



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MASSACHUSETTS MUTUAL LIFE INSURANCE)
COMPANY, MASSMUTUAL HOLDING LLC,)
OPPENHEIMER FUNDS, INC., OPPENHEIMER)
ACQUISITION CORP., TREMONT GROUP)
HOLDINGS, INC., TREMONT PARTNERS, INC.,)
TREMONT (BERMUDA) LIMITED, RYE SELECT)
BROAD MARKET FUND, L.P., RYE SELECT)
BROAD MARKET INSURANCE FUND, L.P.,)
TREMONT MARKET NEUTRAL FUND, L.P.,)
TREMONT OPPORTUNITY FUND III, L.P.,)
RYE SELECT BROAD MARKET PORTFOLIO)
LIMITED, RYE SELECT BROAD MARKET)
PRIME FUND, L.P., AND RYE SELECT BROAD)
MARKET XL FUND, L.P.,)

Plaintiffs,

v.

CERTAIN UNDERWRITERS AT LLOYD'S OF)
LONDON SUBSCRIBING TO BOND NUMBERS)
B0391/FD020720g AND B0391/FD020730g,)
CONTINENTAL CASUALTY COMPANY,)
FEDERAL INSURANCE COMPANY, TWIN CITY)
INSURANCE COMPANY, U.S. SPECIALTY)
INSURANCE COMPANY, NATIONAL UNION)
FIRE INSURANCE COMPANY OF)
PITTSBURGH, PA, ZURICH AMERICAN)
INSURANCE COMPANY, ACE AMERICAN)
INSURANCE COMPANY, XL SPECIALTY)
INSURANCE COMPANY, AXIS INSURANCE)
COMPANY, RLI INSURANCE COMPANY,)
GREAT AMERICAN INSURANCE COMPANY,)
ACE USA/ACE US HOLDINGS, INC.,)

Defendants.

C.A. No. _____

VERIFIED COMPLAINT

Plaintiffs Massachusetts Mutual Life Insurance Company, MassMutual Holdings, LLC

(collectively “MassMutual”); OppenheimerFunds, Inc., Oppenheimer Acquisition Corp. (collectively “Oppenheimer”); Tremont Group Holdings, Inc., Tremont Partners, Inc., Tremont (Bermuda) Limited (collectively “Tremont”); Rye Select Broad Market Fund, L.P., Rye Select Broad Market Insurance Fund, L.P., Rye Select Broad Market Portfolio Limited, Rye Select Broad Market Prime Fund, L.P., Rye Select Broad Market XL Fund, L.P. (collectively “the Broad Market Funds”), Tremont Market Neutral Fund, L.P., and Tremont Opportunity Fund III, L.P. (all entities above will be collectively referred to as “the Corporate Entity Insureds”), by and through their attorneys, allege upon knowledge with respect to themselves and their own actions and the written agreements set forth herein, and upon information and belief with respect to all other allegations, as follows:

INTRODUCTION

1. This is an action for equitable apportionment, breach of contract, and ancillary declaratory relief against primary and excess directors’ and officers’ (“D&O”) liability insurers (“the D&O Insurers”) that sold to MassMutual D&O insurance covering the directors and officers of the Corporate Entity Insureds (“the Insured Individuals”) and against primary fidelity bond insurers (“the Primary Bond Underwriters”) and excess fidelity bond insurers (“the Excess Bond Underwriters”) that sold to MassMutual fidelity insurance covering the Corporate Entity Insureds. As a matter in equity, this Court has jurisdiction in accordance with 10 *Del. C.* § 341.

2. Numerous lawsuits have been filed against the Corporate Entity Insureds and the Insured Individuals (collectively “the Insureds”). These lawsuits generally allege misrepresentation, breach of fiduciary duty, mismanagement, and a failure to supervise on the part of one or more of the Insureds in connection with the multi-billion dollar Ponzi scheme and

multiple thefts perpetrated by Bernard L. Madoff and related enterprises (“the Madoff thefts” and “the Underlying Litigation”).

3. This action is necessitated by the Primary Bond Underwriters’ refusal to participate in the payment of the Insureds’ defense costs for the Underlying Litigation.

4. The remaining insurers have been named as defendants in this action because the issue to be resolved in this action, if not decided with respect to those insurers as well, could lead to a multiplicity of lawsuits with inconsistent and conflicting results.

5. Some of the lawsuits in the Underlying Litigation name all the Insureds as defendants.

6. Some of the lawsuits in the Underlying Litigation name just one or more Corporate Entity Insureds as defendants.

7. Some of the lawsuits in the Underlying Litigation name one or more, but not all, Corporate Entity Insureds and one or more of the Insured Individuals.

8. The Insureds have hired a number of law firms to represent them in the Underlying Litigation and related government investigations.

9. Some law firms are defending just particular Insured Individuals with respect to the Underlying Litigation.

10. Other law firms are defending one or more of the Corporate Entity Insureds and their respective Insured Individuals with respect to the Underlying Litigation.

11. Although there are substantial efficiencies and strengths to one law firm representing both a corporate entity and its directors and officers, this joint defense creates a situation not unlike the situation addressed by Vice Chancellor Lamb in *Valeant Pharmaceutical International v. Jerney*, 921 A.2d 732, 754-55 (Del. Ch. 2007) (requiring an equitable apportionment of defense expenses incurred in defending two officers because of the impossibility of attributing defense expenditures solely to one officer or the other).

12. Many defense expenditures constitute an element of the joint defense of both Corporate Entity Insureds and Insured Individuals for the entirety of the Underlying Litigation.

13. Between the D&O Insurers and the Primary Bond Underwriters, all the Insureds are covered for defense costs. The Primary Bond Underwriters cover the defense costs of the Corporate Entity Insureds, and the D&O Insurers cover the defense costs of the Insured Individuals.

14. Accordingly, Plaintiffs requested that the D&O Insurers and the Primary Bond Underwriters step forward to make sure that all of their current and future defense costs are paid. That has not happened despite the Insureds' repeated requests.

15. The D&O Insurers contend that they are liable just for a percentage of the joint defense costs because those joint defense costs were incurred in defending both Insured Individuals (who are covered by the D&O Insurers) and Corporate Entity Insureds (which are not covered by the D&O Insurers, except with respect to reimbursement of advancement and indemnification payments made by the Corporate Entity Insureds to the Insured Individuals).

16. The Primary Bond Underwriters have refused to agree to pay any portion of the joint defense costs despite their obligation to pay the defense costs of the Corporate Entity Insureds.

17. This situation requires the remedy of equitable apportionment.

THE PARTIES

18. Plaintiff Massachusetts Mutual Life Insurance Company is a Massachusetts corporation with its principal place of business in Springfield, Massachusetts and is the parent corporation of the other plaintiffs named herein, which are its subsidiaries and affiliates.

19. Plaintiff MassMutual Holding LLC is a Delaware limited liability company with its principal place of business in Springfield, Massachusetts.

20. Plaintiff OppenheimerFunds, Inc. is a Colorado corporation with its principal place of business in New York, New York.

21. Plaintiff Oppenheimer Acquisition Corp. is a Delaware corporation with its principal place of business in New York, New York.

22. Plaintiff Tremont Group Holdings, Inc. is a Delaware corporation with its principal place of business in Rye, New York.

23. Plaintiff Tremont Partners, Inc. is a Connecticut corporation with its principal place of business in Rye, New York.

24. Plaintiff Tremont (Bermuda) Limited is organized under the laws of Bermuda with its registered office in Hamilton, Bermuda.

25. Plaintiff Rye Select Broad Market Fund, L.P. is a Delaware Limited Partnership.
26. Plaintiff Rye Select Broad Market Insurance Fund, L.P. is a Delaware Limited Partnership.
27. Plaintiff Rye Select Broad Market Portfolio Limited is organized under the laws of the Cayman Islands.
28. Plaintiff Rye Select Broad Market Prime Fund, L.P. is a Delaware Limited Partnership.
29. Plaintiff Rye Select Broad Market XL Fund, L.P. is a Delaware Limited Partnership.
30. Plaintiff Tremont Market Neutral Fund, L.P. is a Delaware Limited Partnership.
31. Plaintiff Tremont Opportunity Fund III, L.P. is a Delaware Limited Partnership.
32. Defendant Certain Underwriters at Lloyd's of London consists of individual Underwriting Names who subscribed to policies of insurance through certain Syndicates in favor of Insureds entitled Life Insurance Companies Blanket Bond and identified as Bond Numbers B0391/FD020720g (the "Bond") and B0391/FD020730g.
33. Defendant Continental Casualty Company ("CNA") is an Illinois company with its principal place of business in Chicago, Illinois.
34. Defendant Federal Insurance Company ("FIC") is an Indiana insurance corporation with its principal place of business in Warren, New Jersey.

35. Defendant Twin City Fire Insurance Company (“Hartford”) is an Indiana corporation with its principal place of business in Hartford, Connecticut.

36. Defendant U.S. Specialty Insurance Company (“HCC”) is a Texas insurance corporation with its principal place of business in Houston, Texas.

37. Defendant National Union Fire Insurance Company of Pittsburgh, PA (“National Union”) is a Pennsylvania insurance business corporation with its principal place of business in New York, New York.

38. Defendant Zurich American Insurance Company is a New York company with its principal place of business in Schaumburg, Illinois.

39. Defendant ACE American Insurance Company (“ACE”) is a Pennsylvania company with its principal place of business in Philadelphia, Pennsylvania.

40. Defendant ACE USA / ACE US Holdings, Inc. is a Delaware corporation with its principal place of business in Philadelphia, Pennsylvania.

41. Defendant XL Specialty Insurance Company (“XL”) is a Delaware company with its principal place of business in Stamford, Connecticut.

42. Defendant Axis Insurance Company is an Illinois limited liability company with its principal place of business in Alpharetta, Georgia.

43. Defendant RLI Insurance Company (“RLI”) is an Illinois company with its principal place of business in Peoria, Illinois.

44. Defendant Great American Insurance Company (“GAIC”) is an Ohio company with its principal place of business in Cincinnati, Ohio.

JURISDICTION

45. This Court has jurisdiction over the Defendant Primary Bond Underwriters, Excess Bond Underwriters, and D&O Insurers pursuant to 10 Del. C. § 3104 and 18 Del. C. §§ 524 and 525, because the Defendant Bond Underwriters, Excess Bond Underwriters, and D&O Insurers:

- a. are licensed or authorized to do business or sell insurance in Delaware;
- b. have contracted to insure risks located in Delaware;
- c. have, within the relevant time periods, transacted business within Delaware;
- d. have consented to the jurisdiction of this Court by contract;
- e. are incorporated in Delaware; and/or
- f. have insured various Plaintiffs that are incorporated or organized under the laws of Delaware.

THE UNDERLYING LITIGATION

46. On December 11, 2008, the investment world was shocked by the news that Bernard L. Madoff had been arrested. Press Release, U.S. Sec. & Exch. Comm., *SEC Charges Bernard L. Madoff for Multi-Billion Dollar Ponzi Scheme* (Dec. 11, 2008). A New York Times story revealed that Bernard L. Madoff “had for years been paying returns to certain investors out of the cash received from other investors.” Diana B. Henriques and Zachery Kouwe, *U.S. Arrests a Top Trader in Vast Fraud*, N.Y. TIMES, Dec. 12, 2008, at A1. A representative of the Securities and Exchange Commission (“SEC”) called it “a stunning fraud that appears to be of epic proportions.” *Id.* The Insureds learned of Madoff’s thefts at the same time as the investment community.

47. On February 21, 2009, the New York Times reported that the trustee in charge of liquidating the estate of Bernard L. Madoff Investment Securities LLC (“BMIS”) discovered that over the past thirteen years, Madoff never purchased, nor directed to be purchased, any securities. Rather, he simply stole money entrusted to him as investment advisor to various companies and investors. Diana B. Henriques, *Madoff Never Made Supposed Investments*, N.Y. TIMES, Feb. 21, 2009, at B1. Among those companies and investors are one or more of the Broad Market Funds.

48. In the wake of these revelations, a number of investors have sued or threatened to sue the Insureds.

49. A full schedule of the lawsuits and demands pending against the Insureds is attached hereto as Exhibit 1.

50. The complaints in the Underlying Litigation generally allege misrepresentation, breach of fiduciary duty, mismanagement, and failure to supervise on the part of the Corporate Entity Insureds, and, in some instances, certain of their Insured Individuals, in connection with the Madoff thefts.

51. Specifically, the complaints contain numerous allegations pertaining to breach of fiduciary duty (defendants “breached their fiduciary duties owed to the plaintiffs as limited partners of [one Tremont] Partnership”); failure to supervise (“Tremont Partners completely deferred all decisions to BMIS”); and misrepresentations (“The defendants breached their duties to plaintiffs by failing to investigate, confirm, prepare and review with reasonable care the information contained in the Rye Prime Fund [private placement memorandum] and other representations, including the audited annual financial statements and capital account statements”) on the part of certain of the Insureds. *See, e.g., 2005 Tomchin Family Charitable Trust, et al. v. Tremont Partners, Inc., et al.*, No. 09600332 (N.Y. Sup. Ct. filed Feb. 4, 2009); *Securion I, L.P. v. Rye Investment Mgmt., et al.*, No. 09600741 (N.Y. Sup. Ct. filed Mar. 10, 2009); *White Trust Dated May 3, 2002 v. Schulman, et al.*, No. LC083957 (Cal. Super. Ct. filed Dec. 31, 2008).

52. In addition, the plaintiffs in the Underlying Litigation allege that one or more of the Insureds retained Madoff to provide investment advisory services. For example, the plaintiffs in the Underlying Litigation allege that they entrusted their funds to one or more of the Corporate Entity Insureds to be managed, but the Insureds never disclosed that they “were a mere feeder fund to Madoff.” Similarly, some of the plaintiffs in the Underlying Litigation allege one or more of the Corporate Entity Insureds “entrust[ed] a single sub-manager [Madoff] with sole discretion over the custody and trading of the entire funds’ net assets” *See In re*

Tremont Securities Law, State Law, and Insurance Litig., No. 08 CV 11117 (S.D.N.Y. filed Dec. 22, 2008); see e.g., *White Trust Dated May 3, 2002 v. Schulman, et al.*, No. LC083957 (Cal. Super. Ct. filed Dec. 31, 2008) (“Tremont Partners placed all of the Partnership’s assets in the hands of a single manager” — Bernard L. Madoff Investment Securities.); *Meridian Horizon Fund, LP, et al. v. Tremont Group Holdings, Inc.*, No. 09 CV 3708 (S.D.N.Y. filed Apr. 10, 2009) (“The Tremont Defendants served as investment manager to these funds, but delegated all investment decisions to [Madoff and/or BMIS].”).

53. As is explained below, the allegations of misrepresentation, breach of fiduciary duty, mismanagement, and failure to supervise on the part of one or more of the Insureds and the allegations that one or more of the Corporate Entity Insureds retained Madoff to provide investment advisory services trigger obligations on the part of the Primary and Excess Bond Underwriters and the D&O Insurers under the Bond and D&O Policies.

54. Further, the plaintiffs in the Underlying Litigation are seeking to recover for the loss of Property (as that term is defined in the Bond) that they allege was held by the Corporate Entity Insureds or for which they allege the Corporate Entity Insureds were liable.

THE POLICIES

55. In consideration of premiums paid, each of the defendants sold to MassMutual one or more of the policies of insurance listed on Exhibit 2.

The Bond

56. In consideration of premiums paid, the Primary Bond Underwriters sold to MassMutual Bond Number B0391/FD020720g. The Corporate Entity Insureds are insured under the Bond, which is effective from November 4, 2008 to November 4, 2009.

57. Specifically, the Bond protects the Corporate Entity Insureds against “Loss resulting directly from one or more dishonest or fraudulent acts . . . including loss of Property” of certain defined types of individuals (“Dishonest Individuals”) “whether committed alone or in collusion with others.” Bond, Insuring Agreement (A)i) and Definition (b).

58. As alleged in the Underlying Litigation, Bernard Madoff falls within this group of Dishonest Individuals for whose dishonesty the Bond provides coverage.

59. “Property” is defined in the Bond as money, currency, or other instruments, “in which the Assured has an interest or which are held by the Assured for any purpose or in any capacity and whether so held gratuitously or not and whether or not the Assured is liable therefor, and chattels which are not hereinbefore enumerated and for which the Assured is legally liable.” Bond, Definition (a).

60. Moreover, under the terms of the Bond, the Bond Underwriters have promised that:

- a. The Underwriters will indemnify the Assured against court costs and reasonable attorney’s fees incurred and paid by the Assured in defending any suit or legal proceeding brought against the Assured to enforce the Assured’s liability or alleged liability on account of any loss, claim or damage which, if established against the Assured, would constitute a valid and collectible loss sustained by the Assured under the terms of this bond.
- b. Such indemnity shall be in addition to the amount of this bond.

The Excess Bonds

61. By their terms, the excess Bonds sold by the “Excess Bond Underwriters”, including National Union Bond Number 94-555-73-78; CNA Policy Number 169541304; FIC Bond Number 81587537; ACE USA Policy Number DOX G21660760006; Certain Underwriters at Lloyd’s of London subscribing to Bond Number B0391/FD020730g; RLI Policy Number BND 0100015; and GAIC Policy Number FS 524481007 “follow form to” the Bond, that is, they incorporate the key coverage terms of the Bond by reference.

The Primary D&O Policy

62. In consideration of premiums paid, CNA sold to MassMutual Policy Number 267943995, a primary directors and officers liability policy (the “Primary D&O Policy”). The Corporate Entity Insureds and their Insured Individuals are insured under the Primary D&O Policy. The Primary D&O Policy period was May 30, 2008 to May 30, 2009.

63. By the Primary D&O Policy that it sold to MassMutual, CNA has promised that:

- a. The Insurer shall pay on behalf of the Insured Person Loss resulting from any Claim first made against them during the Policy Period . . . for a Wrongful Act, except to the extent that Massachusetts Mutual Life Insurance Company or any Subsidiary has indemnified them for such Loss.
- b. The Insurer shall pay on behalf of Massachusetts Mutual Life Insurance Company or any Subsidiary Loss for which Massachusetts Mutual Life Insurance company or any Subsidiary is required, or has determined as permitted by law, to indemnify the Insured Persons and which results from any Claim first made against the Insured Persons during the Policy Period . . . for a Wrongful Act.

The Excess D&O Policies

64. By their terms, all of the excess D&O policies sold by the D&O Insurers, including Federal Insurance Policy Number 7022-8636, Hartford Policy Number 00DA021617308, HCC Policy Number 24-MGU-08-A16755, Zurich Policy Number DOC 3571791-06, XL Policy Number ELU104942-08, and Axis Policy Number MNN740001/1/2008, follow form to the primary D&O Policy.

RELIEF SOUGHT

65. The Bond requires the Primary Bond Underwriters to pay the Corporate Entity Insureds some or all of the joint defense costs as they are incurred and to indemnify the Corporate Entity Insureds for some or all of any losses, judgments or settlements incurred as a result of the Madoff thefts.

66. The D&O Policies (the Primary D&O Policy and Excess D&O Policies, collectively) require the D&O Insurers to pay some or all of the joint defense costs as they are incurred and to indemnify the Insureds for some or all of any judgments or settlements incurred as a result of the Madoff thefts.

67. On June 6, 2009, the Insureds presented a timely proof of loss to the Primary Bond Underwriters and Excess Bond Underwriters, detailing the losses and defense costs incurred by the Insureds as a result of the Madoff thefts.

68. The Insureds have provided information and updates regarding events in the Underlying Litigation to all of the defendants. The Insureds have provided the D&O Insurers

with timely notice of actions filed against the Insureds in the Underlying Litigation and with timely notice of demand letters and regulatory actions of which the Insureds have knowledge.

69. All conditions precedent to recovery under the Bond, the Excess Bonds, and the D&O Policies have been satisfied, waived, or are the subject of estoppel.

70. On June 18, 2009, and July 27, 2009, representatives of the Insureds met with representatives of the Primary and Excess Bond Underwriters and the D&O Insurers in New York, New York, to discuss apportionment of joint defense costs between the Bond Underwriters and the D&O Insurers. No resolution was reached.

**COUNT I: DECLARATORY JUDGMENT: EQUITABLE APPORTIONMENT
(AGAINST PRIMARY BOND UNDERWRITERS AND D&O INSURERS)**

71. The Insureds incorporate the allegations in paragraphs 1 through 70 of this Complaint as if fully set forth herein.

72. The Insureds have paid, and will continue to pay, defense costs arising from the Madoff thefts.

73. A number of law firms jointly represent the Corporate Entity Insureds and the Insured Individuals with respect to one or more lawsuits in the Underlying Litigation.

74. Much of this defense cost is not divisible between costs incurred in defense of the Corporate Entity Insureds and costs incurred in defense of the Insured Individuals. These defense costs were incurred jointly in defense of both the Corporate Entity Insureds and the Insured Individuals. For example, numerous documents related to the Underlying Litigation were reviewed both for the benefit of the Corporate Entity Insureds and the Insured Individuals.

75. An equitable apportionment of the defense costs between those owed by the Primary Bond Underwriters and those owed by the D&O Insurers is necessary to ensure that the Insureds receive the full benefit of their contracts with the Primary Bond Underwriters and the D&O Insurers.

76. The Insureds lack an adequate remedy at law because the joint defense costs cannot be readily attributed to costs incurred in defending the Corporate Entity Insureds, as opposed to costs incurred in defending the Insured Individuals, and, accordingly, legal damages are not ascertainable or, if awarded in full against one of the insurers, would lead to litigation by that insurer against other insurers for equitable contribution with the Insureds being named as necessary parties therein.

77. The Insureds, the Primary Bond Underwriters, and D&O Insurers have an actual controversy concerning what portion the Primary Bond Underwriters and D&O Insurers respectively must pay of the Insureds' joint defense costs. The parties have a real and adverse interest in the controversy, and it is ripe for judicial determination.

78. The Insureds request a declaration equitably apportioning joint defense costs between those owed by the Bond Underwriters and those owed by D&O Insurers.

COUNT II: BREACH OF CONTRACT
(CORPORATE ENTITY INSUREDS AGAINST BOND UNDERWRITERS)

79. The Corporate Entity Insureds incorporate the allegations in paragraphs 1 through 78 of this Complaint as if fully set forth herein.

80. The Primary Bond Underwriters have failed or refused to pay any portion of the Corporate Entity Insureds' defense costs despite having an obligation to do so.

81. The Corporate Entity Insureds have been damaged by the Primary Bond Underwriters' failure or refusal to pay defense costs.

82. A legal damages remedy is inadequate, as discussed in paragraph 76 above, and the Corporate Entity Insureds have no other adequate remedy at law.

83. Accordingly, the Corporate Entity Insureds seek an equitable apportionment awarding the Corporate Entity Insureds those defense costs that the Primary Bond Underwriters must pay in defense of the Corporate Entity Insureds.

**COUNT III: DECLARATORY JUDGMENT:
SCOPE OF CONTRACTUAL OBLIGATIONS
(AGAINST PRIMARY AND EXCESS BOND UNDERWRITERS)**

84. The Insureds incorporate the allegations in paragraphs 1 through 83 of this Complaint as if fully set forth herein.

85. Each Bond and Excess Bond has a single-loss limit of liability and, for multiple losses, an aggregate loss limit of liability of twice the single-loss limit of liability.

86. The Bond and Excess Bonds do not define the term "loss" or otherwise define how the number of losses is to be determined under the Bond and Excess Bonds.

87. The Insureds contend that the Madoff thefts constitute more than one loss under the Bond and Excess Bonds.

88. One or more Primary Bond Underwriters or Excess Bond Underwriters disagree with the Insureds' contention.

89. The Insureds, the Primary Bond Underwriters, and the Excess Bond Underwriters have an actual controversy concerning the scope of the Bond Underwriters' and the Excess Bond Underwriters' obligations under the Bond and the Excess Bonds. The parties have a real and adverse interest in the controversy, and it is ripe for judicial determination.

90. The Insureds seek a declaration that the Madoff thefts resulted in multiple losses under the Bond and Excess Bonds and that the Insureds losses are otherwise covered thereunder.

**COUNT IV: DECLARATORY JUDGMENT:
SCOPE OF CONTRACTUAL OBLIGATIONS
(AGAINST D&O INSURERS AND BOND UNDERWRITERS)**

91. The Insureds incorporate the allegations in paragraphs 1 through 90 of this Complaint as if fully set forth herein.

92. The Insureds contend that together the D&O Insurers and Primary and Excess Bond Underwriters must indemnify the Insureds for all eventual settlements or judgments in the Underlying Litigation (or pay those settlement or judgments on behalf of the Insureds) to the extent of the respective limits of liability of the Bond, the Excess Bonds, and the D&O Policies.

93. The D&O Insurers, the Primary Bond Underwriters, and the Excess Bond Underwriters dispute the scope of their respective obligations and/or the appropriate apportionment of the liabilities between and among themselves.

94. The Insureds, the D&O Insurers, the Primary Bond Underwriters, and the Excess Bond Underwriters have an actual controversy concerning the scope of the D&O Insurers' and Bond Underwriters' obligations under the D&O Policies, the Bond, and the Excess Bonds. The parties have a real and adverse interest in the controversy, and it is ripe for judicial determination.

WHEREFORE, the Insureds request that the Court enter an order:

- (1) equitably apportioning the Insureds' defense costs between those owed by the Bond Underwriters and those owed by the D&O Insurers;
- (2) declaring that the Madoff thefts resulted in multiple losses under the Bond and Excess Bonds and that the Insureds' losses are otherwise covered thereunder;
- (3) declaring and apportioning the scope of the D&O Insurers' and Bond Insurers' liabilities with respect to any eventual settlements or judgments in the Underlying Litigation;
- (4) awarding the Insureds their reasonable costs and expenses incurred in this action, including attorneys' fees; and
- (5) granting such additional relief as the Court may deem equitable, just and proper.

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