SENADO FEDERAL
Gabinete do Senador Fernando Collor

Ofício GSFCOL Nº 154/2021

Brasília, 30 de novembro de 2021.

A Sua Excelência o Senhor
Senador JORGINHO MELLO
Presidente da Comissão Parlamentar de Inquérito
do Senado Federal sobre a situação das vítimas e familiares
da Chapecoense (CPICHAPE)

Prezado Senador Jorginho Mello,

Encaminho, anexa, documentação recebida do escritório norte-americano *PodhurstOrseck* com informações referentes ao acidente ocorrido com a equipe de futebol da Chapaecoense em novembro de 2016.

O escritório *PodhurstOrseck* representa 43 vítimas daquela tragédia, sendo a ampla maioria nacionais brasileiros. Logrou decisão favorável em processo movido contra a empresa aérea LaMia em tribunal no Estado norte-americano da Flórida. Nesse contexto, submeto as informações em apreço ao exame desta Comissão Parlamentar de Inquérito na expectativa de que possam contribuir para o valioso esforço coordenado por Vossa Excelencia no sentido do completo esclarecimento do acidente, em benefício das famílias brasileiras por ele afetadas.

Aproveito a oportunidade para renovar a Vossa Excelência meus protestos da mais alta estima e consideração.

Com o abraço do

Collor

FERNANDO COLLOR
Senador

Senado Federal | Anexo I – 13º Andar | Praça dos Três Poderes | CEP 70165-900 | Brasília DF
Telefone: +55 (61) 3303-5783 | Fax: +55 (61) 3303-5789 | fernando.collor@senador.leg.br

PodhurstOrseck
TRIAL & APPELLATE LAWYERS

Aaron S. Podhurst
Robert C. Josefsberg
Joel D. Eaton
Steven C. Marks
Peter Prieto
Stephen F. Rosenthal
Ricardo M. Martinez-Cid
Ramon A. Rasco
John Gravante III
Lea P. Bucciero
Matthew P. Weinshall
Alissa Del Riego
Kristina M. Infante
Pablo Rojas
Christina Martinez

Robert Orseck (1934-1978)
Walter H. Beckham, Jr. (1920-2011)

Karen Podhurst Dern
Of Counsel

October 5, 2021

Leonardo Onofre, Assessor
Gabinete do Senador Fernando Collor
Senado Federal – Anexo I – 13o Andar
70165-900 Brasilia DF

Dear Leonardo,

It was good to meet you and Senator Collor, and to discuss our representation of the Chapecoense air disaster victims, as well as recent efforts by English insurance companies to deny our clients justice. I know that your time and Senator Collor's time are extremely valuable, and I am grateful for the opportunity to speak with you both.

As you know, we represent 43 victims of the Chapecoense tragedy. On behalf of these victims—who are overwhelmingly Brazilian nationals—we filed suit in Miami against the Bolivian airline LaMia, whose executives were partly based in Miami. In that lawsuit, we have succeeded in obtaining a judgment against LaMia. Generally speaking, under Florida law, this judgment can now be collected against LaMia's insurers and/or insurance brokers.

Presumably out of fear of our clients' success to date in the Miami litigation, those insurers and brokers—led by Tokio Marine and AON, both of which are England-based companies—have recently engaged in improper and misleading efforts to deny our clients justice. Specifically, Tokio Marine and AON filed highly unusual lawsuits in London against our clients, and obtained orders from the English courts prohibiting our clients from proceeding with the Miami litigation. These extraterritorial orders were obtained without the participation or awareness of our clients, and based on a misleading version of the relevant events.

As we discussed, we are making every effort to rectify this injustice. Namely, we have responded to the lawsuits in London on behalf of our clients, and we have presented forceful arguments to the English courts, explaining that Tokio Marine and AON's lawsuits are meritless and misleading. Unfortunately, the English courts will not resolve this issue until at least January of 2022.

In the meantime, as we discussed, we see *multiple* potential avenues for the Brazilian government to assist its nationals in investigating and rectifying AON and Tokio Marine's efforts to intimidate our clients through the English lawsuits. We are grateful for the opportunity to share with you and other stakeholders our respectful suggestions about actions that various branches and agencies of the Brazilian government can take, including but not limited to:

1. Actions available to the Superintendence of Private Insurance (SUSEP), including investigating AON and Tokio Marine's bad faith conduct, demanding that AON and Tokio Marine demonstrate their solvency despite the severe damage to their brand image as a result of their conduct toward the Chapecoense victims, and potentially taking disciplinary actions as available and appropriate under law, such as fines or a suspension of AON and Tokio Marine's licenses to operate in the Brazilian market.
2. A resumption of investigations and hearings by relevant committees and offices of the Brazilian National Congress, potentially including a reopening of the Senate's Parliamentary Inquiry Commission (CPI) focusing on the Chapecoense tragedy. The CPI performed a great public service and greatly assisted the Chapecoense victims in uncovering the truth about the tragedy, but its work was unfortunately interrupted by the global COVID-19 crisis.
3. Additional law-enforcement actions against AON and Tokio Marine. The Public Federal Ministry (MPF) has a pending lawsuit against AON and Tokio Marine, among other entities, that is stalled due to procedural technicalities. Instead, we respectfully suggest that the Ministry of Justice and Public Security could initiate an investigation into AON and Tokio Marine's misleading and bad-faith conduct at the expense of Brazilian nationals.

These are just some suggestions of ways that Brazil's institutions can help the Chapecoense victims in the face of gross misconduct by AON and Tokio Marine. Simply put, these companies have been misleading the public and have co-opted the British justice system at the expense of Brazilian victims of the Chapecoense tragedy.

Enclosed you will find a more detailed summary of these issues as well as some additional relevant materials. I look forward to speaking to you soon.

Sincerely,

Steven C. Marks
Podhurst Orseck, P.A.
One S.E. 3rd Avenue
Suite 2300
Miami, FL 33131
(305) 358-2800

SUMMARY REPORT

We represent 43 of the 77 victims of the Chapecoense air disaster, which took place in November of 2016. On behalf of our clients—virtually all of whom are Brazilian nationals—we have been seeking justice and fair compensation in court in Miami, Florida. We filed suit in Miami because, among other things, the airline responsible for the accident was partly operated from Miami, and several of its senior executives resided and worked from Miami. Our law firm has over fifty years of experience handling major aviation disaster litigation.

Recently, there have been developments in this matter that are highly unusual and deeply unjust. Namely, several of the insurance entities that have financial responsibility for the tremendous damages suffered by our clients have filed suit against our clients in England, and now seek to prevent our clients from proceeding with the litigation in Miami. These efforts by the insurance entities are unprecedented in our law firm's experience, and in our view represent an extraordinary effort by the insurance entities to deny our clients justice.

This Summary Report details the insurance entities' recent actions and respectfully suggests ways in which the Brazilian government may address those actions and therefore protect its citizens from the insurance companies' improper maneuvers keeping them from achieving justice. We are grateful for the opportunity to bring this issue to your attention. Enclosed are additional materials that provide additional details regarding this issue.

Introduction

The basic facts of the Chapecoense tragedy are well known. On November 28, 2016, a plane carrying the players of the Associação Chapecoense de Futebol ("Chapecoense"), crashed near the international airport serving Medellin, Colombia. Also on board were several Chapecoense staff, executives, and journalists, as well as the flight crew. The airline responsible for the flight was a Bolivian airline commonly known as LaMia. At the time of the accident, LaMia was insured by a Bolivian insurer commonly known as BISA. LaMia's insurance policy was brokered by AON UK Limited ("AON"), an English insurance broker, and reinsured by several London-based reinsurers led by Tokio Marine Kiln Syndicates Limited ("Tokio Marine"). Both AON and Tokio Marine have a significant presence in Brazil.

Our law firm, Podhurst Orseck, P.A., represents 43 of the victims of the Chapecoense air disaster. Although our firm's practice extends to various areas of law, one of our specialties is aviation law, with a particular focus on major international air disasters. We have decades of experience representing grieving families like the families affected by the Chapecoense tragedy.

Most of our clients in the Chapecoense matter first retained us in early 2017. Since then, we have been endeavoring to obtain justice and fair compensation for our clients through a lawsuit filed in Miami, Florida. We filed suit in Miami due to LaMia's ties to Miami. At least one LaMia official, Loredana Albacete, lived permanently in Miami at all relevant times, and conducted LaMia business from Miami. Several other individuals associated with

LaMia also lived and worked in Miami for at least part of the relevant time period. Our law firm also knows—from decades of experience practicing aviation law in Miami—that the civil courts in Miami are capable of efficiently handling complex litigation arising from air disasters.

As part of the Miami lawsuit, we settled our clients' claims against LaMia, which resulted judgments in favor of our clients totaling $844 million. Consistent with our usual practice and Florida law and procedure, we intended to add BISA, AON, Tokio Marine, and other insurance entities as defendants to the lawsuit, and seek to collect the $844 million judgment against those entities.

AON and Tokio Marine's English lawsuits

In a highly unusual effort to thwart the Miami litigation, AON and Tokio Marine have filed lawsuits in England against our clients. Without our clients being able to respond to the lawsuits—indeed, without our clients even being *aware* of the lawsuits—the English courts issued injunctions that purport to prohibit our clients from proceeding to add AON and Tokio Marine as defendants to the Miami litigation. Effectively, AON and Tokio Marine have persuaded the English courts to block proper and lawful litigation in Miami. Moreover, the English courts' injunctions threaten our firm and our clients with potential criminal sanctions if we take any further step in the Miami litigation.

In our firm's decades of experience, we have never encountered such an extraordinary extraterritorial injunction. Indeed, to our knowledge, this sort of extraterritorial interference is unprecedented in the history of aviation law. And more importantly, AON and Tokio Marine's conduct represents an effort to coerce, intimidate, and otherwise prevent our clients—Brazilian nationals and victims of a major aviation tragedy—from seeking just compensation.

The ostensible bases of AON and Tokio Marine's lawsuits in England are entirely without merit. For example, AON and Tokio Marine contend that our clients' Miami lawsuit is hopeless because there is no insurance coverage for the Chapecoense tragedy. One of the main supposed reasons for this is that LaMia's insurance policy contained a geographic exclusion covering Colombia. But this argument is meritless. We know that this geographic exclusion was rescinded in May of 2016, that the various insurance entities were aware of and approved previous LaMia flights to Colombia, and that LaMia flew to Colombia on several occasions before the accident. Indeed, the month before the accident, LaMia flew Chapecoense to Barranquilla, Colombia for a match against Atletico Junior.

More importantly, even if AON and Tokio Marine's arguments had merit, both companies could and should assert those arguments in court in Miami. Under Florida's laws and rules of procedure, AON and Tokio Marine have a right to seek to dismiss the claims against them, seek summary resolution of the lawsuit in their favor, and challenge and respond to those claims on various grounds. There was simply no good reason and certainly

no need for AON and Tokio Marine to seek relief in the English courts. They did so only to intimidate our clients and to interfere with our clients' ability to seek relief in Miami.

As of the date of writing of this report, the injunctions that AON and Tokio Marine obtained remain in place. Although U.S. courts may not recognize the validity of the injunctions, in an abundance of caution we and our clients are complying with the injunctions by effectively pausing our Miami litigation. In the meantime, we are making every effort to persuade the English courts to vacate the injunctions. We have hired English counsel and have filed written briefs in the English courts explaining why the injunctions should be withdrawn. We will not know of the English courts' ruling until at least January of 2022.

Of course, we do not know what the English courts' ruling will be. Moreover, the English courts' ability and willingness to issue this type of extraterritorial injunction has come as a great surprise to us, and has deeply undermined our faith in the English legal system. Given that AON and Tokio Marine are English entities and given the importance of the insurance industry to the English economy, our Brazilian clients may be at an unfair disadvantage in seeking to persuade the English courts to lift the injunctions.

Potential actions available to Brazilian government

As lawyers for Chapecoense victims, we are aware of and have followed the efforts of various branches of the Brazilian government to assist the victims of the tragedy. Among other things, we have closely followed hearings in the National Congress of Brazil, namely the Senate's Parliamentary Inquiry Commission (CPI) focusing on the Chapecoense tragedy. These include hearings at which lawyers and representatives of insurance entities have provided testimony, for example Alexander Stovold, an attorney for Tokio Marine, and Marcelo Homburger, the CEO of AON Brasil. We have also been following developments in a civil lawsuit filed by the Ministério Público Federal (MPF) in federal court in Chapecó.

Although these efforts have been invaluable and have helped uncover the truth of this tragedy, they have unfortunately been suspended in recent months: the Senate CPI formally closed several months ago, and the MPF's lawsuit is stalled because of a technical procedural issue. We respectfully submit that renewed and urgent actions are warranted in response to AON and Tokio Marine's recent efforts to intimidate our clients and prevent them from receiving the compensation that they deserve.

We specifically submit the following suggestions regarding actions that may be taken by the Brazilian government to address and resolve the injustice perpetrated by AON and Tokio Marine against the Chapecoense victims. Of course, we submit these suggestions as lawyers who are relatively unfamiliar with the tools available to the Brazilian government to act on behalf of its nationals, and we are grateful for any additional ideas about actions that may be taken in this matter.

1. *Insurance regulatory actions*

We understand that Brazil's insurance regulatory agencies—namely the Superintendence of Private Insurance (SUSEP)—may be able to help address and rectify the conduct of AON and Tokio Marine. We specifically understand that under Brazilian law, the SUSEP is tasked with supervising participants in Brazil's insurance market, protecting the rights of insureds, and, where necessary, conducting inspections, investigations and disciplinary proceedings. We also understand that all insurers, insurance brokers, and reinsurers need the approval of the SUSEP to participate in the Brazilian market.

As an initial matter, it bears emphasizing that although LaMia's insurance policy was issued in Bolivia and under Bolivian law, both Tokio Marine and AON are clearly subject to the SUSEP's supervision and jurisdiction. This is because both AON and Tokio Marine are participants in the Brazilian insurance market and have employees and offices in Brazil. For example, AON has offices in Sao Paulo, Rio de Janeiro, Curitiba, Porto Alegre, Belo Horizonte, Salvador, and Recife. Indeed, in March 2020 a SUSEP Official, César da Rocha Neves, explained to a Brazilian Congressional commission that both AON and Tokio Marine are subject to regulation by the Brazilian government due to their presence in the Brazil. And in this case, the insurance policy was issued in favor of LaMia's Brazilian customers and passengers: the Chapecoense football team and victims of the Chapecoense tragedy, most of whom were Brazilian.

Although Mr. da Rocha Neves also expressed doubt about whether SUSEP would have direct jurisdiction over AON and Tokio Marine's conduct in this accident, we respectfully submit that this conclusion was based on the limited information known at that time. Today—with the benefit of additional information obtained in recent months—it is clear that AON and Tokio Marine have taken action in the Chapecoense matter that has been directed toward Brazil, based in Brazil, and indeed designed to intimidate and harass Brazilian nationals.

Among other things, AON and Tokio Marine have (1) made potentially misleading representations to Brazilian governmental authorities, including the Senate CPI, regarding the Chapecoense tragedy related insurance issues; (2) made misleading representations about the relevant insurance documents to our Brazilian clients, other Chapecoense victims, and their lawyers; and (3) filed suit in England against Brazilian claimants to insurance policies and threatened criminal sanctions against Brazilian nationals if they proceed with valid insurance-related litigation in Miami. Although we are not experts in Brazilian law, we believe that this conduct violates several provisions of the Brazilian Civil Code, including Article 765 (which requires insurers to act in good faith both before and after agreeing to an insurance contract).

In short, AON and Tokio Marine have likely violated Brazilian law, acted in bad faith toward Brazilian crash victims, and sought to intimidate those victims. We respectfully submit that the SUSEP not only should begin an investigation into these matters, but should also require AON and Tokio Marine to ***show cause*** why they should not be barred or at least

suspended from conducting insurance business in Brazil as a result of their bad-faith conduct. Enclosed you will find a draft Order to Show Cause. In our experience, such an Order is a useful and available tool in many jurisdictions with insurance regulators similar to SUSEP. Although we are not aware of any reason why such an Order is unavailable in Brazil, we of course defer if there is another similar procedural device that is more common in Brazil to accomplish a similar objective.

We also respectfully suggest that the SUSEP should undertake a thorough investigation of the solvency of AON and Tokio Marine's Brazilian offices and affiliates. At the March 2020 CPI hearing, Mr. da Rocha Neves explained that the SUSEP was investigating these companies' solvency, and specifically considering the financial impact of AON and Tokio Marine's *image risk* or "risco de imagem," given the negative public perception that these companies suffer in Brazil. We respectfully submit that these companies' image risk is *much* greater today than in March 2020, for the simple reason that these companies have drastically escalated their efforts to deny justice to victims of such a high-profile tragedy as the Chapecoense air disaster.

2. *Congressional investigations*

To date, the Brazilian National Congress hearings—namely the public hearings of the Senate CPI focusing on the Chapecoense tragedy—have performed a great public service by uncovering the truth about the accident and the insurance entities' post-accident conduct, among other topics. We are very grateful for these hearings and have found them indispensable to our own investigation of this tragedy. However, the work of the Senate CPI was unfortunately interrupted by the global COVID crisis, and we understand that the Senate CPI focusing on the Chapecoense tragedy has technically been terminated. To our knowledge, there has been no hearing or other session of the CPI since March 2020.

We respectfully suggest that additional hearings may be appropriate. We also respectfully submit that, to the extent possible, the CPI focusing on the Chapecoense tragedy and the state of the victims should be reopened so that it may continue the extremely valuable work that was cut short by the COVID crisis. Indeed, we understand that some Brazilian legislators, including Senator Izalci Lucas, have raised the possibility of extending or reopening the CPI.

Additionally, we also respectfully submit that the existing committees of the Brazilian National Congress—for example, the Senate Committee on Economic Affairs; the Senate Committee on Education, Culture and Sports; and/or the Senate Committee on the Constitution, Justice and Citizenship, among others—likely also have jurisdiction and competency to investigate AON and Tokio Marine's conduct toward the Chapecoense victims, and AON and Tokio Marine's worthiness or lack thereof to participate in Brazil's insurance and reinsurance markets.

Among other topics for further hearings and questioning, we suggest the following: (1) AON and Tokio Marine's awareness of LaMia's pre-accident flights to Colombia, and

rescission of the insurance policy's purported geographic exclusion for Colombia in May 2016; (2) AON and Tokio Marine's efforts in the English courts to restrict the Chapecoense victims' access to justice and compensation; (3) AON and Tokio Marine's representations about the tragedy and their post-accident claims handling to Brazilian legislative and regulatory authorities; and (4) Tokio Marine's relationship with BISA, and relatedly Tokio Marine's management of the post-accident claims handling process.

These hearings could involve witnesses from AON and Tokio Marine, including those who already appeared before the CPI in 2020, for example Alexander Stovold (attorney for Tokio Marine), Marcelo Homburger (President of AON Brasil), Jose Adalberto Ferrara (President of Tokio Marine in Brazil). The hearings could also involve new witnesses such as AON officials Neil Darvill and Simon Kaye, the Tokio Marine officials responsible for the Chapecoense claims handling process (whose identities are still not known to us), and officials from AON's Bolivian affiliate Grupo Estrategica. To the extent feasible and necessary to allow these hearings to move forward, these witnesses could be asked to testify using Zoom or similar technology.

3. Judicial and law enforcement actions

Although the MPF's lawsuit in Chapecó names AON and Tokio Marine among the defendants, our understanding is that this lawsuit is effectively stalled for the foreseeable future. Apparently, this is in part due to a procedural technicality, which is that it has been difficult to effect service of the lawsuit on other defendants, such as LaMia and BISA. Unfortunately, during the time the MPF's lawsuit has been stalled, AON and Tokio Marine have taken advantage by filing their lawsuits in England and thereby escalating their campaign of obstruction, confusion and intimidation against the Chapecoense victims.

Accordingly, and to the extent possible, we respectfully submit that *new* legal action against AON and Tokio Marine—whether regulatory enforcement actions or law enforcement investigations—may be appropriate. These stronger actions are warranted in this case for the simple reason that AON and Tokio Marine have engaged in increasingly aggressive and improper actions at the expense of the victims of the Chapecoense tragedy. For example, AON and Tokio Marine have improperly conspired to co-opt the English legal system to deny justice to Brazilian nationals, have made misleading representations to the Brazilian National Congress, and have repeatedly engaged in misleading efforts to persuade the Chapecoense victims—overwhelmingly Brazilian nationals—to release AON and Tokio Marine from liability in this matter. Many of these efforts are briefly described here, but they are also detailed in materials in the MPF lawsuit, and in our own filings on behalf of our clients in Florida and England. Some of those materials are enclosed with this Summary Report.

As part of the Brazilian government's investigative efforts, it may be appropriate to issue letters to AON and Tokio Marine requesting documents and witness testimony. We understand that in Brazil in circumstances like these, these letters would typically be sent by the Ministry of Justice and Public Security. We enclose here draft proposed letters to that

effect. From our past experience in other matters involving sovereign nations investigating wrongdoing by foreign companies, these letters can be an effective tool for eliciting information and testimony from such companies, particularly when the letters make reference to the sovereign's ability to seek witness testimony though Interpol.

Enclosed please find:

1. Draft SUSEP Orders to Show Cause
2. Draft Interpol Letters
3. Our clients' Draft Amended Complaint in the Miami Litigation (confidential)
4. An affidavit we submitted to the Courts in England detailing the Chapecoense tragedy, our representation of Chapecoense victims, and AON and Tokio Marine's conduct in this matter

SUPERINTENDNECE OF PRIVATE INSURANCE (SUSEP)

ORDER TO SHOW CAUSE

Issued by the Superintendence of Private Insurance (SUSEP), an autarchy created by Decree #73/66.

1. This agency, the Superintendence of Private Insurance (SUSEP), is tasked with supervising and controlling the insurance and insurance brokerage markets in Brazil, among other things.

2. This Order arises out of a preliminary investigation by SUSEP into the conduct of Tokio Marine Kiln Syndicates Limited and its Brazilian affiliates and/or subsidiaries (collectively, "Tokio Marine") in relation to claims arising out of the crash of LaMia Flight 2933 on November 28, 2016. As is well known, this tragedy resulted in the deaths of 71 individuals, and injuries to 6 others, most of them Brazilian nationals and many of them affiliated with the football team Associação Chapecoense de Futebol.

3. This agency has specifically initiated a preliminary investigation into Tokio Marine's conduct arising from Tokio Marine's role as reinsurer of the airline operating the flight, which is and was commonly known as LaMia.

4. It has come to the attention of this agency that Tokio Marine has recently initiated legal action against a number of victims of the Chapecoense tragedy. This agency specifically understands that Tokio MArine filed a lawsuit in London, England, the apparent goal of which is to prevent and prohibit the Chapecoense victims with proceeding with litigation in the United States related to the crash of LaMia Flight 2933.

5. Although this agency takes no formal position on the legal or factual issues pending adjudication in the United States or in England, this agency's preliminary conclusion is that

Tokio Marine's efforts to prevent the Chapecoense victims from litigating their claims may be in bad faith and contrary to Tokio Marine's good-faith obligations under Brazilian law.

6. This agency has also initiated an investigation into the solvency of Tokio Marine's Brazilian offices, among other things taking into account the risk to Tokio Marine's brand image as a result of the Chapecoense crash and AON's post-crash conduct, and specifically taking into account the financial impact of any deterioration in Tokio Marine's brand image in Brazil.

Based upon the foregoing, this agency hereby RESOLVES and ORDERS:

1. That Tokio Marine's, including through its local affiliates and/or subsidiaries, shall *show cause* why its conduct in the Chapecoense tragedy is not in violation of Brazilian law; and

2. That Tokio Marine, including through its local affiliates and/or subsidiaries, shall *submit documentation* establishing that Tokio Marine's Brazilian offices and affiliates comply with solvency requirements under Brazilian law.

Should Tokio Marine fail to make one or both showings within *thirty days* of this Order, this agency may prepare an opinion that Tokio Marine is not in compliance with legal prerequisites to operate its business in Brazil, and submit this opinion to the relevant judicial authorities for further proceedings.

DONE AND ORDERED on this ____ day of September, 2021.

SUPERINTENDNECE OF PRIVATE INSURANCE (SUSEP)

ORDER TO SHOW CAUSE

Issued by the Superintendence of Private Insurance (SUSEP), an autarchy created by Decree #73/66.

1. This agency, the Superintendence of Private Insurance (SUSEP), is tasked with supervising and controlling the insurance and insurance brokerage markets in Brazil, among other things.

2. This Order arises out of a preliminary investigation by SUSEP into the conduct of AON UK Limited and its Brazilian affiliates and/or subsidiaries (collectively, "AON") in relation to claims arising out of the crash of LaMia Flight 2933 on November 28, 2016. As is well known, this tragedy resulted in the deaths of 71 individuals, and injuries to 6 others, most of them Brazilian nationals and many of them affiliated with the Associação Chapecoense de Futebol.

3. This agency has specifically initiated a preliminary investigation into AON's conduct arising from AON's role as insurance broker for the airline operating the flight, which is and was commonly known as LaMia.

4. It has come to the attention of this agency that AON has recently initiated legal action against a number of victims of the Chapecoense tragedy. This agency specifically understands that AON filed a lawsuit in London, England, the apparent goal of which is to prevent and prohibit the Chapecoense victims with proceeding with litigation in the United States related to the crash of LaMia Flight 2933.

5. Although this agency takes no formal position on the legal or factual issues pending adjudication in the United States or in England, this agency's preliminary conclusion is that

AON's efforts to prevent the Chapecoense victims from litigating their claims may be in bad faith and contrary to AON's good-faith obligations under Brazilian law.

6. This agency has also initiated an investigation into the solvency of AON's Brazilian offices, among other things taking into account the risk to AON's brand image as a result of the Chapecoense crash and AON's post-crash conduct, and specifically taking into account the financial impact of any deterioration in AON's brand image in Brazil.

Based upon the foregoing, this agency hereby RESOLVES and ORDERS:

1. That AON, including through its local affiliate and/or subsidiary AON Brasil, shall *show cause* why its conduct in the Chapecoense tragedy is not in violation of Brazilian law; and

2. That AON, including through its local affiliate and/or subsidiary AON Brasil, shall *submit documentation* establishing that AON's Brazilian offices and affiliates comply with solvency requirements under Brazilian law.

Should AON fail to make one or both showings within *thirty days* of this Order, this agency may prepare an opinion that AON is not in compliance with legal prerequisites to operate its business in Brazil, and submit this opinion to the relevant judicial authorities for further proceedings.

DONE AND ORDERED on this ____ day of September, 2021.

PRIVILEGED CONFIDENTIAL & VERY SENSITIVE
ATTORNEY/CLIENT COMMUNICATION

DRAFT

September [ ], 2021

Marcelo Homburger
CEO, AON Brasil
Alameda Campinas, 1070
1º ao 12º andar - Jardim Paulista
CEP: 01404-200
Sao Paulo, SP

Gregory C. Case
CEO, AON
The AON Centre
The Leadenhall Building
122 Leadenhall Street
London, England EC3V 4AN

Re: LaMia Flight 2933 Tragedy and Insurance Coverage Issues

Dear Mr. Homburger and Mr. Case:

The Ministry of Justice and Public Security is charged with the responsibility of investigating and when appropriate, seeking justice against individuals and companies who have violated the laws of the Federative Republic of Brazil. The Ministry has been investigating the activities of AON UK Limited ("AON"), Tokio Marine Kiln Syndicates Limited ("Tokio Marine"), and others in relation to the crash of LaMia Flight 2933 on November 28, 2016.

As you probably know, the LaMia crash resulted in the deaths of 71 of the 77 people on board, and serious injuries to the remaining occupants. The Ministry understands that at the time of the accident, LaMia was insured pursuant to an insurance policy brokered by AON, and reinsured by Tokio Marine, among other reinsurers. The Ministry also understands that subsequent to the accident, Tokio Marine took primary responsibility for handling insurance claims related to the accident, and sought to obtain releases from liability covering itself, LaMia, AON and others, in exchange for financial compensation to the crash victims. However, the Ministry also understands that Tokio Marine and AON have taken the position in multiple forums that there is no insurance coverage for this accident.

The Ministry is specifically investigating the post-accident conduct of AON, Tokio Marine and others, including efforts to settle claims arising from the accident, and efforts to deny or otherwise restrict insurance coverage and compensation to victims. As part of that investigation, the Ministry seeks relevant documents as well as the testimony of relevant witnesses and officials.

Rather than proceeding with formal Interpol notices which would seek to compel the testimony of various AON employees who have knowledge as to these issues, we first seek through official channels your cooperation. As a further accommodation, assuming that you and your company promptly cooperate with our efforts, we would be willing to question you and other witnesses in the United States, the United Kingdom, or another convenient location, rather than seeking to compel this testimony in the Federative Republic of Brazil.

At this time, the relevant AON employees whom we would like to question include the following:

1. Simon Kaye;
2. Neil Darvill;
3. Michael Crozier; and
4. Maria Daniela Gumucio Camargo.

In order to avoid formal compulsion, we would want to receive prior to any questioning any and all documents[1] relating in any way to AON's brokerage and post-accident conduct related to LaMia and the crash of LaMia Flight 2933, including but not limited to the following:

1. Any claims file(s) related to the crash of LaMia Flight 2933;
2. Any underwriting or brokerage file(s) related to any insurance policy brokered and/or issued by you for LaMia;

[1] The terms "document", "materials" and/or "literature" are to be used in the broadest possible sense and mean, without limitation, any written, printed, typed, photostatic, photographed, recorded or otherwise reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or symbols, or any combination thereof. This definition includes copies of duplicates of documents contemporaneously or subsequently created which have any non-conforming notes or other markings. Without limiting the generality of the foregoing, "document" includes, but is not limited to, all writings, correspondence, memoranda, notes, records, e-mail, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers of all kinds, statements, entries, ledgers, balances, reconciliations, accounts, analytical records, reports, summaries of investigations, trade letters, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes or minutes of meetings or of other communications of any type, including inter- and intra-office communications, questionnaires, surveys, charts, graphs, papers, indices, data sheets, forms, manuals, lists, photographs, phonograph recordings, films, tapes, discs, data cells, drums, printouts of information stored or maintained by electronic data processing or word processing equipment, all other data compilations from which information can be obtained including, without limitation, electromagnetically sensitive storage media such as floppy disks and hard disks, and any preliminary versions, drafts or revisions of any of the foregoing.

3. Any communications between AON, Tokio Marine, and/or any of their respective employees or agents related to insurance coverage for LaMia;
4. Any communications between AON, Tokio Marine, and/or any of their respective employees or agents related to the crash of LaMia Flight 2933;
5. Any communications between AON, Tokio Marine, and/or any of their respective employees or agents related to LaMia flights to and/or from Colombia;
6. Any documents reflecting AON and/or Tokio Marine's awareness or lack thereof of LaMia flights to and/or from Colombia at any time prior to the crash of LaMia Flight 2933; and
7. Any communications or disclosures between AON, Tokio Marine and any government agency—including any agency of the governments of Brazil, Bolivia, and/or Colombia—regarding insurance coverage for LaMia.

The failure to appear personally and produce these requested documents or respond to this informal request may result in our bringing a formal Interpol directive, criminal prosecution, an arrest warrant and/or other regulatory action including but not limited to the withdrawal of any authorization to conduct any business in The Federative Republic of Brazil as well as any other action authorized under applicable law.

PRIVILEGED CONFIDENTIAL & VERY SENSITIVE
ATTORNEY/CLIENT COMMUNICATION

DRAFT

September [ ], 2021

Brad Irick, CEO
Tokio Marine Kiln
20 Fenchurch Street
London EC3M 3BY

Andrew Torrance, Chairman
Tokio Marine Kiln
20 Fenchurch Street
London EC3M 3BY

Re: LaMia Flight 2933 Tragedy and Insurance Coverage Issues

Dear Mr. Irick and Mr. Torrance:

The Ministry of Justice and Public Security is charged with the responsibility of investigating and when appropriate, seeking justice against individuals and companies who have violated the laws of the Federative Republic of Brazil. The Ministry has been investigating the activities of AON UK Limited ("AON"), Tokio Marine Kiln Syndicates Limited ("Tokio Marine"), and others in relation to the crash of LaMia Flight 2933 on November 28, 2016.

As you probably know, the LaMia crash resulted in the deaths of 71 of the 77 people on board, and serious injuries to the remaining occupants. The Ministry understands that at the time of the accident, LaMia was insured pursuant to an insurance policy brokered by AON, and reinsured by Tokio Marine, among other reinsurers. The Ministry also understands that subsequent to the accident, Tokio Marine took primary responsibility for handling insurance claims related to the accident, and sought to obtain releases from liability covering itself, LaMia, AON and others, in exchange for financial compensation to the crash victims. However, the Ministry also understands that Tokio Marine and AON have taken the position in multiple forums that there is no insurance coverage for this accident.

The Ministry is specifically investigating the post-accident conduct of AON, Tokio Marine and others, including efforts to settle claims arising from the accident, and efforts to deny or otherwise restrict insurance coverage and compensation to victims. As part of that investigation, the Ministry seeks relevant documents as well as the testimony of relevant witnesses and officials.

Rather than proceeding with formal Interpol notices which would seek to compel the testimony of various Tokio Marine employees, attorneys and/or agents who have knowledge as to

these issues, we first seek through official channels your cooperation. As a further accommodation, assuming that you and your company promptly cooperate with our efforts, we would be willing to question you and other witnesses in the United States, the United Kingdom, or another convenient location, rather than seeking to compel this testimony in the Federative Republic of Brazil.

At this time, the relevant Tokio Marine employees, attorneys and/or agents whom we would like to question include but are not limited to the following:

1. Alexander John Stovold;
2. Gareth William Lewis;
3. Ioannis Samiotis;
4. John Gilfedder; and
5. Leon Mark Taylor.

In order to avoid formal compulsion, we would want to receive prior to any questioning any and all documents[1] relating in any way to AON's brokerage and post-accident conduct related to LaMia and the crash of LaMia Flight 2933, including but not limited to the following:

1. Any claims file(s) related to the crash of LaMia Flight 2933;

[1] The terms "document", "materials" and/or "literature" are to be used in the broadest possible sense and mean, without limitation, any written, printed, typed, photostatic, photographed, recorded or otherwise reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or symbols, or any combination thereof. This definition includes copies of duplicates of documents contemporaneously or subsequently created which have any non-conforming notes or other markings. Without limiting the generality of the foregoing, "document" includes, but is not limited to, all writings, correspondence, memoranda, notes, records, e-mail, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers of all kinds, statements, entries, ledgers, balances, reconciliations, accounts, analytical records, reports, summaries of investigations, trade letters, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes or minutes of meetings or of other communications of any type, including inter- and intra-office communications, questionnaires, surveys, charts, graphs, papers, indices, data sheets, forms, manuals, lists, photographs, phonograph recordings, films, tapes, discs, data cells, drums, printouts of information stored or maintained by electronic data processing or word processing equipment, all other data compilations from which information can be obtained including, without limitation, electromagnetically sensitive storage media such as floppy disks and hard disks, and any preliminary versions, drafts or revisions of any of the foregoing.

2. Any underwriting or brokerage file(s) related to any insurance policy brokered and/or issued by you for LaMia;
3. Any communications between AON, Tokio Marine, and/or any of their respective employees or agents related to insurance coverage for LaMia;
4. Any communications between AON, Tokio Marine, and/or any of their respective employees or agents related to the crash of LaMia Flight 2933;
5. Any communications between AON, Tokio Marine, and/or any of their respective employees or agents related to LaMia flights to and/or from Colombia;
6. Any documents reflecting AON and/or Tokio Marine's awareness or lack thereof of LaMia flights to and/or from Colombia at any time prior to the crash of LaMia Flight 2933; and
7. Any communications or disclosures between AON, Tokio Marine and any government agency—including any agency of the governments of Brazil, Bolivia, and/or Colombia—regarding insurance coverage for LaMia.

The failure to appear personally and produce these requested documents or respond to this informal request may result in our bringing a formal Interpol directive, criminal prosecution, an arrest warrant and/or other regulatory action including but not limited to the withdrawal of any authorization to conduct any business in The Federative Republic of Brazil as well as any other action authorized under applicable law.

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

GENERAL JURISDICTION DIVISION

CASE NO. 2018-039581-CA(08)

PRISCILA ELEN DE SOUZA LIMA, as Personal Representative of the Estate of AILTON CESAR JUNIOR ALVES DA SILVA, deceased,

BÁRBARA CALAZANS MONTEIRO, as Personal Representative of the Estate of ANANIAS ALOI CASTRO MONTEIRO, deceased,

GIRLENE CAMPINHO AZEVEDO DOMINGUES, as Personal Representative of the Estate of BRUNO RANGEL DOMINGUES, deceased,

ARIADINY PATRICYA WEBER, as Personal Representative of the Estate of EMERSON FABIO DIDOMENICO, deceased,

PATRÍCIA LUANA GROZA DA SILVA GIMENEZ, as Personal Representative of the Estate of GUILHERME GIMENEZ DE SOUZA, deceased,

VALDÉCIA BORGES DE MORAIS PAIVA, as Personal Representative of the Estate of JOSE GILDEIXON CLEMENTE DE PAIVA, deceased,

AQUINOAN DE SOUSA CARVALHO, as Personal Representative of the Estate of LUCAS GOMES DA SILVA, deceased,

HÉLIO HERMITO ZAMPIER NETO,

ULRIKE OHLWEILER, as Personal Representative of the Estate of ANDERSON RODRIGUES PAIXAO DE ARAUJO, deceased,

DAIELLI FAUSTINO KEMITC DA SILVA, as Personal Representative of the Estate of MATHEUS BITENCOURT DA SILVA, deceased,

GRAZIELE DE AQUINO ALVES VIEIRA, as Personal Representative of the Estate of TIAGO DA ROCHA VIEIRA ALVES, deceased,

JAKSON RAGNAR FOLLMANN,

SUELLEN NERY DOS SANTOS, as Personal Representative of the Estate of MARCELO AUGUSTO MATHIAS DA SILVA, deceased,

ROSÂNGELA MARIA DOS SANTOS SILVA LOUREIRO, as Personal Representative of the Estate of CLEBER SANTANA LOUREIRO, deceased,

SUSANA RIBAS PEREIRA DE JESUS, as Personal Representative of the Estate of WILLIAN THIEGO DE JESUS, deceased,

ALINE PENTEADO PEREIRA MACHADO, as Personal Representative of the Estate of FILIPE JOSE MACHADO, deceased,

VENELANDA DUMKE, as Personal Representative of the Estate of ANDERSON ROBERTO MARTINS, deceased,

LETÍCIA DOS ANJOS GABRIEL, as Personal Representative of the Estate of MARCOS DANILO PADILHA, deceased,

PAULINHO GOBBATO, as Personal Representative of the Estate of RAFAEL CORREA GOBBATO, deceased,

LUIZ MAURO GROHS, as Personal Representative of the Estate of LUIZ FELIPE GROHS, deceased,

AJUSSARA ENRISCO, as Personal Representative Of the Estate of RAFAEL VALMORBIDA,

GRACIELA MISSEL, as Personal Representative of the Estate of MARCIO BESTENE KOURY, deceased,

ILKA APARECIDA LABES PEIXOTO, as Personal Representative of the Estate of DELFIM PADUA PEIXOTO, deceased,

SANDRA JACQUELINE MADRID LUCAS CASTILLO, as Personal Representative of the Estate of ANDERSON DONIZETI LUCAS, Deceased,

DICLEIA JOHANN DE JESUS, as Personal Representative of the Estate of SERGIO LUIZ FERREIRA DE JESUS, deceased,

AMANDA DOS SANTOS MACHADO, as Personal Representative of the Estate of DENER ASSUNCAO BRAZ, deceased,

ALAN RUSCHEL,

ANA CLAUDIA SEVERO, as Personal Representative of the Estate of EDUARDO LUIS PREUSS, deceased,

FABIENNE BELLE, as Personal Representative of the Estate of LUIS CESAR MARTINS CUNHA, deceased,

EZIQUIELA CALDERON GALIOTTO, as Personal Representative of the Estate of GELSON GALIOTTO, Deceased,

CRISTIANI VICENTINI, as Personal Representative of the Estate of RENAN CARLOS AGNOLIN, deceased,

FERNANDA AMORIM DE ABREU, as Personal Representative of the Estate of ARTHUR BRASILIANO MAIA, deceased,

MAURI ANTONIO DA SILVA, as Personal Representative of the Estate of BRUNO MAURI DA SILVA, deceased,

ADRIANA DE OLIVEIRA SAROLI, as Personal Representative of the Estate of LUIZ CARLOS SAROLI, deceased,

SUELI SALETE DE CASTRO, as Personal Representative of the Estate of EDUARDO DE CASTRO, deceased,

XIMENA SUAREZ OTTERBURG,

RAQUEL DONAIDE CORONEL BENAGAS, as Personal Representative of the Estate of GUSTAVO FELICIANO ENCINA NUNEZ, deceased,

ELIZETH ANDREINA SANDOBAL GONZALEZ, as Personal Representative of the Estate of ANGEL EDUARDO LUGO UGAS, deceased

OVIEDO VON BORRIES CABALLERO, as Personal Representative of the Estate of SISY GABRIELA ARIAS PARAVICINY, deceased

EDWIN TUMIRI CHOQUE,

PAMELA JUSTINIANO PEDRAZA as Personal Representative of the Estate of ROMMEL DAVID VACAFLORES TERRAZAS, deceased

FLORA TARQUI AVILA as Personal Representative of the Estate of ALEX RICHARD QUISPE GARCIA, deceased,

LUCAS CASAGRANDE DAL BELLO as Personal Representative of the Estate of MAURO LUIZ DAL BELLO, deceased,

Plaintiffs,

vs.

LINEA AEREA MERIDA INTERNACIONAL DE AVIACION d/b/a LAMIA CORPORATION S.R.L., a foreign corporation, KITE AIR CORPORATION LTD. a foreign corporation, MARCO ANTONIO ROCHA VENEGAS, RICARDO ALBERTO ALBACETE VIDAL, AON UK LIMITED, a foreign corporation,

BISA SEGUROS Y REASEGUROS, S.A., a foreign corporation, TOKIO MARINE KILN SYNDICATES LIMITED, a foreign corporation, and JOHN DOES 1-25, foreign corporations,

Defendants.
_____/

[DRAFT] SECOND AMENDED COMPLAINT AND THIRD-PARTY COMPLAINT

The Plaintiffs hereby bring this complaint for, where applicable, wrongful death, personal injury, negligence and various insurance-related claims against the Defendants, and allege as follows:

INTRODUCTION

1. This is a civil action arising from an aviation disaster that occurred on or about November 28, 2016 (the "subject accident"). On that date, a British Aerospace Avro 146-RJ85, Registration Number CP2933, Serial Number E2348 (the "aircraft"), ran out of fuel and crashed in a mountainous region near the international airport serving Medellin, Colombia. Among those on board were Plaintiffs and Plaintiffs' decedents. Accordingly, some Plaintiffs in this action are suing for negligence following a personal injury and others who are suing for wrongful death pursuant to Florida's wrongful-death statute, Fla. Stat. § 768.21, and any other applicable wrongful-death statute.

2. The aircraft was being operated by Defendant LaMia Corporation S.R.L. as LaMia Flight 2933 (the "subject flight"). Namely, LaMia was flying a professional soccer team from Chapeco, Brazil, to a match in Medellin against a Medellin-based soccer team called Atletico Nacional. The crash victims include the team's players, staff and executives, as well as journalists who joined the flight.

3. As amended herein, this action also includes counts asserted against Defendants BISA Seguros y Reaseguros, S.A. ("BISA); AON UK Limited ("AON"); Tokio Marine Kiln Syndicates Limited ("Tokio Marine"). These Defendants respectively served as the insurer, insurance broker, and lead reinsurer for Defendant LaMia at all times material to this action. In addition, this action includes as Defendants certain "John Doe" Reinsurers, identified as "John Does 1–25," whom Plaintiffs assert are liable on the same grounds and for the same reasons as Tokio Marine. Plaintiffs' claims against these Defendants include claims of negligence and claims arising from certain Defendants' wrongful refusal to defend Plaintiffs' claims against LaMia.

THE PARTIES

4. At all times material, Plaintiff PRISCILA ELEN DE SOUZA LIMA was a citizen and resident of Brazil.

5. At all times material, Plaintiff PRISCILA ELEN DE SOUZA LIMA is or will be the duly appointed Personal Representative of the Estate of AILTON CESAR JUNIOR ALVES DA SILVA, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent AILTON CESAR JUNIOR ALVES DA SILVA was a citizen and resident of Brazil. Plaintiff PRISCILA ELEN DE SOUZA LIMA brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Barbara Lima da Silva, minor daughter of decedent.

6. At all times material, Plaintiff BÁRBARA CALAZANS MONTEIRO was a citizen and resident of Brazil.

7. At all times material, Plaintiff BÁRBARA CALAZANS MONTEIRO is or will be the duly appointed Personal Representative of the Estate of ANANIAS ALOI CASTRO MONTEIRO, deceased, or is otherwise the appropriate and representative survivor, beneficiary,

or next of kin under applicable law. At all times material, Decedent ANANIAS ALOI CASTRO MONTEIRO was a citizen and resident of Brazil. Plaintiff BÁRBARA CALAZANS MONTEIRO brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Enzo Calazans Monteiro, minor son of decedent.

8. At all times material, Plaintiff GIRLENE CAMPINHO AZEVEDO DOMINGUES was a citizen and resident of Brazil.

9. At all times material, Plaintiff GIRLENE CAMPINHO AZEVEDO DOMINGUES is or will be the duly appointed Personal Representative of the Estate of BRUNO RANGEL DOMINGUES, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent BRUNO RANGEL DOMINGUES was a citizen and resident of Brazil. Plaintiff GIRLENE CAMPINHO AZEVEDO DOMINGUES brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Bárbara Azevedo Domingues, minor daughter of decedent;

b. Daniel Azevedo Domingues, minor son of decedent.

10. At all times material, Plaintiff ARIADINY PATRICYA WEBER was a citizen and resident of Brazil.

11. At all times material, Plaintiff ARIADINY PATRICYA WEBER is or will be the duly appointed Personal Representative of the Estate of EMERSON FABIO DIDOMENICO, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent EMERSON FABIO DIDOMENICO was a citizen and resident of Brazil. Plaintiff ARIADINY PATRICYA WEBER brings this wrongful-

death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Luca Didomenico, minor son of decedent;

b. Laura Weber Didomenico, minor daughter of decedent.

12. At all times material, Plaintiff PATRÍCIA LUANA GROZA DA SILVA GIMENEZ was a citizen and resident of Brazil.

13. At all times material, Plaintiff PATRÍCIA LUANA GROZA DA SILVA GIMENEZ is or will be the duly appointed Personal Representative of the Estate of GUILHERME GIMENEZ DE SOUZA, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent GUILHERME GIMENEZ DE SOUZA was a citizen and resident of Brazil. Plaintiff PATRÍCIA LUANA GROZA DA SILVA GIMENEZ brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Ana Clara Groza Da Silva Gimenez, minor daughter of decedent.

14. At all times material, Plaintiff VALDÉCIA BORGES DE MORAIS PAIVA was a citizen and resident of Brazil.

15. At all times material, Plaintiff VALDÉCIA BORGES DE MORAIS PAIVA is or will be the duly appointed Personal Representative of the Estate of JOSE GILDEIXON CLEMENTE DE PAIVA, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent JOSE GILDEIXON CLEMENTE DE PAIVA was a citizen and resident of Brazil. Plaintiff VALDÉCIA BORGES DE MORAIS PAIVA brings this wrongful-death action in his/her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Gabriella Vitória Borges De Paiva, minor daughter of decedent;

b. Lívia Borges De Paiva, minor daughter of decedent.

16. At all times material, Plaintiff AQUINOAN DE SOUSA CARVALHO was a citizen and resident of Brazil.

17. At all times material, Plaintiff AQUINOAN DE SOUSA CARVALHO is or will be the duly appointed Personal Representative of the Estate of LUCAS GOMES DA SILVA, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent LUCAS GOMES DA SILVA was a citizen and resident of Brazil. Plaintiff AQUINOAN DE SOUSA CARVALHO brings this wrongful-death action in her representative capacity.

18. At all times material, Plaintiff HÉLIO HERMITO ZAMPIER NETO was a citizen and resident of Brazil. Plaintiff HÉLIO HERMITO ZAMPIER NETO was a passenger on and suffered injuries during LaMia Flight 2933.

19. At all times material, Plaintiff ULRIKE OHLWEILER was a citizen and resident of Brazil.

20. At all times material, Plaintiff ULRIKE OHLWEILER is or will be the duly appointed Personal Representative of the Estate of ANDERSON RODRIGUES PAIXAO DE ARAUJO, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent ANDERSON RODRIGUES PAIXAO DE ARAUJO was a citizen and resident of Brazil. Plaintiff ULRIKE OHLWEILER brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Johann Ohlweiler Paixão De Araújo, minor daughter of decedent;

b. Jordie Ohlweiler Paixão De Araújo, minor son of decedent.

21. At all times material, Plaintiff DAIELLI FAUSTINO KEMITC DA SILVA was a citizen and resident of Brazil.

22. At all times material, Plaintiff DAIELLI FAUSTINO KEMITC DA SILVA is or will be the duly appointed Personal Representative of the Estate of MATHEUS BITENCOURT DA SILVA, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent MATHEUS BITENCOURT DA SILVA was a citizen and resident of Brazil. Plaintiff DAIELLI FAUSTINO KEMITC DA SILVA brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Miguel Faustino Da Silva, minor son of decedent.

23. At all times material, Plaintiff GRAZIELE DE AQUINO ALVES VIEIRA was a citizen and resident of Brazil.

24. At all times material, Plaintiff GRAZIELE DE AQUINO ALVES VIEIRA is or will be the duly appointed Personal Representative of the Estate of TIAGO DA ROCHA VIEIRA ALVES, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent TIAGO DA ROCHA VIEIRA ALVES was a citizen and resident of Brazil. Plaintiff GRAZIELE DE AQUINO ALVES VIEIRA brings this wrongful-death action in his/her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Tiago Da Rocha Vieira Alves, minor son of decedent.

25. At all times material, Plaintiff JAKSON RAGNAR FOLLMANN was a citizen and resident of Brazil. Plaintiff JAKSON RAGNAR FOLLMANN was a passenger on and suffered injuries during LaMia Flight 2933.

26. At all times material, Plaintiff SUELLEN NERY DOS SANTOS was a citizen and resident of Brazil.

27. At all times material, Plaintiff SUELLEN NERY DOS SANTOS is or will be the duly appointed Personal Representative of the Estate of MARCELO AUGUSTO MATHIAS DA SILVA, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent MARCELO AUGUSTO MATHIAS DA SILVA was a citizen and resident of Brazil. Plaintiff SUELLEN NERY DOS SANTOS brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. João Arthur Mathias Nery, minor son of decedent.

28. At all times material, Plaintiff ROSÂNGELA MARIA DOS SANTOS SILVA LOUREIRO was a citizen and resident of Brazil.

29. At all times material, Plaintiff ROSÂNGELA MARIA DOS SANTOS SILVA LOUREIRO is or will be the duly appointed Personal Representative of the Estate of CLEBER SANTANA LOUREIRO, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent CLEBER SANTANA LOUREIRO was a citizen and resident of Brazil. Plaintiff ROSÂNGELA MARIA DOS SANTOS SILVA LOUREIRO brings this wrongful-death action in his/her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Cleber Santana Loureiro Júnior, minor son of decedent;

b. Aroldo José Pereira Loureiro Neto, minor son of decedent.

30. At all times material, Plaintiff SUSANA RIBAS PEREIRA DE JESUS was a citizen and resident of Brazil.

31. At all times material, Plaintiff SUSANA RIBAS PEREIRA DE JESUS is or will be the duly appointed Personal Representative of the Estate of WILLIAN THIEGO DE JESUS deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent WILLIAN THIEGO DE JESUS was a citizen and resident of Brazil. Plaintiff SUSANA RIBAS PEREIRA DE JESUS brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Nina Ribas De Jesus, minor daughter of decedent.

32. At all times material, Plaintiff ALINE PENTEADO PEREIRA MACHADO was a citizen and resident of Brazil.

33. At all times material, Plaintiff ALINE PENTEADO PEREIRA MACHADO is or will be the duly appointed Personal Representative of the Estate of FILIPE JOSE MACHADO, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent FILIPE JOSE MACHADO was a citizen and resident of Brazil. Plaintiff ALINE PENTEADO PEREIRA MACHADO brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Antonella Pereira Machado, minor daughter of decedent.

34. At all times material, Plaintiff VENELANDA DUMKE was a citizen and resident of Brazil.

35. At all times material, Plaintiff VENELANDA DUMKE is or will be the duly appointed Personal Representative of the Estate of ANDERSON ROBERTO MARTINS, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent ANDERSON ROBERTO MARTINS, was

a citizen and resident of Brazil. Plaintiff VENELANDA DUMKE brings this wrongful-death action in his/her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Eloisa Dumke Martins, minor daughter of decedent;

b. Isabela Dumke Martins, minor daughter of decedent;

c. Anderson Roberto Martins Junior, son of decedent.

36. At all times material, Plaintiff LETÍCIA DOS ANJOS GABRIEL was a citizen and resident of Brazil.

37. At all times material, Plaintiff LETÍCIA DOS ANJOS GABRIEL is or will be the duly appointed Personal Representative of the Estate of MARCOS DANILO PADILHA, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent MARCOS DANILO PADILHA was a citizen and resident of Brazil. Plaintiff LETÍCIA DOS ANJOS GABRIEL brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Lorenzo Gabriel Padilha, minor son of decedent.

38. At all times material, Plaintiff PAULINHO GOBBATO was a citizen and resident of Brazil.

39. At all times material, Plaintiff PAULINHO GOBBATO is or will be the duly appointed Personal Representative of the Estate of RAFAEL CORREA GOBBATO, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent RAFAEL CORREA GOBBATO was a citizen and resident of Brazil. Plaintiff PAULINHO GOBBATO brings this wrongful-death action in his

representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Vivian Da Pieve Antunes, daughter of decedent;

b. Maria De Lourdes Correa Gobbato, daughter of decedent.

40. At all times material, Plaintiff LUIZ MAURO GROHS was a citizen and resident of Brazil.

41. At all times material, Plaintiff LUIZ MAURO GROHS is or will be the duly appointed Personal Representative of the Estate of LUIZ FELIPE GROHS, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent LUIZ FELIPE GROHS was a citizen and resident of Brazil. Plaintiff LUIZ MAURO GROHS brings this wrongful-death action in his representative capacity.

42. At all times material, Plaintiff AJUSSARA ERSICO was a citizen and resident of Brazil.

43. At all times material, Plaintiff AJUSSARA ERSICO is or will be the duly appointed Personal Representative of the Estate of RAFAEL VALMORBIDA, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent RAFAEL VALMORBIDA was a citizen and resident of Brazil. Plaintiff AJUSSARA ERSICO brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Otavio Torquato Valmorbida, minor son of decedent;

44. At all times material, Plaintiff GRACIELA MISSEL was a citizen and resident of Brazil.

45. At all times material, Plaintiff GRACIELA MISSEL is or will be the duly appointed Personal Representative of the Estate of MARCIO BESTENE KOURY, deceased, or is otherwise

the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent MARCIO BESTENE KOURY was a citizen and resident of Brazil. Plaintiff GRACIELA MISSEL brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Isabela Missel Bestene Koury, minor daughter of decedent;

b. Ana Carolina Missel Correa, minor step-daughter of decedent.

46. At all times material, Plaintiff ILKA APARECIDA LABES PEIXOTO was a citizen and resident of Brazil.

47. At all times material, Plaintiff ILKA APARECIDA LABES PEIXOTO is or will be the duly appointed Personal Representative of the Estate of DELFIM PADUA PEIXOTO, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent DELFIM PADUA PEIXOTO was a citizen and resident of Brazil. Plaintiff ILKA APARECIDA LABES PEIXOTO brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Bianka Labes Peixoto Graff, daughter of decedent;

b. Emanuella Labes Peixoto, daughter of decedent;

c. Delfim Mario Padua Peixoto Neto, son of decedent.

48. At all times material, Plaintiff SANDRA JACQUELINE MADRID LUCAS CASTILLO was a citizen and resident of Brazil.

49. At all times material, Plaintiff SANDRA JACQUELINE MADRID LUCAS CASTILLO is or will be the duly appointed Personal Representative of the Estate of ANDERSON DONIZETI LUCAS, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent ANDERSON

DONIZETI LUCAS was a citizen and resident of Brazil. Plaintiff SANDRA JACQUELINE MADRID LUCAS CASTILLO brings this wrongful-death action in her representative capacity.

50. At all times material, Plaintiff DICLEIA JOHANN DE JESUS was a citizen and resident of Brazil.

51. At all times material, Plaintiff DICLEIA JOHANN DE JESUS is or will be the duly appointed Personal Representative of the Estate of SERGIO LUIZ FERREIRA DE JESUS, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent SERGIO LUIZ FERREIRA DE JESUS was a citizen and resident of Brazil. Plaintiff DICLEIA JOHANN DE JESUS brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Vanessa Johann de Jesus, daughter of decedent;

b. Luiz Antonio Johann de Jesus, minor son of decedent.

52. At all times material, Plaintiff AMANDA DOS SANTOS MACHADO was a citizen and resident of Brazil.

53. At all times material, Plaintiff AMANDA DOS SANTOS MACHADO is or will be the duly appointed Personal Representative of the Estate of DENER ASSUNCAO BRAZ, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent DENER ASSUNCAO BRAZ was a citizen and resident of Brazil. Plaintiff AMANDA DOS SANTOS MACHADO brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Bernardo Braz Machado, minor son of decedent.

54. At all times material, Plaintiff ALAN RUSCHEL was a citizen and resident of Brazil. Plaintiff ALAN RUSCHEL was a passenger on and suffered injuries during the crash of LaMia Flight 2933.

55. At all times material, Plaintiff ANA CLAUDIA SEVERO was a citizen and resident of Brazil.

56. At all times material, Plaintiff ANA CLAUDIA SEVERO is or will be the duly appointed Personal Representative of the Estate of EDUARDO LUIS PREUSS, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent EDUARDO LUIS PREUSS was a citizen and resident of Brazil. Plaintiff ANA CLAUDIA SEVERO brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Gabrielle Luiza Preuss, daughter of decedent.

57. At all times material, Plaintiff FABIENNE BELLE was a citizen and resident of Brazil.

58. At all times material, Plaintiff FABIENNE BELLE is or will be the duly appointed Personal Representative of the Estate of LUIS CESAR MARTINS CUNHA, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent LUIS CESAR MARTINS CUNHA was a citizen and resident of Brazil. Plaintiff FABIENNE BELLE brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Nazare Gaudencia Cunha, mother of decedent.

59. At all times material, Plaintiff EZIQUIELA CALDERON GALIOTTO was a citizen and resident of Brazil.

60. At all times material, Plaintiff EZIQUIELA CALDERON GALIOTTO is or will be the duly appointed Personal Representative of the Estate of GELSON GALIOTTO, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent GELSON GALIOTTO was a citizen and resident of Brazil. Plaintiff EZIQUIELA CALDERON GALIOTTO brings this wrongful-death action in his/her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Emilly Gabrieli Galiotto, daughter of decedent.

61. At all times material, Plaintiff CRISTIANI VICENTINI was a citizen and resident of Brazil.

62. At all times material, Plaintiff CRISTIANI VICENTINI is or will be the duly appointed Personal Representative of the Estate of RENAN CARLOS AGNOLIN, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent RENAN AGNOLIN was a citizen and resident of Brazil. Plaintiff CRISTIANI VICENTINI brings this wrongful-death action in her representative capacity.

63. At all times material, Plaintiff FERNANDA AMORIM DE ABREU was a citizen and resident of Brazil.

64. At all times material, Plaintiff FERNANDA AMORIM DE ABREU is or will be the duly appointed Personal Representative of the Estate of ARTHUR BRASILIANO MAIA, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent ARTHUR BRASILIANO MAIA was a citizen and resident of Brazil. Plaintiff FERNANDA AMORIM DE ABREU brings this wrongful-death action in her representative capacity.

65. At all times material, Plaintiff MAURI ANTONIO DA SILVA was a citizen and resident of Brazil.

66. At all times material, Plaintiff MAURI ANTONIO DA SILVA is or will be the duly appointed Personal Representative of the Estate of BRUNO MAURI DA SILVA, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent BRUNO MAURI DA SILVA was a citizen and resident of Brazil. Plaintiff MAURI ANTONIO DA SILVA brings this wrongful-death action in his representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Adriana Izabel da Silva, mother of decedent.

67. At all times material, Plaintiff ADRIANA DE OLIVEIRA SAROLI was a citizen and resident of Brazil.

68. At all times material, Plaintiff ADRIANA DE OLIVEIRA SAROLI is or will be the duly appointed Personal Representative of the Estate of LUIZ CARLOS SAROLI, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent LUIZ CARLOS SAROLI was a citizen and resident of Brazil. Plaintiff ADRIANA DE OLIVEIRA SAROLI brings this wrongful-death action in his representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Gabriel de Oliveira Saroli, son of decedent;

b. Matheus de Oliveira Saroli, son of decedent.

69. At all times material, Plaintiff EDUARDO DE CASTRO was a citizen and resident of Brazil.

70. At all times material, Plaintiff EDUARDO DE CASTRO is or will be the duly appointed Personal Representative of the Estate of EDUARDO DE CASTRO, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent EDUARDO DE CASTRO was a citizen and resident of Brazil. Plaintiff EDUARDO DE CASTRO brings this wrongful-death action in his representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Sueli Salete de Castro, mother of decedent.

71. At all times material, Plaintiff XIMENA SUAREZ OTTERBURG was a citizen and resident of Bolivia.

72. At all times material, Plaintiff XIMENA SUAREZ OTTERBURG was a citizen and resident of Bolivia. Plaintiff XIMENA SUAREZ OTTERBURG was a passenger on and suffered injuries during LaMia Flight 2933.

73. At all times material, Plaintiff RAQUEL DONAIDE CORONEL BENAGAS was a citizen and resident of Paraguay.

74. At all times material, Plaintiff RAQUEL DONAIDE CORONEL BENAGAS is or will be the duly appointed Personal Representative of the Estate of GUSTAVO FELICIANO ENCINA NUNEZ, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent GUSTAVO FELICIANO ENCINA NUNEZ was a citizen and resident of Paraguay. Plaintiff RAQUEL DONAIDE CORONEL BENAGAS brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Andrea Monstserrah Encina Coronel, minor daughter of decedent.

75. At all times material, Plaintiff ELIZETH ANDREINA SANDOBAL GONZALEZ was a citizen and resident of Venezuela.

76. At all times material, Plaintiff ELIZETH ANDREINA SANDOBAL GONZALEZ is or will be the duly appointed Personal Representative of the Estate of ANGEL EDUARDO LUGO UGAS, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent ANGEL EDUARDO LUGO UGAS was a citizen and resident of Venezuela. Plaintiff ELIZETH ANDREINA SANDOBAL GONZALEZ brings this wrongful-death action in her representative capacity.

77. At all times material, Plaintiff, OVIEDO VON BORRIES RIBERA, was a citizen and resident of Bolivia.

78. At all times material, Plaintiff OVIEDO VON BORRIES RIBERA is or will be the duly appointed Personal Representative of the Estate of SISY GABRIELA ARIAS PARAVICINY, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent SISY GABRIELA ARIAS PARAVICINY was a citizen and resident of Bolivia. Plaintiff OVIEDO VON BORRIES RIBERA, brings this wrongful-death action in his representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Mariana Von Borries Arias, minor daughter of decedent;

b. Matias Von Borries Arias, minor son of decedent.

79. At all times material, Plaintiff ERWIN TUMIRI CHOQUE was a citizen and resident of Bolivia. Plaintiff, ERWIN TUMIRI CHOQUE was a passenger on and suffered injuries during the crash of LaMia Flight 2933.

80. At all times material, Plaintiff, PAMELA JUSTINIANO PEDRAZA, was a citizen and resident of Bolivia.

81. At all times material, Plaintiff PAMELA JUSTINIANO PEDRAZA is or will be the duly appointed Personal Representative of the Estate of ROMMEL DAVID VACAFLORES TERRAZAS, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent ROMMEL DAVID VACAFLORES TERRAZAS was a citizen and resident of Bolivia. Plaintiff PAMELA JUSTINIANO PEDRAZA, brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Juliana Vacaflores Justiniano, minor daughter of decedent;

82. At all times material, Plaintiff, FLORA TARQUI AVILA GONZALEZ, was a citizen and resident of Bolivia.

83. At all times material, Plaintiff FLORA TARQUI AVILA GONZALEZ is or will be the duly appointed Personal Representative of the Estate of ALEX RICHARD QUISPE GARCIA, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin under applicable law. At all times material, Decedent ALEX RICHARD QUISPE GARCIA was a citizen and resident of Bolivia. Plaintiff, FLORA TARQUI AVILA GONZALEZ, brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Gonzalo Alex Quispe Aduviri, minor son of decedent;

b. Braynt Anibal Quispe Oyardo, minor son of decedent.

84. At all times material, Plaintiff, LUCAS CASAGRANDE DAL BELLO, was a citizen and resident of Brazil.

85. At all times material, Plaintiff LUCAS CASAGRANDE DAL BELLO is or will be the duly appointed Personal Representative of the Estate of MAURO LUIZ DAL BELLO, deceased, or is otherwise the appropriate and representative survivor, beneficiary, or next of kin

under applicable law. At all times material, Decedent MAURO LUIZ DAL BELLO was a citizen and resident of Bolivia. Plaintiff, LUCAS CASAGRANDE DAL BELLO, brings this wrongful-death action in her representative capacity and on behalf of all potential survivors, including, but not limited to, the following:

a. Thalia Casagrande dal Bello, daughter of decedent;

b. Leticia Casagrande dal Bello, daughter of decedent.

86. The decedents referenced in this Complaint were all passengers aboard the subject flight.

87. At all times material, Defendant Línea Aérea Mérida Internacional de Aviación d/b/a LaMia Corporation S.R.L. ("LaMia") was and is organized under the laws of Bolivia, with its principal place of business in Miami, Florida.

88. At all times material, Defendant Marco Antonio Rocha Venegas, a citizen and resident of Broward County, Florida, was an officer and managing partner of Defendant LaMia.

89. At all times material, the aircraft was owned by Defendant Kite Air Corporation Ltd. ("Kite"), a company that was and is organized under the laws of Hong Kong.

90. At all times material, Defendant Ricardo Alberto Albacete Vidal, a citizen and resident of Spain, owned Defendant Kite. Alternatively, Defendant Ricardo Alberto Albacete Vidal, a natural person, has been doing business as Kite Air Corporation Ltd.

91. At all times material, the aircraft was owned by Defendant Ricardo Alberto Albacete Vidal, who was and is a citizen of Spain.

92. At all times material, BISA was and is organized under the laws of Bolivia, with its principal place of business in Bolivia. BISA was the insurance company that provided flight insurance covering the subject accident.

93. At all times material, AON UK Limited was and is organized under the laws of England, with its principal place of business in England. AON UK Limited was and is the insurance broker who placed the flight insurance policy covering the subject accident.

94. At all times material, Tokio Marine Kiln Syndicates Limited was and is organized under the laws of England, with its principal place of business in England. Tokio Marine was and is the lead reinsurer subscribed the reinsurance policy covering the subject accident.

95. At all times material, John Does 1-25 (the "John Doe Reinsurers") are entities subscribed to the reinsurance policy covering the accident. The specific identities of John Does 1-25 are unknown to Plaintiffs. Plaintiffs anticipate that they will promptly obtain a full and verified copy of the reinsurance policy or another document which will confirm the identities of the John Doe Reinsurers, at which point Plaintiffs will name as defendants the specific entities and/or individuals subscribed to the reinsurance policy.

JURISDICTIONAL ALLEGATIONS

96. This is an action for damages in excess of Thirty Thousand Dollars ($30,000.00), exclusive of costs, interest, and attorneys' fees, and is therefore within the jurisdictional limits of this Court.

97. Venue is proper in Miami-Dade County because, among other things, all of the Florida-resident Defendants resided in Miami-Dade County or conducted business in Miami-Dade County at all times material, the Plaintiffs' causes of action accrued in Miami-Dade County, and the foreign corporate defendants have agents and other representatives in Miami-Dade County.

98. At all times material, LaMia engaged in substantial and not isolated activity within Florida. LaMia has continuous and systematic business contacts in Florida that are extensive and pervasive. LaMia has its nucleus of operations and nerve center in Florida and is so heavily

engaged in activity in Florida as to render it essentially at home in Florida because, among other things:

a. LaMia's officers and agents reside and perform work on behalf of LaMia in Florida;

b. LaMia's officers and agents performed high-level, executive tasks in Florida, such as negotiating and procuring insurance coverage for its operations, including the insurance policy that was placed on the aircraft at the time of the subject flight;

c. LaMia's officers and agents made business decisions in Florida, including decisions regarding which coverage to place on its operations;

d. LaMia's officers coordinated flights, procured operations licenses, and solicited and negotiated business from Florida;

e. LaMia's managing partner, Marco Antonio Rocha Venegas, is a citizen and resident of Florida, where he continues to run LaMia's business affairs, including making decisions about LaMia's liability exposure following the subject accident; and

f. Loredana Albacete, a senior LaMia principal, resided in Miami at all times material and conducted extensive business affairs for LaMia in and from Miami, including business related to LaMia's flight operations and insurance coverage.

99. At all times material, Kite engaged in substantial and not isolated activity within Florida. Kite has continuous and systematic business contacts in Florida that are extensive and pervasive. Kite has its nucleus of operations and nerve center in Florida and is so heavily engaged in activity in Florida as to render it essentially at home in Florida because, among other things:

a. Kite's officers and agents reside and perform work on behalf of Kite in Florida;

b. Kite's officers and agents performed high-level, executive tasks in Florida, such as negotiating and procuring insurance coverage for its operations, including the insurance policy that was placed on the aircraft at the time of the subject flight;

c. Kite's officers and agents made business decisions in Florida, including which coverage to place on its operations;

d. Kite's officers coordinated flights, procured operations licenses, and solicited and negotiated business from Florida; and

e. Kite's owner, Ricardo Albacete, is a citizen and resident of Florida.

100. At all times material, Ricardo Albacete has operated and done business individually, or as Kite Air Corporation Ltd., in Florida, including by:

a. Making decisions about LaMia and Kite's affairs from Florida, such as negotiating and procuring insurance coverage for Kite's operations, including the insurance policy that was placed on the aircraft at the time of the subject flight; and

b. Having agents residing permanently in Florida and carrying tasks on his behalf in Florida.

101. At all times material, Marco Antonio Rocha Venegas, in his capacity as an agent, officer, and managing partner of LaMia, has operated and done business in Florida, including by:

a. Making decisions about LaMia's affairs from Florida, including decisions about LaMia's liability exposure following the subject accident as well as LaMia's viability as a company;

b. Overseeing LaMia's policies, practices, and operations, including those relevant to the subject accident, from Florida.

102. At all times material, Loredana Albacete, a citizen of Spain, acted as an agent of Defendants LaMia, and/or Kite, and/or Ricardo Albacete, and/or Marco Antonio Rocha Venegas, and in that capacity carried out high-level functions for the Defendants, made corporate-level decisions for the Defendants, and handled the Defendants' business affairs, including negotiating contracts, deals, flights, and ventures on their behalf; applying for and securing licenses, permits, and insurance on their behalf; and acting as the central repository and conduit of the Defendants' business communications and information. Loredana Albacete performed these functions from Miami, Florida, and at all times material resided there. Specifically, Loredana Albacete, on behalf of LaMia, and/or Kite, and/or Ricardo Albacete, and/or Marco Antonio Rocha Venegas, negotiated and secured the flight insurance policies and reinsurance policies for the subject flight from her residence in Miami, Florida.

103. At all times material, AON UK Limited engaged in substantial and not isolated activity within Florida. AON UK Limited has continuous and systematic business contacts in

Florida that are extensive and pervasive. Among other things, AON and its affiliates maintain offices in Florida, have agents and representatives in Florida, and solicit business in Florida. Specifically, AON UK Limited operated and did business in Florida with respect to the events giving rise to this lawsuit, including by, among other things:

a. Contracting to procure insurance for LaMia, whose officers and agents operated and resided in Miami, Florida at the time the negotiations and written and/or implied contract to procure insurance were entered into;

b. Communicating directly, knowingly and extensively with Miami-resident Loredana Albacete, who was primarily responsible for securing insurance of behalf of LaMia, on the subject of the procurement of the subject flight insurance policies;

c. Acting as insurance broker for flight insurance policies within a policy territory, which included all territories within the United States of America, *see*, *e.g.*, *ESAB Grp. Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 392 (4th Cir. 2012).

104. At all times material, BISA Seguros y Reaseguros, S.A., engaged in substantial and not isolated activity within Florida. BISA Seguros y Reaseguros, S.A. has continuous and systematic business contacts in Florida that are extensive and pervasive. Specifically, BISA Seguros y Reaseguros, S.A. operated and did business in Florida with respect to the events giving rise to this lawsuit, including by, among other things:

a. Contracting to provide insurance for LaMia, whose officers and agents operated and resided in Miami, Florida at the time the negotiations took place and the subject flight insurance and reinsurance policies were entered into;

b. Communicating directly with Loredana Albacete, who was primarily responsible for securing insurance of behalf of LaMia, on the subject of the subject flight insurance policies in Miami, Florida, where Loredana Albacete resided;

c. Providing flight insurance within a policy territory, which included all territories within the United States of America, including Miami, Florida; and

d. Agreeing to cover accidents and furnish a defense to its insured within a policy territory, which included all territories within the United States of America, including Miami, Florida.

105. At all times material, Tokio Marine Kiln Syndicates Limited engaged in substantial and not isolated activity within Florida. Tokio Marine Kiln Syndicates Limited has continuous and systematic business contacts in Florida that are extensive and pervasive. Specifically, Tokio Marine Kiln Syndicates Limited operated and did business in Florida with respect to the events giving rise to this lawsuit, including by, among other things:

a. Contracting to provide a flight reinsurance policy that named as an insured LaMia, whose officers and agents operated and resided in Miami, Florida at the time the negotiations took place and the subject flight insurance and reinsurance policies were entered into;

b. Communicating directly and/or through AON with Loredana Albacete, who was primarily responsible for securing insurance of behalf of LaMia, on the subject of the subject flight insurance policies in Miami, Florida, where Loredana Albacete resided;

c. Providing flight insurance within a policy territory, which included all territories within the United States of America, including Miami, Florida;

d. Agreeing to cover accidents and furnish a defense to its insured within a policy territory, which included all territories within the United States of America, including Miami, Florida; and

e. Engaging in claims-handling in the aftermath of the subject accident in Florida, including by communicating through counsel extensively with Florida-based attorneys and sending legal representatives to Florida for claims-handling discussions and negotiations.

106. Moreover, Tokio Marine Kiln Syndicates Limited waived or abandoned any objection to this Court's exercise of personal jurisdiction by pre-emptively intervening in the instant action and seeking affirmative relief in this Court and a Florida-based federal court on several occasions, including by seeking to remove the instant action and seeking to transfer the instant action, among other things.

107. At all times material, John Does 1-25 engaged in substantial and not isolated activity within Florida. At all times material, John Does 1-25—by and through their agent, lead reinsurer, and representative Tokio Marine Kiln Syndicates Limited—engaged in activity in

Florida to the full extent of Tokio Marine's activities in Florida. Specifically, John Does 1-25 operated and did business in Florida with respect to the events giving rise to this lawsuit, including by:

a. Subscribing to a flight reinsurance policy that named as an insured LaMia, whose officers and agents operated and resided in Miami, Florida at the time the negotiations took place and the subject flight insurance and reinsurance policies were executed;

b. Subscribing to a flight reinsurance policy that provided coverage within a policy territory, which included all territories within the United States of America, including Miami, Florida; and

c. Acting, through their agent, representative and lead reinsurer Tokio Marine Kiln Syndicates, in the same respect alleged in the immediately preceding paragraphs.

108. Moreover, pursuant to Florida Statutes § 48.193, all defendants are subject to this Court's jurisdiction because they breached a contract—the subject flight insurance policies—by failing to perform acts in Florida that were required under the contract to have been performed in Florida. Specifically, defending the insureds in this Florida court was "a contractual obligation to be performed in Florida." The excess judgments at issue here were obtained in Florida as a result of bad faith that occurred in the state of Florida, where the lawsuit against the insureds was filed. Defendants foresaw or should have foreseen that their breaches of duties owed to their insureds in Florida and resulted in Florida judgments would subject them to being haled into a Florida court.

GENERAL ALLEGATIONS

LaMia's business and insurance coverage

109. At all times material, Defendant LaMia was engaged in the business of flying passengers for remuneration.

110. To insure risks related to its business and/or to comply with applicable insurance-coverage requirements, LaMia sought and obtained insurance coverage.

111. Beginning in 2011 or earlier, LaMia's principal insurance broker was Defendant AON. In this capacity, AON served and purported to serve as LaMia's agent, brokering and helping to arrange for the placement of several insurance policies for LaMia.

112. Upon information, AON arranged for the placement of several insurance policies covering one-year periods roughly spanning all or part of calendar years 2012 through 2017.

113. One of these policies—hereinafter the "2015-2016 policy"—had a policy period spanning calendar years 2015 and 2016. Specifically and upon information, the 2015-2016 policy was issued by BISA, was identified by the policy number AF1539901, and had a policy period of April 10, 2015 through April 10, 2016.

114. In or around September of 2015, LaMia fell behind on premium payments on the 2015-2016 policy. Loredana Albacete, a Miami-resident LaMia official acting on LaMia's behalf, explained to AON via email that the company was experiencing a temporary financial strain and asked AON to help arrange an extension of the premium payment deadlines. Simon Kaye, an AON employee, explained to Ms. Albacete that the Reinsurers of the 2015-2016 policy, who held all or materially all of the risk on the policy, were becoming impatient with the delayed payments.

115. Finally, on January 5, 2016, AON communicated to LaMia that as a result of the overdue premium payments, the Reinsurers intended to cancel the 2015-2016 policy. Specifically, he wrote that "[w]e have spoken to Reinsurers . . . and it is with regret that we have to advise that the Reinsurance of BISA is cancelled effective midnight 5th January 2016. Reinsurers have advised that they will reinstate coverage however subject to settlement of the full outstanding premium, being the third and fourth installment of the policies."

116. On January 11, 2016, the Bolivian aviation authority (officially known by its Spanish-language name Direccion General de Aeronautica Civil) grounded the subject aircraft due

to the fact that LaMia lacked the requisite insurance coverage. Upon information and belief, the aviation authority learned of LaMia's lapse in coverage through communications from AON, BISA, Tokio Marine, the John Doe Reinsurers, and/or their agents, employees, and/or affiliates.

117. Shortly after the 2015-2016 policy was cancelled, AON and LaMia began discussions about renewing or reactivating the cancelled policy. For example, on or around January 13, 2016, Simon Kaye of AON wrote to Loredana Albacete to inquire about the past-due premium payments on the previous insurance policy and discuss renewing coverage.

118. On or around February 5, 2016, Mr. Kaye wrote to Ms. Albacete explaining that the Reinsurers would likely be unwilling to reinstate coverage on the 2015-2016 policy, and that a new policy would need to be negotiated. Mr. Kaye also explained that the issuance of a new policy was contingent on LaMia's payment of the overdue premiums on the 2015-2016 policy.

119. Over the next several weeks, Mr. Kaye and Ms. Albacete engaged in extensive discussions about, among other topics: (a) LaMia's operations and business prospects; (b) LaMia's insurance needs; (c) the resolution of LaMia's overdue premium obligations on the prior policy; and (d) the placement of new insurance coverage for LaMia. These exchanges took place largely or exclusively over email. On at least some emails, Ms. Albacete and Mr. Kaye also copied other employees or principals of AON and LaMia, as well as employees of AON's Bolivian affiliate.

120. As Ms. Albacete explained to Mr. Kaye, LaMia was facing a difficult chicken-and-egg problem. It could not legally operate flights without insurance coverage, but it would struggle to pay insurance premiums without first securing new flight business and new revenue.

121. In part to resolve this problem, Ms. Albacete provided Mr. Kaye with extensive details about LaMia's business leads and prospects. Namely, Ms. Albacete repeatedly conveyed that LaMia had negotiated lucrative contracts which would help it pay the overdue premiums.

During this time period, the overwhelming majority of LaMia's business prospects were flight contracts with South American soccer teams.

122. On or around April 1, 2016, Ms. Albacete wrote Mr. Kaye explaining that LaMia had exciting business prospects with South American soccer teams and that they urgently needed insurance coverage because the soccer season would soon commence. Mr. Kaye responded that LaMia would have to pay the premiums owed to the Reinsurers in order to obtain a new policy.

123. In April 2016, discussions between Mr. Kaye and Ms. Albacete advanced such that LaMia appeared willing and able to pay the overdue premiums on the 2015-2016 policy, which would then allow LaMia to obtain a new policy. On or around April 5, Mr. Kaye informed Ms. Albacete that the exact payment "due to AON UK" for the overdue premiums was $46,759.08. Upon information and belief, LaMia made a payment to AON in that amount shortly thereafter, under the direction of Ms. Albacete.

124. With the overdue premiums having been paid, Ms. Albacete and Mr. Kaye proceeded to discuss the placement of a new policy.

125. The new policy—identified by the policy numbers AF1639901 and B0823AF1639901—had a policy period of April 10, 2016 through April 10, 2017 (hereinafter the "2016-2017 policy"). The Policy was insured by Defendant BISA and reinsured by Defendant Tokio Marine as well as the Defendant John Doe Reinsurers. It provided $25 million in personal injury liability coverage. As noted in more detail below, the 2016-2017 policy was amended about one month later, on or around May 12, 2016.

AON, BISA, Tokio Marine, and the John Doe Reinsurers' knowledge of LaMia's business operations and coverage needs

126. Throughout Mr. Kaye and Ms. Albacete's extensive discussions regarding the 2016-2017 policy, Ms. Albacete repeatedly explained to Mr. Kaye that the vast majority—if not the entirety—of LaMia's business consisted and would in the future consist of flying South American soccer teams.

127. In South America, although each country has its own domestic soccer league, professional soccer teams commonly play cross-border matches. Indeed, the continent's two highest-profile tournaments—the Copa Sudamericana (the South American Cup) and the Copa Libertadores (the Liberators' Cup)—are international in nature, and feature dozens of cross-border matches each year.

128. Accordingly, when LaMia was courting business from South American soccer teams, it was expressly and implicitly courting business for international flights between South American countries.

129. LaMia's express communications to AON regarding the soccer team business began in July of 2015 at the latest, when Ms. Albacete explained in an email to AON that LaMia's "operations" would involve "fly[ing] a soccer team to 3 different games in Brazil."

> The other question is, what is the best way to insure the type of operations that we will be conducting? To give you an example: we are being requested to fly a soccer team to 3 different games in Brazil.

130. Later, LaMia expressly stated that it was seeking to fly soccer teams internationally across different South American countries. For example, in January of 2016, Ms. Albacete wrote to Mr. Kaye that LaMia was in negotiations to fly Club Olimpia, a professional soccer team based in Asuncion, Paraguay, to matches in Venezuela and Ecuador.

131. On or around March 30, 2016, Ms. Albacete wrote to Mr. Kaye explaining that LaMia had negotiated a deal to fly a soccer team on a round-trip flight between Bolivia and

Venezuela. Ms. Albacete also explained that LaMia would seek business involving the Copa Sudamericana, a continent-wide tournament.

132. In 2016, the participants in the Copa Sudamericana included six teams from Argentina, four from Bolivia, eight from Brazil, four from Chile, five from Colombia, four from Ecuador, four from Paraguay, four from Peru, four from Uruguay, and four from Venezuela. Dozens of matches were scheduled and ultimately played across all of these countries.

133. In her communications with Mr. Kaye, Ms. Albacete also specifically referenced and described potential flights involving Bolivian soccer team The Strongest, Argentine soccer team Rosario Central, and the Argentinian national soccer team. In 2015 and 2016, these teams collectively played matches in virtually every South American country, including Brazil, Argentina, Chile, Colombia, and Venezuela.

134. Indeed, Ms. Albacete expressly communicated to Mr. Kaye LaMia's hopes of becoming a go-to airline for soccer teams flying across South America. In one email, she told Mr. Kaye that she was "secretly hoping that Bolivian team beats Venezuela so that we can continue to fly them around the continent." In another, she wrote that "[t]he Southamerican cup has many games coming and we are the perfect candidates to fly them."

> We now have an airworthy aircraft and a contract to operate. This initial contract is only for one flight. We would be transporting a futbol team from Bolivia to Venezuela and back to Bolivia.
>
> We are working on signing an operation contract for a longer period of time but in the mean time we have several options to sign this type of one trip deals. The Southamerican cup has many games coming and we are the perfect candidates to fly them.

135. This dynamic continued over several months, even after the issuance of the 2016-2017 policy. For example, in May 2016, Ms. Albacete wrote to Mr. Kaye regarding a specific flight for Argentine soccer team Rosario Central. Namely, LaMia planned to fly Rosario Central to a game in Medellin, Colombia against Medellin-based team Atletico Nacional. Notably for

purposes of the instant action, Medellin was the destination airport in the subject accident. Separately, on or around August 14, 2016, Ms. Albacete again wrote Mr. Kaye explaining that LaMia was due to fly a soccer team to matches in Venezuela and Colombia.

136. In sum, both before and after placement of the 2016-2017 policy, AON was intimately aware of LaMia's operations, and specifically of the fact that LaMia's business would include flights to Colombia.

137. Upon information and belief, Tokio Marine and the John Doe Reinsurers were also at least partly aware of LaMia's business operations and its focus on soccer team flights. Email communications between Mr. Kaye and Ms. Albacete make reference to exchanges between AON and "underwriters" and "Reinsurers"—presumably meaning Tokio Marine and the John Doe Reinsurers—regarding LaMia's flights for professional sports teams.

138. For example, in July of 2015, Mr. Kaye explained that LaMia's soccer team business was a topic that AON would need to discuss with the Reinsurers.

> Finally, regarding sports teams, we will need to ensure that underwriters are aware of this exposure and obtain their agreement prior to contracts/flights commencing. As you will appreciate, underwriters can be uncomfortable with certain high profile sports teams due to the payouts they would be expected to pay in the event a loss. If you can provide details of the particular team we will run this by underwriters and ensure there are no issues and coverage is in full force and effect.

139. Later, in January 2016, Mr. Kaye again explained that he would need to discuss "the sports team risk" with underwriters—referring to LaMia's prospects of flying Paraguayan soccer team Olimpia—"as this can be a sensitive area."

The May 2016 emails and endorsements

140. In May 2016, AON expressly discussed with Reinsurers LaMia's plans to fly Argentine soccer team Rosario Central to a match in Medellin, Colombia. As a result, the 2016-2017 policy underwent significant amendment in May 2016. The relevant endorsements appear

to be dated May 12, 2016 and appear to have been prompted by said email from LaMia inquiring about flying to Colombia.

141. Specifically, on or around May 11, 2016, Ms. Albacete wrote to AON's Bolivian affiliate explaining that "[o]n May 17, 2016, we are going to take the soccer team Rosario Central to the game in Medellin, and we will be returning on May 19, 2016. In reference to the note of 'geographic limitations' LSW617H [a geographic exclusion form] where Colombia and Peru are excluded, we would like to know how to proceed in order to be in compliance." On or around May 12, 2016, several endorsements to the policy were executed. One endorsement provided for "Revision of Premium and/or Geographic Limits." Specifically, it provided that "Insurers may give notice for revision of premium and/or geographic limits. Such notice will be effective upon expiration of eight days from 23:59 GMT the day the notice is given." On or around May 13, AON's Bolivian affiliate replied that "[b]y this message, we confirm that the reinsurers have taken note of the trip to Colombia. Only for informational purposes, they need to know the following: the team to be transported, how many flights have been performed to date, and whether all the flights were for soccer teams."[1] Ultimately, Ms. Albacete replied that the deal with Rosario Central had fallen through.

142. The May 2016 emails make clear that AON *and* the reinsurers were aware that LaMia performed flights to Colombia, and that they expressly considered those flights *not* to run afoul of the 2016-2017 policy's geographic exclusion. Moreover, the May 2016 endorsement, read together with the May 2016 emails, indicates that BISA and the reinsurers rescinded the

[1] Unlike Ms. Albacete's emails with Mr. Kaye, which were in English the emails regarding the Rosario Central flights to Medellin were in Spanish. Accordingly, the text of those emails has been translated for purposes of the present Complaint.

exclusion for Colombia on May 13, 2016, consistent with the "Revision of Premium and/or Geographic Limits" provision of the endorsement.

143. Later, in testimony before a Brazilian Senate committee, Ricardo Albacete explained that AON, BISA, and LaMia's Reinsurers were informed—in writing—about flights to and over Colombia.

144. In addition, throughout AON's extensive discussions with Ms. Albacete, AON was aware that she lived in and conducted business out of Miami. For example, in December 2016, an AON employee named Neil Darvill wrote to Ms. Albacete regarding a potential meeting in Miami.

The crash of LaMia Flight 2933

145. Sometime in 2016, Chapecoense, a Brazilian professional soccer team (officially called Associação Chapecoense de Futebol), contracted with LaMia to transport players, staff, and others from Brazil to Colombia for a soccer match. Specifically, the scheduled match was against Atletico Nacional, a Colombian professional soccer team based in the city of Medellin. The flight was to land at the same airport as the previously-discussed Rosario Central flight, and indeed Chapecoense's match was against the same rival—Atletico Nacional—that Rosario Central played against in May 2016.

146. On November 27, 2016, the day before the subject flight, LaMia made two requests to the Brazilian Aeronautical Authority to transport the team and others by air from Brazil directly to Colombia.

147. The Brazilian Aeronautical Authority, however, rejected both requests because LaMia, a Bolivian entity, did not comply with Brazilian regulations, which required that charter flights be conducted by operators belonging to the country of origin (Brazil) or destination (Colombia).

148. In light of that decision by the Brazilian Aeronautical Authority, LaMia arranged for the Chapecoense team and staff to travel on a regular passenger flight from Guarulhos, Brazil, to Santa Cruz, Bolivia, where they would rendezvous with the aircraft.

149. On November 28, 2016, LaMia flew the aircraft from Cochabamba, Bolivia, where it was stationed, to Santa Cruz, Bolivia, where it met with the soccer team for the subject flight. Thereafter, the flight departed from Santa Cruz, Bolivia, with 73 passengers and four crew members. The destination airport for this flight was the international airport serving Medellin, which is located in the nearby town of Rionegro.

150. According to the original flight plan prepared by LaMia, the proposed flight route had the aircraft taking off from Santa Cruz, Bolivia, towards the ultimate destination of Medellin, Colombia with a stop to refuel in Cobija, Bolivia, which is located between Santa Cruz and Medellin.[2]

151. Midflight, however, the flight crew—LaMia's agents—changed the flight plan, electing to forgo the fuel stop in Cobija and head directly to Medellin.

152. The flight crew knew or should have known that, by failing to refuel, the aircraft would be at dangerously low fuel levels by the time it reached Medellin, in violation of multiple international standards and protocols concerning fuel reserves as well as industry minimum fuel requirements for the aircraft, all of which required the aircraft to have at least one extra hour of fuel reserved for the subject flight.

153. For instance, before reaching Medellin, the flight crew had multiple conversations concerning the low fuel levels of the aircraft.

[2] Although the destination airport—Jose Maria Cordova International Airport—is the main international airport serving the city of Medellin, it is located in the nearby town of Rionegro. For simplicity's sake, this Amended Complaint will refer to Medellin as the destination city.

154. At one point, one of the pilots even recommended that they refuel at an airport in Bogota, Colombia, which was closer than the airport in Medellin to their then-current location.

155. The flight crew, however, ultimately elected not to stop to refuel, and instead maintained course towards Medellin.

156. By the time the aircraft approached Medellin, the crew knew or should have known that it had reached critical fuel levels and that it was unreasonably dangerous to continue flying. At the very least, the flight crew knew that they lacked the one-hour fuel reserve required by intentional, national, and industry standards for the subject flight.

157. Once the aircraft entered Medellin airspace, Colombian air traffic control ("ATC") instructed the flight crew to enter multiple holding patterns because the airspace was heavily congested.

158. Despite knowing of the low fuel levels, the flight crew, without objecting to ATC's instructions, entered into the multiple holding patterns.

159. The pilots failed to notify ATC that they were at dangerously low, emergency levels of fuel when placed in the holding patterns.

160. It was only when the aircraft reached a second holding pattern that the pilots requested "priority" to approach.

161. The request for "priority" did not equate to declaring "Minimum Fuel Status" or "MAYDAY" for fuel as indicated by the International Civil Aviation Organization ("ICAO"), which would have notified ATC of an immediate emergency and which would have mandated that the aircraft be given priority to land.

162. It was not until the aircraft reached a third holding pattern that the pilots finally reported their emergency condition.

163. At this point, the aircraft ran out of fuel and all engines began to shut down.

164. Although the pilots had direct knowledge of the aircraft's fuel condition, they failed to alert the cabin crew so that they could prepare the passengers for an emergency descent.

165. After the loss of power in all engines, the aircraft suffered a complete electrical failure and began its descent into the mountainous region near the Medellin airport, where it crashed, killing 71 individuals and injuring 6 others on board the subject flight.

166. Had the pilots communicated their emergency conditions to ATC before entering any of the holding patterns, the aircraft would have had enough fuel to land at Rionegro, though the aircraft would still have been well below the required fuel-reserve levels.

167. Remarkably, LaMia operated the subject flight with a crew that lacked a valid language proficiency license in English.

168. English is the official language internationally for the operation of aircrafts and must be specified individually in pilot licenses.

169. The documentation required to carry out the subject flight had an apparent flaw because the pilot-in-command had an expired language proficiency license and the co-pilot did not have one at all.

170. These licenses are an indispensable requirement for international flights since, as is the case here, emergency status is communicated in English to the ATC.

171. The flight crew's failure to stop to refuel was a regular practice and procedure of LaMia. Indeed, on three separate occasions—flights on August 23, October 30, and November 5, 2016—LaMia flew flights with planned fuel stops at Cobija, and each time LaMia skipped the refueling and continued towards the ultimate destination, in a pattern that indicates that the crew repeatedly ignored the aircraft's minimum fuel requirements.

172. LaMia's officers, management, and partners knew or should have known that that practice and procedure presented a substantial risk of injury to the occupants of the aircraft. LaMia's officers, management, and partners also knew that LaMia's pilots lacked the requisite language proficiency to operate international flights.

173. Despite that, LaMia's officers, management, and partners failed to properly train the flight crew to operate the aircraft in a safe and reasonable manner, failed to ensure that the flight crew possessed the requisite language proficiency to operate international flights, and failed to ensure that LaMia's chartering operations complied with international protocols and industry standards.

174. Indeed, the official report from Colombia's civil aviation agency, Aerocivil, found the causes of the crash to be fuel exhaustion due to an inappropriate flight plan by the airline, and certain erroneous decisions by the pilots, including a failure to declare an emergency after fuel levels became critically low.

Post-accident insurance disputes and claims handling

175. After the accident, discussions commenced between LaMia, AON, BISA and the Reinsurers concerning insurance coverage for claims arising from the accident.

176. Notably, it was Tokio Marine and the other Reinsurers—not BISA—who took primary responsibility for most or all of the post-accident claims handling.

177. For example, shortly after the accident, on December 1, 2016, an AON employee named Neil Darvill emailed Ms. Albacete to explain that the Resinsurers had agreed "to Indemnify LaMia" related to the accident, without prejudice as to certain coverage issues, and that the Reinsurers "are now prepared to handle the liability aspect in the normal manner."

178. Nevertheless, upon information and belief, Tokio Marine began arranging for a flat denial of coverage in this matter shortly after the accident. Namely, on February 20, 2017, Tokio Marine and BISA executed a "Deed of Release." This Deed provided that "BISA shall decline coverage under the Insurance." It also explained that "Reinsurers wish to establish . . . a humanitarian assistance fund for the benefit of the 68 Passengers affected by the accident" and that "[i]n consideration of this, BISA now wishes to fully and irrevocably release and waive" any rights it had against Tokio Marine under the reinsurance contract.

179. In other words, the "Deed of Release" purported to be a type of contract, in which BISA agreed to deny coverage for the passengers' claims, in exchange and consideration for Tokio Marine setting up a "humanitarian assistance fund" for the passengers. Incidentally, the Deed provided that this "humanitarian assistance fund" would be in the amount of $25 million, the exact amount of liability coverage under the 2016-2017 policy.

180. In short, the "Deed of Release" was a sham collusive document, reflecting a deal that inured only to the benefit of BISA and the Reinsurers, and clearly to the detriment of LaMia and the passengers. Specifically, the Deed required BISA to violate its statutory and common law duties to its insured, LaMia, to properly investigate and defend claims arising from the subject accident. Moreover, the upshot of the Deed was to delegate to Tokio Marine all aspects of claims-handling and to empower Tokio Marine to settle the passengers' claims for the exact amount of the 2016-2017 policy's liability limits, under the guise of a "humanitarian assistance fund."

181. The day after the Deed was executed, on February 21, BISA formally informed LaMia that it was denying coverage for the accident. Among other things, BISA cited a geographic exclusion in the policy covering Colombia.

182. Beginning in October 2017, counsel for Tokio Marine engaged in initial conversations with counsel for Plaintiffs regarding Plaintiffs' claims. These conversations continued over several months largely over phone and email. However, they also included in-person meetings, including in Miami.

183. For all practical and material purposes, these were claims-handling discussions, the goal of which was to secure a release of Plaintiffs' claims.

184. At all times material Plaintiffs have declined any payments pursuant from the so-called "humanitarian assistance fund" under the terms and conditions proposed by Tokio Marine.

185. Since the filing of this action, neither BISA nor Tokio Marine nor any other reinsurer has provided a defense for Plaintiffs' claims against LaMia.

186. Plaintiffs entered into settlement agreements with Defendants LaMia, Kite, Rocha and Albacete. Specifically, Plaintiffs entered into *Coblentz* agreements with these Defendants, which included provisions for consent judgments against LaMia, specific provisions regarding the amount of each Plaintiff's damages arising from the subject accident, and an assignment of LaMia's rights against AON or any other insurance broker related to the accident. *See Coblentz v. Am. Sur. Co. of New York*, 416 F.2d 1059 (5th Cir. 1969). *See also Com. Ins. Consultants, Inc. v. Frenz Enter., Inc.*, 696 So.2d 871, 872 (Fla. 5th DCA 1997) (third party may seek to recover against tortfeasor's insurance broker after being successful in its action against tortfeasor). This Court subsequently entered final judgments against Defendants LaMia, Kite, Rocha and Albacete consistent with these settlement agreements.

Tokio Marine and the John Doe Reinsurers' role

187. As illustrated by the claims-handling process, although the 2016-2017 policy was technically issued by BISA, in most practical respects the real insurers were Tokio Marine and the

other "Reinsurers." It was the so-called Reinsurers, not BISA, who (1) drove negotiations on the terms of the 2016-2017 policy; (2) retained all of the risk on the policy; (3) were paid the overwhelming majority of the premiums on the policy; (4) arranged for a denial of coverage under the policy; and (5) ultimately led the entirety of the claims-handling process after the accident.

188. The Reinsurers' central role is reflected in virtually every document and communication regarding insurance coverage in this matter. For example, when LaMia was not able to timely pay its premiums on the 2015-2016 policy, Mr. Kaye expressed to Ms. Albacete that the London-based Reinsurers were becoming impatient with the overdue payments and may force the cancellation of the policy. Among other things, he wrote that "[w]e have done all we can to obtain Reinsurers [sic] agreement to extend the Notices of Cancellation to this point however one of the Reinsurers will not extend any further without confirmation that BISA have premium and are transferring the funds to AON." In December of 2015, Ms. Albacete wrote to AON's Bolivian affiliate to explain that Mr. Kaye had been supporting a one-week "extension of cover with the re-insurers." Mr. Kaye also wrote that he would need Ms. Albacete's help to "negotiate with underwriters."

189. On January 5, 2016, Mr. Kaye wrote to Ms. Albacete confirming the cancellation of the 2015-2016 policy. Specifically, he wrote that "[w]e have spoken to Reinsurers . . . and it is with regret that we have to advise that the Reinsurance of BISA is cancelled effective midnight 5th January 2016. Reinsurers have advised that they will reinstate coverage however subject to settlement of the full outstanding premium, being the third and fourth installment of the policies." As this email makes clear, LaMia's insurance coverage was fully dependent upon—and in most respects indistinguishable from—the reinsurance contract between the Reinsurers and BISA. Indeed, when Mr. Kaye wrote to explain that LaMia's coverage would be cancelled, he specifically

explained that the *reinsurance* would be cancelled. It was the Reinsurers, and not BISA, who functionally insured LaMia, and it was the Reinsurers, not BISA, who decided to cancel LaMia's coverage.

190. Similarly, during the negotiation of the 2016-2017 policy—which in significant part took place through emails between Ms. Albacete and Mr. Kaye—Mr. Kaye made repeated references to the preferences and demands of "the underwriters" or "the Reinsurers," rather than BISA.

191. For example, in early April 2016, Mr. Kaye explained by email that "underwriters calculated the [applicable] premium"; that the debt on the 2015-2016 policy would need "to be cleared in order for underwriters to consider re-instating coverage"; that "underwriters were not willing to provide quotations until the debt [referring to the overdue premiums on the 2015-2016 policy] is cleared"; and that once the debt was cleared that would "allow underwriters to quote for a policy[.]"

192. Once Ms. Albacete and Mr. Kaye had arranged for payment of the overdue premiums on the 2015-2016 policy, Mr. Kaye conveyed to Ms. Albacete that "we have received 100% support to the [new 2016-2017] policy from Reinsurers[.]"

193. In early 2016, Mr. Kaye also conveyed to Ms. Albacete that some of the underwriters may have concerns about the significant liability risk involved in flights for professional soccer teams.

194. Moreover, upon information and belief, Tokio Marine and the Reinsurers retained 100 percent of the risk on the 2016-2017 policy. In other words, BISA kept none of the risk. This arrangement—commonly known as "fronting"—allowed Tokio Marine to insure risks in Bolivia, where it was not able to directly issue policies due to local regulations and licensing requirements.

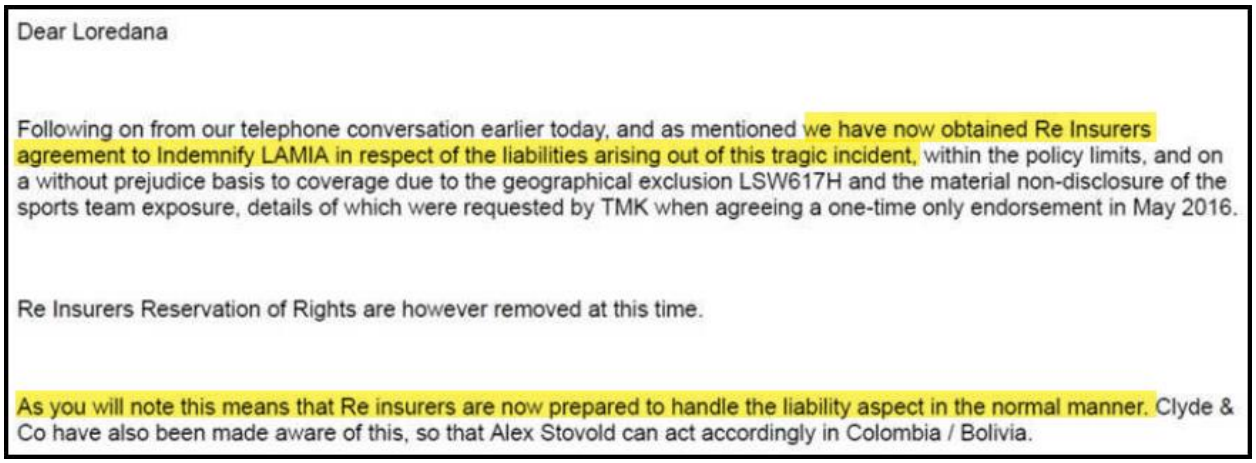
195. Pursuant to and consistent with this fronting arrangement, BISA was merely a technical conduit for an insurance relationship between LaMia on the one hand, and Tokio Marine and the Reinsurers on the other. Upon information and belief, LaMia paid insurance premiums to AON and/or its Bolivian affiliate, who would then relay those premiums to Tokio Marine and the Reinsurers. LaMia did not pay premiums directly to BISA.

196. An email sent by AON's Bolivian affiliate to Ms. Albacete in May of 2015, concerning the 2015-2016 policy, is instructive. Among other things, the email attempted to provide Ms. Albacete with a detailed breakdown of LaMia's premium obligations. Pursuant to the "Fronting Policy" that LaMia then held, its premium was a combination of (1) a "Net Reinsurance Premium" due to the reinsurers, (2) a fee owed to BISA, and (3) various minor costs and tax obligations. Notably, BISA was owed only a one percent fee. In other words, LaMia's premium overwhelmingly consisted of a "Reinsurance Premium" owed to the Reinsurers. Just as BISA's role in the insurance relationship was negligible, so, too, was its fee. Upon information and belief, a similar arrangement was in place for the 2016-2017 policy.

197. BISA likewise made no meaningful decisions regarding the placement of the 2016-2017 policy or the policy's substantive terms. In April 2016, Mr. Kaye's exchanges with Ms. Albacete made virtually no reference to BISA, and certainly not to BISA as a meaningful decisionmaker regarding the terms of the policy. Instead, Mr. Kaye negotiated entirely between LaMia and "underwriters" or "Reinsurers." He only engaged BISA once a deal had been reached between LaMia and the Reinsurers.

198. After the accident, Tokio Marine and the other Reinsurers remained the key players and decisionmakers. Entirely bypassing BISA, Tokio Marine directly engaged with LaMia and with Plaintiffs regarding claims arising out of the subject accident.

199. For example, as noted above, on December 1, 2016, an AON employee named Neil Darvill emailed Ms. Albacete to explain that the Resinsurers had effectively agreed to indemnify LaMia for the accident, without prejudice as to certain coverage issues, and to manage the claims-handling process.



Dear Loredana

Following on from our telephone conversation earlier today, and as mentioned we have now obtained Re Insurers agreement to Indemnify LAMIA in respect of the liabilities arising out of this tragic incident, within the policy limits, and on a without prejudice basis to coverage due to the geographical exclusion LSW617H and the material non-disclosure of the sports team exposure, details of which were requested by TMK when agreeing a one-time only endorsement in May 2016.

Re Insurers Reservation of Rights are however removed at this time.

As you will note this means that Re insurers are now prepared to handle the liability aspect in the normal manner. Clyde & Co have also been made aware of this, so that Alex Stovold can act accordingly in Colombia / Bolivia.

200. Consistent with Mr. Darvill's email to Ms. Albacete, Tokio Marine sought to negotiate with Plaintiffs regarding a release of their claims against LaMia arising out of the accident. These negotiations were largely undertaken by counsel for Tokio Marine, who visited Miami as part of the negotiations.

201. Although Tokio Marine—perhaps self-servingly—at times characterized these negotiations as concerning a "humanitarian fund," in all substantive and material respects they were standard negotiations concerning a release of liability for LaMia, its insurer and its Reinsurers. As Mr. Darvill's email explained, the "Re insurers [sic]" were responsible for "handl[ing] the liability aspect" arising from the accident.

COUNT I
WRONGFUL DEATH AGAINST LAMIA

202. The Plaintiffs re-allege and incorporate the allegations of paragraphs 1–201 here.

203. **Duty:** At all times material, the flight crew (including the pilots) of the subject flight were operating the aircraft in the course and scope of their employment with and on behalf of LaMia.

204. At all times material, LaMia and the flight crew (including the pilots) owed a duty to the decedents and the Plaintiffs to operate and control the aircraft, a passenger-carrying dangerous instrumentality, with the highest degree of care, and to exercise the highest degree of care to prevent injury of any kind.

205. LaMia knew or reasonably should have foreseen that the failure to exercise reasonable care in the operation, control, and maintenance of the aircraft created a broad zone of risk that posed a general threat of harm to the occupants of the subject flight.

206. **Breach:** At all times material, LaMia and its agents breached their duty of care owed to the occupants of the subject flight, including the decedents and the Plaintiffs, in some or all of the following ways:

a. Failing to properly navigate and operate the aircraft in a safe and competent manner, thereby resulting in the subject accident;

b. Failing to warn passengers on the subject flight of the dangers associated with operation of the aircraft, including failing to notify the passengers of the impending crash;

c. Failing to fly at the proper fuel levels in accordance with the flight plan, regulations of the ICAO, flight manual, or any other law or regulation that applied;

d. Failing to comply with rules, norms, and industry standards regarding proper fuel management for the aircraft and the subject flight;

e. Failing to maintain proper communication with ATC;

f. Failing to comply with rules and norms regarding proper emergency procedures and communications for the aircraft and the subject flight;

g. Failing to properly oversee and make sure that its crew was qualified to make the subject flight;

h. Failing to ensure that its crew complied with all licensing requirements and regulations;

i. Failing to maintain proper maintenance logbooks and flight operations manuals that complied with all applicable laws and regulations;

j. Failing to assure that its crew was properly trained in air traffic communications for emergency situations; and

k. Failing to protect against known or foreseeable risks and to take precautionary measures.

207. **Causation:** LaMia's negligence, through its agents, directly and proximately caused the death of the decedents and the injuries of the Plaintiffs. Furthermore, as the operator of the aircraft, a dangerous instrumentality, LaMia is liable to the decedents and the Plaintiffs for damages regardless of the degree of care exercised and is vicariously liable for the negligent acts and omissions of its agents, whom LaMia entrusted to operate the aircraft. LaMia also knew or reasonably should have foreseen that by failing to operate, control, and maintain the aircraft in a reasonable manner and in conformity with international and industry standards, there was a substantial likelihood that the occupants of the subject flight would be injured.

208. **Damages:** As a direct and proximate result of LaMia's negligence, the consequent death of the decedents, the Plaintiffs have been damaged and claim all damages to which they individually, the estates, the survivors, and the beneficiaries are entitled, including, as applicable law may provide, but not limited to:

a. Pain and suffering of the decedents prior to death;

b. Pain and suffering of the survivors, beneficiaries, and heirs of the decedents;

c. Lost society, companionship, guidance, and services of the decedents to their survivors, beneficiaries, and heirs;

d. Loss of support in money or in kind;

e. Lost net accumulations;

f. Lost value of life;

g. Funeral expenses; and

h. Any and all other damages to which the Plaintiffs, survivors, beneficiaries, or the estates of the decedents may be entitled to recover under applicable law.

WHEREFORE, the Plaintiffs demand judgment against LaMia for compensatory damages, costs, and such other relief as this Court deems appropriate, and further demand trial by jury of all issues triable as of right by a jury.

COUNT II
NEGLIGENCE AGAINST LAMIA

209. The Plaintiffs re-allege and incorporate the allegations of paragraphs 1–201 here.

210. **Duty:** At all times material, the flight crew (including the pilots) of the subject flight were operating the aircraft in the course and scope of their employment with and on behalf of LaMia.

211. At all times material, LaMia and the flight crew (including the pilots) owed a duty to the decedents and the Plaintiffs to operate and control the aircraft, a passenger-carrying dangerous instrumentality, with the highest degree of care, and to exercise the highest degree of care to prevent injury of any kind.

212. LaMia knew or reasonably should have foreseen that the failure to exercise reasonable care in the operation, control, and maintenance of the aircraft created a broad zone of risk that posed a general threat of harm to the occupants of the subject flight.

213. **Breach:** At all times material, LaMia and its agents breached their duty of care owed to the occupants of the subject flight, including the decedents and the Plaintiffs, in some or all of the following ways:

a. Failing to properly navigate and operate the aircraft in a safe and competent manner, thereby resulting in the subject accident;

b. Failing to warn passengers on the subject flight of the dangers associated with operation of the aircraft, including failing to notify the passengers of the impending crash;

c. Failing to fly at the proper fuel levels in accordance with the flight plan, regulations of the ICAO, flight manual, or any other law or regulation that applied;

d. Failing to comply with rules, norms, and industry standards regarding proper fuel management for the aircraft and the subject flight;

e. Failing to maintain proper communication with ATC;

f. Failing to comply with rules and norms regarding proper emergency procedures and communications for the aircraft and the subject flight;

g. Failing to properly oversee and make sure that its crew was qualified to make the subject flight;

h. Failing to ensure that its crew complied with all licensing requirements and regulations;

i. Failing to maintain proper maintenance logbooks and flight operations manuals that complied with all applicable laws and regulations;

j. Failing to assure that its crew was properly trained in air traffic communications for emergency situations; and

k. Failing to protect against known or foreseeable risks and to take precautionary measures.

214. **Causation:** LaMia's negligence, through its agents, directly and proximately caused the death of the decedents and the injuries of the Plaintiffs. Furthermore, as the operator of the aircraft, a dangerous instrumentality, LaMia is liable to the decedents and the Plaintiffs for damages regardless of the degree of care exercised and is vicariously liable for the negligent acts and omissions of its agents, whom LaMia entrusted to operate the aircraft. LaMia also knew or

reasonably should have foreseen that by failing to operate, control, and maintain the aircraft in a reasonable manner and in conformity with international and industry standards, there was a substantial likelihood that the occupants of the subject flight would be injured.

215. **Damages:** As a direct and proximate result of LaMia's negligence, the Plaintiffs suffered serious and permanent injuries, including bodily injury, pain and suffering, disability, mental anguish, loss of capacity for the enjoyment of life, and medical treatment. The losses are permanent and/or continuing and the Plaintiffs will suffer losses in the future.

WHEREFORE, the Plaintiffs demand judgment against LaMia for compensatory damages, costs, and such other relief as this Court deems appropriate, and further demand trial by jury of all issues triable as of right by a jury.

COUNT III
WRONGFUL DEATH AGAINST KITE

216. The Plaintiffs re-allege and incorporate the allegations of paragraphs 1–201 here.

217. At all times material, Kite was the owner of the aircraft, a dangerous instrumentality under the law.

218. At all times material, Kite was in control of who could use the aircraft and had a nondelegable obligation to ensure that the aircraft was operated safely and to entrust the aircraft to persons who would exercise reasonable care.

219. Kite authorized LaMia and its agents to operate the aircraft for the subject flight.

220. Accordingly, Kite is vicariously and legally liable for the damages resulting from the ownership and operation of the aircraft, since LaMia and its agents were operating the aircraft with Kite's knowledge and consent.

221. The subject accident was the direct and proximate cause of the decedents' deaths.

222. As a direct and proximate result of the decedents' deaths, the Plaintiffs have been damaged and claim all damages to which they individually, the estates, the survivors, and the beneficiaries are entitled, including, as applicable law may provide, but not limited to:

a. Pain and suffering of the decedents prior to death;

b. Pain and suffering of the survivors, beneficiaries, and heirs of the decedents;

c. Lost society, companionship, guidance, and services of the decedents to their survivors, beneficiaries, and heirs;

d. Loss of support in money or in kind;

e. Lost net accumulations;

f. Lost value of life;

g. Funeral expenses; and

h. Any and all other damages to which the Plaintiffs, survivors, beneficiaries, or the estates of the decedents may be entitled to recover under applicable law.

WHEREFORE, the Plaintiffs demand judgment against Kite for compensatory damages, costs, and such other relief as this Court deems appropriate, and further demand trial by jury of all issues triable as of right by a jury.

COUNT IV
NEGLIGENCE AGAINST KITE

223. The Plaintiffs re-allege and incorporate the allegations of paragraphs 1–201 here.

224. At all times material, Kite was the owner of the aircraft, a dangerous instrumentality under the law.

225. At all times material, Kite was in control of who could use the aircraft and had a nondelegable obligation to ensure that the aircraft was operated safely and to entrust the aircraft to persons who would exercise reasonable care.

226. Kite authorized LaMia and its agents to operate the aircraft for the subject flight.

227. Accordingly, Kite is vicariously and legally liable for the damages resulting from the ownership and operation of the aircraft, since LaMia and its agents were operating the aircraft with Kite's knowledge and consent.

228. The subject accident was the direct and proximate cause of the Plaintiffs' injuries.

229. As a direct and proximate result of LaMia's negligence, the Plaintiffs suffered serious and permanent injuries, including bodily injury, pain and suffering, disability, mental anguish, loss of capacity for the enjoyment of life, and medical treatment. The losses are permanent and/or continuing and the Plaintiffs will suffer losses in the future.

WHEREFORE, the Plaintiffs demand judgment against Kite for compensatory damages, costs, and such other relief as this Court deems appropriate, and further demand trial by jury of all issues triable as of right by a jury.

COUNT V
WRONGFUL DEATH AGAINST RICARDO ALBACETE

230. The Plaintiffs re-allege and incorporate the allegations of paragraphs 1–201 here.

231. At all times material, Ricardo Albacete was the owner of the aircraft, a dangerous instrumentality under the law.

232. At all times material, Ricardo Albacete was in control of who could use the aircraft and had a nondelegable obligation to ensure that the aircraft was operated safely and to entrust the aircraft to persons who would exercise reasonable care.

233. Ricardo Albacete authorized LaMia and its agents to operate the aircraft for the subject flight.

234. Accordingly, Ricardo Albacete is vicariously and legally liable for the damages resulting from the ownership and negligent operation of the aircraft, since LaMia and its agents were operating the aircraft with Ricardo Albacete's knowledge and consent.

235. The subject accident was the direct and proximate cause of the decedents' deaths.

236. As a direct and proximate result of the decedents' deaths, the Plaintiffs have been damaged and claim all damages to which they individually, the estates, the survivors, and the beneficiaries are entitled, including, as applicable law may provide, but not limited to:

a. Pain and suffering of the decedents prior to death;

b. Pain and suffering of the survivors, beneficiaries, and heirs of the decedents;

c. Lost society, companionship, guidance, and services of the decedents to their survivors, beneficiaries, and heirs;

d. Loss of support in money or in kind;

e. Lost net accumulations;

f. Lost value of life;

g. Funeral expenses; and

h. Any and all other damages to which the Plaintiffs, survivors, beneficiaries, or the estates of the decedents may be entitled to recover under applicable law.

WHEREFORE, the Plaintiffs demand judgment against Ricardo Albacete for compensatory damages, costs, and such other relief as this Court deems appropriate, and further demand trial by jury of all issues triable as of right by a jury.

COUNT VI
NEGLIGENCE AGAINST RICARDO ALBACETE

237. The Plaintiffs re-allege and incorporate the allegations of paragraphs 1–201 here.

238. At all times material, Ricardo Albacete was the owner of the aircraft, a dangerous instrumentality under the law.

239. At all times material, Ricardo Albacete was in control of who could use the aircraft and had a nondelegable obligation to ensure that the aircraft was operated safely and to entrust the aircraft to persons who would exercise reasonable care.

240. Ricardo Albacete authorized LaMia and its agents to operate the aircraft for the subject flight.

241. Accordingly, Ricardo Albacete is vicariously and legally liable for the damages resulting from the ownership and negligent operation of the aircraft, since LaMia and its agents were operating the aircraft with Ricardo Albacete's knowledge and consent.

242. The subject accident was the direct and proximate cause of the Plaintiffs' injuries.

243. As a direct and proximate result of LaMia's negligence, the Plaintiffs suffered serious and permanent injuries, including bodily injury, pain and suffering, disability, mental anguish, loss of capacity for the enjoyment of life, and medical treatment. The losses are permanent and/or continuing and the Plaintiffs will suffer losses in the future.

WHEREFORE, the Plaintiffs demand judgment against Ricardo Albacete for compensatory damages, costs, and such other relief as this Court deems appropriate, and further demand trial by jury of all issues triable as of right by a jury.

COUNT VII
WRONGFUL DEATH AGAINST MARCO ANTONIO ROCHA VENEGAS

244. The Plaintiffs re-allege and incorporate the allegations of paragraphs 1–201 here.

245. **Duty:** At all times material, Marco Antonio Rocha Venegas, in his capacity as an officer and managing partner of LaMia, was responsible for retaining and training the aircraft's flight crew; ensuring that the aircraft's flight crew had the appropriate and necessary documentation, licenses, training, and language proficiencies for the subject flight; ensuring that

the aircraft was operated in a safe and reasonable manner and that the subject flight was operated in compliance with national, international, and industry standards concerning fuel reserves; ensuring that LaMia complied with national and international regulations concerning the operation of international flights, including the subject flight; and ensuring that LaMia had the appropriate insurance coverage, licenses, and regulatory permits needed to carry out the subject flight, which involved transporting a Brazilian soccer team.

246. Marco Antonio Rocha Venegas knew or reasonably should have foreseen that the failure to exercise reasonable care in any of his duties as LaMia's officer and managing partner created a broad zone of risk that posed a general threat of harm to the occupants of LaMia's flights.

247. Specifically, Marco Antonio Rocha Venegas knew that the Plaintiffs would be occupants in the subject flight, and he knew or reasonably should have foreseen that the failure to exercise reasonable care in the execution of his duties created a broad zone of risk that posed a general threat of harm to the Plaintiffs.

248. **Breach:** At all times material, Marco Antonio Rocha Venegas breached the duty of care he owed to the occupants of the subject flight, including the decedents and the Plaintiffs, in some or all of the following ways:

a. Failing to vet, retain, train, and supervise the flight crew of the subject flight;

b. Failing to ensure that the aircraft's flight crew had the appropriate and necessary documentation, licenses, training, and language proficiencies for the subject flight;

c. Failing to ensure that the aircraft was operated in a safe and reasonable manner and that the subject flight was operated in compliance with national, international, and industry standards concerning fuel reserves;

d. Failing to ensure that LaMia complied with national and international regulations concerning the operation of international flights, including the subject flight;

e. Failing to ensure that LaMia had the appropriate insurance coverage, licenses, and regulatory permits needed to carry out the subject flight, which involved transporting a Brazilian soccer team;

f. Failing to correct LaMia's negligent practice of bypassing scheduled fuel stops;

g. Failing to warn the known and intended occupants of the subject flight of LaMia's dangerous practices, including the low fuel reserves with which LaMia flew its aircraft;

h. Failing to ensure that LaMia complied with rules and norms regarding proper emergency procedures and communications for the aircraft and the subject flight;

i. Failing to properly oversee and make sure that LaMia's crew was qualified to operate the subject flight; and

j. Failing to protect against known or foreseeable risks and to take precautionary measures.

249. **Causation:** As a direct and proximate result of Marco Antonio Rocha Venegas' negligence, the subject flight crashed, causing the deaths of the decedents and the injuries of the Plaintiffs. The deaths of the decedents and the injuries of the Plaintiffs were reasonably foreseeable to Marco Antonio Rocha Venegas, who knew or reasonably should have foreseen that his negligence was substantially likely to cause the decedents' deaths and the Plaintiffs' injuries.

250. **Damages:** As a direct and proximate result of Marco Antonio Rocha Venegas' negligence, and the consequent death of the decedents, the Plaintiffs have been damaged and claim all damages to which they individually, the estates, the survivors, and the beneficiaries are entitled, including, as applicable law may provide, but not limited to:

a. Pain and suffering of the decedents prior to death;

b. Pain and suffering of the survivors, beneficiaries, and heirs of the decedents;

c. Lost society, companionship, guidance, and services of the decedents to their survivors, beneficiaries, and heirs;

d. Loss of support in money or in kind;

e. Lost net accumulations;

f. Lost value of life;

g. Funeral expenses; and

h. Any and all other damages to which the Plaintiffs, survivors, beneficiaries, or the estates of the decedents may be entitled to recover under applicable law.

WHEREFORE, the Plaintiffs demand judgment against Marco Antonio Rocha Venegas for compensatory damages, costs, and such other relief as this Court deems appropriate, and further demands trial by jury of all issues triable as of right by a jury.

COUNT VIII
NEGLIGENCE AGAINST MARCO ANTONIO ROCHA VENEGAS

251. The Plaintiffs re-allege and incorporate the allegations of paragraphs 1–201 here.

252. **Duty:** At all times material, Marco Antonio Rocha Venegas, in his capacity as an officer and managing partner of LaMia, was responsible for retaining and training the aircraft's flight crew; ensuring that the aircraft's flight crew had the appropriate and necessary documentation, licenses, training, and language proficiencies for the subject flight; ensuring that the aircraft was operated in a safe and reasonable manner and that the subject flight was operated in compliance with national, international, and industry standards concerning fuel reserves; ensuring that LaMia complied with national and international regulations concerning the operation of international flights, including the subject flight; and ensuring that LaMia had the appropriate insurance coverage, licenses, and regulatory permits needed to carry out the subject flight, which involved transporting a Brazilian soccer team.

253. Marco Antonio Rocha Venegas knew or reasonably should have foreseen that the failure to exercise reasonable care in any of his duties as LaMia's officer and managing partner created a broad zone of risk that posed a general threat of harm to the occupants of LaMia's flights.

254. Specifically, Marco Antonio Rocha Venegas knew that the Plaintiffs would be occupants in the subject flight, and he knew or reasonably should have foreseen that the failure to

exercise reasonable care in the execution of his duties created a broad zone of risk that posed a general threat of harm to the Plaintiffs.

255. **Breach:** At all times material, Marco Antonio Rocha Venegas breached the duty of care he owed to the occupants of the subject flight, including the decedents and the Plaintiffs, in some or all of the following ways:

a. Failing to vet, retain, train, and supervise the flight crew of the subject flight;

b. Failing to ensure that the aircraft's flight crew had the appropriate and necessary documentation, licenses, training, and language proficiencies for the subject flight;

c. Failing to ensure that the aircraft was operated in a safe and reasonable manner and that the subject flight was operated in compliance with national, international, and industry standards concerning fuel reserves;

d. Failing to ensure that LaMia complied with national and international regulations concerning the operation of international flights, including the subject flight;

e. Failing to ensure that LaMia had the appropriate insurance coverage, licenses, and regulatory permits needed to carry out the subject flight, which involved transporting a Brazilian soccer team;

f. Failing to correct LaMia's negligent practice of bypassing scheduled fuel stops;

g. Failing to warn the known and intended occupants of the subject flight of LaMia's dangerous practices, including the low fuel reserves with which LaMia flew its aircraft;

h. Failing to ensure that LaMia complied with rules and norms regarding proper emergency procedures and communications for the aircraft and the subject flight;

i. Failing to properly oversee and make sure that LaMia's crew was qualified to operate the subject flight; and

j. Failing to protect against known or foreseeable risks and to take precautionary measures.

256. **Causation:** As a direct and proximate result of Marco Antonio Rocha Venegas' negligence, the subject flight crashed, causing the deaths of the decedents and the injuries of the Plaintiffs. The deaths of the decedents and the injuries of the Plaintiffs were reasonably foreseeable

to Marco Antonio Rocha Venegas, who knew or reasonably should have foreseen that his negligence was substantially likely to cause the decedents' deaths and the Plaintiffs' injuries.

257. **Damages:** As a direct and proximate result of Marco Antonio Rocha Venegas' negligence, the Plaintiffs suffered serious and permanent injuries, including bodily injury, pain and suffering, disability, mental anguish, loss of capacity for the enjoyment of life, and medical treatment. The losses are permanent and/or continuing and the Plaintiffs will suffer losses in the future.

WHEREFORE, the Plaintiffs demand judgment against Marco Antonio Rocha Venegas for compensatory damages, costs, and such other relief as this Court deems appropriate, and further demand trial by jury of all issues triable as of right by a jury.

COUNT IX
NEGLIGENT PROCUREMENT OF INADEQUATE INSURANCE AGAINST AON LIMITED UK

258. The Plaintiffs re-allege and incorporate the allegations of paragraphs 1–201 here.

259. **Duty:** At all times material, AON Limited UK, in its capacity as an insurance broker, was responsible for procuring sufficient and adequate flight insurance and reinsurance for LaMia, Kite, Mr. Albacete, and Mr. Rocha Venegas. As an insurance broker, AON had a duty to ensure that LaMia had the appropriate insurance coverage commensurate with LaMia's express requests and known or reasonably knowable business needs. *See, e.g.*, *Caplan v. La Chance*, 219 So.2d 89, 90 (Fla. 3d DCA 1969). *See also Frenz Enter., Inc.*, 696 So.2d at 872 (third party may seek to recover against tortfeasor's insurance broker after being successful in its action against tortfeasor). This duty is not derived solely from AON's contractual obligations to LaMia, but is

also a duty sounding in tort, and arising from AON's undertaking to procure insurance. *See Sheridan v. Greenberg*, 391 So.2d 234 (Fla. 3d DCA 1980). Indeed, under Florida's common law, insurance brokers owe insureds a fiduciary duty. *See Southtrust Bank v. Exp. Ins. Serv., Inc.*, 190 F. Supp. 2d 1304, 1308 (M.D. Fla. 2002); *Wachovia Ins. Servs., Inc. v. Toomey*, 994 So.2d 980, 989 (Fla. 2008). Moreover, Florida law recognizes that a third-party victim may assert a cause of action *directly* against a tortfeasor's insurance broker. *See Hamer v. Kahn*, 404 So.2d 847 (Fla. 4th DCA 1981); *see also Frenz Enter., Inc.*, 696 So.2d at 872 (third party may seek to recover against tortfeasor's insurance broker after being successful in its action against tortfeasor). Plaintiffs' claim against AON is therefore a direct claim, is not based on any assignment of LaMia's rights against AON.

260. AON Limited UK knew or reasonably should have foreseen that the failure to exercise reasonable care in any of its duties as an insurance broker to procure insurance on behalf of LaMia created a broad zone of risk that posed a general threat of harm to the occupants of LaMia's flights, among other persons.

261. Upon information and belief, at the time of issuance of the 2016-2017 policy, LaMia did not know about the geographic exclusion for Colombia and specifically about the likelihood that the insurers and/or reinsurers would deny coverage on that basis. LaMia's failure to anticipate the insurers and reinsurers' later invocation of that exclusion does not bar a claim for negligence on the part of AON. *See, e.g.*, *Miles v. AAA Ins. Co.*, 771 So.2d 607, 608–09 (Fla. 3d DCA 2000) (failure of insureds to read policy does not completely preclude recovery against broker). Moreover, our investigation reveals that prior to the accident, LaMia, AON and the Reinsurers shared an understanding that the purported Colombia exclusion would not bar coverage for flights to Colombia. Namely, in May of 2016, AON's local affiliate conveyed to LaMia that

Tokio Marine and the other Reinsurers did not believe that a flight to Medellin, Colombia would violate any terms of the policy or otherwise preclude coverage. Indeed, in the context of the May 2016 endorsement to the policy, LaMia might reasonable have understood this message to constitute formal notice that any purported geographic exclusion for Colombia had been rescinded.

262. **Breach:** To the extent that the 2016-2017 policy does not provide any coverage for Plaintiff's damages here, AON failed to secure adequate and sufficient insurance for LaMia. For example, as detailed above, AON UK Limited knew that LaMia was highly likely if not certain to fly to Colombia. It was a likely destination for LaMia's soccer-team flights and an express destination for one of LaMia's prospective flights for an Argentine soccer team scheduled to play a match in Medellin. Despite AON's knowledge of LaMia's near-certain business in Colombia, the flight insurance policy that AON UK Limited brokered and obtained on LaMia's behalf purports to contain a territorial exclusion for accidents that occur in Colombia. The policy also had insufficient policy limits to cover the foreseeable and expected claims of travelers on board LaMia flights, including the Plaintiffs.

263. AON did not fully explain the purported Colombia exclusion to LaMia or its impact on coverage. Such explanation was warranted given that the exclusion was a notable change from LaMia's prior AON-brokered insurance policies. The policy also had insufficient policy limits to cover the foreseeable and expected claims of travelers on board LaMia flights, including our clients. Although LaMia was aware of the policy's limits before entering into the policy contract, AON failed to properly advise LaMia of the extremely high risk of an excess judgment given that LaMia's business consisted of flights for soccer teams, which almost by definition entail a large number of passengers with significant incomes.

264. **Causation:** Had AON properly complied with its aforementioned duties, it would have procured an insurance policy that was at least commensurate with LaMia's most basic needs, *e.g.*, coverage for flights in South American countries. The flight insurance policy AON UK Limited ultimately obtained left LaMia exposed in numerous respects, and it deprived the Plaintiffs of obtaining compensation for their significant injuries and damages. Moreover, had AON properly advised LaMia of the risks of an excess judgment, LaMia may well have never operated the subject flight at all.

265. **Damages:** Because of AON UK Limited's negligence in negotiating and obtaining an insufficient insurance policy on behalf of LaMia, both LaMia and Plaintiffs have suffered significant harm. Under Florida law, Plaintiffs are entitled to recover from AON for compensatory damages.

WHEREFORE, the Plaintiffs demand judgment against AON UK Limited for compensatory damages, costs, and such other relief as this Court deems appropriate, and further demand trial by jury of all issues triable as of right by a jury.

COUNT X

CLAIM AGAINST TOKIO MARINE AND THE OTHER REINSURERS TO ENFORCE THE CONSENT JUDGMENTS AGAINST LAMIA

266. The Plaintiffs re-allege and incorporate the allegations of paragraphs 1–201 here.

267. The Plaintiffs assert this count in the alternative to Count IX against AON.

268. In Florida, when a tort victim obtains a judgment against an alleged tortfeasor/insured, the victim may then assert a claim to collect on that judgment from the tortfeasor's insurer. Such claims have three basic elements that the tort victim/plaintiff has the burden of proving: the existence of coverage, the insurer's wrongful refusal to defend the claim,

and the reasonableness of the settlement between the tort victim and the alleged tortfeasor. *See U.S. Fire Ins. Co. v. Hayden Bonded Storage Co.*, 930 So.2d 686, 691 (Fla. 4th DCA 2006). And generally speaking, when the tort victim prevails on such a claim, it is entitled to the full amount of the judgment, rather than to the limits of the policy.

269. Importantly, there is no requirement that the insured/tortfeasor formally assign its rights against its insurers to the tort victim. *See Rosen v. Fla. Ins. Guar. Ass'n*, 802 So.2d 291, 294 (Fla. 2001). Moreover, the fact that the plaintiff/tort victim may covenant not to execute on any judgment against the insured/tortfeasor does not extinguish the insured/tortfeasor's liability, nor does it bar the plaintiff/tort victim's cause of action against the insurer. *See id.* at 295.

270. The Plaintiffs and LaMia entered into a settlement agreement, which provided for entry of a judgment in favor of Plaintiffs and against LaMia in amounts totaling $844 million. As part of that agreement, LaMia admitted liability.

271. The issues of liability and the full extent of the Plaintiffs' damages have been resolved in this binding settlement agreement, and thus our clients' claims against LaMia's insurers are ripe and have accrued.

272. At all material times, LaMia's insurers and reinsurers have refused to defend claims against LaMia arising from the Chapecoense crash.

273. Under Florida law, an insurance company "acts at its peril in refusing to defend its insured and will be held responsible for the consequences." *Fla. Farm Bureau Mut. Ins. Co. v. Rice*, 393 So.2d 552, 556 (Fla. 5th DCA 1980).

274. Tokio Marine and the John Doe Reinsurers acted as LaMia's true insurers on the 2016-2017 policy: they negotiated the terms of the policy, they held all the risk on the policy, they

solicited and received information about LaMia's activities even after the policy was already in place, and they assumed full responsibility for claims-handling under the policy after the accident.

275. Florida courts recognize that reinsurers may assume liabilities typically borne by insurers in several scenarios, among others: where the reinsurer assumes the insurer's liabilities, *see Banco Ficohsa v. Aseguradora Hondurena,* S.A., 937 So.2d 161, 165 (Fla. 3d DCA 2006), *see also* Restatement (Second) of Torts § 324A; and where the insurer acts as the agent of the reinsurer, *see Law Offices of David J. Stern P.A. v. SCOR Reinsurance Corp.*, 354 F. Supp. 2d 1338, 1344 (S.D. Fla. 2005).

276. Here, Tokio Marine and the John Doe Reinsurers assumed the duties and liabilities of BISA. Tokio Marine and the John Doe Reinsurers also assumed a principal-agent relationship with BISA, wherein BISA was merely a conduit for the Reinsurers' activities and interests related to LaMia's insurance policy, and BISA acted for and on behalf of the Reinsurers.

277. Accordingly, Tokio Marine and the John Doe Reinsurers are liable to LaMia and to Plaintiffs to the same and full extent of BISA's liabilities, and had legal duties to act in good faith toward LaMia.

278. Specifically, Tokio Marine and the John Doe Reinsurers had a good-faith duty to LaMia to properly handle the claims against LaMia arising from the subject accident. Among other things, Tokio Marine and the John Doe Reinsurers had duties to defend the claims against LaMia, to properly investigate those claims, and to reasonably attempt to settle those claims within the applicable policy limits.

279. Plaintiffs are entitled to recover the full extent of these excess judgments.

280. The 2016-2017 policy provided coverage for claims arising from the subject accident, including the claims settled between LaMia and the Plaintiffs and which are now subject

to final judgments of this Court. To the extent that BISA, Tokio Marine, and/or the John Doe reinsurers assert the geographic exclusion as a coverage defense, these Defendants could have and should have nevertheless defended the claims against LaMia pursuant to a reservation of rights as to this purported coverage defense. Moreover, the May 2016 endorsements and the May 2016 emails between Ms. Albacete and AON's Bolivian affiliate make clear that all relevant insurance entities did not view a flight to Medellin as violating the terms of the policy and indeed that the insurers and reinsurers likely rescinded the exclusion for Colombia.

281. To the extent that BISA, Tokio Marine, and/or the John Doe reinsurers assert other coverage defenses, these Defendants could have and should have nevertheless defended the claims against LaMia pursuant to a reservation of rights as to those purported coverage defenses. In any event, any other purported coverage defenses are also without merit. For example, any claim that coverage was not available under the policy based on a purported lapse in premium payment is without merit because, among other things: (1) the policy does not provide for automatic cancellation of coverage based on a lapse in premium payments; (2) the policy contains provisions that require opportunity to make up any late payments; and (3) the policy contains provisions requiring written notice before coverage is cancelled or terminated. Neither BISA nor the reinsurers advised LaMia that coverage would be cancelled based on any purported lapse in payment prior to the accident, and did not advise aviation authorities of any lapse in coverage, as they had done for the 2015-2016 policy.

282. Likewise, any claim that LaMia violated the terms of the policy because a flight for a soccer team was an aggravated liability risk has no foundation in the policy language, and in any event was repeatedly waived by BISA and the reinsurers, who were keenly aware both before and

after the issuance of the policy that LaMia's business consisted almost exclusively of flights for soccer teams.

283. Finally, any claim that the conduct of the pilots was criminal or would otherwise void coverage under the policy is without merit and without foundation in the policy language.

284. Tokio Marine and the other reinsurers' refusal to defend the claims against LaMia was wrongful. Not only did Tokio Marine and the other reinsurers have an affirmative duty to defend the claims, but they also strove to circumvent their duties by settling their claims under the misleading guise of a "humanitarian assistance fund." Then, having had an opportunity to settle the claims against LaMia for the reasonable amount of $25 million—and indeed having received express demands from our clients to do so—Tokio Marine and the reinsurers again refused to settle or defend the claims.

285. Tokio Marine's wrongful and bad-faith conduct went further. Namely, Tokio Marine's made representations to our clients and other claimants in the LaMia air disaster that Tokio Marine knew or reasonably should have known were false. For example, Tokio Marine has repeatedly represented that coverage under the policy was automatically suspended or terminated based on a brief lapse in LaMia's premium payments, but this coverage defense is entirely without foundation in the policy itself.

286. The settlement amounts reflected in the *Coblentz* agreements and consent judgments against LaMia were reasonable. Although a detailed description of each case is beyond the reasonable scope of this witness statement, suffice it to say that the vast majority of our clients' decedents were professional soccer players in their prime years, with high incomes and in many cases even higher earning prospects. Most of them tragically left behind a significant number of

survivors, including wives and children. Accordingly, the damages suffered by most of our clients would conservatively be in excess of $10 million in any given individual case.

287. The settlement amounts also reflect the culmination of good-faith negotiations and discussions between our firm, on behalf of our clients, and attorneys and representatives of LaMia. These negotiations took place over several months, specifically addressed the settlement amounts for each of our clients' cases, and ultimately resulted in final agreements that were enforced by the Court in Miami-Dade County and reflected in final consent judgments entered by that Court.

288. In short, as a result of Tokio Marine and the Other Reinsurers' breaches of their duties to LaMia, LaMia is now exposed to judgments significantly in excess of the insurance policy limits. And under Florida law, our clients are entitled to recover the full extent of these excess judgments.

WHEREFORE, the Plaintiffs demand judgment against Tokio Marine and the John Doe Reinsurers for all damages available, including the full extent of their damages as negotiated in the settlement agreement entered into with Tokio Marine's insured and reflected in the judgments entered against LaMia. The Plaintiffs request a trial by jury.

Dated: October 6, 2021

Respectfully submitted,

/s/ Steven C. Marks
Steven C. Marks (FBN 516414)
smarks@podhurst.com
Kristina M. Infante (FBN 112557)
kinfante@podhurst.com
PODHURST ORSECK, P.A.
One S.E. 3rd Avenue, Suite 2300
Miami, FL 33131
Telephone: (305) 358-2800
Fax: (305) 358-2382

Attorneys for Plaintiffs

On behalf of: (6) – (48) the individuals listed at Schedule 1 to the Re-Re-Amended Claim Form
First Statement of S. Marks
Exhibit: SCM1
Date: 30 June 2021
CL-2020-000467

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

BETWEEN:

AON UK LIMITED

Claimant

- and -

(1) LAMIA CORPORATION SRL (ALSO KNOWN AS LÍNEA AÉREA MÉRIDA INTERNACIONAL DE AVIACIÓN D/B/A LAMIA CORPORATION S.R.L)

(2) KITE AIR CORPORATION LIMITED

(3) MARCO ANTONIO ROCHA VENEGAS

(4) RICARDO ALBERTO ALBACETE VIDAL

(5) LAMIA C.A. (PREVIOUSLY KNOWN AS LÍNEA AÉREA MÉRIDA INTERNACIONAL DE AVIACIÓN C.A)

(6) – (48) THE INDIVIDUALS LISTED AT SCHEDULE 1 TO THE RE-RE-AMENDED CLAIM FORM

Defendants

FIRST WITNESS STATEMENT OF STEVEN CRAIG MARKS

I, STEVEN CRAIG MARKS, of Podhurst Orseck P.A., C/O SunTrust International Center, One S.E. 3rd Avenue, Suite 2300, Miami, Florida, 33131, United States of America, state as follows:

1. I am STEVEN CRAIG MARKS, the Managing Partner of PODHURST ORSECK, P.A. ("Podhurst"), a Miami-based law firm. I have practiced law for over 35 years, having been admitted to the Florida bar in 1985. I am duly authorised to make this

witness statement on behalf of (6) – (48) THE INDIVIDUALS LISTED AT SCHEDULE 1 TO THE RE-RE-AMENDED CLAIM FORM.

2. I make this witness statement in support of the resistance of (6) – (48) THE INDIVIDUALS LISTED AT SCHEDULE 1 TO THE RE-RE-AMENDED CLAIM FORM to the Claimant's application for an anti-suit injunction.

3. The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

4. There is now produced and shown to me a paginated bundle of true copy documents marked [SCM1/**]. All references to documents in this statement are to Exhibit [SCM1/**] unless otherwise stated.

5. This witness statement concerns various issues related to two proceedings: (a) CL-2020-000522 – Tokio Marine Kiln Syndicates Limited & Others v. Bisa Seguros y Reaseguros S.A. & others; and (b) CL-2020-000467 – AON UK Limited v. LaMia Corporation S.R.L (also known as Linea Aerea Merida Internacional de Aviacion d/b/a LaMia Corporation S.R.L.) & others.

6. One of my areas of specialty and expertise is aviation law. I have represented clients in hundreds of aviation disasters in multiple jurisdictions for over thirty years, and I have handled litigation arising out of numerous major commercial airline crashes.[1]

7. Because of my expertise in aviation litigation, I have been selected to act as lead counsel, appointed court counsel and/or counsel representing victims in several major airline crash cases. Most recently, I was appointed by a federal court in Chicago, Judge Alonso (U.S. District Judge for the Northern District of Illinois), to be one of three lead counsel on the Plaintiffs' Executive Committee in litigation arising from the crash of Ethiopian Airlines Flight 302.

8. My law firm, Podhurst Orseck, has, for more than fifty years, specialized in aviation, mass tort, and products liability, among other areas of law. Since its inception, neither Podhurst nor its attorneys have ever been found in violation of any bar ethics rule or otherwise been sanctioned by any legal or bar authority. The firm takes pride in a rigorous and ethical approach to its work, and Podhurst attorneys have consistently been appointed to leadership roles of legal organizations at the local, regional, national and even international level. I am a member of the Legal Advisory Committee for the International Civil Aeronautical Organization. My partners have served on the American Bar Association's Standing Committee on the Judiciary, commissions to assist governors and Presidents with judicial nominations, and the U.S. Supreme Court Advisory Committee on Criminal Rules, among other bodies.

9. I understand that in the two above-captioned proceedings, AON UK Limited ("AON") and Tokio Marine Kiln Syndicates Limited ("Tokio Marine") have presented argument to the High Court of England and Wales concerning litigation that

[1] My curriculum vitae, which lists most of the major aviation disaster cases I have handled in my career, as well as my appointments as lead counsel in several matters arising out of mass casualty events, is included in the paginated bundle of documents submitted with this statement. [SCM1/1-3].

Podhurst initiated in the state trial court in Miami, Florida on behalf of several victims of the crash of LaMia Flight 2933.

10. I specifically understand that AON and Tokio Marine contend that the claims that our clients intend to assert against them in the Miami proceedings are wholly without merit and/or doomed to fail, and accordingly were brought for the purpose of vexation and/or harassment. I further understand that AON and Tokio Marine have sought and obtained interim anti-suit injunctions on this basis, the apparent goal of which is to bar our clients from asserting their claims in Miami.

11. This witness statement specifically addresses issues relevant to the two above-captioned proceedings, including but not limited to (a) the factual background of the LaMia Flight 2933 crash, (2) the legal and factual basis of our clients' causes of action against AON and Tokio Marine, (3) and the history of Podhurst's representation of our clients in this matter.

12. I have represented our clients in this matter for several years, and I respectfully submit this witness statement as the senior and lead Podhurst attorney acting on behalf of the victims of the LaMia air disaster.

FACTUAL BACKGROUND

13. To date, AON and Tokio Marine have not made evidentiary disclosures or productions of documents to our clients. The factual background section of this affidavit, therefore, is necessarily based only on information that Podhurst has been able to ascertain without those documents.

I. LaMia's business and insurance coverage

14. Our investigation of this case indicates that Línea Aérea Mérida Internacional de Aviación d/b/a LaMia Corporation S.R.L. ("LaMia") and/or its predecessor corporations began working with AON in 2011 at the latest. Specifically, AON served and purported to serve as LaMia's agent, brokering and helping to arrange for the placement of several insurance policies for LaMia.

15. Based upon our investigation, AON arranged for the placement of several insurance policies covering one-year periods roughly spanning all or part of calendar years 2012 through 2017. One of these policies—hereinafter the "2015-2016 policy"—had a policy period spanning calendar years 2015 and 2016. Specifically, and upon information, the 2015-2016 policy was issued by BISA Seguros y Reaseguros, S.A. ("BISA"), was identified by the policy numbers 109-910624-2008 10 334 and AF1539901, and had a policy period of April 10, 2015 through April 10, 2016.

16. In or around September of 2015, LaMia fell behind on premium payments on the 2015-2016 policy. Loredana Albacete, a Miami-resident LaMia official acting on LaMia's behalf, explained to AON via email that the company was experiencing a temporary financial strain and asked AON to help arrange an extension of the premium payment deadlines. [SCM1/145-148]. Simon Kaye, an AON employee, explained to Ms. Albacete that the reinsurers of the 2015-2016 policy, who held all

or materially all of the risk on the policy, were becoming impatient with the delayed payments. [SCM1/145].

17. Finally, on January 5, 2016, AON communicated to LaMia that as a result of the overdue premium payments, the reinsurers intended to cancel the 2015-2016 policy. Specifically, he wrote that "[w]e have spoken to Reinsurers . . . and it is with regret that we have to advise that the Reinsurance of BISA is cancelled effective midnight 5th January 2016. Reinsurers have advised that they will reinstate coverage however subject to settlement of the full outstanding premium, being the third and fourth installment of the policies." [SCM1/143].

18. On January 11, 2016, the Bolivian aviation authority (officially known by its Spanish-language name Direccion General de Aeronautica Civil) grounded LaMia's aircraft, apparently due to the fact that LaMia lacked the requisite insurance coverage. Upon information, the aviation authority learned of LaMia's lapse in coverage through communications from AON, BISA, Tokio Marine, the Other Reinsurers, and/or their agents, employees, and/or affiliates.

19. Shortly after the 2015-2016 policy was cancelled, AON and LaMia began discussions about renewing or reactivating the cancelled policy. For example, on or around January 13, 2016, Mr. Kaye wrote to Ms. Albacete to inquire about the past-due premium payments on the previous insurance policy and discuss renewing coverage. [SCM1/142].

20. On or around February 5, 2016, Mr. Kaye wrote to Ms. Albacete explaining that the reinsurers would likely be unwilling to reinstate coverage on the 2015-2016 policy, and that a new policy would need to be negotiated. [SCM1/139]. Mr. Kaye also explained that the issuance of a new policy was contingent on LaMia's payment of the overdue premiums on the 2015-2016 policy.

21. Over the next several weeks, Mr. Kaye and Ms. Albacete engaged in extensive discussions about, among other topics: (a) LaMia's operations and business prospects; (b) LaMia's insurance needs; (c) the resolution of LaMia's overdue premium obligations on the prior policy; and (d) the placement of new insurance coverage for LaMia. These exchanges took place largely or exclusively over email. On at least some emails, Ms. Albacete and Mr. Kaye also copied other employees or principals of AON and LaMia, as well as employees of AON's Bolivian affiliate.

22. As Ms. Albacete explained to Mr. Kaye, LaMia was facing a difficult chicken-and-egg problem: it could not legally operate flights without insurance coverage, but it would struggle to pay insurance premiums without first securing new flight business and new revenue. [SCM1/161].

23. In part to resolve this problem, Ms. Albacete provided Mr. Kaye extensive details about LaMia's business leads and prospects. Namely, Ms. Albacete repeatedly conveyed that LaMia had negotiated lucrative contracts which would help it pay the overdue premiums. [SCM1/158-159]. During this time period, the overwhelming majority of LaMia's business prospects were flight contracts with South American soccer teams.

24. On or around April 1, 2016, Ms. Albacete wrote Mr. Kaye explaining that LaMia had exciting business prospects with South American soccer teams and that they urgently needed insurance coverage because the soccer season would soon

commence. [SCM1/160]. Mr. Kaye responded that LaMia would have to pay the premiums owed to the Reinsurers in order to obtain a new policy.

25. Over the following days, discussions between Mr. Kaye and Ms. Albacete advanced such that LaMia appeared willing and able to pay the overdue premiums on the 2015-2016 policy, which would then allow LaMia to obtain a new policy. On or around April 5, Mr. Kaye informed Ms. Albacete that the exact payment "due to AON UK" for the overdue premiums was $46,759.08. [SCM1/169]. Upon information and belief, LaMia made a payment to AON in that amount shortly thereafter, under the direction of Ms. Albacete.

26. With the overdue premiums having been paid, Ms. Albacete and Mr. Kaye proceeded to discuss the placement of a new policy. [SCM1/168]. The new policy—identified by the policy numbers AF1639901 and B0823AF1639901—had a policy period of April 10, 2016 through April 10, 2017 (hereinafter the "2016-2017 policy"). The Policy was insured by BISA and reinsured by Tokio Marine as well as the Other Reinsurers. It provided $25 million in personal injury liability coverage. Unless otherwise indicated, references to the insurance policy at issue refer to this policy. A certified translation of the policy is included in the paginated bundle submitted along with this statement. [SCM1/4-44].

27. As noted in more detail below, the 2016-2017 policy was amended about one month later, on or around May 12, 2016.

II. AON, BISA, Tokio Marine, and the Other Reinsurers' knowledge of LaMia's business operations and coverage needs

28. Throughout Mr. Kaye and Ms. Albacete's extensive discussions regarding the 2016-2017 policy, Ms. Albacete repeatedly explained to Mr. Kaye that the vast majority—if not the entirety—of LaMia's business consisted of and would in the future consist of flying South American soccer teams. [SCM1/158-162].

29. In South America, although each country has its own domestic soccer league, professional soccer teams commonly play cross-border matches. The continent's two highest-profile tournaments—the Copa Sudamericana (the South American Cup) and the Copa Libertadores (the Liberators' Cup)—are international in nature, and feature dozens of cross-border matches each year. These tournaments are respectively the analogues of the Europa League and the Champions League.

30. Accordingly, when LaMia was courting business from South American soccer teams, it was expressly and implicitly courting business for international flights between South American countries.

31. LaMia's express communications to AON regarding the soccer team business began in July of 2015 at the latest, when Ms. Albacete explained in an email to AON that LaMia's operations would involve flying soccer teams to their games. In that email, Mr. Albacete specifically asked AON "what is the best way to insure the type of operations that we will be conducting? To give you an example, we are being requested to fly a soccer team to 3 different games in Brazil." [SCM1/153].

32. Later, LaMia expressly stated that it was seeking to fly soccer teams internationally across different South American countries. For example, in January of 2016, Ms. Albacete wrote to Mr. Kaye that LaMia was in negotiations to fly Club Olimpia, a

professional soccer team based in Asuncion, Paraguay, to matches in Venezuela and Ecuador. [SCM1/141-142].

33. On or around March 30, 2016, Ms. Albacete wrote to Mr. Kaye explaining that LaMia had negotiated a deal to fly a soccer team on a round-trip flight between Bolivia and Venezuela. [SCM1/161]. Ms. Albacete also explained that LaMia would seek business involving the Copa Sudamericana, a continent-wide tournament.

34. In 2016, the participants in the Copa Sudamericana included six teams from Argentina, four from Bolivia, eight from Brazil, four from Chile, five from Colombia, four from Ecuador, four from Paraguay, four from Peru, four from Uruguay, and four from Venezuela. Dozens of matches were scheduled and ultimately played across all of these countries.

35. In her communications with Mr. Kaye, Ms. Albacete also specifically referenced and described potential flights involving Bolivian soccer team The Strongest, [SCM1/158-159] and Argentinian soccer team Rosario Central, [SCM1/51], among others. In 2015 and 2016, these teams collectively played matches in virtually every South American country, including Brazil, Argentina, Ecuador, Colombia, and Venezuela.

36. Indeed, Ms. Albacete expressly communicated to Mr. Kaye LaMia's hopes of becoming a go-to airline for soccer teams flying across South America. In one email, she told Mr. Kaye that she was "secretly hoping that Bolivian team beats Venezuela so that we can continue to fly them around the continent." [SCM1/255]. In another, she wrote that although LaMia had been initially contracted for only one flight "transporting a futbol team from Bolivia to Venezuela and back to Bolivia," the carrier was "working on signing an operation contract for a longer period of time." [SCM1/161]. In the meantime, Ms. Albacete explained that LaMia had "several options" to sign these sorts of "one trip deals" for transporting South American soccer teams, and that "[t]he Southamerican cup has many games coming and we are the perfect candidates to fly them."

37. In sum, both before and after placement of the 2016-2017 policy, AON was intimately aware of LaMia's operations, and specifically of the fact that LaMia's business would include flights to Colombia.

38. Upon information and belief, Tokio Marine and the other reinsurers of the 2016-2017 policy were also at least partly aware of LaMia's business operations and its focus on soccer team flights. Email communications between Mr. Kaye and Ms. Albacete make reference to exchanges between AON and "underwriters" and Reinsurers"—presumably including Tokio Marine—regarding LaMia's flights for professional sports teams.

39. For example, in July of 2015, Mr. Kaye explained that LaMia's soccer team business was a topic that AON would need to discuss with the Reinsurers. In an email dated July 29, 2015, Mr. Kaye explained, "regarding sports teams," AON would "need to ensure that underwriters are aware of this exposure and obtain their agreement prior to contracts/flights commencing." Mr. Kaye noted that "underwriters can be uncomfortable with certain high profile sports teams due to the payouts they would be expected to pay in the event [of] a loss," and thus AON would

"run this by underwriters and ensure there are no issues and coverage is in full force and effect." [SCM1/524-525].

40. Later, in January 2016, Mr. Kaye again explained that he would need to discuss "the sports team risk" with underwriters—referring to LaMia's prospects of flying Paraguayan soccer team Olimpia—"as this can be a sensitive area." [SCM1/100].

III. The May 2016 emails and endorsements

41. The 2016-2017 policy underwent significant amendment in May 2016. The relevant endorsements appear to be dated May 12, 2016 and appear to have been prompted by an email from LaMia inquiring about flying to Colombia. [SCM1/51].

42. On or around May 11, 2016, Ms. Albacete wrote to AON's Bolivian affiliate explaining that "On May 17, 2016, we are going to take the soccer team Rosario Central to the game in Medellin, and we will be returning on May 19, 2016. In reference to the note of 'geographic limitations' LSW617H [a geographic exclusion form] where Colombia and Peru are excluded, we would like to know how to proceed in order to be in compliance." [SCM1/51].

43. On or around May 12, 2016, AON's local affiliate wrote to Simon Kaye, advising that "Loredana informed they will be taken a football team to Medellin, Colombia on May 17th, returning the 19th. As you may recall, the Geographical Limits of the Policy States: Worldwide, but subject to LSW617H: b) Colombia, Peru…. Would you please provide us with the LSW617H clause? Will they be able to fly to Colombia?" [SCM1/48].

44. On or around May 12, 2016, several endorsements to the policy were executed. One endorsement provided for "Revision of Premium and/or Geographic Limits." Specifically, it provided that "Insurers may give notice for revision of premium and/or geographic limits. Such notice will be effective upon expiration of eight days from 23:59 GMT the day the notice is given." [SCM1/38].

45. Immediately after the endorsement providing for revisions to geographic limits was executed, on or around May 13, Mr. Kaye wrote back to AON's local affiliate: "Can confirm underwriters have noted the below flights and destination. They have requested the following information: Name of the team that is being flown? How many flights have now been performed? Have all the flights been for sports teams?" That same day, AON's Bolivian affiliate replied to Ms. Albacete's email regarding the Rosario Central trip to Colombia, explaining that "[b]y this message, we confirm that the reinsurers have taken note of the trip to Colombia. Only for informational purposes, they need to know the following: the name of the team to be transported, how many flights have been performed to date, and whether all the flights were for soccer teams."[2] In other words, the Reinsurers provided notice in writing that they approved of a revision to the policy's geographic limits, affirming that a trip to

[2] Unlike Ms. Albacete's emails with Mr. Kaye, which were in English the emails regarding the Rosario Central flights to Medellin were in Spanish. Accordingly, the text of those emails has been translated for purposes of this Witness Statement.

Colombia *would* come within the policy's coverage. Ultimately, Ms. Albacete replied that the deal with Rosario Central had fallen through. [SCM1/51]

46. The May 2016 emails make clear that AON *and* the reinsurers were aware that LaMia was at least planning to fly soccer teams to Colombia, and that they expressly considered those flights *not* to run afoul of the 2016-2017 policy's geographic exclusion. Indeed, the information sought by the reinsurers through AON appears more concerned with the extent and nature of LaMia's flights for sports teams, rather than with the geographic destinations of LaMia's flights.

47. Moreover, the May 2016 endorsement, read together with the May 2016 emails, indicates that BISA and/or the reinsurers rescinded the exclusion for Colombia on May 13, 2016, consistent with the "Revision of Premium and/or Geographic Limits" provision of the endorsement.

48. The same "Revision of Premium and/or Geographic Limits" provision of the endorsement also provides that if an insurer wishes to terminate the extension of coverage provided in the clause, it must provide eight-days' notice: "[t]he coverage provided through this Clause may be terminated by the Insurers giving notice to be effective upon expiration of eight days from 23:59 GMT the day the notice is given." To our knowledge, the insurers never provided notice that they rescinded the extension of coverage over flights to Colombia. [SCM1/38].

49. Later, in testimony before a Brazilian Senate committee, LaMia principal Ricardo Albacete explained that AON, BISA, and LaMia's Reinsurers were informed—in writing—about flights to and over Colombia.

50. I understand that AON has represented to this Court that the May 2016 emails reflect that LaMia was aware of a purported requirement to advise and seek approval of every flight to or over Colombia. But the Policy itself does not provide for any such one-off grants of coverage for specific flights. Instead, the policy—as amended on May 12, 2016—provides for revision of the geographic limits themselves. I also understand that AON has represented that Tokio Marine approved the Rosario Central flights on a one-off, per-flight basis. But even if that were true, this was not communicated to LaMia. And again, such a single-flight grant of coverage would be without basis in the policy.

51. In addition, throughout AON's extensive discussions with Ms. Albacete, AON was aware that she lived in and conducted business out of Miami. For example, in December 2016, an AON employee named Neil Darvill wrote to Ms. Albacete regarding a potential meeting in Miami. [SCM1/46].

IV. The crash of LaMia Flight 2933

52. Sometime in 2016, Chapecoense, a Brazilian professional soccer team (officially called Associação Chapecoense de Futebol), contracted with LaMia to transport players, staff, and others from Brazil to Colombia for a soccer match. Specifically, the scheduled match was to take place in the city of Medellin. The flight was to land at the same airport as the previously-discussed Rosario Central flight, and indeed

Chapecoense's match was against the same rival—Atletico Nacional—that Rosario Central played against in May 2016.

53. On November 28, 2016, the flight departed from Santa Cruz, Bolivia, with 73 passengers and four crew members. The destination airport for this flight was the international airport serving Medellin, which is located in the nearby town of Rionegro.

54. Tragically, the flight crashed in a mountainous region near the Medellin airport. The only survivors were one crew member, three players, and two other passengers who were on board, all of whom suffered serious injuries.

55. The official report from Colombia's civil aviation agency, Aerocivil, found the causes of the crash to be fuel exhaustion due to an inappropriate flight plan by the airline, and certain erroneous decisions by the pilots, including a failure to declare an emergency after fuel levels became critically low. [SCM1/417-523].

V. Post-accident insurance disputes and claims handling

56. After the accident, discussions commenced between LaMia, AON, BISA and the Reinsurers concerning insurance coverage for claims arising from the accident.

57. Notably, it was Tokio Marine and the other Reinsurers—not BISA—who took primary responsibility for most or all of the post-accident claims handling.

58. For example, shortly after the accident, on December 1, 2016, an AON employee named Neil Darvill emailed Ms. Albacete to explain that the Resinsurers had agreed "to Indemnify LaMia" in relation to the accident, without prejudice as to certain coverage issues, and that the Reinsurers "are now prepared to handle the liability aspect in the normal manner."

59. Nevertheless, based on our investigation of this matter, Tokio Marine began arranging for a flat denial of coverage in this matter shortly after the accident. Namely, on February 20, 2017, Tokio Marine and BISA executed a "Deed of Release." This Deed provided that "BISA shall decline coverage under the Insurance." It also explained that "Reinsurers wish to establish . . . a humanitarian assistance fund for the benefit of the 68 Passengers affected by the accident" and that "[i]n consideration of this, BISA now wishes to fully and irrevocably release and waive" any rights it had against Tokio Marine under the reinsurance contract.

60. In other words, the "Deed of Release" purported to be a type of contract, in which BISA agreed to deny coverage for the passengers' claims, in exchange and consideration for Tokio Marine setting up a "humanitarian assistance fund" for the passengers. Incidentally, the Deed provided that this "humanitarian assistance fund" would be initially funded at $11.22 million, with a cap of funding in the amount of $25 million, the exact amount of liability coverage under the 2016-2017 policy.

61. In several respects, the "Deed of Release" is a document of dubious legal weight and effect, at least in Florida. Transparently, the Deed reflects an arrangement that inured only to the benefit of BISA and the Reinsurers, and clearly to the detriment of LaMia and the passengers. Specifically, the Deed effectively requires BISA to

violate its statutory and common-law duties to its insured, LaMia, to properly investigate and defend claims arising from the subject accident.

62. Moreover, the Deed effectively delegates to Tokio Marine all aspects of claims-handling and empowers Tokio Marine to settle the passengers' claims for the exact amount of the 2016-2017 policy's liability limits, under the guise of a "humanitarian assistance fund."

63. The day after the Deed was executed, on February 21, BISA formally informed LaMia that it was denying coverage for the accident. [SCM1/303-304]. BISA cited five grounds to support its denial of coverage and refusal to defend its insured, LaMia:

i. Colombia was a country listed in the insurance policy's geographic exclusion.

ii. At the time of the accident, LaMia was not current on its premium payments.

iii. LaMia failed to comply with its "due diligence" obligation under the policy because it is evident that the cause of the accident was pilot negligence in failing to have sufficient fuel.

iv. LaMia had "aggravated the risk" to its insurer because it should have communicated the fact that it was transporting a professional sports team.

v. The cause of accident fell within the exclusion for "illegal or criminal acts" done at the direction of LaMia's board of directors.

64. On June 2, 2017, despite its February 2017 letter denying coverage in part on the grounds that the policy had lapsed due to LaMia's failure to pay its premium on time, BISA represented to Bolivian authorities that the policy *was* active and valid at the time of the tragedy. [SCM/305-306 (Spanish); 526-528 (English)]. In the June 2 letter signed by BISA executives, Alejandro Mac Lean and Sabrina Bergamaschi, BISA answered several interrogatories that had been posed to it by Bolivia's Fiscal Authority, which oversees the insurance industry. The Bolivian Fiscal Authority sought information as to whether there was insurance coverage for the accident, whether insurance had lapsed due to LaMia's delayed premium payment, and whether BISA had informed the Bolivian authorities about LaMia's lapse in coverage prior to the accident, as it was required to do if coverage had indeed lapsed. The letter includes the following statements on the part of the BISA executives:

i. The policy was not canceled on the date of the accident. If the insurance company had decided to cancel the policy, for any reason whatsoever, it would have proceeded to rescind the contract, granting 15 days' notice prior to the cancellation date in accordance with Article 1023 of the Commercial Code, which procedures were not applicable because the insurance company did not cancel the policy.

ii. It was not until *after* the accident, with the participation of the Lead Reinsurer, that non-coverage of the claim was analyzed and determined due to non-compliance with the terms and conditions of the policy, including the late payment of the premium.

iii. In response to an interrogatory asking BISA to explain whether it had communicated with the Bolivian authorities regarding LaMia's delayed premium payment, BISA responded that the insured had a "pending payment" of the second installment of the premium of the flight insurance policy, and that with the "due support of the Lead Reinsurer," the decision had been made *not* to cancel the policy, and thus, it was not appropriate to notify the Bolivian authorities about LaMia's overdue premium payment.

iv. Finally, BISA confirmed that the subject insurance policy contained a Geographic Exclusion provision that included Colombia as an excluded territory.

65. BISA's interpretation of the policy as expressed in the June 2 letter—that 15 days' notice is required before an insurer can terminate coverage for any reason—is obviously inconsistent with the position it took with respect to its insured, LaMia, at the direction of Tokio Marine. Nevertheless, BISA's June 2 statement *is* consistent with the language of the insurance policy. The "Rescission" clause of the policy provides that "[i]f the Company exercises the power to rescind, it must notify the insured in writing of its decision at its address and no less than fifteen days in advance." [SCM1/21]. The only grounds listed in the policy that would result in "Automatic Termination" of any coverage provided in the policy are not at issue here: outbreak of war between certain designated countries, a hostile detonation of a weapon of war, or the requisition of the aircraft for title or use. [SCM1/37]. In all other instances, including delayed premium payment, the 15 days' notice is required. BISA has repeatedly admitted that no notice of cancelation was provided to LaMia before the November 28, 2016 tragedy.

66. The reinsurers' argument that coverage was automatically terminated upon LaMia's failure to pay the "second installment" the day it came due is also belied by the parties' prior dealings leading up to the tragedy. The policy called for a form of payment "by credit" to be done in two equal installments--$ 82,752.09 to be paid on May 23, 2016 and on October 2, 2016.

67. According to BISA's records, LaMia's payments of the first installment due on May 23 were also tardy and only partial. Instead of paying the full amount of the first installment on May 23, LaMia made numerous payments in smaller amounts throughout the next several months to arrive at $82,752.09. [SCM/332].

68. If it were true that LaMia's failure to pay the installment on time caused an automatic cancelation of the policy, then LaMia would have been operating without flight insurance coverage beginning on May 23. That is not the case, of course, and no one has argued otherwise.

69. I will also add that it has recently come to our attention that there may be additional policies covering our clients' claims that have never been disclosed to us or to our clients. According to the department prosecutor of Santa Cruz, Bolivia, LaMia had an additional insurance policy—apart from the 2016-2017 policy and the policy covering LaMia's flight crew—that covered "civil damages," which would include our clients' claims. According to the Bolivian prosecutor, that additional policy did not

contain any territorial exclusion. Because we have not yet had the opportunity to conduct discovery, we have not seen a copy of this document.

VI. Tokio Marine and the Other Reinsurers' role

70. As illustrated by the claims-handling process, although the 2016-2017 policy was technically issued by BISA, in most practical respects the real insurers were Tokio Marine and the other "Reinsurers." It was the so-called Reinsurers, not BISA, who (1) drove negotiations on the terms of the 2016-2017 policy; (2) retained all of the risk on the policy; (3) were paid the overwhelming majority of the premiums on the policy; (4) arranged for a denial of coverage under the policy; and (5) ultimately led the entirety of the claims-handling process after the accident.

71. The Reinsurers' central role is reflected in virtually every document and communication regarding insurance coverage in this matter. For example, when LaMia was not able to timely pay its premiums on the 2015-2016 policy, Mr. Kaye expressed to Ms. Albacete that the London-based Reinsurers were becoming impatient with the overdue payments and might force the cancellation of the policy. Among other things, he wrote that "[w]e have done all we can to obtain Reinsurers [sic] agreement to extend the Notices of Cancellation to this point however one of the Reinsurers will not extend any further without confirmation that BISA have premium and are transferring the funds to AON." [SCM1/147]. In December of 2015, Ms. Albacete wrote to AON's Bolivian affiliate to explain that Mr. Kaye had been supporting a one-week extension of cover with the re-insurers. Mr. Kaye also wrote that he would need Ms. Albacete's help to "negotiate with underwriters." [SCM1/146-147].

72. On January 5, 2016, Mr. Kaye wrote to Ms. Albacete confirming the cancellation of the 2015-2016 policy. Specifically, he wrote that "[w]e have spoken to Reinsurers . . . and it is with regret that we have to advise that the Reinsurance of BISA is cancelled effective midnight 5th January 2016. Reinsurers have advised that they will reinstate coverage however subject to settlement of the full outstanding premium, being the third and fourth installment of the policies." [SCM1/143]. As this email makes clear, LaMia's insurance coverage was fully dependent upon—and in most respects indistinguishable from—the reinsurance contract between the Reinsurers and BISA. Indeed, when Mr. Kaye wrote to explain that LaMia's coverage would be cancelled, he specifically explained that it was the Reinsurance that would be cancelled. It was the Reinsurers, and not BISA, who functionally insured LaMia, and it was the Reinsurers, not BISA, who decided to cancel LaMia's coverage for the 2015-2016 policy.

73. Similarly, during the negotiation of the 2016-2017 policy—which in significant part took place through emails between Ms. Albacete and Mr. Kaye—Mr. Kaye made repeated references to the preferences and demands of "the underwriters" or "the Reinsurers," rather than BISA.

74. For example, in early April 2016, Mr. Kaye explained by email that "underwriters calculated the [applicable] premium"; that the debt on the 2015-2016 policy would need "to be cleared in order for underwriters to consider re-instating coverage"; that "underwriters were not willing to provide quotations until the debt [referring to the

overdue premiums on the 2015-2016 policy] is cleared"; and that once the debt was cleared that would "allow underwriters to quote for a policy[.]" [SCM1/157-163].

75. Once Ms. Albacete and Mr. Kaye had arranged for payment of the overdue premiums on the 2015-2016 policy, Mr. Kaye conveyed to Ms. Albacete that "we have received 100% support to the [new 2016-2017] policy from Reinsurers[.]" [SCM1/71].

76. In early 2016, Mr. Kaye also conveyed to Ms. Albacete that some of the underwriters might have concerns about the significant liability risk involved in flights for professional soccer teams. [SCM1/100].

77. Moreover, upon information and belief, Tokio Marine and the Reinsurers retained 100 percent of the risk on the 2016-2017 policy. In other words, BISA kept none of the risk. This arrangement—commonly known as "fronting"—allowed Tokio Marine to insure risks in Bolivia, where it was not able to directly issue policies due to local regulations and licensing requirements.

78. Pursuant to and consistent with this fronting arrangement, BISA was merely a technical conduit for an insurance relationship between LaMia on the one hand, and Tokio Marine and the Reinsurers on the other. Upon information and belief, LaMia paid insurance premiums to AON and/or its Bolivian affiliate, who would then relay those premiums to Tokio Marine and the Reinsurers. LaMia did not pay premiums directly to BISA.

79. Upon information and belief, the entire net premium that LaMia owed under the 2015-2016 and 2016-2017 was to be paid to the reinsurers, with only a negligible fee owed to BISA. Just as BISA's role in the insurance relationship was negligible, so, too, was its fee.

80. BISA likewise made no meaningful decisions regarding the placement of the 2016-2017 policy or the policy's substantive terms. In April 2016, Mr. Kaye's exchanges with Ms. Albacete made virtually no reference to BISA, and certainly not to BISA as a meaningful decisionmaker regarding the terms of the policy. Instead, Mr. Kaye negotiated entirely between LaMia and "underwriters" or "Reinsurers." He only engaged BISA once a deal had been reached between LaMia and the Reinsurers.

81. Moreover, BISA repeatedly made public statements affirming that Tokio Marine made the decision to deny coverage and to refuse to defend LaMia. For example, BISA told the Bolivian newspaper "Los Tiempos" in May 2017 that the policy had not been canceled at the time of the crash for LaMia's late payment, explaining: "[i]t is the exclusive power of the company to grant a waiting time for any pending payment, with the authorization of the reinsurer or, failing that, to cancel the policy. The company chose not to cancel the policy. If it had done so, it would have announced the termination of the contract 15 days in advance . . . ." *https://www.lostiempos.com/actualidad/economia/20170602/bisa-dice-que-no-era-su-deber-informar-dgac*. For this reason, BISA went on to tell the newspaper, the reinsurers initially authorized handling the case under a "reservation of rights," and, at the same time, analysing the scope of the coverage. But on February 21, 2017, "following the recommendation of the London law firm in charge of this

analysis, the decision was made to reject the claim by issuing the declination letter and the LaMia fund was created."

82. After the accident, Tokio Marine and the other Reinsurers remained the key players and decisionmakers. Entirely bypassing BISA, Tokio Marine directly engaged with LaMia and with our clients regarding claims arising out of the subject accident.

83. For example, as noted above, on December 1, 2016, an AON employee named Neil Darvill emailed Ms. Albacete to explain that the Resinsurers had effectively agreed to indemnify LaMia for the accident, without prejudice as to certain coverage issues, and to manage the claims-handling process. [SCM1/46]. In that email, Mr. Darvill advised Ms. Albacete that AON had "now obtained Re Insurers agreement to Indemnify LAMIA in respect of the liabilities arising out of this tragic incident, within he policy limits, and on a without prejudice basis to coverage due to the geographical exclusion LSW617H and the material non-disclosure of the sports team exposure . . . ." According to AON the "Re Insurers Reservation of Rights are however removed at this time. As you will note this means that Re insurers are now prepared to handle the liability aspect in the normal manner."

84. Consistent with Mr. Darvill's email to Ms. Albacete, Tokio Marine sought to negotiate with our clients regarding a release of their claims against LaMia arising out of the accident. These negotiations were largely undertaken by counsel for Tokio Marine, who visited Miami as part of the negotiations.

85. Although Tokio Marine—perhaps self-servingly—at times characterized these negotiations as concerning a "humanitarian fund," in all substantive and material respects they were standard negotiations concerning a release of liability for LaMia, its insurer and its Reinsurers. As Mr. Darvill's email explained, the "Re insurers [sic]" were responsible for "handl[ing] the liability aspect" arising from the accident. [SCM1/46].

86. Beginning in October 2017, counsel for Tokio Marine engaged in initial conversations with the Podhurst firm regarding the possibility of settling our clients' claims against LaMia, as well as its insurer, reinsurers, and insurance broker. These conversations continued over several months largely over phone and email. However, they also included in-person meetings, including in Miami, Brazil, and London. For all practical and material purposes, these were claims-handling discussions, the goal of which was to secure a release of our clients claims.

87. Tokio Marine was represented by attorneys at Clyde & Co. LLP during these discussions, including primarily Alex Stovold.

88. In the fall of 2017, we learned that Clyde & Co. lawyers had reached out to our clients and invited them to a settlement conference in Brazil on November 7-9, 2017, where Clyde & Co. intended to negotiate a final settlement packaged under the descriptor of a "humanitarian aid fund" that would release all potential defendants of all liability for the tragedy. We wrote to Alex Stovold at Clyde & Co. on October 25, 2017 to advise him of our representation of clients in the matter, and asked that Clyde & Co. cease direct communications with our clients. At the

time, we did not know who Clyde & Co. represented in the matter or what its role was.

89. In response to our letter, Clyde & Co. wrote that it was appointed by and worked for reinsurers of BISA. According to Clyde & Co., the representation of the reinsurers was not pursuant to a contract of reinsurance because of the position as to coverage it attributed to BISA. The letter went on to explain the Clyde & Co. lawyers were appointed to assist with the administration of the "Humanitarian Assistance Fund," which had been put in place by reinsurers whose identities could not be revealed at that juncture. The letter attached three "statements" that had been issued by the reinsurers to the victims' families.

90. In Statement No. 1, Clyde & Co. told the victims that BISA had concluded that the insurance policy does not cover the accident, but that a fund would be set up for the families. Specifically, Clyde & Co. advised that it served as "the administrators of the Lamia 2933 Humanitarian Assistance fund, which has been established by the reinsurers of BISA Seguros y Reaseguros SA, Lamia's liability insurers." [SCM1/309]. The Statement further advised that "BISA has concluded . . . that Lamia's insurance policy does not provide cover for the accident." The Statement went on: "However, BISA and its Reinsurers have taken the decision, without any admission of liability, that Reinsurers shall establish and administer the Humanitarian Assistance Fund for the benefit of the 68 passengers/families affected by the accident and entitled to compensation."

91. Statement No. 2 requested that the victims' families collate personal information including income tax returns and birth certificates and remit them to Clyde &Co. [SCM1/311].

92. Statement No. 3. set forth a complicated procedure for the families to recover from the fund—one that would require at least 75% of the passengers to "pre-agree" to accept the fund money in the amount of $200,000 per passenger and execute releases before any of them would be entitled to compensation. [SCM1/315]. The last item on the lengthy list of requirements for entitlement to collect from the humanitarian assistance fund was the execution of a release. The Statement specifically explained that "[i]n consideration of the receipt of the Payment from the Fund, a Full and Final Release shall be granted by the survivors and decedents' heirs to LaMia, their Insurers and Reinsurers, and the owners of the aircraft . . . together with all personnel who make up and/or are related to those entities and their related advisors. This means that no further action in any jurisdiction will be allowed or possible against these entities. The right to amend the parties to be released is retained by the Fund Administrators." [SCM1/316].

93. Early on our negotiations with Clyde & Co., it became clear the purpose of the "humanitarian assistance fund" was to attempt to eliminate the reinsurers' exposure.

94. For years, Clyde & Co., purporting to act as "fund administrator" on behalf of the reinsurers continued to issue periodic statements. In several of the statements, Clyde & Co. warned the fund would be closing imminently, and that no victims would be entitled to collect from the fund after a rapidly approaching date. For example, Statement No. 6 advised the victims that November 28, 2018 would be the deadline for receipt of proceeds from the fund, [SCM1/383], and Statement No. 7, issued on

October 12, 2018, represented that the last opportunity to families to sign releases in exchange for $225,000.00 would be November 5-14, 2018, [SCM1/385].

95. Despite Clyde & Co.'s numerous statements pressuring families to sign releases by a certain date or risk forfeiting any opportunity to recover anything for their significant losses, the fund is apparently still open. Most recently, in April 2021, Clyde & Co. acting for Tokio Marine issued Statement No. 10, which provides that the fund is still open, and that families of the 68 passengers can each collect $225,000 from the fund subject to the terms and conditions. [SCM1/389]. This means that, to date, Tokio Marine has offered to pay only **$15.3 million** to the victims of the Chapecoense tragedy. It has not offered to pay the full amount of the coverage.

96. In statements to the families, Tokio Marine failed to disclose all of the relevant information concerning the tenuous nature of the insurers' coverage defenses, including (i) that the insurers, reinsurers, and AON were all well aware that a significant amount of LaMia's operations was dedicated to the transportation of professional soccer teams in South America, including to countries listed in the policy's geographic exclusion; (ii) that the reinsurers/insurers had actually agreed in writing to waive the geographic limitation for Colombia prior to the accident, and (iii) that the policy did not provide that a late payment of a premium was grounds for automatic termination without notice, and thus the coverage had not lapsed at the time of the accident—a fact BISA admitted to Bolivian governmental authorities.

97. Instead, Tokio Marine led the families to believe that their significant damages were not covered by the flight insurance policy, and that their only hope for any compensation arising out of the tragedy was to agree to the terms of the "humanitarian assistance fund." In one of the statements, Statement No. 4 issued in December 2017, Tokio Marine purported to provide the families with "relevant documentation relating to the coverage decision," which omitted any mention of the relevant facts of the previous paragraph. [SCM1/324]. Specifically, Tokio Marine wrote that "a number of families and / or their lawyers indicated that whilst they wanted to receive payment from the Fund, before doing so, they wished to see documents which supported the decision taken by BISA in respect of coverage. To address the families' wishes, we sought BISA's approval for the release of relevant documentation relating to the coverage decision. We are grateful to BISA for authorising the release of this documentation." The Statement went on to list and append BISA's coverage denial letter to LaMia dated February 21, 2017; a letter from BISA to a local prosecutor's office in Bolivia, dated January 10, 2017; and the 2016-2017 insurance policy. The Statement explained that "[t]his documentation is provided for the purpose of assisting survivors, families and their representatives with their decisions regarding Payments from the Fund, and we would be grateful if the documents could be treated as confidential to those parties."

98. In our communications with Tokio Marine, we repeatedly made clear that if our clients were to consider settling our claims against the insurers/reinsurers—i.e., if they were to sign a release of those parties in exchange for payment of the humanitarian assistance monies—we could not agree to release our clients' claims against LaMia. We explained that if we were to accept the reinsurers' position of no coverage, that would mean the existence of significant liability on the part of the broker that placed the insurance coverage, AON. And in order to proceed against

AON on professional negligence claims, our clients could not release all claims against LaMia. This is because, under Florida law, a tort victim bringing a professional negligence claim against a broker for negligent failure to procure adequate insurance must first obtain a judgment against the inadequately insured tortfeasor.

99. Under Florida law, our clients' only option to ensure the preservation of all claims against other negligent actors, including AON, would be the execution of a "covenant not to execute" (not a release) against LaMia coupled with a release of all claims against the reinsurance/insurance entities.

100. Tokio Marine repeatedly requested that we provide copies of the draft Coblentz agreement we hoped to negotiate with LaMia and other defendants in the Florida action. Accordingly, we provided copies of these draft documents to Tokio Marine initially on March 31, 2019—even before our substantive discussions with LaMia began. [SCM1/393]. Put another way, Tokio Marine's counsel considered and provided input on these documents before they were submitted by us to Tokio Marine's insured as part of our settlement discussions.

101. In total, I along with several of my colleagues had dozens of telephone conferences, numerous meetings, and exchanged countless emails with Tokio Marine regarding the settlement agreement with LaMia and the release that Tokio Marine hoped to obtain to protect itself and the other reinsurers. In October 2019, our office circulated another copy of the consent judgment and covenant not to execute terms we were negotiating with LaMia to Tokio Marine. We notified Tokio Marine when a settlement agreement was reached with LaMia.

102. A final sticking point in our negotiations with Tokio Marine was its insistence that our clients indemnify the reinsurers for any exposure it could face as a result of actions brought by governmental entities. Consistently and repeatedly, in discussions that spanned years, we told Tokio Marine that we could never agree to have our clients bear the risk of an exposure they do not control. We were clear that under no circumstances could our clients be responsible for actions taken by third parties, including governmental entities, against the reinsurers. That was the only responsible position for any attorney to take, but it was not deemed acceptable to the reinsurers.

103. The Plaintiffs reached an agreement by February 2020 with LaMia on a Coblentz agreement that Tokio Marine had extensively reviewed and considered. In the agreement, LaMia would admit its liability and consent to judgments against it in negotiated amounts, in exchange for Plaintiffs' covenant not to execute on LaMia's personal assets. The agreement assigned LaMia's rights to proceed against AON and reserved onto the Plaintiffs their right to collect on the judgments against any other financially responsible entity.

104. By August 2020, our clients had, for years, attempted to reach a resolution with Tokio Marine. At that point, we no longer felt we could continue to accommodate Tokio Marine's extensive efforts to protect itself from exposure, including its conduct in omitting material information bearing on the existence of coverage, in making unreasonable demands of our clients in exchange for a sum of money ($225,000) that does not come close to compensating them for their damages or even to the insufficient policy limits in the flight insurance policy, in attempting to negotiate a

deal that would foreclose any meaningful recovery for our clients against third parties including AON, and in insisting that our clients bear Tokio Marine's risk of exposure in litigation brought by governmental entities not subject to our clients' control. Accordingly, Plaintiffs moved to enforce the settlement agreement they had reached with LaMia and obtained judgments against the Florida defendants totaling $844 million.

105. Under Florida law, the entry of judgments against LaMia was a necessary pre-requisite to our clients' lawsuits against AON and the reinsurers. The judgments were years in the making. They were the consequence of Podhurst's significant efforts both in adversarial litigation on disputed issues of law and in hours of settlement negotiations with LaMia. Having obtained these judgments against LaMia, our clients' derivative legal claims against AON and the reinsurers are ripe. These claims are critically important to our clients. To date, our clients have not recovered any compensation for the damages they have suffered from any responsible party.

VII. The Florida proceedings

106. I represent 43 victims of the Chapecoense air disaster. Several other attorneys at the Podhurst firm assist me in this representation. Of our 43 clients, 37 are the families of victims who lost their lives of the crash. Specifically, in such cases, our clients are the lawfully appointed representatives of the estates of the deceased victims of the crash. The remaining 6 clients are individuals who were injured in the crash. The deceased and injured individuals we represent include soccer players, a personal trainer, a team doctor, an attorney, team executives, and crew members, among others.

107. Our clients are citizens and residents of Brazil, Paraguay, and Venezuela.

108. Most of our clients in this matter first retained us in early 2017 pursuant to written contracts. Some of our clients retained us in 2018. Since the inception of these representations, we have communicated regularly with our clients, including through detailed update letters. In each case, we also have local co-counsel in Brazil, who are in regular contact with our clients, and with whom we communicate regularly.

109. We specifically communicated regularly and in detail with our clients during the claims-handling and settlement negotiations that counsel for Tokio Marine undertook in 2017 through 2019.

110. Pursuant to our representation of each of these clients, we have authority to file suit on behalf of our clients, to litigate and if appropriate settle claims arising from the accident, and to defend our clients against the proceedings filed in England by AON and Tokio Marine. Our clients retained us with the clear understanding and expectation that we would file suit on their behalf in Florida.

111. All of our clients have retained us on a contingent-fee basis, pursuant to written representation agreements that specify the fee arrangement, explain to the client his/her rights, and detail the scope of the representation. Florida's substantive laws and bar rules permit contingent-fee arrangements and also impose some regulations on those arrangements. All of our client contracts comply with applicable laws and regulations. Indeed, contingent-fee arrangements of this type

are common throughout the United States, and throughout our firm's more than fifty-year history, the overwhelming majority of our legal work has been on a contingent-fee basis. Our clients be unable to pay Podhurst on a private fee or hourly fee basis.

112. Through us as counsel, our clients have elected to file suit in Florida. Among other reasons, this is because of LaMia's strong connections to Florida, the relative efficiency of Florida's civil justice system, and Florida courts' familiarity with aviation disaster litigation, among other factors. Key witnesses and parties reside in South Florida including Loredana Albacete and Marco Antonio Rocha.

113. On November 27, 2018, Podhurst filed a lawsuit on behalf of 43 victims of the Chapecoense Air Disaster against LaMia, Kite, Ricardo Albacete, and Marco Antonio Rocha.

114. Because LaMia's insurers and reinsurers refused to defend it, LaMia was forced to seek out personal counsel to represent it in the Florida litigation. I will note that, under Florida law, an insurer's outright refusal to defend an insured is a rare occurrence due to the fact that "[a]n insurer's duty to defend is distinct from and broader than the duty to indemnify." *Lime Tree Vill. Cmty. Club Ass'n v. State Farm Gen. Ins. Co.*, 980 F.2d 1402, 1405 (11th Cir. 1993). The insurer must defend when the plaintiffs' complaint alleges facts which could *potentially* bring the suit within policy coverage, and if the allegations of the complaint leave any doubt as to the duty to defend, the question must be resolved in favor of the insured. *See id.* Because Florida law requires courts to interpret "any ambiguities" in an insurance contract "against the insurer and in favor of coverage," *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So.2d 871, 877 (Fla. 2007), an insurer's determination of no coverage, even if it is a reasonable interpretation of the policy, will not bar coverage if the policy is fairly susceptible to an interpretation that coverage exists. Accordingly, the typical procedure that insurers follow in cases where the existence of coverage is debated is to provide the insured a defense under a reservation of rights and file a declaratory judgment action. In the declaratory judgment action, the insurer will seek a judicial decree as to whether it owes a duty to defend and indemnify its insured under the policy. In the meantime, until and unless a declaratory judgment is entered in the insurer's favor, the insurer will appoint counsel to defend the insured in litigation.

115. LaMia and Marco Antonio Rocha, LaMia's principal, were represented in the litigation by Miami-based lawyer Arturo Bravo, Esq. On his clients' behalf, Mr. Bravo waived service of process on April 24, 2019. Mr. Bravo began engaging in settlement discussions with Plaintiffs' counsel by at least May 2019.

116. In the meantime, Mr. Bravo, on behalf of his clients LaMia and Mr. Rocha, filed a motion to dismiss the Plaintiffs' complaint on the grounds that Colombia, rather than Florida, was a more convenient forum for adjudicating the case. The Miami-Dade Circuit Court heard argument on and denied LaMia's motion on August 21, 2019, concluding that Miami was the appropriate forum for the case to proceed. Accordingly, the defendants answered the complaint in September 2019.

117. Having lost on its motion to dismiss Plaintiffs' complaint on *forum non conveniens* grounds, LaMia through its counsel began to engage in more productive discussions with Plaintiffs regarding the possibility of settlement. LaMia's liability

was clear, the plaintiffs' economic and non-economic damages were indisputably significant, and LaMia's reinsurers had denied their responsibility to defend and indemnify the airline. It is precisely in this scenario when courts allow the insured-defendant and the third-party plaintiffs to enter into what is known as a "Coblentz" agreement, named after the seminal case *Coblentz v. Am. Sur. Co. of New York*, 416 F.2d 1059 (5th Cir. 1969). The settlement device allows the insured and the injured claimant to enter into an agreement whereby the claimant obtains a negotiated consent judgment against the insured, and the claimant covenants not to execute on the consent judgment against the insured's personal assets.

118. I, along with colleagues in my office, conferred at length by telephone, email, and in-person with Mr. Bravo regarding the proposed Coblentz agreement to be entered. The negotiations lasted from approximately May 2019 until March 2020. Extensive in-person meetings to discuss specific damages information and settlement values were held on May 6 and September 4, 2019. During those meetings, I reached agreements on the settlement amounts for each of the clients I represent, including by utilizing multi-factor formulas for determining fair, reasonable, and agreed-upon settlement amounts for all the claimants based on each of their particular circumstances. As I mentioned earlier, most of the deceased victims I represent were very young, high wage-earning athletes who left behind spouses and young children. Some of my clients were grievously injured in ways that require years of expensive medical care and cause immeasurable pain and suffering. Under any potentially applicable law—whether Florida law or the law of the plaintiffs' domiciles—the settlement values that were agreed upon each represent a fair, even conservative, estimation of the Plaintiffs' recoverable damages.

119. Our clients entered into settlement agreements with LaMia, as well as the owner of the subject aircraft, and individual principals of LaMia. Specifically, our clients entered into Coblentz agreements with these entities, which included provisions for consent judgments against LaMia, specific provisions regarding the amount of each Plaintiff's damages arising from the subject accident, and an assignment of those LaMia's rights against AON or any other insurance broker related to the accident. *See Coblentz v. Am. Sur. Co. of N.Y.*, 416 F.2d 1059 (5th Cir. 1969). *See also Comm. Ins. Consultants, Inc. v. Frenz Enters., Inc.*, 696 So.2d 871, 872 (Fla. 5th DCA 1997) (third party may seek to recover against tortfeasor's insurance broker after being successful in its action against tortfeasor).

120. The Plaintiffs agreed that, in exchange for LaMia's admission of liability and agreement to have judgments entered against it in specified amounts, the Plaintiffs would covenant that, although the judgments shall remain in existence and LaMia would be liable on them, the Plaintiffs would not execute on the judgments. The agreements also provided that Plaintiffs would "seek satisfaction of any judgment" from the flight insurance brokers involved in placing in the policy "or any other party liable to satisfy such judgment except" LaMia, Mr. Rocha, Mr. Albacete, and Kite.

121. After reaching a final agreement to enter into a Coblentz agreement, LaMia's personal counsel, Mr. Bravo, advised Plaintiffs' counsel that he was withdrawing from the case. At a hearing on April 23, 2020, the Miami Court ordered that LaMia should obtain new counsel to represent it. LaMia failed to do so. Because LaMia

failed to obtain new counsel to defend it in the proceedings, the Miami-Dade Court entered a default judgment against LaMia on June 29, 2020.

122. On June 30, 2020, Plaintiffs filed a motion with the Miami-Dade Circuit Court for enforcement of the settlement agreement—the Coblentz agreement—it had reached with the defendants. The motion explained that, as an agent acting on behalf of his clients, Mr. Bravo had bound his clients to the terms of the Coblentz agreement the parties had negotiated.

123. The Miami-Dade Circuit Court held an evidentiary hearing on Plaintiffs' motion to enforce the settlement agreement, and it concluded, under uncontroversial principles of contract law, that the parties had reached an enforceable settlement agreement. Accordingly, the Court entered final judgments in all 43 cases against LaMia, Kite, Rocha and Albacete consistent with these settlement agreements. The judgments were entered on August 12, 2020.

124. Two days after the judgments were entered, and unbeknownst to Plaintiffs and their counsel, Tokio Marine filed its initial claim form in this Court against LaMia, BISA, and others.

125. The final judgments against LaMia and others in the original Florida wrongful death action gave rise to Plaintiffs' cause of action against the AON and Tokio Marine. On August 11, 2020, the Plaintiffs filed a motion for leave to file a third-party complaint against LaMia's insurer, reinsurers, and AON. A hearing on the motion was set for September 1, 2020. On the day before the hearing was to take place, and before it was even a named party in the lawsuit, Tokio Marine voluntarily appeared in the lawsuit and filed a notice of removal of the case to federal court.

126. In November 2020, and unbeknownst to Plaintiffs and their counsel, Tokio Marine added the 43 Plaintiffs to its request for an interim anti-suit injunction. Despite that it was engaged in litigation with Plaintiffs in Florida, Tokio Marine did not notify the Plaintiffs or their counsel of its efforts to have this Court initiate parallel proceedings to the Florida proceeding. Nor did Tokio Marine notify the federal court in Florida of its efforts in the UK directed at the jurisdiction of the Florida federal and state courts—no mention of it in any of the several briefs and status reports filed in the federal proceeding.

127. During the brief pendency of the Florida action in federal court, Tokio Marine indicated in a filing that it intended to collaterally attack the judgments entered in the Florida proceeding, alleging that the judgments were "void." [SCM1/394]; D.E. 10, *De Souza Lima et al. v. Linea Aerea Merida Internacional de Aviacion et al.*, No. 20-cv-23531 (S.D. Fla.). After considering Tokio Marine's filings, the federal court ruled that Tokio Marine's removal of the Florida case to federal court was improper, in part because the reinsurer had voluntarily and prematurely appeared in the lawsuit and sought affirmative relief to which it was not entitled.

128. On February 1, 2021, the federal court granted Plaintiffs' motion to remand the case back to the jurisdiction where it had been pending.

129. Less than two weeks later, on February 12, 2021, Tokio Marine, which still had not been named a party in the lawsuit, filed a motion to transfer the Florida case to the complex business litigation section in Miami-Dade County, Florida. Tokio Marine

attended a hearing on that motion, which was denied by the administrative law judge in Miami-Dade presiding over such matters.

130. On March 12, 2021, Tokio Marine moved for an anti-suit injunction in this Court and also moved for leave to serve our clients by alternative means.

131. On March 16, 2021, the Plaintiffs were set for the hearing of their long-pending motion for leave to file a third-party complaint. The hearing was scheduled for March 25, 2021. In response to Plaintiffs' filing the notice of hearing, and despite that it was not yet a named party in the lawsuit, Tokio Marine wrote an email to me and my colleague advising us that it was not available for the hearing date we noticed and requesting the "courtesy" that we "confer" with Tokio Marine counsel on the scheduling of hearings in the case. Tokio Marine still did not advise us that it was simultaneously seeking an anti-suit injunction that would deprive Plaintiffs of the opportunity to go forward with the hearing altogether, and Plaintiffs were still unaware of Tokio Marine's machinations in the UK. Of course, there is no requirement to coordinate hearing dates with an entity that has not yet been named a party in the lawsuit. But in the spirit of cooperation, we agreed to re-set the hearing for a mutually convenient time.

132. Without disclosing its intention to deny the Plaintiffs access to the Court in which they had litigated for over two years, Tokio Marine's counsel provided their availability for a rescheduled hearing on Plaintiffs' motion for leave to amend their complaint in April 2021, weeks after the March 25 date Plaintiffs had selected. Notably, Tokio Marine selected an alternative date that would fall *after* the March 31, 2021 hearing scheduled in this Court on Tokio Marine's petition for an anti-suit injunction. In other words, as Tokio Marine asked Plaintiffs' counsel for courtesies in rescheduling a hearing to accommodate Tokio Marine counsel's purported unavailability, it was simultaneously seeking to prevent the Plaintiffs from going forward with the hearing altogether in a parallel proceeding that it did not disclose.

133. Plaintiffs and their counsel first learned that Tokio Marine had initiated this proceeding in the UK on March 31, 2021 via email from Leon Taylor of DLA Piper, counsel for Tokio Marine.

VIII. AON and Tokio Marine's proceedings in this Court

134. Our law firm first became aware that AON and Tokio Marine had initiated proceedings against our clients in England in late March 2021, when AON and Tokio Marine purported and/or attempted to serve our clients through delivery to our office of materials related to the proceedings. At the time that these materials were delivered, our office was closed due to the COVID-19 pandemic and none of the attorneys directly involved in the LaMia matter were present in Miami.

135. Since then, we have retained Penningtons Manches Cooper as well as Queen's Counsel Ben Elkington to assist in representing our clients in this honorable Court.

OUR CLIENTS' CLAIMS AGAINST AON AND TOKIO MARINE

136. Our clients have, and intend to assert, the following claims against AON and Tokio Marine as set out below, and in the draft amended complaint exhibited to this witness statement [SCM1/529 - 597]. In the event anti-suit injunctions granted by

the English court are lifted, we will file a document in the form of, or similar to, the draft amended complaint.

IX. Claim against AON for negligent procurement of insurance

137. At all times material, AON Limited UK, in its capacity as an insurance broker, was responsible for procuring sufficient and adequate flight insurance and reinsurance for LaMia. As an insurance broker, AON had a duty to ensure that LaMia had the appropriate insurance coverage commensurate with LaMia's express requests and known or reasonably knowable business needs. *See, e.g., Caplan v. La Chance*, 219 So.2d 89, 90 (Fla. 3d DCA 1969). This duty is not derived solely from AON's contractual obligations to LaMia, but is also a duty sounding in tort, and arising from AON's undertaking to procure insurance. *See Sheridan v. Greenberg*, 391 So.2d 234 (Fla. 3d DCA 1980). Indeed, under Florida's common law, insurance brokers owe insureds a fiduciary duty. *See Southtrust Bank v. Exp. Ins. Serv., Inc.*, 190 F. Supp. 2d 1304, 1308 (M.D. Fla. 2002); *Wachovia Ins. Servs., Inc. v. Toomey*, 994 So.2d 980, 989 (Fla. 2008).

138. Moreover, Florida law recognizes that a third-party victim may assert a cause of action directly against a tortfeasor's insurance broker. *See Hamer v. Kahn*, 404 So.2d 847 (Fla. 4th DCA 1981). *See also Com. Ins. Consultants, Inc. v. Frenz Enter., Inc.*, 696 So.2d 871, 872 (Fla. 5th DCA 1997) (third party may seek to recover against tortfeasor's insurance broker after being successful in its action against tortfeasor).

139. AON knew or reasonably should have foreseen that the failure to exercise reasonable care in any of its duties as an insurance broker to procure insurance on behalf of LaMia created a broad zone of risk that posed a general threat of harm to the occupants of LaMia's flights, among other persons.

140. Upon information and belief, at the time of issuance of the 2016-2017 policy, LaMia did not know about the geographic exclusion for Colombia, much less about the likelihood that the insurers and/or reinsurers would deny coverage on that basis. And LaMia's failure to anticipate the insurers and reinsurers' later invocation of that exclusion does not bar a claim for negligence on the part of AON. *See, e.g., Miles v. AAA Ins. Co.*, 771 So.2d 607, 608–09 (Fla. 3d DCA 2000) (failure of insureds to read policy does not completely preclude recovery against broker).

141. Moreover, our investigation reveals that prior to the accident, LaMia, AON and the Reinsurers shared an understanding that the purported Colombia exclusion would not bar coverage for flights to Colombia. Namely, in May of 2016, AON's local affiliate conveyed to LaMia that Tokio Marine and the other Reinsurers did not believe that a flight to Medellin, Colombia would violate any terms of the policy or otherwise preclude coverage. See *id*. Indeed, in the context of the May 2016 endorsement to the policy, LaMia might reasonably have understood this message to constitute formal notice that any purported geographic exclusion for Colombia had been rescinded.

142. AON negligently failed to secure adequate and sufficient insurance for LaMia. For example, as detailed above, AON UK Limited knew that LaMia was highly likely if not certain to fly to Colombia. It was a likely destination for LaMia's soccer-team flights and an express destination for one of LaMia's prospective flights for an

Argentinian soccer team scheduled to play a match in Medellin. Despite AON's knowledge of LaMia's near-certain business in Colombia, the flight insurance policy that AON UK Limited brokered and obtained on LaMia's behalf purports to contain a territorial exclusion for accidents that occur in Colombia. AON did not fully explain the purported Colombia exclusion to LaMia or its impact on coverage. Such explanation was warranted given that the exclusion was a notable change from LaMia's prior AON-brokered insurance policies.

143. The policy also had insufficient policy limits to cover the foreseeable and expected claims of travelers on board LaMia flights, including our clients. Although LaMia was aware of the policy's limits before entering into the policy contract, AON failed to properly advise LaMia of the extremely high risk of an excess judgment given that LaMia's business consisted of flights for soccer teams, which almost by definition entail a large number of passengers with significant incomes.

144. Had AON properly complied with its aforementioned duties, it would have procured an insurance policy that was at least commensurate with LaMia's most basic needs, e.g., coverage for flights in South American countries including Colombia. The flight insurance policy AON UK Limited ultimately obtained left LaMia exposed in numerous respects, and it deprived our clients of obtaining compensation for their significant injuries and damages.

145. Moreover, had AON properly advised LaMia of the risks of an excess judgment, LaMia may well have never operated the subject flight at all.

146. Because of AON UK Limited's negligence in negotiating and obtaining an insufficient insurance policy on behalf of LaMia, our clients have obtained an excess judgment against LaMia, and may now proceed directly against AON to recover that judgment. *See Com. Ins. Consultants, Inc.*, 696 So.2d at 872.

X. Claim against Tokio Marine and the Other Reinsurers to enforce the consent judgments against LaMia

147. Our clients intend to assert this claim in the alternative to their claims against AON.

148. In Florida, when a tort victim obtains a judgment against an alleged tortfeasor/insured, the victim may then assert a claim to collect on that judgment from the tortfeasor's insurer. Such claims have three basic elements that the tort victim/plaintiff has the burden of proving: the existence of coverage, the insurer's wrongful refusal to defend the claim, and the reasonableness of the settlement between the tort victim and the alleged tortfeasor. *See U.S. Fire Ins. Co. v. Hayden Bonded Storage Co.*, 930 So.2d 686, 691 (Fla. 4th DCA 2006).

149. Importantly, there is no requirement that the insured/tortfeasor formally assign its rights against its insurers to the tort victim. *See Rosen v. Fla. Ins. Guar. Ass'n*, 802 So.2d 291, 294 (Fla. 2001). Moreover, the fact that the plaintiff/tort victim may covenant not to execute on any judgment against the insured/tortfeasor does not extinguish the insured/tortfeasor's liability, nor does it bar the plaintiff/tort victim's cause of action against the insurer. *See id.* at 295.

150. Our clients and LaMia entered into a settlement agreement, which provided for entry of a judgment in favor of our clients and against LaMia in amounts totaling $844 million. As part of that agreement, LaMia admitted liability. The issues of

liability and the full extent of our clients' damages have been resolved in this binding settlement agreement, and thus our clients' claims against LaMia's insurers are ripe and have accrued.

151. At all material times, LaMia's insurers and reinsurers have refused to defend claims against LaMia arising from the Chapecoense crash. Under Florida law, an insurance company "acts at its peril in refusing to defend its insured and will be held responsible for the consequences." *Fla. Farm Bureau Mut. Ins. Co. v. Rice*, 393 So.2d 552, 556 (Fla. 5th DCA 1980).

152. Tokio Marine and the Other Reinsurers acted as LaMia's true insurers on the 2016-2017 policy: they negotiated the terms of the policy, they held all the risk on the policy, they solicited and received information about LaMia's activities even after the policy was already in place, and they assumed full responsibility for claims-handling under the policy after the accident.

153. Florida courts recognize that reinsurers may assume liabilities typically borne by insurers in several scenarios, among others: where the reinsurer assumes the insurer's liabilities, *see Banco Ficohsa v. Aseguradora Hondurena, S.A*., 937 So.2d 161, 165 (Fla. 3d DCA 2006), *see* also Restatement (Second) of Torts § 324A; and where the insurer acts as the agent of the reinsurer, *see Law Offices of David J. Stern P.A. v. SCOR Reinsurance Corp*., 354 F. Supp. 2d 1338, 1344 (S.D. Fla. 2005).

154. Here, Tokio Marine and the Other Reinsurers assumed the duties and liabilities of BISA. Tokio Marine and the Other Reinsurers also assumed a principal-agent relationship with BISA, wherein BISA was merely a conduit for the Reinsurers' activities and interests related to LaMia's insurance policy, and BISA acted for and on behalf of the Reinsurers.

155. Accordingly, Tokio Marine and the Other Reinsurers are liable to LaMia and to our clients to the same and full extent of BISA's liabilities, and had legal duties to act in good faith toward LaMia.

156. Specifically, Tokio Marine and the Other Reinsurers had a good-faith duty to LaMia to properly handle the claims against LaMia arising from the subject accident. Among other things, Tokio Marine and the Other Reinsurers had duties to defend the claims against LaMia, to properly investigate those claims, and to reasonably attempt to settle those claims within the applicable policy limits.

157. The 2016-2017 policy provided coverage for claims arising from the subject accident, including the claims settled between LaMia and our clients and which are now subject to final judgments of this Court.

158. To the extent that BISA, Tokio Marine, and/or the Other Reinsurers assert the geographic exclusion as a coverage defense, they could have and should have nevertheless defended the claims against LaMia pursuant to a reservation of rights as to this purported coverage defense. Moreover, the May 2016 endorsements and the May 2016 emails between Ms. Albacete and AON's Bolivian affiliate make clear that all relevant insurance entities did not view a flight to Medellin as violating the

terms of the policy and indeed that the insurers and reinsurers likely rescinded the exclusion for Colombia. See *id*.

159. To the extent that BISA, Tokio Marine, and/or the Other Reinsurers assert other coverage defenses, they could have and should have nevertheless defended the claims against LaMia pursuant to a reservation of rights as to those purported coverage defenses. In any event, any other purported coverage defenses are also without merit. For example, any claim that coverage was not available under the policy based on a purported lapse in premium payment is without merit because, among other things, (1) the policy does not provide for automatic cancellation of coverage based on a lapse in premium payments; (2) the policy contains provisions that require opportunity to make up any late payments; and (3) the policy contains provisions requiring written notice before coverage is cancelled or terminated. Neither BISA nor the reinsurers advised LaMia that coverage would be cancelled based on any purported lapse in payment prior to the accident, and did not advise aviation authorities of any lapse in coverage, as they had done for the 2015-2016 policy.

160. Likewise, any claim that LaMia violated the terms of the policy because a flight for a soccer team was an aggravated liability risk has no foundation in the policy language, and in any event is impossible to square with the conduct of BISA and the reinsurers both before and after the issuance of the policy. BISA and the reinsurers were keenly aware at all times material that LaMia's business consisted almost exclusively of flights for soccer teams.

161. Finally, any claim that the conduct of the pilots was criminal or would otherwise void coverage under the policy is without merit and without foundation in the policy language.

162. Tokio Marine and the other reinsurers' refusal to defend the claims against LaMia was wrongful. Not only did Tokio Marine and the other reinsurers have an affirmative duty to defend the claims, but they also strove to circumvent their duties by settling their claims under the misleading guise of a "humanitarian assistance fund." Then, having had an opportunity to settle the claims against LaMia for the reasonable amount of $25 million—and indeed having received express demands from our clients to do so—Tokio Marine and the reinsurers again refused to settle or defend the claims.

163. Tokio Marine's wrongful and bad-faith conduct went further. Namely, Tokio Marine made representations to our clients and other claimants in the LaMia air disaster that Tokio Marine knew or reasonably should have known were false. For example, Tokio Marine has repeatedly represented that coverage under the policy was automatically suspended or terminated based on a brief lapse in LaMia's premium payments, but this coverage defense is entirely without foundation in the policy itself.

164. The settlement amounts reflected in the *Coblentz* agreements and consent judgments against LaMia were reasonable. Although a detailed description of each case is beyond the reasonable scope of this witness statement, suffice it to say that the vast majority of our clients' decedents were professional soccer players in their prime years, with high incomes and in many cases even higher earning prospects. Most of them tragically left behind a significant number of survivors, including wives

and children. Accordingly, the damages suffered by most of our clients would conservatively be in excess of $10 million in any given individual case.

165. The settlement amounts also reflect the culmination of good-faith negotiations and discussions between our firm, on behalf of our clients, and attorneys and representatives of LaMia. These negotiations took place over several months, specifically addressed the settlement amounts for each of our clients' cases, and ultimately resulted in final agreements that were enforced by the Court in Miami-Dade County and reflected in final consent judgments entered by that Court.

166. In short, as a result of Tokio Marine and the Other Reinsurers' breaches of their duties to LaMia, LaMia is now exposed to judgments significantly in excess of the insurance policy limits. And under Florida law, our clients are entitled to recover the full extent of these excess judgments.

XI. The applicability of Florida law to Plaintiffs' claims against AON and Tokio Marine

167. Our clients' claims against AON are tort claims. They are not derivative of and are not bound by any formal written contract that AON may have had with LaMia. In Florida, should a court be faced with a conflict of law question as to this claim, it would apply the law of the jurisdiction that has the most significant relationship to the occurrence and the parties under the principles as stated in the Restatement (Second) of Conflict of Laws § 6 (1971). Contacts to be taken into account in applying the principles of § 6 include (a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicile, residence, nationality, place of incorporation and place of the business of the parties and (d) the place where the relationship, if any, between the parties is centered. Restatement (Second) of Conflict of Laws § 145.

168. Here, the balance of these factors points to Florida law. although the LaMia air disaster occurred in Colombia, the "injury" at the heart of the AON claim concerns AON's failure to procure adequate insurance for LaMia, and our clients' having obtained judgments against LaMia for which there is arguably no coverage.

169. The location of this injury, and the center of the relevant relationships between the parties, is Miami, Florida. Miami is the place from which LaMia, by and through Loredana Albacete, solicited insurance coverage and negotiated the terms of its insurance coverage. It is the place to which AON directed all of its brokerage activity, through its countless email exchanges with Ms. Albacete. It is also the place where our clients obtained judgments against LaMia. No other forum has as significant a relationship with the AON claims: Colombia is the location of the accident, but the liability issues arising from the accident have been settled and resolved, and Colombia otherwise has no meaningful relationship to the AON claim; Brazil is the home of the Chapecoense soccer team and many of our clients, but it otherwise has no relationship to this case, much less to the AON claim; Bolivia is LaMia's country of incorporation and the country where the policy was formally issued, but it otherwise has no meaningful connection to this case; finally, AON is

based in the United Kingdom, but otherwise lacks any meaningful connection with the AON claim.

170. Our clients' claims against Tokio Marine arise from (1) the judgments and admission of liability our clients obtained against LaMia in Florida, and (2) Tokio Marine's wrongful failure to defend the claims against its insured LaMia. Both elements of the claims center on Florida. Of course, our clients asserted claims against LaMia through litigation in Florida, and indeed through presuit negotiations that centered on Florida and partly took place in person in Florida.

171. Moreover, Florida courts and federal courts applying Florida's conflict-of-laws principles consistently hold that lawsuits concerning an insurer's failure to properly defend or settle a claim against its insured are governed by the law of the place of performance of the duty to defend and reasonably settle, *i.e.*, the place where the claims against the insured are brought. *See Webber v. Nat'l Gen. Assur. Co.*, 2015 WL 1190034, at *3 (M.D. Fla. Mar. 16, 2015) (citing cases).

172. The leading case on the issue was a Florida Supreme Court case: *Govn't Employees Ins. Co. v. Grounds*, 332 So.2d 13 (Fla. 1976), which held that Florida law should apply to the bad faith action because "the obligation of the contract breached by [the insurance carrier] was the obligation to provide [the insured] with a good faith defense to the action . . . the place of performance was Florida, where the cause of action against the [insured] was maintained and was defended . . . ." *Id.* at 14-15. The holding has been reaffirmed in numerous subsequent cases. For example, in *Shin Crest PTE, Ltd. v. AIU Ins. Co.*, 2008 WL 728388 (M.D. Fla. 2009), in a suit against a Taiwanese manufacturer of a defective chair, the court applied Florida insurance bad faith law, despite the fact that the parties had agreed in the insurance contract that Taiwanese law governed breach of contract and declaratory judgment claims on the contract. Relying on *Grounds*, the court concluded that "matters concerning performance are governed by the law of the place of performance." *Id.* at *2. Florida was the place of performance "because that is where the lawsuits against [the insureds] were maintained and defended . . . ." *Id.*

XII. The jurisdiction of Florida courts over Plaintiffs' claims against AON and Tokio Marine

173. Florida law has spoken on the issue of jurisdiction in circumstances similar to those presented here. In *Virginia Farm Bureau Mutual Ins. Co. v. Dunford*, 877 So.2d 22 (Fla. 4th DCA 2004), for example, the tortfeasor resided in Virginia and was insured under a liability policy issued in Virginia. Interpreting Florida Statutes § 48.193(1)(g), which provides for jurisdiction where a defendant is alleged to have breached a contract by failing to perform acts in Florida that were required under the contract to have been performed in Florida, the court held that defending the insured in a Florida court was "a contractual obligation to be performed in Florida." *Id.* at 23-24. Notably, the court distinguished two cases relied upon by the carrier because neither case involved what is present in this case—"excess judgments resulting from bad faith occurring in the state in which the suit against the insured was filed." *Id.* at n.1. The court indicated again in conclusion that the insurer's breach of any duty under the contract occurred in the state where a judgment was obtained against the insured, not necessarily the state where the claimant resided:

"[The carrier] should have foreseen that a breach of that duty in Florida, resulting in a Florida judgment, would subject it to being haled into a Florida court." *Id.* at 25.

174. The *Dunford* decision is merely illustrative of a line of Florida cases recognizing that it is appropriate to exercise jurisdiction over an insurer in a third-party bad faith action where the insurer breaches a contractual duty to defend its insured in Florida. *See Betzoldt v. Auto Club Group Ins. Co.*, 124 So.3d 402 (Fla. 2d DCA 2013) (holding that a Michigan insurer, which issued insurance policies only to Michigan drivers, was subject to personal jurisdiction in Florida in a third-party bad faith case arising out of the Michigan insured's car crash in Florida).

175. At all times material, AON UK Limited engaged in substantial and not isolated activity within Florida. AON UK Limited has continuous and systematic business contacts in Florida that are extensive and pervasive. Among other things, AON and its affiliates maintain offices in Florida, have agents and representatives in Florida, and solicit business in Florida. Specifically, AON UK Limited operated and did business in Florida with respect to the events giving rise to this lawsuit, including by, among other things:

i. Contracting to procure insurance for LaMia, whose officers and agents operated and resided in Miami, Florida at the time the negotiations and written and/or implied contract to procure insurance were entered into.
ii. Communicating directly, knowingly and extensively with Miami-resident Loredana Albacete, who was primarily responsible for securing insurance on behalf of LaMia, on the subject of the procurement of the subject flight insurance policies.
iii. Acting as insurance broker for flight insurance policies within a policy territory, which included all territories within the United States of America, *see, e.g., ESAB Grp. Inc. v. Zurich Ins. PLC*, 685, 691 (4th Cir. 2012).

176. At all times material, Tokio Marine Kiln Syndicates Limited engaged in substantial and not isolated activity within Florida. Tokio Marine Kiln Syndicates Limited has continuous and systematic business contacts in Florida that are extensive and pervasive. Specifically, Tokio Marine Kiln Syndicates Limited operated and did business in Florida with respect to the events giving rise to this lawsuit, including by, among other things:

i. Contracting to provide a flight reinsurance policy that named as an insured LaMia, whose officers and agents operated and resided in Miami, Florida at the time the negotiations took place and the subject flight insurance and reinsurance policies were entered into;
ii. Communicating directly and/or through AON with Loredana Albacete, who was primarily responsible for securing insurance on behalf of LaMia, on the subject of the subject flight insurance policies in Miami, Florida, where Loredana Albacete resided;
iii. Providing flight insurance within a policy territory, which included all territories within the United States of America, including Miami, Florida;
iv. Agreeing to cover accidents and furnish a defense to its insured within a policy territory, which included all territories within the United States of America, including Miami, Florida; and

v. Engaging in claims-handling in the aftermath of the subject accident in Florida, including by communicating through counsel extensively with Florida-based attorneys and sending legal representatives to Florida for claims-handling discussions and negotiations.

177. Moreover, Tokio Marine Kiln Syndicates Limited waived or abandoned any objection to this Court's exercise of personal jurisdiction by pre-emptively intervening in the instant action and seeking affirmative relief in this Court and a Florida-based federal court on several occasions, including by seeking to remove the instant action and seeking to transfer the instant action, among other things.

XIII. Prejudice to our clients

178. Our clients would be deeply prejudiced by a permanent anti-suit injunction prohibiting them from proceeding with their claims in Florida for several reasons. I point out only some of them below.

179. First, our clients have selected Podhurst to act on their behalf in litigation arising out of the Chapecoense air disaster. The victims' decision to place their trust in us, in the wake of unimaginable trauma and uncertainty, was not one casually made. Our clients trust us to seek justice on their behalf not only because of our record of success in the niche area of aviation disaster litigation, but also because we have built relationships with our clients, beginning weeks after tragedy struck their families and continuing for nearly five years. My colleagues and I have made several trips to Brazil to meet with our clients, and we have co-counseled with a network of Brazilian lawyers who help us ensure our clients' questions and concerns are always addressed. All of my colleagues and staff working with me on the case speak Portuguese or Spanish or both, making personal communications with our clients over the years that much easier. If this Court were to grant the insurance entities' request for a permanent anti-suit injunction and force proceedings in the UK, Podhurst would be unable to represent the victims in the proceedings because Podhurst has no UK office and because Podhurst attorneys are not authorized to conduct litigation in the UK. Put simply, to grant a permanent anti-suit injunction would be to deny our clients their choice of counsel nearly five years into the representation.

180. Second, our clients have no connection to the UK, and they have neither the knowledge nor the resources to litigate their claims in the UK. In most instances, our clients are widows with young children who lost the breadwinner in the family. They have struggled emotionally and financially since the tragedy, and nearly five years later, they still have not been compensated for their losses. As I mentioned earlier, rules governing lawyers in the United States allow us to represent these victims on a contingent-fee basis—a regime that allows families to seek justice without having to pay up-front legal fees and costs they cannot afford. For example, in costs alone, Podhurst has expended nearly $500,000.00 USD to litigate our clients' claims, not including any of the thousands of hours of attorney and legal staff time. Our clients simply are not in a position to pay the costs of UK lawyers for litigation in the UK. The consequence of an anti-suit injunction, then, is not only

to deprive our clients of the lawyers they chose, but also to render them unable to obtain new counsel.

181. Third, Florida is the forum that our clients have selected, and it is the forum where our clients have litigated their claims for nearly three years. It is the jurisdiction where the judgments against LaMia were obtained, and it is the court best suited to determine the validity of those judgments if Tokio Marine and AON intend to challenge them, as they have suggested. Efforts by Tokio Marine and AON to collaterally attack the U.S. judgments in a UK court is, as a matter of public policy viewed from a US perspective, anathema to notions of international comity. Prohibiting our clients from proceeding in Florida would not only risk improperly barring them from having their claims heard and, if appropriate, compensated, but it would also be unnecessary: for the reasons outlined above, Florida is an appropriate forum for our clients' claims.

182. The significant prejudice to our clients by the imposition of a permanent anti-suit injunction overwhelms any potential prejudice to Tokio Marine and AON if this Court were to deny their request for an anti-suit injunction. For one, Tokio Marine and AON regularly conduct business and employ counsel in the United States, including in Florida. Indeed, Tokio Marine has already retained counsel, attorneys at DLA Piper, who have litigated these issues on Tokio Marine's behalf in the Florida federal and state court proceedings.

183. As noted above, our clients' choice of Florida as a forum to assert their claims against LaMia, Tokio Marine, AON and others is lawful and legitimate in this matter, at least under Florida's laws and procedures. But even if Tokio Marine and AON dispute those points, Florida's laws and procedures allow defendants to challenge the propriety of Florida as a venue, the convenience of Florida as a forum, and Florida's exercise of jurisdiction over them or over this matter. Although we believe these arguments would be without merit, Florida courts are experienced and capable in adjudicating these arguments, and would give a fair hearing to them.

184. Moreover, under Florida law and procedure, Tokio Marine and AON will have every opportunity to raise the substantive arguments on the merits of Plaintiffs' claims that it made before this Court. And trial court decisions on those legal arguments can be appealed to a panel of Florida appellate judges to conduct a *de novo* review.

185. To the extent Tokio Marine and AON attempt to argue that our clients' claims are unsupported or otherwise vexatious, those are arguments that can be made in Florida courts too. Indeed, under Florida Statutes § 57.105, Tokio Marine and AON could be awarded a reasonable attorney's fee, including prejudgment interest, if the court were to find that the Plaintiffs' claims were either "not supported by the material facts necessary to establish the claim or defense" or "[w]ould not be supported by the application of then-existing law to those material facts." As I mentioned earlier, however, in Podhurst's fifty-year history, no Podhurst attorney has ever been sanctioned under this statute for the simple reason that our lawyers, as a rule, do not file frivolous or vexatious lawsuits. For the reasons I have outlined here, this case is no exception to our longstanding track record.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a

false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed .....

STEVEN CRAIG MARKS

Date 30 JUNE 2021

On behalf of: (6) – (48) the individuals listed at Schedule 1 to the Re-Re-Amended Claim Form
First Statement of S. Marks
Exhibit: SCM1
Date: 30 June 2021
CLAIM NO CL-2020-000467

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)
BETWEEN:

AON UK LIMITED

Claimant

- and -

(1) LAMIA CORPORATION SRL (ALSO KNOWN AS LÍNEA AÉREA MÉRIDA INTERNACIONAL DE AVIAVIÓN D/B/A LAMIA CORPORATION S.R.L)

(2) KITE AIR CORPORATION LIMITED

(3) MARCO ANOTONIO ROCHA VENEGAS

(4) RICARDO ALBERTO ALBACETE VIDAL

(5) LAMIA C.A. (PREVIOUSLY KNOWN AS LÍNEA AÉREA MÉRIDA INTERNACIONAL DE AVIAVIÓN C.A)

(6) – (48) THE INDIVIDUALS LISTED AT SCHEDULE 1 TO THE RE-RE-AMENDED CLAIM FORM

Defendant

FIRST WITNESS STATEMENT OF STEPHEN CRAIG MARKS

Penningtons Manches Cooper LLP
125 Wood Street
London
EC2V 7AW
Telephone: 020 7457 3000
Facsimile: 020 7457 3240
Ref: OCJ/RGM/4100409

Solicitors for (6) – (48) THE INDIVIDUALS LISTED AT SCHEDULE 1 TO THE RE-RE-AMENDED CLAIM FORM