations, loss of use or enjoyment of real or personal property, foreclosure, economic loss, fear, fear of illness or disease, fear of developing illness or disease, fright, mental or emotional distress, pain and suffering, loss of earnings, impairment of earning capacity, health equity and medical monitoring, bystander liability, survival actions, breach of contract, all statutory claims, punitive or exemplary damages, attorneys' fees, costs or expenses, moving expenses, additional rental or mortgage payments;

(i) arising out of, concerning, in any way connected with, or in any way relating, directly or indirectly, to medical screening and medical monitoring for undeveloped, unmanifested, and/or undiagnosed bodily injuries, as well as any injury arising out of or relating to the occupancy of, or presence at, Champlain Towers South at the time of the CTS Collapse;

(j) arising out of, concerning, in any way connected with, or in any way relating, directly or indirectly, to security services performed at Champlain Towers South pursuant to a security services agreement;

(k) for damages or alleged damages resulting in whole or in part from exposure to hazardous or allegedly hazardous, toxic, dangerous or harmful substances;

(l) for claims for compensatory, punitive, exemplary, extra-contractual or statutory damages based upon any allegations of fraud, insurer bad faith, additional insured status, unfair claims practices, unfair settlement practices, or other act or failure to act by any insurer in connection with the defense, investigation, handling, adjustment, litigation, or settlement of any claim or Released Claim released hereunder, or any alleged insurer misconduct of any kind or nature;

(m) for derivative, constructive, technical, indirect, strict, secondary, joint and several, or vicarious liability arising out of the conduct or fault of others for which the Released Parties may be responsible;

(n) for any right legally assertable by the Releasor or the Decedent's Estate now or in the future, whether the claim is personal to each individual, derivative of a claim now or in the future, or as assignee, successor, survivor, legatee, beneficiary, subrogee, or representative of the Releasor or the Decedent's Estate;

(o) for a past, present, future, known, unknown, foreseen, unforeseen, contingent, nascent, mature claim or a claim arising at law, in equity or otherwise, including but not limited to, claims for survival and wrongful death; or

(p) for contribution, subrogation, defense, or indemnification, whether contractual or otherwise, arising out of, attributable to, or in any way related to, the Litigation, any Related Action, the Universal Action, the CTS Collapse, 87 Park, or the 87 Park Site.

2.1.1. Releasor hereby releases, forever discharges, and holds harmless the Released Parties from any and all Released Claims, including unknown Released Claims, arising out of, concerning, in any way connected with, or in any way relating, directly or indirectly, to the CTS Collapse, this Release, or the Settlement Agreement.

2.2. Scope of Release

2.2.1. Releasor acknowledges and expressly waives and relinquishes all rights and benefits, if any, which it, he, or she has or may have under Section 1542 of the Civil Code of the State of California (and similar statutes) which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

2.2.2. Releasor acknowledges that the foregoing waiver of the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other state, territory, or other jurisdiction was separately bargained for and that the Parties would not have entered into this Settlement Agreement unless it included a broad release of unknown claims relating to the matters released herein.

2.2.3. Releasor intends to be legally bound by the releases set forth in this Release. Releasor represents and warrants that no promise or inducement has been offered or made for the releases contained in this Release, except as set forth in this Release, and that this Release is executed without reliance on any statements or any representations not contained in this Release.

2.3. Covenant Not to Sue any Released Party and Waiver and Estoppel. Releasor (a) represents, warrants, and agrees that Releasor waives and is forever estopped from asserting any Released Claim against any Released Party, and (b) covenants not to sue or threaten to sue, now or in the future, any Released Party for any Released Claim, or otherwise assert or threaten to assert any Released Claim against any Released Party.

3. Miscellaneous

3.1. Representations and Warranties. Releasor represents and warrants to the Released Parties that (a) Releasor executes this Release knowingly and willingly, (b) the person executing this Release on behalf of Releasor has the right, power, and authority to do so, and (c) Releasor has not assigned to any other person or entity any right, claim or cause of action against any Released Parties arising out of the Released Claims. Releasor acknowledges that it may in the future learn of additional or different facts that relate to the CTS Collapse. Releasor understands and acknowledges the consequences of releasing all Released Claims and assumes all related risks, including that some Released Claims might have accrued or been discovered later. Releasor agrees that the releases set forth in this Release are irrevocable and unconditional, inure to the benefit of each of the Released Parties, and are intended to be as broad as lawfully possible.

3.2. No admission of Liability. Nothing in this Release shall be construed as an admission of fault, liability, or wrongdoing on the part of any Released Party.

3.3. Consideration. Releasor shall deliver this Release in consideration for receipt of settlement proceeds pursuant to the Settlement Agreement. As a condition precedent to receiving any disbursement of settlement proceeds pursuant to the Settlement Agreement, Releasor warrants that he, she, or it has honestly disclosed all information required as part of his, her, its, or their participation in the Settlement, and must deliver this Release in a properly executed form. Releasor further stipulates that the settlement proceeds Releasor has received is sufficient

consideration for the execution and delivery of this Release, independent of Releasor's participation in the Settlement.

3.4. Applicable Law, Jurisdiction, Venue, and Attorneys' Fees. This Release shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflicts of laws principles. Any dispute or claim arising out of, relating to, or connected with this Release shall be settled by litigation in the Court and Releasor waives any objections to such jurisdiction and/or venue. Releasor hereby submits and consents to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of, or relating to, this Release. **RELEASOR SPECIFICALLY AND KNOWINGLY WAIVES ANY RIGHTS IT MIGHT HAVE TO A TRIAL BY JURY IN ANY LAWSUIT OR OTHER PROCEEDING ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS RELEASE, INCLUDING TO ENFORCE ITS TERMS.** The prevailing party in any suit, action, proceeding, or dispute arising out of, or relating to, or connected with, this Release, including any suit, action, proceeding, or dispute to enforce the terms of this Release, shall be entitled to recover its reasonable attorneys' fees and costs incurred in such suit, action, proceeding, or dispute.

3.5. General. Releasor must execute this Release by signing on the designated signature block below, before a qualified notary public. Releasor agrees that, for the purpose of executing this Release, a wet or ink signature is required to be considered an original signature.

3.6. Severability. If any term or provision of this Release is invalid, illegal, or unenforceable, then such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Release or invalidate or render unenforceable such term or provision of the Release. Notwithstanding anything to the contrary, if the Settlement Agreement becomes unenforceable or is declared invalid, illegal, or unenforceable, then this Release shall nevertheless remain enforceable and independent of the Settlement Agreement, and the invalidity, unenforceability, or illegality of the Settlement Agreement shall not affect this Release or invalidate or render this Release unenforceable.

4. Other

4.1. Releasor agrees that, to the extent a trust agreement, probate order, guardianship order, or other similar legal document is necessary to establish the Releasor's authority to execute this Release, then such document(s) are incorporated into this Release as the following Exhibits attached hereto (if applicable):

Please see attached the Letters of Administration for the Estate of Frank Kleiman appointing Joshua Kleiman as the Personal Representative

Please attach a copy of the order appointing you Personal Representative of the Decedent's Estate.

IN WITNESS WHEREOF, Releasor has executed this Release on the Effective Date stated below.

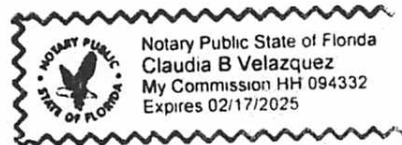
RELEASOR:

By: [Signature]
Name: Joshua Kleiman
Date: 8/24/22

STATE OF FLORIDA)
)
COUNTY OF Miami-Dade)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of August, 2022 by Joshua Kleiman. He/she is personally known to me or has produced _____ as identification.

[Signature]
Notary Public, State of Florida
My Commission Expires: 2/17/2025



**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-003624-CP-02

SECTION: PMH05

JUDGE: Yvonne Colodny

IN RE: Kleiman, Frank

Decedent

_____ /

LETTER OF ADMINISTRATION

TO ALL WHOM IT MAY CONCERN

WHEREAS, FRANK KLEIMAN, a resident of Miami-Dade County, FL died on June 24, 2021 (“Decedent”), owning assets in the State of Florida, and

WHEREAS, JOSHUA KLEIMAN has been appointed personal representative (“Personal Representative”) of the Decedent’s estate (“Decedent’s Estate”) and has performed all acts prerequisite to issuance of Letters of Administration in the estate,

NOW, THEREFORE, I, the undersigned circuit judge, declare JOSHUA KLEIMAN duly qualified under the laws of the State of Florida to act as Personal Representative of Decedent’s Estate, with full power to administer the Estate according to law; to ask, demand, sue for, recover and receive the property of the Decedent; to pay the debts of the Decedent as far as the assets of the Estate will permit and the law directs; and to make distribution of the Estate according to law.

These Letters of Administration are subject to the following restrictions:

- This Estate must be closed within 12 months, unless it is contested or its closing date is extended by court order.

- These letters do not authorize entry into any safe deposit box without further court order.
- The Personal Representative shall place all liquid assets in a depository designated by the Court pursuant to the Section 69.031, Florida Statutes ("Depository"). This is a frozen account. No funds can be withdrawn without a court order.
- Attorney of Record shall file Receipt of Assets by Depository within thirty days from the issuance of these letters.
- These letters do not authorize the sale, transfer, distribution, encumbrance, borrowing, or gifting of any Estate assets without a special court order.
- If Florida real estate is sold, per court order, a closing statement shall be filed, and the sale's net proceeds shall be placed in the Depository.
- Inventory shall be filed within 60 days.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 16th day of August, 2021.



2021-003624-CP-02 08-16-2021 9:57 AM

Hon. Yvonne Colodny

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Bart H. Chepenik, bchepenik@ctlip.com
Bart H. Chepenik, probateservice@ctlip.com
Lilian Hernandez, Lhernandez@ctlip.com

Physically Served:

Exhibit 5

EXHIBIT A

SCHEDULE OF CTSCA INSURERS

Fireman's Fund Insurance Company (an Allianz Company) Umbrella Policy No. USL00656920U Policy Period: 8/1/2020 – 8/1/2021	James River Insurance Co. Commercial General Liability Policy No. 00098532-1 Policy Period: 12/28/2020 – 12/28/2021
Philadelphia Indemnity Insurance Company Crime Policy No. PCAC008305-0219 Policy Period: 12/22/2020 – 12/20/2021	Philadelphia Indemnity Insurance Company Directors and Officers Policy No. PCAP018689-0318 Policy Period: 12/28/2020 – 12/28/2021
QBE Excess Umbrella Policy No. HRP2020 Policy Period: 12/28/2020 – 12/28/2021	Great American Insurance Company Property Policy No. MAC E658359 00 00 Policy Period: 12/28/2020 – 12/28/2021