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CAUSE No. 20-0754-C395

CONTINENTAL INSURANCE GROUP, LTD., CONTINENTAL LTC INC., and CONTINENTAL GENERAL INSURANCE COMPANY,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
v.	§	
	§	WILLIAMSON COUNTY, TEXAS
JAMES P. CORCORAN,	§	
Defendant.	§	
	§	395 TH JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER

Subject to his Motion to Compel Arbitration and Stay Proceedings which will be filed in short order should Plaintiffs not agree to dismiss Plaintiffs' Original Petition, James P. Corcoran, ("Corcoran" or "Defendant"), files his Original Answer, as follows:

I. GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Corcoran generally denies each and every material allegation in Plaintiffs' Original Petition, demands strict proof of Plaintiffs' allegations, and to the extent that such matters are questions of fact, says that Plaintiffs should prove such facts by such evidence as the law may require.

II. MANDATORY ARBITRATION

The Plaintiffs are bound to arbitrate all disputes they may have arising out of Corcoran's employment or termination of employment, including disputes regarding the application or enforceability of the arbitration provision contained in his employment contract. Should

Envelope# 43923920

Plaintiffs not agree to dismiss this litigation and proceed to arbitration, Corcoran will be filing a motion to compel arbitration and stay or dismiss this proceeding.

III. AFFIRMATIVE DEFENSES

Subject to and without waiving the foregoing General Denials, Defendant asserts, pursuant to Rule 94 of the Texas Rules of Civil Procedure, the following affirmative defenses which, singly or in combination, bar Plaintiffs' right to recover, in whole or in part, the damages alleged in Plaintiffs' Original Petition:

1. Failure to state a claim upon which relief may be granted;
2. Waiver, unclean hands, and estoppel;
3. Barred by an arbitration clause;
4. Plaintiffs' fraudulent conduct;
5. Complaint is wholly and substantially frivolous and not advanced in good faith; and
6. All of Defendant's actions regarding his employment were fair, reasonable, necessary and appropriate based on Defendant's business judgment.

IV. THE FACTS

The True Nature of This Action

1. This lawsuit is nothing more than an ill-advised, transparent strike suit by Plaintiffs in an effort to diffuse the fact that they unlawfully terminated a whistleblower for reporting improper conduct. Corcoran was hired by Continental Insurance Group Limited ("CIGL") in 2015 for the express purpose of providing assurance to insurance regulators that CIGL's parent company, HC2 Holdings ("HC2"), and its chairman, Phil Falcone ("Falcone"), would have no involvement in the day-to-day operations of any of the insurance companies HC2 was looking to

acquire. These regulators expressed significant concerns about Falcone based on his prior admissions of wrongdoing with the United States Securities and Exchange Commission ("SEC"), wherein Falcone and his advisory firm Harbinger Capital were charged, among other things, with fraudulently obtaining $113.2 million from a hedge fund he advised and misappropriating the money to pay his personal taxes, and other acts of misappropriation of client assets, market manipulation, and betraying clients. Falcone ultimately agreed to pay more than $18 million in penalties, admit wrongdoing, and be barred from the securities industry for five years, all as set forth in an August 19, 2013 SEC press release. As set forth more fully below, one of Corcoran's primary roles as Chairman of plaintiff Continental General Insurance Company ("CGIC") and its parent company Continental Insurance Group Ltd. ("CIGL") was to ensure that CGIC did not run afoul of any regulatory requirements by permitting Falcone improperly to become involved with and influence CGIC's operations, which conduct would subject CGIC to significant penalties, including the revocation of its certificate of authority to operate. But when Corcoran on multiple occasions raised legitimate concerns with Falcone and HC2's General Counsel Joe Ferraro ("Ferraro") regarding Falcone's attempts to improperly influence CGIC and its officers, which concerns Falcone ignored and instead continued his improper interference, Corcoran was compelled to report such conduct to CGIC's regulator, the Texas Department of Insurance. And when Corcoran reported these facts to HC2's board of directors (which is the ultimate controlling entity over its 100% wholly owned subsidiary CIGL), HC2's board of directors forced CIGL to terminate Corcoran in retaliation. In their blatantly disingenuous effort to recharacterize their retaliatory discharge as somehow a justified business decision, Plaintiffs literally make up facts about an alleged "shadow" scheme in order to defame Corcoran and justify his termination,

notwithstanding the fact that their falsehoods have gotten the better of them, since their current claims contradict CIGL's prior admission that its termination of Corcoran was "without cause."

Corcoran is Hired to Ensure Regulatory Compliance

2. In July of 2015, Falcone hired Corcoran to help facilitate and procure HC2's acquisition of CGIC, with the goal of leveraging Corcoran's insurance expertise and reputation for honesty and integrity into assuaging concerns that state regulators had with Falcone having an ownership interest in an insurance company. In conjunction with Corcoran's 2015 hiring, HC2 filed an application with the Ohio Department of Insurance to acquire CGIC, which acquisition was ultimately approved in December 2015. As part of that approval, Falcone was required to sign a December 21, 2015 Consent Order (the "Ohio Consent Order") with the Ohio Department of Insurance in which he agreed that "no current or future member of the board of directors of HC2 Holdings, Inc. or HC2 Holdings 2, Inc. shall serve as either an officer or board member for Continental Insurance Group LTD, Continental Insurance, Inc. or the Insurer for a period of five years." As Falcone was both a board member and chairman of HC2, this Ohio Consent Order was designed specifically to prohibit Falcone's interference with CGIC.

3. Similarly, on August 1, 2018, the Florida Office of Insurance Regulation ("FLOIR") entered into a Consent Order (the "Florida Consent Order") with CGIC and HC2. The Florida Consent Order reflects that HC2, the ultimate controlling entity of CGIC, had disclaimed control of CGIC. The Florida Consent Order also reflects generally that under the disclaimer, HC2, or "any person associated with HC2" (except for Justin Myers in his capacity as a board member of CGIC) will not exercise "any influence or control, either directly or indirectly over the business operations, affairs, or activity" of CGIC or any entity owned or controlled by CGIC. This was similarly designed so that Falcone, a person associated with HC2, would be prohibited from

trying to influence or control either directly or indirectly the business operations, affairs or activities of CGIC, no matter in what capacity he attempted to assert such influence or control. Moreover, the Florida Consent Order notes that the representations in HC2's Florida disclaimer were material to the issuance of the Florida Consent Order, and that "failure to adhere to one or more of the terms and conditions contained (therein) may result, without further proceedings, in (FLOIR) suspending, revoking, or taking other administrative action as it deems appropriate upon (CGIC's) certificate of authority" in Florida.

4. Sharing the exact same concerns about Falcone's interference with CGIC, the South Carolina Department of Insurance ("SC DOI") entered an Order on July 12, 2018 (the "South Carolina Consent Order") with similar requirements applicable to CGIC. In pertinent part, the South Carolina Consent Order referenced the Disclaimer of Affiliation filed by Falcone, which notes that on an ongoing basis he would have no role in the day-to-day operations of CGIC, unless approved by the states of South Carolina and Texas. The South Carolina Consent Order notes that the foregoing was a condition precedent for its approval of CGIC's desired acquisition of Kanawha Insurance Company ("KIC") and that failure to comply would render South Carolina's approval "null and void". Corcoran made this clear to Falcone in an April 23, 2018 email, where Corcoran relayed to Falcone that there were "concerns raised about you." Specifically, the South Carolina Consent Order provides:

> As a continuing obligation of CGIC and in accordance with the Disclaimer of Affiliation filed with the Department by Philip A. Falcone, Chairman, President and CEO of HC2, as supplemented by proof of the discussion of these matters with CGIC's Board of Directors and letters from Mr. James P. Corcoran to Director Farmer and Texas Insurance Commissioner Sullivan, Mr. Falcone shall not have any role in the day-to-day operations of management of Kanawha or CGIC pre- or post-merger. Any subsequent change to the statements/positions in these documents must be filed with and approved by the states of South Carolina and Texas, respectively, before taking effect.

5. So integral was Corcoran's involvement in CGIC's efforts to acquire KIC that he was required to submit a letter to the Texas and South Carolina Insurance Commissioners on May 23, 2018, reciting that the letter had been requested in relation to Falcone's Disclaimer of Affiliation dated May 23, 2018, and stating that Corcoran, as Executive Chairman of CGIC would direct all decisions related to its operations and management. In approving CGIC's acquisition of KIC, both insurance regulators relied upon Corcoran's letter of May 23, 2018 and Falcone's Disclaimer of Affiliation of May 8, 2018.

6. Notably, in approving the merger of KIC with and into CGIC, the Texas Department of Insurance ("TDI") entered an order on July 31, 2018 that expressly recognized the South Carolina Order as a prior fact underlying the Texas approval, as well as FLOIR's continuing jurisdiction over CGIC. In summary, any efforts by Falcone to interfere with or improperly influence or intimidate CGIC was precisely what the Texas Insurance Holding Company Act, the FLOIR Consent Order, and Order of the South Carolina DOI sought to prohibit, and violations of their consent decrees would have significant negative consequences on CGIC. One of Corcoran's primary responsibilities was to make certain that this did not happen.

Falcone Decides to Sell CGIC and Instructs Corcoran to Handle it

7. In May of 2019 Corcoran met with Falcone to discuss, among other things, the possibility of selling CGIC. They discussed concerns raised by the TDI regarding CGIC's affiliate investments and the fees earned pursuant to an investment management agreement and the possibility that those fees would ultimately be substantially reduced. Corcoran also noted the difficulties CGIC was having in finding insurers that would sell their books of long-term care to it, in light of the fact that CGIC's parent company HC2 did not have a sufficient financial condition or an ability to contribute additional substantial funds if CGIC needed them. In

addition, Corcoran relayed to Falcone that his prior history with the SEC consistently came up in discussions with insurers and potential investors and was a recurring issue, and HC2's ownership of CGIC was creating a negative drag on the company. At that meeting, Falcone agreed that the value of CGIC could be maximized under new ownership, and he authorized Corcoran to solicit offers to buy CGIC, and directed him to conduct the process in a confidential manner, stressing the fact that confidentiality was crucial so as not to have a market impact or disrupt CGIC employees who would start to leave/look for another job if they knew the company was being sold. In fact, the essence of Plaintiffs' complaint -- that Corcoran conducted some type of "shadow" process to sell CGIC -- is completely fabricated, as evidenced by the following facts.

8. As part of Falcone's and Corcoran's discussion to sell CGIC, Corcoran proposed that his employment agreement be amended to provide an "Investment Transaction Payment" to be paid if either a sale of or capital contribution was secured or initiated by him. Corcoran proposed that he be paid of a portion of the Purchase Price. A series of emails between Corcoran and Falcone, from July 3 through July 9, 2019 reflect these negotiations, and even include a draft proposed amendment to Corcoran's employment agreement. In the July 3 email, Corcoran updated Falcone on the sale process, explaining, "As we discussed, at this point I am in discussions with three potential buyers, two of which have substantial assets. In addition, the Chinese deal seems to have 'legs.'" Not only did Falcone acknowledge this, but in a responsive email Falcone even negotiated further the terms of any fee for Corcoran.

9. As the evidence will further show, Falcone was at all times fully apprised of and engaged in the sale process.

- In a May 21, 2019 email, Falcone inquired of Corcoran regarding the possible purchase of CGIC or an investment from a potential Hong Kong buyer.

- In a June 17, 2019 email, Corcoran followed up with Falcone, inquiring "Did you get a chance to draft something on the China deals?"

- In a June 27, 2019 email, Falcone wrote to Corcoran in response to Corcoran's email noting the need to demonstrate that every affiliate transaction is credible and reviewed by the Board of CGIC, with Falcone responding "Let's just sell CGIC and get it over with…I can't deal with this nonsense anymore."

- In a July 29, 2019 email, Corcoran informed Falcone of two potential buyers, Searchlight and a Chinese investor, noting NDAs to be signed. The email also states: "Texas has rejected the IMA, we need to discuss the approach and crystallize things as soon as possible, especially if you decide to sell. We also need to discuss going forward… modification of my employment contract."

- In an August 1, 2019 email, Corcoran notified Falcone that he had forwarded an NDA to [a particular investor] with reference to the acquisition of CGIC.

Importantly, these emails prove that Plaintiffs' claims to this Court that there was some type of "shadow" campaign to sell CGIC are not only baseless, but are completely fabricated. In addition, Corcoran coordinated all his sales/marketing activities with both Dave Ramsey ("Ramsey"), CGIC's CEO and also a member of the board of directors of CGIC, as well as Danny Saenz, former Deputy Commissioner of TDI, and also a board member of CGIC who, along with Corcoran, raised concerns with HC2 management similarly urging the sale of CGIC.

Plaintiffs Begin to Bristle at Corcoran's Policing of CGIC's Activities

10. Through the summer of 2019 Corcoran was doing exactly what he had been hired to do – watching over CGIC and ensuring its compliance with all regulatory obligations. And his efforts were being appreciated, as evidenced by an August 6, 2019 email to him from Falcone, wherein Falcone stated, "Clearly, the entire team from Jim (Mr. Corcoran) on down is performing extremely well. We keep it up and we will continue to be in a phenomenal position."

11. When Corcoran raised concerns about certain activities relating to CGIC, however, praise turned to scorn. Corcoran sent an August 27, 2019 email to Falcone and certain CGIC board members reiterating prior concerns and objections he had raised to what was known as the "KORR Transaction." That transaction was, in essence, an attempt to forward a $12.5 million investment from the CGIC portfolio, which was meant to secure payments to long-term care policyholders, to Casterdenn, a SPV entity which would have been controlled by Falcone and his associate Ken Orr, whose history of violating securities regulations and money laundering raised serious concerns (as explained in a September 14, 2004 SEC press release), while attempting to bypass Corcoran and CGIC's Board. Corcoran successfully stopped that transaction, notwithstanding Falcone strongly advocating the deal, even calling Corcoran at his home and while he was on vacation. Corcoran's intervention in this attempted transaction was critical to keeping CGIC from violating regulatory consent orders previously discussed.

12. Realizing that he needed to escalate his concerns with regard to CIGC, on September 26, 2019 Corcoran forwarded to Ferraro, HC2's General Counsel, a comprehensive memorandum with supporting exhibits, expressing his concerns and the concerns of certain other members of the Board of Directors of CGIC regarding Falcone's repeated improper attempts to influence or interfere with CGIC's day-to-day operations, especially concerning various proposed affiliate transactions. In addition, Corcoran raised the concern that HC2 had made inaccurate public statements regarding CGIC which potentially could be SEC violations. *See* the September 26 memo, attached hereto as **Exhibit 1**.

13. Corcoran's September 26 memorandum outlined his recommendation that "it is prudent for all involved to make every effort to avoid even the appearance of impropriety while exploring affiliate transactions that may be of mutual benefit." And the memorandum made

clear that Corcoran's intention in raising these concerns was to protect CGIC, a point that Ferraro immediately acknowledged, stating his view that "I appreciate the fact that your email and recommendations are intended to protect CGIC, HC2, and Mr. Falcone." Ferraro's admission is merely another piece of evidence refuting Plaintiffs' baseless assertions before this Court that steps Corcoran took were designed to advance his own interests rather than CGIC's. And along those lines Ferraro even stated that he appreciated that Corcoran's memorandum provided no conclusions or speculation as to the nature of Falcone's communications, but instead focused on a desire to avoid any possible perception by a state insurance authority that Falcone's communications violated any of the Consent Orders.

14. The various consent orders were put in place to protect CGIC from HC2's influence, particularly when it came to CGIC's evaluation of potential investments. Unfortunately, they proved insufficient to stop Falcone's attempts. For example, when legitimate questions were asked concerning an investment that was being recommended for a broadcasting company owned by HC2, Falcone responded in a September 4, 2019 email to Corcoran and David Ramsey, CEO of CGIC, "This is a fu**ing pile of bull***t." Corcoran responded on September 5, 2019, explaining to Falcone the obligations under Texas law and that "Danny Saenz and members of the Board of Directors have expressed concerns…" Although not well received by Falcone, Corcoran's explanation was both well-reasoned and in accordance with his role to protect CGIC:

> it is imperative that you understand the legal and regulatory obligations of CGIC, a Texas domestic insurer. First, CGIC has a legal obligation to report its affiliate transactions to the Texas Department of Insurance (TDI). We are not requesting TDI's approval of the transaction but, rather, complying with the law to report the transaction to our domestic regulator. Specifically, the proposed loan by Arena Investments to HC2 Broadcasting will result in a weakening of the security position of CGIC. As such, this modification of the original transaction will require reporting to the TDI. Not only is this a legal

> requirement but, it is also in keeping with the commitment you and I both have made to Doug Slape and his staff that CGIC would be fully transparent with regard to all transactions with affiliates.

A Turning Point Had Been Reached

15. As set forth previously, there is ample evidence of Falcone and Corcoran discussing the prospective sale of CGIC from May through August 2019. However, after Corcoran was forced to escalate his concerns about Falcone to HC2's general counsel Ferraro on September 26, Falcone became so angry that he thereafter pretended to be unaware of the sales process, and tried to "set up" Corcoran as engaging in unauthorized activities.

16. On October 9, 2019, Corcoran emailed Falcone, noting "that Energy International Investments would be forwarding a Letter of Intent to purchase CGIC, not to expect to exceed $100 M. I anticipate others…" Then, on October 15, 2019, Corcoran forwarded Falcone an email noting that CGIC had secured an appraisal from a company named Milliman, showing a value for CGIC in excess of $500 million, noting it was to support a potential sale. Corcoran asked Falcone "Do you want the 'seller's view support' ultimately put out in the data room?" Remarkably, Falcone responded that "we are not for sale."

17. That same day Corcoran forwarded a second email noting to Falcone that at this point there were four potential buyers that signed NDAs "consistent with our prior discussion." In response to that and the email regarding the Milliman report and potential buyers, Falcone stated on October 15, 2019, "I'm not sure what you're talking about data room for what?" Continuing his charade, Falcone then wrote "Jim, I have no idea who you are talking with and no

interest in selling at this point." Corcoran responded "Phil, we discussed and you were aware of the NDAs and China discussions."

18. In light of this exceedingly troubling development/tactic on Falcone's part, that same day, on October 15, Corcoran met with HC2's General Counsel Ferraro and Chief Finance Officer Mike Sena, and demonstrated to them with Falcone's own emails that Falcone had been fully aware of all sales discussions for months and was literally making things up. Ultimately it was decided to continue the sale process but simply keep Ferraro well informed.

Falcone Continues to Interfere with CIGC

19. Despite Ferraro's written assurances of September 27, 2019 that Falcone would cease communications with CGIC, Falcone continued his improper conduct. For example, on October 31, 2019, Falcone wrote to Corcoran and Ramsey to express displeasure with their decision not to invest in the Fieldpoint Deposit Insurance Program, which was an investment that he himself was advocating. Falcone wrote, sarcastically, but tellingly, "not that it's any of my business (as we only own 100%) but I understand you blocked opening up an account at Fieldpoint…I didn't know the firm could be that flippant about making money." As a result, on November 7, 2019, Corcoran advised Ferraro of Falcone's actions and that he, along with board member Saenz, believed that they had an obligation to disclose Falcone's involvement with CGIC's investment decisions to the TDI, something that they had, until that time, wanted to avoid.

20. Corcoran did not trigger TDI involvement, but rather Falcone's actions (and HC2's inadequate response) did. Attached as **Exhibit 2** is the November 7, 2019 memo (without exhibits).

Falcone Reverses Himself, Again, and Seeks to Sell CIGC

21. On November 13, 2019, Corcoran forwarded to Falcone correspondence from Energy International Investment Holdings (which had been previously referred to as the Chinese company), expressing an interest in purchasing CGIC. Falcone responded "OK. Happy discuss."

22. That same day, Falcone was aware that CGIC board member Saenz was coming to New York to meet with him to discuss his concerns regarding Falcone's conduct with reference to Texas insurance law and the various state consent orders, and the fact that Saenz was considering resigning from the board if Falcone did not respond to the issues raised in Corcoran's emails to Ferraro of September 26 and November 7, 2019. Falcone decided not to attend. Nevertheless, Saenz recommended to Ferraro at that meeting that HC2 sell CGIC, questioning CGIC's ability to ensure compliance with the various consent orders. However, being unsatisfied with the way the meeting went, Saenz and Corcoran concluded that they were obliged to report their concerns to the TDI. Accordingly, Saenz scheduled a meeting with the TDI on December 16, 2019.

23. On January 3, 2020 Corcoran was contacted by Avram Glazer ("Glazer") of CDIB Capital International, who inquired about buying CGIC. On January 8, after seeking and obtaining Ferraro's approval, Corcoran and Ramsey forwarded an NDA to Glazer. Glazer subsequently replaced Falcone as Chairman of the Board of HC2, CGIC's ultimate parent company.

24. On January 8, and January 16, 2020, Corcoran forwarded emails to Saenz, noting, among other things, that on January 8, 2020 CGIC would be responding to the January 2, 2020 TDI Letter of Examination and providing TDI with correspondence between Falcone and all

affiliates of CGIC regarding potential affiliate investments or any investment that was referred to CGIC for review by HC2 or its affiliates, including a string of internal emails dealing with securities purchased by CGIC on February 14, 2018. This purchase raised significant concerns, since CGIC purchased the securities from HC2 at $132.21 per share, when they had traded at $47 per share, resulting in CGIC paying HC2 $1.7 million over their value established in the over-the-counter market.

25. On January 14, 2020, Ramsey and Corcoran forwarded to Ferraro a list of all the potential bidders for CIGC (after any potential buyer signed an NDA, Corcoran had no or little contact with potential buyers and all questions were handled by Ramsey and others, and most of the potential buyers were not solicited by Corcoran).

26. On January 31, 2020, Falcone called a meeting which included Corcoran, Ramsey, CGIC's local counsel Skadden Arps, and HC2 board members to announce that he had signed an exclusive Letter of Intent with a "mystery buyer," and directed Corcoran and Ramsey to close the data room and have no further discussions with any potential buyers. At the meeting Falcone stated that he agreed with Corcoran that he should sell CGIC, but then volunteered "I did nothing wrong."

27. Falcone directed that any contact with potential buyers should be handled by Ferraro, and Corcoran fully complied. Subsequently, one of the potential buyers reached out to Corcoran on February 3, 2020, and Corcoran immediately referred him to Ferraro. That same prospect again reached out to Corcoran with an offer of $80 million to purchase CGIC, and Corcoran again immediately referred him to Ferraro.

28. On February 27, 2020, the law firm Ropes & Gray, who was hired by Corcoran to provide independent legal advice to the unaffiliated directors of CGIC (meaning, independent directors who were not also on the HC2 board of directors) forwarded to the HC2 board of directors a letter outlining certain inaccurate public statements made by HC2 regarding CGIC. A copy of the Ropes & Gray letter to the board of directors of HC2 Holdings is attached as **Exhibit 3**.

The TDI Interview and Corcoran's Termination Thereafter

29. On March 12, 2020, Corcoran was interviewed by the TDI with reference to a Limited Scope Examination focusing primarily on Falcone's and CGIC's affiliate investments. On March 13 Corcoran forwarded to the board of directors of HC2 a comprehensive memorandum regarding TDI's examination of CGIC, summarizing what was discussed, and outlining serious compliance concerns regarding Falcone. *See* the March 13, 2020 Board letter, attached as **Exhibit 4**.

30. On March 19, 2020, the law firm of Cadwalader, on behalf of HC2 board members, responded to Corcoran with what has been described as a twelve-page "kitchen sink blunderbuss." Notwithstanding, the HC2 board members acknowledged that Corcoran formally, constructively, and repeatedly raised in writing to HC2 management CGIC's concerns over Falcone's communications. Importantly, at no point in this twelve-page letter was Corcoran accused of any "shadow" campaign or conspiring to "steal" CGIC, which is obviously a mere contrivance by Plaintiffs before this Court in order to impose upon Corcoran the costly obligation to defend a lawsuit in Texas arising out of an employment agreement which compels arbitration in New York.

31. Ropes & Gray responded to Cadwalader and HC2 in a comprehensive March 30, 2020 letter, pointing out that "as directors of an insurance company, CGIC's Board of Directors were required to evaluate affiliate transactions from the perspective of whether the transaction is in the best interest of CGIC and its policyholders, not from the perspective of HC2." *See* **Exhibit 5** attached hereto. Just three days later, on April 2, 2020, Wayne Barr, a member of the board of HC2, called Corcoran and informed him that the board of directors of HC2 was terminating his services. That the same day, CIGL, the 100% parent of CIGC, and wholly owned subsidiary of HC2, sent a formal letter terminating Corcoran (HC2's board of directors is the ultimate controlling person of CIGL, and as such directed his termination). Importantly, despite the purported litany of wrongdoing that the Cadwalader letter accused him of, CIGL could find no cause to terminate Corcoran, and had to admit in the termination notice that they were terminating him "without cause."

32. With regard to the TDI examination, while Corcoran was interviewed on March 12, 2020, the pandemic obviously impacted the process. However, the examination remains ongoing, and the TDI recently interviewed CGIC's chief financial officer as part of this ongoing investigation.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant James Corcoran respectfully requests that Plaintiffs have and recover nothing by Plaintiffs' action, that judgment be entered in his favor as to the claims made by Plaintiffs, and for such other and further relief to which he may be justly entitled.

Dated: June 22, 2020

Respectfully submitted,

HAYNES AND BOONE, LLP

/s/ Martin J. Murray

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ATTORNEYS FOR DEFENDANT JAMES P. CORCORAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel of record in accordance with the Texas Rules of Civil Procedure on this 22nd day of June 2020.

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/s/ J. Iris Gibson
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James P. Corcoran

From: James P. Corcoran [jpcorcoran@jpcorcoran.com]
Sent: Thursday, September 26, 2019 1:58 PM
To: 'Joseph Ferraro'
Subject: Florida Office of Insurance Regulation Consent Order and Affiliate Communications - PRIVILEGED & CONFIDENTIAL
Attachments: APPENDIX A.docx

PRIVILEGED & CONFIDENTIAL

Joe,

I am writing to you to express concern with communications the Chairman, President, and CEO of HC2, Phil Falcone, has sent to me, other members of the Board of Directors of CGIC (the "CGIC Board"), and executive officers of CGIC. This concern exists due to the communications occurring in the context of various proposed affiliate transactions and in light of the consent orders of (a) the Florida Office of Insurance Regulation ("FLOIR") and (b) the South Carolina Department of Insurance, to which CGIC and HC2 is subject.

The Consent Orders

On August 1, 2018, FLOIR entered into a Consent Order with CGIC (the "Florida Order"). The Florida Order reflects that HC2, the ultimate controlling person of the Company, has disclaimed control of CGIC. The Florida Order also reflects generally that under the disclaimer, HC2, or "any person associated with" HC2, except for Justin Myers, will not exercise "any influence or control, either directly or indirectly over the business operations, affairs, or activity" of CGIC or any entity owned or controlled by CGIC (and licensed by the state of Florida). Clearly Phil is a person associated with HC2 and any attempt by him to influence or control either directly or indirectly the business operations, affairs or activities of CGIC are barred by the Florida Order no matter in what capacity he attempts to assert such influence or control. Such activity is precisely what the Texas Insurance Holding Company Act, the FLOIR Consent Order and Order of the South Carolina DOI seek to prohibit. If any of the regulators that oversee CGIC perceive any attempt to influence, control or intimidate the Board of an insurance subsidiary on behalf of the interest of the parent, this will raise serious regulatory concerns. Under the disclaimer, such control other than by Justin Myers may only obtain with FLOIR's advance written consent. Moreover, the Florida Order notes that the representations in HC2's Florida disclaimer were material to the issuance of the Florida Order. The order also provides that "failure to adhere to one or more of the terms and conditions contained [therein] may result, without further proceedings, in [FLOIR] suspending, revoking, or taking other administrative action as it deems appropriate upon [CGIC's] certificate of authority" in Florida.

The South Carolina Department of Insurance ("SC DOI") entered an Order on July 12, 2018 (the "South Carolina Order") with similar requirements applicable to CGIC. In pertinent part, the South Carolina Order referenced the Disclaimer of Affiliation filed by Phil, and notes that on an ongoing basis Phil shall have no role in the day-to-day operations of the Company, unless approved by the states of South Carolina and Texas. The South Carolina order noted that the foregoing was a condition precedent for its approval of CGIC's acquisition of Kanawha Insurance Company ("KIC") and that failure to comply would render the South Carolina's approval "null and void".

Notably, in approving the merger of KIC with and into CGIC, the Texas Department of Insurance ("TDI") entered an order on July 31, 2018 that expressly recognized the South Carolina Order as a prior fact underlying the Texas approval as well as FLOIR's continuing jurisdiction over CGIC.

EXHIBIT 1

Phil's Communications

On a number of occasions, Phil has directly e-mailed me, other members of the board, and executive officers of CGIC in the context of proposed affiliate transactions, i.e., with regard to HC2 Broadcasting Holdings, Inc. and Casterdenn LLC. The e-mails have come in the course of interaction between CGIC's board members and executive officers with CGIC's affiliates on possible terms for proposed transactions. Most recently, for example, we were engaged in discussions over potential terms for a restructuring of CGIC's preferred perpetual position in HC2 Broadcasting Holdings, Inc. The CGIC Board and executive management team were exploring whether the proposed transaction made sense from a business standpoint for CGIC, including what set of specific terms would result in a "fair and equitable" transaction.[i] In the midst of these discussions, Phil interjected multiple times in a way that I am concerned could be interpreted by regulators as dismissive of the questions and concerns of CGIC's Board and executive management as regards the fairness and equity of the proposed transaction or even as an effort to sway the Board and management in favor of the transaction. Phil's pertinent communications are listed and elaborated on in Appendix A.

Legal Ramifications

CGIC continues to service old business in Florida and its possession of a Florida certificate of authority adds value to CGIC. Since the Florida Order expressly states that no individual associated with HC2 except Justin may directly or indirectly influence or assert control over "the business operations, affairs, or activity" of CGIC, I asked Florida regulatory counsel to provide guidance on FLOIR's regulatory powers in the event FLOIR discovered Phil's communications and deemed them to be efforts to exert control. In that regard, it should be noted that the e-mails and communications listed on Appendix A would be accessible to the Texas, Florida, and South Carolina regulators during a standard market conduct or financial examination or simply a request generated by the TDI's review of affiliate transactions. Communications between the parent and the insurance company are one of the first things that would be sought, especially in this era. It is the issue of the moment for the regulators since, as you probably know, North Carolina insurance-company owner Greg Lindberg has been the subject of much regulatory and press attention based on Mr. Lindbergh's utilizing the assets of insurers he owned to invest in his other businesses. *See, e.g.*, https://www.wsj.com/articles/insurance-regulators-move-to-close-loopholes-11553460325. Although Mr. Lindbergh apparently channeled loans from the insurance companies to his other businesses via intermediaries, his conduct has generally raised regulatory eyebrows with regard to ultimate controlling parties use of insurer assets. FLOIR and other regulators are especially sensitive at this time to potential overreach by the ultimate control persons of insurance companies with reference to affiliate transactions. Moreover, I also note that Mr. Lindbergh apparently had executed disclaimers of control, which he skirted or violated.

Florida counsel responded to my inquiry by detailing a number of potential outcomes. Initially, counsel responded in part as follows: "If [FLOIR] believes a violation is occurring, which could include a violation of a consent order or disclaimer of control affidavit, it can fine the insurer; seek a cease and desist order enjoining the complained-of behavior, including emergency orders with immediate effectiveness, seek removal of board member of a parent holding company unlawfully exerting control over the insurer, which could require divestiture of ownership interest. Any act done by the insurer in furtherance of a proscribed act by a controlling stockholder could constitute a separate violation under an aiding and abetting theory. In addition to these civil remedies, if [FLOIR] believes a criminal violation of the Insurance Code has occurred, it is required to notify prosecutors pursuant to 624.310(2)(b)." Florida counsel also advised that: "any violation of the Consent Order entered August 1, 2018 (granting CGIC authority to transact insurance in Florida), gives [FLOIR] authority to take adverse action against CGIC, including potential revocation of its certificate of authority. If revocation occurred, by the terms of the Consent Order, its parent could be permanently enjoined from transacting insurance in Florida in any manner." Furthermore, Florida counsel's view is that a "violation of the Disclaimer of Control

EXHIBIT 1

Affidavit that was executed for HC2 Holdings Inc. would constitute a violation of the [Florida Order]." Florida counsel concluded that: "it is clear that [FLOIR] has broad authority to wield its enforcement authority over insurers and the insurer's affiliated parties, which extends to controlling shareholders. The Office's enforcement authority can be invoked based on violations of existing consent orders and also acts that detrimentally impact insurers or present the future likelihood of detrimental impact on an insurer." Finally, Florida counsel observed that "while the enforcement statutes do not appear to impose an affirmative duty to report violations to the Office, if the Office subsequently unearthed unreported violations (e.g., a violation of the Disclaimer of Control), this could form the basis for enforcement action against the party who failed to report." At this time, I do not believe we are necessarily compelled to report Phil's communications, particularly due to the fact that the Board has fulfilled its legal obligations to ensure its affiliate transactions are negotiated in compliance with the law and I am sending you this memorandum with recommendations to prevent any possible violations of the Florida Order, the South Carolina Order, and the disclaimers of control. Indeed, the Board has moved vigorously to conduct these transactions on an arm's length basis regardless of the motivations for and the fact of Phil's e-mails and communications. Moreover, unnecessarily reporting them at this time could have a draconian and destructive effect on CGIC. Indeed, as you can see from Florida counsel's responses to me, should FLOIR believe any party has violated the Florida Order, FLOIR could take dramatic regulatory action against CGIC, its board, and even its controlling stockholders, or even refer matters to Florida prosecutors.[ii]

Recommendations

We need to prevent the recurrence of any communication that could be perceived by regulators as violating the orders and disclaimers. Accordingly, we should avoid even the appearance of impropriety without regard to Phil's actual motivations and ensure that he and any other person associated with HC2 other than Justin Myers not interject themselves into discussions between CGIC's Board and management and affiliates concerning proposed affiliate transactions or other operations of CGIC. Rather, I recommend that per the literal language of the Florida Order, that only Justin Myers present proposed affiliate and other transactions or any non-administrative/non-ministerial affiliate interactions and matters to CGIC's Board and executive management and initiate communications with CGIC's Board and executive management concerning such transactions, interactions, and matters . Of course, CGIC's Board and management may have questions others associated with HC2 or its affiliates are better placed to answer than Justin. In those instances, the Board and management can generally work through Justin to obtain answers and information. I believe a rigorous process along these lines will help ensure FLOIR or other regulators do not misconstrue the actions of anyone, including parties associated with HC2 such as Phil.

Conclusion

Please understand this memo is intended to protect CGIC, HC2, and Phil. The Florida Order is quite restrictive as to the contacts CGIC can have with persons associated with HC2 and FLOIR has wide-ranging powers it could impose should it conclude that order has been violated. It is simply my view that it is prudent for all involved to make every effort to avoid even the appearance of impropriety while exploring affiliate transactions that may be of mutual benefit. Should you wish to discuss any of the foregoing, do not hesitate to contact me.

Regards,

Jim

James P. Corcoran
450 Park Avenue

EXHIBIT 1

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New York, NY 10022
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[i]Under Texas law, a registered insurer "may organize, acquire, invest in, or make loans to one or more subsidiaries, and may loan to or invest in affiliates" all as permitted under that code. *See* TEX. INS. CODE 823.252. However, the insurer must meet a "fair and equitable" standard for "material" transactions. *See* TEX. INS. CODE 823.101(a) & (b). Materiality is defined for reporting purposes (i.e., information in an insurer's registration statement) as when the "amount of a single transaction or the total amount of all transactions involving sales, purchases, exchanges, loans or other extensions of credit, or investments is more than one-half of one percent of an insurer's admitted assets as of December 31 of the year preceding the date of the transaction or transactions. . . ." TEX. INS. CODE 823.054(b). The commissioner "by rule or order" may provide a different standard. TEX. INS. CODE 823.054(d). The rules of the Texas Department of Insurance ("TDI") provide that information "which is not material for the purposes of the Act, need not be filed under the Act, §823.054, for certain requirements respecting materiality." 28 TAC 7.203(d). In discussing "material changes" to an insurer's registration statement, TDI's rules provide the following qualify as material:

> [A]ny transaction with an affiliate or affiliates which, when taken together with all other transactions with affiliates excluding those transactions approved under §7.204(a)(1) of this title (relating to Transactions Subject to Prior Notice) and those transactions for which notification is given under §7.204(a)(2) occurring within 12 months next preceding, under Subchapter C of the Act. In this case, §7.210(c) and (f) of this title must be made current together with a report of *all transactions with affiliates regardless of size* within 12 months next preceding. After the transactions are reported and the filings under §7.210(c) and (f) are made current, each subsequent transaction with an affiliate which, when taken together with those transactions which occurred within the 12 months next preceding, were reported under this subsection and Subchapter C of the Act, must be reported under subsection (e) of this section.

28 TAC 7.203(f) (emphasis added). Accordingly, it appears TDI's rules may consider all affiliate transactions as "material" regardless of size for reporting purposes and in need of reporting on an insurer's registration statement. Moreover, regardless of the rule, as the statute notes, the commissioner can set a different standard by order. Although TDI has not issued a formal order with respect to Continental General Insurance Company ("CGIC") regarding affiliate transactions, TDI staff had requested in late 2018 that CGIC refrain from further affiliate investments, has since requested that CGIC provide it information on all of its affiliate investments, and has repeatedly expressed concerns with and undertaken strict scrutiny of CGIC's affiliate investments. Therefore, based on all of the foregoing, all of CGIC's affiliate investments arguably should meet the "fair and equitable" standard.

[ii] Because TDI recognized FLOIR's ongoing jurisdiction over CGIC, I have asked Texas regulatory counsel to assess whether TDI could similarly view Phil's communications as a violation of the Florida order and take action against CGIC as a result. I will let you know what Texas counsel advises.

EXHIBIT 1

James P. Corcoran

From: James P. Corcoran [mailto:jpcorcoran@jpcorcoran.com]
Sent: Thursday, November 07, 2019 3:05 PM
To: 'Kimberly A. Yelkin (kyelkin@gardere.com)'; 'David Ramsey'; 'Danny Saenz'
Subject: Phil Falcone, Consent Orders, Disclaimers of Affiliation/Control - PRIVILEGED & CONFIDENTIAL
Importance: High

Joe,

I write to follow up on my email of September 26, 2019 in which I urged you that it was critical for Phil to cease his interjections into CGIC's day-to-day transactions, affairs, and operations based on the significant regulatory risk those interjections pose to CGIC under Texas Insurance law, the Consent Orders (the "Consent Orders") of the Florida Office of Insurance Regulation ("FLOIR") and the South Carolina Department of Insurance ("SC DOI") to which CGIC, Phil and HC2 are subject, and Phil's Disclaimers of Affiliation/Control ("DOC") as to CGIC. As this memorandum details, Phil has not ceased his interjections. As a result, CGIC and its officers and directors are exposed to serious regulatory and legal sanction. As further detailed herein, it is absolutely imperative that Phil cease such activity, which in my view at this point has placed CGIC in the position that it has a duty to report his activity to the regulators.

In that regard, I cannot emphasize enough that all the state insurance regulators have broad authority to examine the books and records of an authorized insurer and they generally interpret their power as unfettered. Moreover, from time to time, they are required to examine insurers on-site at their offices pursuant to their enforcement authority. Staff of CGIC will be asked whether they have received any direction, or had any involvement with officers, directors, and shareholders of HC2, and all of their emails, phone records, and other documents may be reviewed for corroboration. The regulators will focus specifically on interactions involving any HC2 officer or board member that has had prior regulatory problems or disciplinary actions taken against them by any financial regulator.

I also cannot overemphasize enough that the Consent Orders and Financial Decision and Conditional Order of the South Carolina DOI were drafted to make sure that Phil has no direct or indirect control of CGIC, and especially its investment portfolio. That was the price of admission. Moreover, my Employment Contract was the subject of much discussion at the Hearing in July 2018 regarding CGIC's acquisition of Kanawha. The regulator wanted assurances that I would be able to compel Phil's compliance with the South Carolina orders. The fact that my compensation was formulaic and did not provide Phil with any control via a discretionary bonus, etc. was a critical component of the assurances the regulator needed, and facilitated approval of the Kanawha acquisition.

With the preceding background, it's important to revisit here my September 26, 2019 email (attached here for your convenience) outlining the provisions of the Consent Orders including a list of emails that raise concerns with reference to the Florida and SC Consent Orders as well as the provisions of the Texas Holding Company Act and Phil's Disclaimers of Control/Affiliation. The list attached to the September 26, 2019 email as Appendix A lists materials from July 11, 2019 through September 19, 2019. The initial materials, among other things, included discussion of the proposed Casterdenn LLC investment (Ken Orr), including my email of July 29, 2019 to Justin Myers, which raised serious concerns regarding Casterdenn, Mr. Orr and Justin's behavior. These concerns include

EXHIBIT 2

the fact that the proposal was generated by Phil and Justin after Justin retained outside counsel on his own and bypassed me and CGIC's Board to try and implement a series of open-ended loans from the CGIC portfolio to Mr. Orr, initially in the amount of up to $12.5 million. This under the highly dubious theory that it was not an affiliate transaction. The Appendix also includes additional correspondence dealing with the Casterdeen transaction. All the foregoing mentioned correspondence demonstrates that Mr. Falcone initiated the proposed Casterdenn transaction (through Justin) as an attempt to bypass me and the Board in an attempt to forward a substantial amount of CGIC's funds to an individual whose history raises serious concerns.

Appendix A also includes materials demonstrating Phil's advocacy for the HC2B affiliate transaction, injecting himself into CGIC's discussions with HC2B. These interjections look like an attempt to intimidate CGIC and its officers and directors into refraining from asking tough questions and properly negotiating the deal from CGIC's perspective. This is demonstrated by Phil's September 4, 2019 email to me and officers of CGIC in response to questions being posed by CGIC to HC2B, in which Phil declared as to those questions: "This is a fucking pile of bullsht" (also included is my September 9, 2019 response to Phil elaborating on the Board's responsibilities, duties and the law.) Particularly in light of Phil's continued interjections since my September 26, 2019 e-mail to you, it is difficult to see how regulators would view Phil's September 4, 2019 e-mail as anything other than an attempt to direct CGIC's affairs in violation of the Consent Orders (incidentally, the TDI has already raised concerns regarding the HC2B transaction and has requested detailed board minutes demonstrating that the board scrutinized the material changes to this investment).

I had hoped based on your assurances in your response to my September 26, 2019 e-mail (which you sent me on September 27, 2019 and a copy of which is attached) that Mr. Falcone would rigorously adhere to the terms of the Consent Orders so that CGIC would not be in the position it is now in where it is increasingly harder to see how CGIC does not have an obligation to report his actions to the Texas Department of Insurance ("TDI"), FLOIR, and the SC DOI. Unfortunately, as demonstrated below, due to Phil's continuing interjections into CGIC's day-to-day transactions, affairs, and operations that include what look like threats and intimidation, it seems highly likely that the regulators would deem them to be breaches of the Consent Orders and the Disclaimers of Affiliation/Control (and as a result, Texas Insurance Law). Therefore, CGIC likely has an obligation at this point to report Phil's actions to TDI and ultimately the FLOIR and SC DOI. Indeed, as I noted in my September 26, 2019 e-mail, if the regulators subsequently unearth matters they believe should have been reported, this can form a basis for action against parties failing to report.

Further context is important here with regard to the critical component that allowed HC2 to acquire CGIC and subsequently Kanawha Insurance Company: my ability to assure regulators that Mr. Falcone and HC2 will not, as the Florida consent order put it, to exercise "any influence or control either directly or indirectly over the business operations, affairs or activity of CGIC or any entity owned or controlled by CGIC" and that I would be in control of CGIC as Executive Chair. All the regulators clearly expressed concerns regarding Phil, especially that he not in any manner control the investment portfolio. In my discussions with Chief Deputy Commissioner Doug Slape of the TDI, Commissioner Farmer of SC DOI and Commissioner David Altmaier of FLOIR, all three sought my assurance that Mr. Falcone would have no control of CGIC especially with relation to the investment portfolio.

Commissioner Altmaier in particular was very strong on this point. I made a commitment to him (and Commissioner Farmer at the South Carolina hearing as reflected in the South Carolina Final Decision and Conditional Order) that I would assure that Mr. Falcone did not directly or indirectly control the investment portfolio, the day to day operations of the insurance company, and that I would be able to perform my duties without pressure from him. I testified to this end that Mr. Falcone fully understood that I would be Executive Chair of the Company without pressure from him and that he would have no control directly or indirectly. You can pull up the transcript if need be.

Indeed, the Final Decision and Conditional Order of the Director of Insurance of South Carolina on July 12, 2018 specifically states as a continued obligation of CGIC and in accordance with the Disclaimer of Affiliation signed by Phil (as supplemented by a letter to Director Farmer and Texas Insurance Commissioner Sullivan), Mr. Falcone shall not have any role in the day to day operations or management or Kanawha or CGIC, pre or post merger. It goes on to state that any change to the statement positions in these documents must be filed with and approved by the states of SC and Texas, respectfully before taking effect.

Notwithstanding Phil's knowledge of CGIC's commitments to the regulators as reflected in writing in the Consent Orders and his Disclaimers of Control/Affiliation. I have had numerous conversations with Phil on these matters and

EXHIBIT 2

received multiple emails demonstrating his frustration with CGIC's regulatory commitments. His actions reflect resistance to complying with his Disclaimers of Affiliation/Control, the Consent Orders and Texas Insurance law. Candidly, his action raises whether he is suited to being a principal in an owner of a company in a highly regulated industry, such as an insurance company.

Among the many troublesome instances in which Phil has injected himself into CGIC's affairs and its investment portfolio–in addition to the aforementioned Casterdenn LLC transaction (Ken Orr)–is the Fieldpoint Deposit Insurance Program proposed by Tommy Fallin. Initially, I understood the Fieldpoint Deposit Insurance Program as a presentation by Tom Fallin to me for an incidental transfer. However, Fieldpoint people indicated that they were under the impression that CGIC was agreeable to deposit $50 million in Fieldpoint's FDIC insurance related programs, and it has become clear to me that the source of that belief was Phil. In fact, as reflected by the attached email of October 31, 2019 from Phil, he was in direct contact with Fieldpoint on the issue and a proponent of the transaction, which again appears like an attempt to steer CGIC's investment and business decisions in contravention of the spirit of the Consent Orders.
In any case, we chose not to make the investment for logistical, administrative, and legal reasons. For example, the attached July 1, 2019 email regarding the Fieldpoint program from CGIC's Texas regulatory counsel raised regulatory and legal concerns including whether the TDI could be comfortable that the program complied with FDIC requirements, which Phil has completely disregarded. In that regard, Phil's October 31, 2019 email regarding our Fieldpoint decision accused Dave Ramsey and me of being flippant. The record will reflect our decision was far from flippant. We had approximately ten conference calls and opinion of outside counsel noting substantial risk. The potential economic upside was far outweighed by regulatory and legal risk. Phil's email again looks like a form of intimidation and the sort of thing that the Consent Orders were designed to prevent. We do not agree with his calculations but that is not the issue. Once again he injected himself in an apparent attempt to steer us into an investment program in violation of his Disclaimers of Affiliation/Control and the Consent Orders of the states of Florida and SC.

Next, with respect to the proposed restructure of CGIC's position in HC2B mentioned above and raised in my September 26, 2019 e-mail (which CGIC recently consummated), Phil continued to interject himself looking to push that deal through even after that September 26, 2019 memorandum I forwarded to you. My prior email of September 26, 2019 stops on September 19, 2019. Attached is an email from Phil to me dated September 20, 2019 again injecting himself into the discussions, copying Dave Ramsey and Danny Saenz, in which Phil indicated he would contact TDI, Chief Deputy Doug Slape, regarding the transaction, despite the Consent Orders. In addition, enclosed is my response of September 20, 2019 noting such contact would be a violation of the Consent Orders and that Phil may not directly influence any decisions of CGIC.

Moreover, in October, Phil continued to criticize CGIC's management in a way that is hard to see—in light of the totality of his interjections--as anything other than his effort to change management's behavior. He began the month's interjections on October 3, 2019 when he forwarded to me a memo in response to an article which Janet Ward of CGIC forwarded to Ivan Minkov of HC2B in which she noted the article "popped" up and sparked interest dealing with HC2B's 8K. Mr. Falcone copied multiple HC2 parties and commented, "Sounds like certain employees might be spending too much time trolling the internet...I'm on google alert and I didn't even see this." This took place in the context of strenuous negotiations between CGIC and HC2B and CGIC management's tough scrutiny and questioning of HC2B.

Mr. Falcone has also intervened with regard to the investment portfolio of CGIC through the mechanism of the Investment Management Agreement ("IMA") and Justin Myers. These attempts include direct and implied threats to myself and employees of CGIC. Of special note is an October 8, 2019 email from Phil to me copying Mr. Ramsey dealing with the IMA. Also attached is my October 8, 2019 response to Phil's October 8, 2019 email. Phil's email is addressed to me and Dave Ramsey is copied, and it directs me as Executive Chair to tell Texas to "get in line." Mr. Falcone notes in this email that he has some authority or power over the IMA, again despite the various Consent Orders. He also implies that the Board of Directors are on the same team as the portfolio managers ignoring the fact that under insurance law, the IMA--an affiliate transaction--needs to be negotiated at arms length and be reasonable, and to that degree we are not on the same team.

The IMA is an affiliate contract between CGIC and CGI and Mr. Falcone and HC2 are not parties to that contract. It is an affiliate transaction subject to Board approval and the Board members have an obligation to assure that any IMA is

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in the best interest of CGIC and its approximately 75,000 policyholders, not in the best interest of Phil Falcone or HC2. It would be a violation of Texas Insurance Law if I were to enter into any contract or agreement which would provide compensation based upon my being instrumental in securing an IMA for the benefit of Phil Falcone and/or HC2.

While CGIC's board and management recognize the company's ultimate owners invested in CGIC in order to realize economic gain, management and the board must insure that any IMA protects CGIC and its policyholders, and that services under the IMA are cost efficient, all as required under Texas law. As part of these obligations, CGIC and its board and management also have to prevent Mr. Falcone's behavior from becoming the basis for regulatory action, including the prospect of CGIC being put under regulatory oversight. In addition, CGIC's responsibilities to its owners are to do everything possible to maintain CGIC's RBC at a level that would not compel HC2 to contribute more capital pursuant to its commitment under paragraph 10 of the Texas Consent Order, which is in essence, an HC2 financial guaranty.

Also included with this memo is my October 15, 2019 email of 11:45 A.M. updating Mr. Falcone on the concerns of the TDI with our IMA. I noted in that email our burden to demonstrate to the TDI that the IMA benefits policyholders, a risk reward analysis noting to him that at that point we could only demonstrate a 3 bps improvement from the prior IMA and that Justin and Dave Watters were doing a further analysis. At the subsequent meeting with the TDI on October 21, 2019 the team, including Justin, was essentially only able to demonstrate that "the existing IMA did no harm to policyholders." When that statement was made by one of the TDI staff at the October 21, 2019 meeting, neither Justin nor Dave Watters provided a response.

My email of October 15, 2019 generated two email responses from Mr. Falcone. One at 6:50 P.M. on October 15, which appears to be form of threat, "As an aside, is TDI aware of your contract and the incentives around acquisitions? When I have a discussion with them around fees I want to put it all in the table and didn't want to be surprised if they were not aware." In fact, as I previously noted my contract was the subject of discussion at the SC Hearing. Nevertheless, in light of this comment I am happy to forward a copy of my Employment Contract to Doug Slape with a covering memo explaining the reason.

The second email from Mr. Falcone on October 15, 2018 at 11:28 P.M. also looks like a threat. It states, "In addition, one thing to note, since we based your personal contract on the successful negotiation of the existing IMA with TDI, I'm assuming if TDI changes their part of the deal and forces us to structure a new arrangement, we of course assume that you will amend your contract and hence your base and bonus accordingly, to keep it in line with the spirit of the overall agreement. In addition, we will also have to amend the M&A incentive contract since it doesn't make sense to have that kind of a success payout with a reduction in Management Fees, since they all coincided."

As previously noted, it would be totally inappropriate to link my personal contract to a "successful" negotiation of the existing IMA with TDI. My contract has nothing to do with the IMA. This is a fabrication by Phil stemming from his frustration and is really just a threat that if we couldn't preserve the existing IMA in the face of TDI's concerns, my compensation would be reduced. It's hard to see how this is anything other than an attempt to steer CGIC's interactions with TDI, which would violate the Consent Orders and Phil's Disclaimers of Affiliation/Control. A successful negotiation with the TDI for the Executive Chair and other management of CGIC would be to secure the highest quality services at the lowest cost. The Board and management need to make the decision based on price and productivity as if dealing with any other third independent party, not with the goal of maintaining the manager's current fees.

Another matter of concern is the issue I raised with you in my September 30, 2019 email regarding an HC2 Investor Presentation and an SEC filing and the language on page 11 dealing with Continental Insurance LTC. I would note that pursuant to paragraph 10 of the Texas Consent Order with reference to the Kanawha acquisition, there exists a financial obligation on the part of HC2 to maintain CGIC's RBC levels at 450%. Has that been corrected? Apparently the statement at issue is still on HC2's website.

As I already noted Phil's continued involvement and threats are totally inappropriate and inconsistent and are very likely violations of Texas Insurance Law, the Florida and SC Consent Orders, and his Disclaimers of Affiliation/Control, and it is increasingly clear he is having extreme difficulty ceasing this behavior that can have dire consequences for CGIC, and therefore, ultimately, its owners. On that note, let me remind you, as noted in my September 26, 2019, that South Carolina conditioned its approval of CGIC's acquisition of Kanawha Insurance Company on various regulatory

EXHIBIT 2

obligations including those I have discussed in this memo. That failure to comply could render SC's approval of the Kanawha acquisition null and void.

The reaction in Florida is likely to be much more draconian. In Florida, any act done by the insurer in furtherance of a proscribed act by a controlling stockholder could constitute a separate violation under an aiding and abetting theory. In addition to these civil remedies, as Florida counsel noted, if [FLOIR] "believes a criminal violation of the Insurance Code has occurred, it is required to notify prosecutors pursuant to 624.310(2)(b)." Florida counsel also advised that: "any violation of the Consent Order entered August 1, 2018 (granting CGIC authority to transact insurance in Florida), gives [FLOIR] authority to take adverse action against CGIC, including potential revocation of its certificate of authority. If revocation occurred, by the terms of the Consent Order, its parent could be permanently enjoined from transacting insurance in Florida in any manner." Furthermore, Florida counsel's view is that a "violation of the Disclaimer of Control Affidavit that was executed for HC2 Holdings Inc. would constitute a violation of the [Florida Consent Order]."

Florida counsel concluded that: "it is clear that [FLOIR] has broad authority to wield its enforcement authority over insurers and the insurer's affiliated parties, which extends to controlling shareholders. The Office's enforcement authority can be invoked based on violations of existing consent orders and also acts that detrimentally impact insurers or present the future likelihood of detrimental impact on an insurer." Florida counsel observed that "while the enforcement statutes do not appear to impose an affirmative duty to report violations to the Office, if the Office subsequently unearthed unreported violations (e.g., a violation of the Disclaimer of Control), this could form the basis for enforcement action against the party who failed to report."

Finally, if all of the foregoing is not enough, CGIC's domestic regulator, Texas, will also likely not take kindly to Phil's actions in connection with the Consent Orders. These regulators talk to each other and action by one very often creates a cascading effect with others. Texas cannot ignore that Phil has been interjecting himself into CGIC's affairs in what look to be attempts to influence its operations and investments, all of which would violate the Consent Orders, of which the TDI was fully aware in the context of approving the Kanawha acquisition.

SUMMARY

As I have already noted, the insurance regulators will ultimately be reviewing all the relevant correspondence outlined in my emails of September 26 and November 7, 2019 either through a special or its regular mandated market conduct examination. Danny Saenz the independent board member and I believe we have an obligation to disclose these matters initially to the TDI namely Chief Deputy Doug Slape and ultimately the states of Florida and SC. Danny and I have made personal commitments to Chief Deputy Doug Slape to inform him of any concerns regulatory or otherwise that could undermine the viability of CGIC. I intend to keep that promise. Danny Saenz shares these concerns and is considering resigning from the Board and subsequently briefing Mr. Slape on the reasons for his resignation.

Accordingly, before any meeting with Doug Slape, we suggest that we meet with you and Phil as soon as possible in order to set forth a course of action to mitigate what no doubt would be a strong regulatory response.

Regards,

Jim

James P. Corcoran
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EXHIBIT 2

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February 27, 2020

David B. Hennes
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BY FEDEX

The Board of Directors of HC2 Holdings, Inc.:
Philip A. Falcone
Robert V. Leffler, Jr.
Wayne Barr, Jr.
Warren H. Gfeller
Lee S. Hillman
Julie Springer
HC2 Holdings, Inc.
450 Park Avenue, 30th Floor
New York, NY 10022

Re: HC2 Holdings, Inc. Public Statements Regarding Continental General Insurance Company

Dear Messrs. Falcone, Leffler, Barr, Gfeller, Hillman, and Ms. Springer:

This firm represents the directors of Continental General Insurance Company ("Continental") unaffiliated with HC2 Holdings, Inc. ("HC2"), namely Mary Cavanaugh, James Corcoran, David Ramsey, and Danny Saenz. The purpose of this letter is to reiterate concerns regarding certain inaccurate public statements made by HC2 regarding Continental, as detailed below. These matters were previously brought to the attention of HC2 management but Continental did not receive an appropriate response. It appears that, to date, the inaccurate statements remain uncorrected. As a result, we now write to the Board of Directors of HC2 to ensure that these matters have been reviewed and addressed.

Specifically, we wish to bring to your attention the following public statements that were inaccurate:

HC2 Fourth Quarter 2018 Conference Call. On March 12, 2019 at approximately 5 p.m. EDT, HC2 conducted its Fourth Quarter 2018 Conference Call for analysts and the investing public. A recording of that call remains available on HC2's website and the corresponding transcript is available on Bloomberg. During the call, an analyst noted that HC2's cash position at December 31, 2018 was low and asked HC2's Chief Executive Officer to address the "liquidity situation" at the holding company. *See* Transcript at 8, Q4 HC2 Holdings, Inc. Earnings Conference Call, Bloomberg

EXHIBIT 3

(Mar. 12, 2019). In response, HC2's Chief Executive Officer, Philip Falcone, stated several times that HC2 management was "not concerned . . . at all" about HC2's liquidity and liquidity is "not something that we're thinking about at all" because "we do have a number of different levers to pull," including taking advantage of the end of a "moratorium on dividends" from "the insurance company," *i.e.*, from Continental. When asked "[w]hat type of magnitude of dividends" could be obtained by HC2 from Continental, HC2's Chief Financial Officer, Michael Sena, stated that Continental could pay up to 10% of its surplus, amounting to a potential $25 million dividend.

These statements were inaccurate because Continental cannot pay HC2 a dividend based solely on its surplus. Instead, Continental must have adequate earnings to support the dividend. As of March 12, 2019, Continental did not have earnings sufficient to support any dividend; thus, Continental could not pay a dividend to HC2, let alone a $25 million dividend. Moreover, even if Continental did have earnings sufficient to support a dividend, any dividend would need to be declared and paid by and under the authority of Continental's Board of Directors, not by officers of HC2 pulling on "levers." Accordingly, HC2's statements on the March 12, 2019 earnings call that Continental could pay a dividend up to $25 million were inaccurate.

HC2 Investor Presentation. On September 26, 2019, HC2 filed a Form 8-K with the SEC attaching an investor presentation, entitled "Company Overview." This investor presentation is available on HC2's website. On Slide 11 of the investor presentation, HC2 included the following statement about Continental: "'Ring Fenced' Liabilities – No Parent Guarantees."

This statement was inaccurate because, among other reasons, it is contrary to orders of both the Texas and Ohio Departments of Insurance. For example, pursuant to an Official Order of the Texas Department of Insurance, dated July 31, 2018, if Continental's total adjusted capital and authorized control risk-based capital level fall below statutorily-specified levels "then within five business days, HC2 Holdings Inc.; HC2 Holdings 2, Inc.; Continental Insurance Group Ltd.; and Continental LTC, Inc. agree to contribute cash or other admitted assets acceptable to the department as necessary to Continental General to restore the total adjusted capital to authorized control risk-based capital level." Texas Official Order ¶ 10; *see also* State of Ohio Department of Insurance Consent Order ¶ 2 (requiring HC2 Holdings, Inc. and HC2 Holdings 2, Inc. "[f]or five years following the closing, including reporting as of December 31, 2020 . . . to maintain Insurer's total adjusted capital to authorized control level RBC at a minimum of 400 percent" and "[i]f the total adjusted capital to authorized control level RBC level falls below 400 percent, then within five business days, [to] contribute cash or other marketable securities acceptable to the Department as necessary to Insurer to restore the RBC level"). Accordingly, HC2 is obligated to maintain Continental's total adjusted capital at certain levels, and thus HC2's statement that HC2's liabilities to Continental are "ring fenced" is inaccurate.

On or about March 13, 2019, James Corcoran, Executive Chairman of Continental, raised the inaccurate statements made during the March 12, 2019 earnings call with Mr. Sena. Mr. Corcoran also raised the inaccurate statement in the investor presentation during a September 27, 2019 meeting

with HC2's Chief Legal Officer, Joseph Ferraro. Mr. Corcoran followed up by email to Mr. Ferraro on September 30, 2019 and again in a memorandum provided to Mr. Ferraro on November 7, 2019. Since those communications, Mr. Corcoran has on a number of occasions raised his concerns with Mr. Ferraro and has not received any response as to how HC2 plans to address these issues.

In light of the fact that there has not been any response from HC2, Continental is forced to elevate this matter to HC2's Board of Directors. Given the foregoing, please advise us no later than March 17, 2020 how HC2 plans to correct the inaccurate statements detailed above.

Very truly yours,

David B. Hennes

cc: James Corcoran, Executive Chairman, Board Member, Continental
David Ramsey, President and Chief Executive Officer, Board Member, Continental
Mary Cavanaugh, Board Member, Continental
Danny Saenz, Board Member, Continental

EXHIBIT 3

CONTINENTAL GENERAL INSURANCE COMPANY

P.O. Box 203098
Austin, TX 78720-3098
Toll Free: (866) 830-0607
Fax: (888) 769-0737

March 13, 2020

Warren H. Gfeller
c/o Stranger Valley Land Co, LLC

Re: TDI Targeted Examination of Continental General Insurance Company (CGIC)

Dear Warren:

It is regrettable we could not meet as intended on Wednesday, March 11, and I sincerely hope you are feeling better. As I noted to you in my e-mail of March 4, the Texas Department of Insurance, CGIC's domestic regulator, had called for a meeting with me on March 12, which I attended. I write now to ensure that you are advised of very concerning developments with respect to the Texas Department of Insurance.

As you may or may not know, the Texas Department commenced a targeted examination of CGIC on January 10, 2020 (see the attached letter from the Texas Department) as a result of concerns raised by an independent board member of CGIC. That targeted examination is focused on corporate governance, related party activities, affiliate agreements and investment activities of CGIC. In that regard, please note that we were requested to produce substantive communications involving the former President, Michael Mazur, Justin Myers, Dave Ramsey, Janet Ward and me with all affiliates of CGIC within the HC2 Holding company system.

The March 12 meeting TDI called with me was in connection with this targeted examination. I have attached the agenda for that interview to this letter. As you'll see from the agenda, the meeting in which TDI interviewed me honed in on specific affiliate transactions.

EXHIBIT 4

CONTINENTAL GENERAL INSURANCE COMPANY

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The interview also focused on the history of the regulatory approvals required for CGIC to complete the acquisition of the South Carolina-domiciled Kanawha Insurance Company that CGIC completed in 2018. In that regard, I cannot overemphasize enough that the Final Decision and Conditional Order of the South Carolina Department of Insurance reflects the regulator's intent to insure truly independent management of CGIC. The Order specifically provides that Phil Falcone was not to have direct or indirect control of CGIC. Moreover, at the hearing in July 2018 regarding the acquisition, the regulator wanted assurances that I would be able to compel Phil's compliance with the South Carolina orders and the final decision and conditional order specifically provided that "[n]either HC2 nor CGIC will make changes to the management of Kanawha [now CGIC since it merged with and into CGIC] without the express written approval of the insurer's domestic regulator," namely Texas.

Similarly, in the Consent Order the Florida Office of Insurance Regulation issued in connection with CGIC's application for a certificate of authority in connection with the Kanawha acquisition, the Florida office specified that no person associated with HC2 other than Justin Myers, in his role as a board member of CGIC, was to exert influence or control, either directly or indirectly, over CGIC's business operations, affairs, and activities. Furthermore, I note that when HC2 originally acquired CGIC, the company was then domiciled in Ohio, and the Ohio Department of Insurance only approved HC2's acquisition of CGIC on the condition that no HC2 board members could serve as an officer or director of CGIC (or CGIC's direct parent). Phil and HC2 acquiesced in and are bound by all of these state regulatory orders.

Additionally, enclosed for your review are: (a) the aforementioned South Carolina, Florida, and Ohio orders as well as orders issued by the Texas Department of Insurance concerning HC2's acquisition of United Teachers and CGIC's Kanawha acquisition, (b) correspondence dated February 18, 2020 from me to Mike Sena and Justin Myers of HC2 regarding the investment management agreement and a large overcharge of investment management fees, (c) correspondence dated February 20, 2020 from me to Mike Sena and Justin Myers of HC2 regarding the overpayment by CGIC for purchase of 20,800 common shares of DBM Global, Inc. facilitated by the CGIC's affiliate investment managers at a price of $132.21 per share, (d) correspondence dated February 27, 2020 from me to Mike Sena and David Watters regarding the manager's mishandling of over $10,000,000 of loans to Arcot Finance LLC, a "bespoke jeweler" and fine gem investment firm, and (e) correspondence dated November 7, 2019 and September 27, 2019 regarding my concerns about Phil Falcone's interjections into the affairs of CGIC given the express regulatory restrictions set forth in the attached regulatory orders. CGIC has yet to receive a response to these matters.

Finally, it is incumbent upon me, as Executive Chair of CIG and CGIC, to assure compliance with all regulatory requirements and also to inform you of developments such as the TDI targeted exam that could result in significant regulatory actions affecting

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CONTINENTAL GENERAL INSURANCE COMPANY

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CGIC. I look forward to rescheduling our meeting. In the meantime, thanks for your consideration.

Best regards,

Jim Corcoran

Cc: Robert V. Leffler, Jr.
Wayne Barr, Jr.
Lee S. Hillman
Julie Springer
Danny Saenz
Dave Ramsey
Mary Cavanaugh
Dave Watters
Justin Myers

EXHIBIT 4

TDI | Texas Department of Insurance

PO Box 149104 | Austin, TX 78714 | 1-800-578-4677 | tdi.texas.gov

Continental General Insurance Company
Limited Scope Examination as of December 19, 2019

Jim Corcoran
Executive Chair
March 12, 2020 at 2:00PM CST

Interview Agenda

1. Introductions
2. Background/Experience/Reporting Structure/Roles and Responsibilities
3. Culture
4. Investment Process
5. Investment Management Agreement
6. DBMG Investment
7. Casterdenn LLC (KORR) Investment
8. Fieldpoint Transaction
9. IBT Investment –
    a. IBT (IDLE Blockchain Technology) – CIG, on behalf of CGI, purchased the convertible bond as a short-term investment in April 2018 – paid $2,073,250 (Par $2,075,577, discount $2,327). A partial impairment was recorded in 3Q2019 based upon FV information provided by CIG, investment manager. At that time, underlying cryptocurrency weakness was disclosed as the reason for the recommendation to impair. The security matured October 11, 2018 (4Q18) with no cash received. Due to ongoing miscommunication between the investment accounting consulting firm and the investment manager, a receivable was recorded in October 2018 and no impairment was recorded at 12/31/2018. Following a partial recovery of about $200K on July 12, 2019, we recorded a full impairment in 3Q2019 based upon further discussion with the investment accounting consulting firm – final loss was about $1.9M ($2.1M par less $200K recovered). In the 4Q2019, we charged 50% of the impairment to the investment management fee effective December 31, 2019. The impairment of ~$1.9M and the investment management fee offset of ~$0.9M were both disclosed in the 2019 Annual Statement Notes as prior year corrections.

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10. ARCOT Investment
11. 704Games Investment
    a. 704Games (f/k/a DMi) – affiliate common stock investment – 51,500 shares purchased May 2016 for $5M - $2.9M GAAP Equity and $2.1M Goodwill. Security was impaired $2.3M in 4Q2017. At 12/31/2019, Book Adjusted Carrying Value was $2.1M reflecting a net unrealized loss after impairment of ~$0.6M based on GAAP equity (reflects continued net loss position after impairment). Fair Value was reported at $2.1M. Goodwill balance was fully amortized 3Q2018 due to continuing loss scenario. See write-up below provided by investment manager to include with NAIC SUB 1 filling explaining rationale for initial investment.
12. HC2 Broadcasting Dividend Payments
    a. Perpetual shares purchased in December 2018 – received $2.0M cash dividends in 2019
    b. Redeemable Shares (amendment converting from perpetual to redeemable) October 2019 – realized gain of $190K on conversion, received $0.5M PIK dividends in 2019
13. Other/Miscellaneous Discussion
14. Final remarks

EXHIBIT 4

DMi, Inc. Narrative

Affiliate investments represent opportunities for [UTA/CGI] to take positions in companies where deep insight and essential information are more readily available than in unaffiliated investments. In these positions, the Company has direct access to management to better understand the dynamics affecting its investments in the company or the broader industry. Affiliate investments also offer opportunities to invest privately, not available to all investors, which broadens the investment landscape and provides a wider range of opportunities from which to choose its investments and diversify its holdings. We believe that these characteristics create opportunities to realize risk-adjusted returns not otherwise available in the market. The Company's exposure to affiliate investments is limited to 50% of its statutory surplus and thus provides small but meaningful upside potential to complement its core investment-grade fixed income strategy.

DMi, Inc. is a digital games publisher and developer focused on delivering fun and engaging NASCAR branded games. The Company is dedicated to bringing high quality digital and socially interactive game experiences to the marketplace. DMi has a team of "Best in Class" digital media experts that develop, market and sell DMi games to NASCAR fans (75 million worldwide) and gaming enthusiasts.

As NASCAR's exclusive console simulation-style video game licensee, DMi, since its founding in 2014, has undertaken a complete re-development of previous versions of the NASCAR simulation-style video game. This new version, titled NASCAR Hear Evolution (NHE), is slated for launch in September 2016 and will be the first the NASCAR video game series available on the PlayStation®4 computer entertainment system and Xbox One. The game will also arrive on Windows PC. The new game will feature all of the top NASCAR drivers, teams, and will include incredibly detailed tracks and racing environments. DMi's exclusive developer, Monster Games, has incorporated several state-of-the-art features that will enable the game to dynamically adapt to a player's individual game playing abilities and expertise, making each game play a "true to life experience," regardless of skill level.

Led by game-industry veterans Tom Dusenberry, former CEO of Hasbro Interactive, and Ed Martin (more information on both below), the Company has assembled a talented team singularly focused on developing and publishing the highest-level NASCAR branded games. Located in NASCAR Plaza in Charlotte, NC, the team has regular contact with NASCAR personnel, which contributes to the authenticity and quality of DMi's products.

As part of DMi's development and marketing strategy, DMi has established a Game Ambassador program with several NASCAR drivers, including Joey Logano (also a DMi investor), Ryan Blaney, Darrell Wallace, Jr. and Matt Tifft. The

EXHIBIT 4

Game Ambassador programs is aimed at tapping the driving and gaming skills of these NASCAR drivers to help develop the most realistic NASCAR racing experience. With large social media followings and mass appeal, the DMi Game Ambassadors participate in public appearances on the Company's behalf and are expected to play a vital role in the lead-up to and launch of NASCAR Heat Evolution in September.

DMi has also partnered with Toyota, an Official NASCAR partner, in a unique video game cover athlete competition. The first Toyota driver to cross the finish line in the 2016 NASCAR Sprint All-Star Race at Charlotte Motor Speedway held on May 21, 2016 became the cover athlete of NASCAR Heat Evolution. While the race was won by 2015 Dayton 500 Champion and Game Ambassador Joey Logano, with Brad Kesolowski a close second (both investors in DMi); Carl Edwards was the first Toyota driver to cross the finish line making him the face of the 2016 NASCAR Heat Evolution. Additionally, Toyota and DMi are developing an innovative in-game branding partnership that will elevate the racing experience for video game fans.

DMi has also developed a mobile NASCAR slot game, a NASCAR trivia game and is developing a mobile racing game, all of which will supplement the completely revamped console game. Leveraging the development technology used in NHE, the Company has also partnered with NBC, which broadcasts the second half of the NASCAR season. Under this partnership, DMi will be providing NBC with NASCAR Heat Evolution animations to be used during NBC's NASCAR broadcasts. These animations will show on-track dynamics such as drafting and how roof flaps function.

DMi is led by industry veterans Tom Dusenberry and Ed Martin.

"It's all about the fun" has been a consistent theme in the 30 year career of games executive, Tom Dusenberry. As a former CEO of Hasbro Interactive, Games.com and Atari, Mr. Dusenberry is closely associated with great games such as Monopoly, Trivial Pursuit, Frogger, Star Wars, NASCAR, Roller Coaster Tycoon and hundreds of other well know game brands. Tom has successfully integrated fun and engagement into games on multiple hardware platforms and has come full circle in the world of NASCAR. His first NASCAR hit, NASCAR HEAT, was a CD-ROM version created for PlayStation, Microsoft Windows and Game Boy published in 2000. Dusenberry Martin Racing is poised to capitalize on new technology and expand the NASCAR brand to create ground breaking digital consumer products that bring NASCAR racing fans and game players even closer to the action. Tom draws upon his years in the corporate world in addition to his entrepreneurial skills honed after founding his own company, Dusenberry Entertainment, Inc. He brings a wealth of experience to every aspect of the interactive games industry.

Ed Martin has been a prominent player in the motorsports video game and licensing world since 1994 when he joined Papyrus Design Group – the first NASCAR licensee in games. Over his nearly 20 years as a licensee in the interactive entertainment space, Ed has been an executive leader at all 4 NASCAR licensees (Papyrus, Hasbro Interactive/Atari, EA Sports and Eutechnyx) as the segment grew to become one of NASCAR's top 3. Ed has helped to evolve NASCAR games from PC to among the first online racing game, to the console, through multiple console transitions and recently, into mobile platforms. Ed has also been a leader in leveraging the technology of video games and the partnerships in

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NASCAR to evolve it from "games" to "interactive entertainment" – including relationships with broadcasters such as FOX Sports, online sites such as NASCAR.com and even within the sport for training and simulation. Ed now serves as President of Dusenberry Martin Racing

EXHIBIT 4

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March 30, 2020

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BY E-MAIL

Richard M. Brand, Esq.
Jonathan M. Watkins, Esq.
Cadwalader, Wickersham & Taft, LLP
200 Liberty Street
New York, New York 10281

Re: Response to March 19, 2020 Letter to James Corcoran, Executive Chairman, Continental General Insurance Company

Dear Messrs. Brand and Watkins:

We write on behalf of James Corcoran, Executive Chairman of Continental General Insurance Company ("CGIC") and the other members of the Board of Directors of CGIC unaffiliated with HC2 Holdings, Inc. ("HC2"), namely Mary Cavanaugh, David Ramsey, and Danny Saenz. The unaffiliated CGIC Board members have reviewed your March 19, 2020 letter to Mr. Corcoran and view it as nothing more than an inaccurate and unjustified attack on Mr. Corcoran and the unaffiliated Board members of CGIC. To be clear: the unaffiliated Board members believe that Mr. Corcoran has at all times fulfilled his obligation to ensure compliance with the Texas Insurance Code, the Consent Orders issued by Florida and South Carolina, and his fiduciary duties to CGIC and its affiliates and CGIC's policyholders, which is what the law requires and what is expected by insurance regulators.

Your letter contains unfounded and unsupported accusations and misstatements directed at Mr. Corcoran, who has in good faith and in a constructive manner, over a period of months, raised serious issues with HC2 management concerning the repeated attempts of Philip Falcone, Chairman, President and Chief Executive Officer of HC2, to directly or indirectly influence the affairs of CGIC, including, but not limited to, certain affiliate transactions.[1] Mr. Corcoran raised these issues to HC2 in real time, but HC2 either failed to respond at all, failed to respond in a timely fashion, or tried to placate Mr. Corcoran with assurances only to have the improper interference by Mr. Falcone continue in violation of the Texas Insurance Code and the Florida and South Carolina Consent Orders. Only

[1] We do not respond to each and every point raised in your letter; our failure to respond should in no way be construed as agreement. We disagree with all of the assertions in the letter concerning any alleged violation of fiduciary duties or improper conduct on the part of Mr. Corcoran or any other officer or director of CGIC.

EXHIBIT 5

now that the Texas Department of Insurance ("TDI") has initiated a targeted examination of CGIC ("the Targeted Examination"), has HC2 decided to question Mr. Corcoran's motives and improperly attempt to re-characterize events in order to attempt to deflect attention from its own conduct.

As a preliminary matter, we will address the fundamentally false and inaccurate claims that you make in the introductory section of your letter. *First*, your letter wrongfully ascribes an unsupported nefarious intention to Mr. Corcoran, claiming that by his actions, he intended to trigger the Targeted Examination of CGIC by the TDI covering corporate governance, related-party transactions, affiliated agreements, and portfolio activities. The actual facts: it was only after HC2 failed to address the serious issues raised by Mr. Corcoran—issues so serious that Mr. Saenz, former Deputy Commissioner of the Financial Regulation Division at the TDI, threatened his resignation if the issues were not addressed—that Messrs. Corcoran and Saenz determined it was necessary to raise the issues of concern with the TDI. *Second*, your letter falsely claims that Mr. Corcoran made disparaging comments to an HC2 employee concerning HC2 Board members. The same accusation was made during the March 19, 2020 call that Mr. Corcoran participated in at the request of Robert Leffler, Jr. and Wayne Barr, Jr. On that call, Mr. Corcoran categorically denied having made such comments and asked for the specifics of what he purportedly said and to whom; like your letter, Messrs. Leffler and Barr provided none. Mr. Corcoran continues to deny having made any such disparaging statements. *Lastly*, you purport to be "deeply concerned" that Mr. Corcoran has "abdicated" his duties as Chairman of CGIC in the two weeks preceding March 19. This is false and the faux concern expressed in your letter is directly contradicted by HC2's simultaneous touting to the securities markets of efforts taken by Mr. Corcoran during these unprecedented times. *See* Form 8-K Ex. 99.1, HC2 Holdings (Mar. 23, 2020).

I. Involvement of HC2 and Mr. Falcone in Affairs of CGIC

The sole purpose of the your letter appears to be to deflect focus from the legitimate issues appropriately raised by Messrs. Corcoran and Saenz, namely, among other things, Mr. Falcone's improper communications in the context of proposed affiliate transactions, including those between CGIC and HC2 Broadcasting Holdings, Inc. ("HC2B") and Casterdenn LLC ("Casterdenn"). Your letter claims that "HC2 has consistently acknowledged" the limitations that the Florida and South Carolina Consent Orders—which were drafted specifically to prohibit Mr. Falcone's influence, direct or indirect, over CGIC—impose on HC2's involvement in CGIC's affairs. HC2's claimed "acknowledgement" of those limitations, unfortunately, is belied by the actual facts and documents. Despite Mr. Corcoran's repeated attempts to convey to HC2 that Mr. Falcone's improper communications expose CGIC and its officers and directors to substantial legal and regulatory risks under the Consent Orders, Mr. Falcone's conduct persisted, unnecessarily escalating the matter. Instead of recognizing those risks and acknowledging that they were caused by Mr. Falcone's improper conduct, your letter wrongly attempts to recast focus on Mr. Corcoran by now claiming that he has acted in bad faith.

EXHIBIT 5

Mr. Corcoran Raises Concerns to HC2 Management. As you acknowledge, Mr. Corcoran formally and constructively raised in writing to HC2 management CGIC's concerns over Mr. Falcone's communications. *See* 3/19/20 Ltr. at 2. On September 26, 2019, Mr. Corcoran provided a detailed memorandum by email to Joseph Ferraro, Chief Legal Officer of HC2, which plainly reflects the fact that Mr. Corcoran's intention in raising these concerns was "to protect CGIC, HC2, and Phil." Mr. Ferraro immediately and contemporaneously acknowledged that intention. The September 26 memorandum also clearly states Mr. Corcoran's view that "it is prudent for all involved to make every effort to avoid even the appearance of impropriety while exploring affiliate transactions that may be of mutual benefit," and concludes with a section entitled "Recommendations" and an offer to discuss the issues raised in the memorandum.

Mr. Ferraro's response, which your letter quotes, nonetheless incorrectly downplayed Mr. Falcone's communications as "nothing more than a senior executive providing his educated, experienced, and at times fervent and blunt opinion on matters where he has very direct and important knowledge useful for the CGIC Board to know when considering all aspects of a potential investment." This characterization misses the point entirely: the Florida and South Carolina Consent Orders were drafted to protect CGIC from HC2's influence, particularly when it came to CGIC's evaluation of potential investments. If CGIC executives ask legitimate questions and are met with responses from Mr. Falcone, such as "*[t]his is a fucking pile of bullsht*," as was the case when CGIC asked questions concerning the HC2B transaction, it cannot be reasonably disputed that Mr. Falcone's conduct is an attempt to intimidate. 9/4/19 Email from P. Falcone to J. Corcoran.

Mr. Ferraro's characterization of Mr. Falcone's communications as merely "one voice in a sea of providers of information and opinions" ignores the pertinent issue, which is how Mr. Falcone's communications would be interpreted not only by CGIC directors and executives but by insurance regulators. Mr. Corcoran advised Mr. Ferraro that such communications could be perceived as intimidating and an attempt to deter CGIC's directors and executives from exercising their duty to protect CGIC. Such concerns are unquestionably reasonable, especially given the serious ramifications to CGIC of not strictly adhering to the Consent Orders. *See, e.g.*, Florida Consent Order ¶ 25 (providing for revocation of the company's certificate of authority for failure to comply).

With respect to the Casterdenn transaction, your letter suggests that the fact that the CGIC Board ultimately rejected that transaction is dispositive of the issue of whether Mr. Falcone's actions were improper. Once again, your letter gets the facts wrong. The Casterdenn transaction was never submitted to the CGIC Board. Regardless, what matters is that Mr. Falcone improperly controlled the transaction and, along with Mr. Myers, attempted to bypass the required affiliate transaction review by the CGIC Board in an attempt to transfer substantial CGIC funds, initially $12.5 million, to an affiliate controlled by Ken Orr, an individual whose history of violating securities regulations and engaging in money laundering raised serious concerns.[2] As acknowledged by Mr. Ferraro, the

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[2] *See In the Matter of Kenneth O. Orr*, Release No. 50941 (Dec. 28, 2004); *United States v. Orr*, 99 CR 1019 (E.D.N.Y 2004).

EXHIBIT 5

very appearance of improper influence by Mr. Falcone exposes CGIC and its executive officers to risk of violating the Consent Orders. *See* 9/26/19 Email; *see also* 11/7/19 Mem. at 4 (stating that the issue is *not* a disagreement with calculations but that Mr. Falcone "injected himself in an apparent attempt to steer us into an investment program in violation" of the Consent Orders).

HC2 Management Purports to Adopt Mr. Corcoran's Recommendations. In what is, quite frankly, a stunning omission, your letter fails to mention Mr. Ferraro's contemporaneous acknowledgement of the legitimacy of Mr. Corcoran's concerns, as well as the fact that Mr. Ferraro ultimately *agreed* to adopt Mr. Corcoran's recommendations to address them. Mr. Ferraro wrote:

> Nevertheless, out of an abundance of caution, and to both better *ensure Mr. Falcone is at all times compliant with the Consent Order* and no state regulator could have before it any communication that could be interpreted as calling into question such compliance, or the fairness and equity of CGIC's affiliate transaction review process, as well as to alleviate [Mr. Corcoran's] concerns over ever being faced with circumstances under which [he] would even consider an affirmative obligation to report to TDI, I agree with your recommendation.

9/27/19 Email (emphasis added). Mr. Ferraro's response and adoption of Mr. Corcoran's recommendation demonstrates that your contrived and belated claim that Mr. Corcoran was acting unreasonably or in contravention of his fiduciary duties is without factual basis in any respect.[3]

Mr. Falcone's Inappropriate Communications Continue In Violation of the Consent Orders. Despite Mr. Ferraro's written assurances that Mr. Falcone would cease communications with CGIC, Mr. Falcone continued his improper conduct. For example, on October 31, 2019, Mr. Falcone wrote to Messrs. Corcoran and Ramsey to express displeasure with their decision not to invest in the Fieldpoint Deposit Insurance Program, writing "[n]ot that it's any of my business (as we only own 100%) but I understand you blocked opening up an account at Fieldpoint . . . I didn't know the firm could be that flippant about making money." As a result, on November 7, 2019, Mr. Corcoran advised Mr. Ferraro of Mr. Falcone's actions and that he, along with Mr. Saenz, believed that it was necessary to disclose the issue to the TDI, something that they had, until that time, tried to avoid. *See* 11/7/2019 Mem. at 7; 9/26/2019 Mem. at 3 (expressing concern over the "draconian and destructive effect on CGIC" that having to report to regulators on the issues concerning Mr. Falcone's communications

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[3] Indeed, Mr. Ferraro stated in his response that he appreciated the fact that Mr. Corcoran's memorandum provided no conclusions or speculation as to the nature of Mr. Falcone's communications and instead focused on a desire to avoid any possible perception by a state insurance authority that Mr. Falcone's communications would violate the Consent Orders. This contemporaneous writing only underscores that Mr. Corcoran acted reasonably and in an appropriate fashion.

EXHIBIT 5

could have). In short, Mr. Corcoran did not trigger TDI involvement, Mr. Falcone's actions (and HC2's inadequate response) did.[4]

As mentioned above, the suggestion that Mr. Corcoran intended to initiate the TDI Examination is false. It was only after Mr. Falcone continued directing communications to CGIC—contrary to guidance from his own counsel—that both Mr. Corcoran *and* Mr. Saenz determined it was necessary to report the communications to the TDI. To be clear, Mr. Corcoran was not alone in his concerns; at the November 19, 2019 meeting with Mr. Ferraro and Ms. Herbst (which Mr. Falcone skipped), Mr. Saenz told the group expressly that he would resign from CGIC's board because of Mr. Falcone's conduct.[5] The prospect of Mr. Saenz resigning from the Board, which, in and of itself, would have generated substantial concerns from the TDI, along with the unsatisfactory response from Mr. Ferraro and Ms. Herbst, led Mr. Saenz to schedule a meeting with the TDI on December 16, 2019.[6]

Despite your suggestions to the contrary, Mr. Corcoran and his fellow independent board members gave HC2 management every opportunity to remedy their concerns regarding Mr. Falcone's conduct. This was not, as you suggest, an issue with Mr. Corcoran setting up further processes and procedures to prevent Mr. Falcone from improperly interfering. *See* 3/19/20 Ltr. at 5. These were simple actions to be taken by Mr. Falcone and HC2 and about which Messrs. Corcoran and Saenz could not have been clearer.

Moreover, Mr. Corcoran has not, as you suggest, kept HC2 "in the dark" about the TDI Examination. *See id.*[7] Mr. Ferraro was provided with a banker's box of all of the materials that CGIC submitted to the TDI pursuant to the TDI's request of January 2, 2020. CGIC has never prevented HC2 in any way from communicating with the TDI directly. Indeed, in his November 7, 2019

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[4] Your letter improperly attempts to take credit for discussions that occurred between Mr. Corcoran, Mr. Saenz, Mr. Ferraro, and Suzi Herbst, Chief Administrative Officer of HC2, to discuss steps that were necessitated because Mr. Falcone continued to ignore Mr. Corcoran's recommendations. *See* 3/19/20 Ltr. at 3. It was Mr. Corcoran who suggested the meeting, a meeting to which Mr. Falcone was invited but did not bother to attend. *See* 11/7/19 Mem. at 7 ("We suggest that we meet with you and Phil as soon as possible in order to set forth a course of action to mitigate what no doubt will be a strong regulatory response").

[5] While your letter seeks credit for HC2 for its agreement "to support the appointment of Mary Cavanaugh as a new independent director," pursuant to the Texas Insurance Code and Consent Orders, the Board of CGIC did not need nor seek HC2's agreement to support the appointment of Ms. Cavanaugh as a new independent director. Moreover, the entire CGIC Board—including the HC2 appointees—voted *unanimously* for Ms. Cavanaugh's appointment.

[6] The suggestion that the Targeted Examination was initiated by Mr. Corcoran is also contradicted by the fact that, for over a year before the December 16, 2019 TDI meeting, the TDI challenged CGIC affiliate investments on several occasions. *See, e.g.*, 10/30/18 Email from D. Woytek (TDI) to J. Ward (CGIC) (requesting that no additional affiliated investments be made until the TDI completely resolves issues surrounding affiliated investments held by CGIC).

[7] It is Mr. Corcoran, the unaffiliated CGIC Board members, and senior management of CGIC who have been kept "in the dark." Messrs. Falcone and Ferraro met with Doug Slape, Chief Deputy Commissioner of the TDI, on December 19, 2019. There was no discussion with Mr. Corcoran, any of the unaffiliated CGIC Board members, or senior management of CGIC regarding this meeting. Instead, counsel for CGIC was told that the meeting took place after it happened.

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memorandum, Mr. Corcoran explicitly advised HC2 that the regulators would be reviewing, either through a special or regularly mandated market conduct examination, the problematic communications detailed in his memoranda. *See* 11/7/19 Mem. at 7. HC2 will also have the opportunity to respond as it sees fit to the TDI on these issues in writing and through anticipated interviews of, at a minimum, Justin Myers and Dave Watters. As such, your claim of "serious harm to HC2 and its affiliates" is contrived, given that HC2 has had and continues to have open lines of communication with the TDI during the still ongoing Targeted Examination. 3/19/20 Ltr. at 5.[8]

Purported Misstatements About Doug Slape. Your letter also asserts that Mr. Corcoran made "false statements" about a conversation he and Mr. Saenz had with Mr. Slape concerning Justin Myers, one of HC2's designees to the CGIC Board. This claim is repeated no fewer than three times in the letter and is the sole basis for your frivolous claim that Mr. Corcoran somehow spearheaded "a campaign of misinformation." 3/19/20 Ltr. at 4, 10, 11. There were no misstatements.

On December 16, 2019, Messrs. Corcoran and Saenz met with Mr. Slape and Jamie Walker, TDI Deputy Commissioner. During that meeting, Mr. Slape directed the Targeted Examination and the group discussed Mr. Myers. Based on that discussion, Mr. Corcoran and Mr. Saenz understood Mr. Slape to have requested (i) the removal of Mr. Myers from the Board, and (ii) a hold on further affiliate transactions and HC2 appointments to the Board until the conclusion of the Examination. As part of that discussion, Mr. Slape told Messrs. Corcoran and Saenz that he could exercise his undisputed regulatory authority to remove Mr. Myers. Mr. Corcoran noted that, as Executive Chairman of CGIC and CIG, he had the unfettered authority to remove Mr. Myers and thus it was unnecessary for the TDI to act. Ms. Walker then asked Mr. Corcoran when he intended to do so. Ultimately, Mr. Corcoran decided not to act and to await the results of the Examination.

Mr. Saenz's subsequent conversation with Deputy Commissioner Walker not only confirmed their understanding of Mr. Slape's view, but was also memorialized in an email forwarded to Mr. Ferraro for his review. *See* 1/6/20 Email from J. Corcoran to J. Ferraro (forwarding 1/6/20 Email from D. Saenz to J. Corcoran). In his email, Mr. Saenz stated that it was his "sense that whatever voluntary steps can be taken by either Phil, Joe or Justin to step down from the board would be prudent" and that "[b]ased on the facts of Justin's role at HC2 and some of the actions he's taken I believe that Jamie will move to take some formal regulatory action under a Commissioner's Order and TDI will direct his removal." *Id.* Thus, the contemporaneous email correspondence makes clear that it was Mr. Saenz's assessment that the TDI would order Mr. Myers' removal if voluntary steps

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[8] In addition, despite the fact that he is not obligated to do so, Mr. Corcoran was prepared to present to the Board of Directors of HC2 on the Targeted Examination at their most recent Board meeting, but he was disinvited from the meeting at the last minute. It is also ironic that your letter complains of purportedly being kept in the dark when HC2 management itself recklessly failed to provide notice to CGIC or its Board or management team regarding the fact that HC2 was apparently in advanced discussions to sell CGIC, resulting in key employees learning of the potential sale along with the investing public and subjecting CGIC to potential harm as a result.

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were not taken. The facts are that Messrs. Corcoran and Saenz were again attempting to avoid a formal regulatory response to protect HC2 and Mr. Myers, not to cause HC2 harm.[9]

Your letter incorrectly attempts to distort and transform this clear understanding into nefarious misconduct. However, Mr. Corcoran would have no reason to mislead HC2 with respect to Mr. Slape's position about the removal of Mr. Myers from the CGIC Board given it was at all times within Mr. Corcoran's unfettered discretion to remove Mr. Myers from the Board. Indeed, Mr. Slape emphasized this fact during a conversation with CGIC's counsel on January 8, 2020. While stressing that policyholders of an insurance company are the first priority and not the interests of stockholders, Mr. Slape advised that he would review any new appointments by Mr. Corcoran and had the power to accept or reject them as provided in the Consent Order.

II. Affiliate Transactions and the Investment Management Agreement Overpayment

With respect to concerns raised regarding two other investments made by CGIC, Mr. Corcoran raised these issues on behalf of CGIC on February 20, 2020 and February 27, 2020. Your letter is the first substantive response that CGIC has received. Mr. Corcoran and the CGIC Board intend to review the information provided and will respond accordingly.

Similarly, with respect to the undisputed Investment Management Agreement overpayment, the CGIC Board will consider your response and respond accordingly. We note, however, that the admitted overpayment was not uncovered by external auditors, as your letter states (3/19/20 Ltr. at 9); rather, CGIC discovered the overpayment during an internal review on January 23, 2020.

III. Fiduciary Duties

While littered with citations to general fiduciary duty law, your letter is lacking any acknowledgment that Mr. Corcoran and the independent members of CGIC's Board and management team are also governed by, and must comply with, the Texas Insurance Code. The Texas Insurance Code specifically provides that "[t]he control of an authorized insurer by another person does not relieve an officer or director of the insurer of any obligation or liability to which the officer or director is subject by law. The insurer shall be managed to assure the insurer's separate operating identity consistent with this code."[10] As the Texas Insurance Code includes a specific statutory framework governing affiliate transactions, directors of an insurance company are governed by restrictions on

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[9] Beyond exposing HC2 to regulatory scrutiny, as mentioned by Mr. Corcoran during the March 19, 2020 call with Messrs. Leffler, Jr. and Barr, Jr., Mr. Falcone's conduct risked creating a potential avenue for regulators, rehabilitators, and policyholder groups to attempt to pierce HC2's corporate veil, thereby exposing HC2 stockholders to policyholder liabilities. *See R&M Mixed Bev. Consultants, Inc. v. Safe Harbor Bens., Inc.*, 578 S.W.3d 218, 230 (Tex. App. 2019) ("evidence of abuse or . . . injustice and inequity" provides grounds for piercing the corporate veil of an insurance subsidiary) (quoting *SSP Partners v. Gladstrong Investments (USA) Corp.*, 275 S.W.3d 444, 455 (Tex. 2008)). That Mr. Corcoran raised the issues related to Mr. Falcone's conduct was protective of HC2 stockholders, not a violation of any duty owed by Mr. Corcoran.

[10] Tex. Ins. Code § 823.403(s).

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affiliate transactions in a way that directors of a non-insurance entity are not.[11] Accordingly, as directors of an insurance company, CGIC's Board must evaluate affiliate transactions from the perspective of whether the transaction is in the best interest of CGIC and its policyholders, not from the perspective of HC2.[12] It is through the lens of the Texas Insurance Code that Mr. Corcoran's actions must be viewed, not citations to general fiduciary duty law. Despite its governing effect, your eleven page letter contains not a single citation to the Texas Insurance Code.

Your letter goes on to make a series of unfounded allegations, namely that Mr. Corcoran acted against the interests of CGIC and its affiliates for some "personal benefit" and in so doing has wasted corporate resources. These allegations are, on their face, wholly unsupported by the facts and the law cited in the letter, and none demonstrate that Mr. Corcoran acted contrary to his fiduciary duties in any respect.[13] As detailed above, Mr. Corcoran has at all times acted to ensure compliance with his fiduciary duties *and* the applicable insurance law and Consent Orders. Given the seriousness of each of your allegations, we will refute each in turn.

No Improper Personal Benefit. You conclusorily state multiple times, without any supporting facts, that Mr. Corcoran acted against the interests of CGIC in order to obtain some unidentified "personal benefit." 3/19/20 Ltr. at 9-11. Rather, Mr. Corcoran's conduct—as demonstrated by the contemporaneous communications between Messrs. Corcoran and Ferraro discussed above—reflects that Mr. Corcoran has acted in a manner consistent with his legal, regulatory, and fiduciary obligations at all times. Indeed, HC2 management had recognized as much by acknowledging Mr. Corcoran's actions were motivated to protect CGIC, HC2, and Mr. Falcone.

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11 Tex. Ins. Code § 823.454(a) ("A director or officer of an insurer or insurance holding company system that is subject to this chapter is subject to an administrative penalty under Chapter 84 if the director or officer knowingly and willfully: (1) participates in or assents to a transaction or an investment that has not been properly reported or submitted under this chapter; (2) permits an officer, agent, or employee of the insurer or holding company system, as appropriate, to engage in a transaction or make an investment that has not been properly reported or submitted under this chapter; or (3) violates this chapter.").

12 Tex. Ins. Code § 823.101(a)-(b) (requiring all material affiliate transactions to be "fair and equitable"); *see also Crook v. Williams Drug Co.*, 558 S.W.2d 500 (Tex. Civ. App. 1977) (affirming jury instruction stating that "[c]orporate officers and directors and other persons who by virtue of their controlling interest or influence in such corporations are fiduciaries and their authority and powers are vested in them in trust for the benefit of the corporations, their shareholders and *in case of an insurance company, its policy holders*") (emphasis added).

13 A director is given wide latitude in the exercise of his or her responsibilities. *See* Tex. Bus. Org. Code 21.401(b) ("In discharging the duties of director under this code or otherwise and in considering the best interests of the corporation, a director is entitled to consider the long-term and short-term interests of the corporation and the shareholders of the corporation, including the possibility that those interests may be best served by the continued independence of the corporation."). The duty of care in Texas has been characterized as a duty of ordinary care and, under the business judgment rule, Texas courts generally preclude director liability for even gross negligence. *See Chapman v. Arfeen*, 2018 WL 4139001, at *15 (Tex. App. Beaumont 2018). Here, Mr. Corcoran has at all times "act[ed] in good faith and . . . not allow[ed] his personal interests to prevail over the interests of the corporation." *Gearhart Indus., Inc. v. Smith Int'l, Inc.*, 741 F.2d 707 (5th Cir. 1984).

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In short, your failure to identify this purported "personal benefit" or provide any supporting detail demonstrates that the allegation is frivolous, at best.

No Violations of Duty of Candor and Waste. Your suggestion that Mr. Corcoran is not complying with his duty of candor, particularly to his fellow directors, is illogical. *See* 3/19/20 Ltr. at 10. In support of this claim, you cite to my February 27, 2020 letter to HC2's Board of Directors. As an initial matter, you ignore the fact that the February 27 letter was sent *on behalf of all of the unaffiliated directors of CGIC*, each of whom share the concerns raised in that letter. In any event, as set forth in my separate response to Todd Freed, dated March 30, 2020, that letter raised legitimate issues regarding the statements of HC2 management to the public securities markets concerning CGIC. Moreover, the engagement of counsel to evaluate and advise on such issues is entirely appropriate, especially given that HC2 had refused to adequately respond to these serious and legitimate concerns for some time. Indeed, your claim of waste is particularly ironic in light of the fact that the HC2 Board of Directors has engaged Skadden Arps and Cadwalader to advise on these same issues.

Any claim that Mr. Corcoran's concerns regarding Mr. Falcone's compliance with the Consent Orders were not genuine is untrue. You assert that, had his concerns been genuine, Mr. Corcoran would have acted "in a very different manner." 3/19/20 Ltr. at 10. But you do not say *how* Mr. Corcoran should have acted; nor do you dispute that Mr. Corcoran raised the concerns with HC2 management or that Messrs. Corcoran and Saenz had every right to inform the TDI of those concerns. To assert that HC2 is "the only party who has taken constructive measures to moot" Mr. Corcoran's concerns regarding Mr. Falcone's attempt to influence affiliate transactions is plainly wrong and contradicted by the actual facts. As detailed at great length above, Mr. Corcoran diligently raised concerns to HC2 management and offered his recommendations, which Mr. Ferraro adopted and Mr. Falcone then ignored.

No Abdication of Duties. Your faux claim of being "trouble[ed]" that Mr. Corcoran has purportedly "abdicated" his duties "through his absence over the past two weeks, a period of unprecedented volatility and losses in the financial markets," is factually baseless. Mr. Corcoran worked remotely during the week of March 5 due to an injury to his knee. And, as acknowledged in your letter, Mr. Corcoran was in Austin, Texas for a meeting with the TDI on March 12, traveling on company business at a time when world travel was being restricted due to the COVID-19 pandemic. *Id.* at 4. Since that meeting, Mr. Corcoran has been working remotely in accordance with city, state, and federal guidance concerning the pandemic.

That this issue has been manufactured for purposes of attempting to intimidate Mr. Corcoran is evidenced by HC2's March 23, 2020 Form 8-K to its stockholders, in which HC2 lauded CGIC's recent efforts—led by Mr. Corcoran—to position the Company in light of the pandemic:

> The company has intentionally kept a higher than normal cash balance . . . [and] given the significant uncertainty in the market, CIG

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> and CGI are taking a number of steps to prepare for increased rates of default, forced liquidations, potential regulator-mandated premium holidays to accommodate policyholders who may not be able to make timely payments, downgrades and other scenarios.

Put charitably, the claim that Mr. Corcoran has abdicated his duties is a total fabrication and misstatement of fact.

Moreover, your repeated invocation of Mr. Corcoran's Employment Agreement, particularly its for cause termination provision in Section 5(a)(i), serves no purpose other than to act as an empty threat. *See* 3/19/20 Ltr. at 1, 10-12.[14] Mr. Corcoran has at all times acted consistent with his fiduciary duties and has "devote[d] all of his business time and attention to the Company and its Affiliates and the promotion of its and their business and interests." Employee Agreement at 3(b). While wrongly attempting to suggest that Mr. Corcoran has violated this obligation, you unsurprisingly ignore the provision that also obligates Mr. Corcoran to use "his reasonable best efforts to ensure that the business and activities of the Company and its Subsidiaries are *conducted in compliance with all applicable laws, rules and regulations in all material respects*." *Id.* (emphasis added).

No Improper Email Use. With respect to the issue raised concerning Mr. Corcoran's use of a personal email account (3/19/20 Ltr. at 11-12), Mr. Corcoran and the CGIC Board of Directors plan to discuss this issue, and thus there is no need for HC2 to reach out to the CGIC Board on this matter. Of course, you cite no actual harm that has occurred from Mr. Corcoran's chosen form of communication.

IV. Conclusion

As set forth above, Mr. Corcoran takes seriously his responsibilities to CGIC, its affiliates, including CIG and CLTC, and CGIC's policyholders, and the unaffiliated directors of CGIC firmly believe that Mr. Corcoran has at all times acted in the best interest of these constituencies and consistent with his fiduciary duties, contractual obligations, and legal and regulatory obligations. Mr. Corcoran and the unaffiliated CGIC Board members are satisfied that they have raised their concerns with the HC2 Board and are satisfied that they have met their obligations as board members consistent with the Texas Insurance Code and the Consent Orders. HC2 is free to and will have ample opportunity during the course of the Targeted Examination to present its position on these issues directly to the TDI. Mr. Corcoran and the unaffiliated Board members remain ready and willing to have a constructive dialogue on these and any other future matters.

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[14] A threat, we caution, that could be interpreted by regulators as an attempt to influence the affairs of CGIC and thus violate the Florida and South Carolina Consent Orders. *See* Florida Consent Order (Aug. 1, 2018); South Carolina Order (July 12, 2018).

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Automated Certificate of eService

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