

Via Email – wigger.teri@dol.gov

August 27, 2020

Ms. Teri M. Wigger
Assistant Regional Administrator
U.S. Department of Labor, OSHA
Federal Building
201 Varick Street, Room 670
New York, NY 10014

Re: SOX Whistleblower Complaint Against HC2 Holdings

Dear Ms. Wigger:

As counsel of record, we submit this SOX whistleblower complaint on behalf of James Corcoran (“Corcoran”), who was terminated after complaining to senior management and ultimately the board of directors about material misstatements made by a publicly traded company which failed to correct those statements but instead fired him, as explained below.

Corcoran was hired in 2015 by Phil Falcone (“Falcone”), chairman of HC2 Holdings, Inc., (NYSE: HCHC (“HC2”)) to serve as the CEO of HC2’s wholly owned subsidiary Continental Insurance Group Limited (“CIGL”). Falcone hired Corcoran for the express purpose of providing assurance to regulators that Falcone and HC2 would have no involvement in the day-to-day operations of any of the insurance companies HC2 was looking to acquire. These regulators expressed concerns about Falcone based on his prior admissions of wrongdoing with the SEC, wherein Falcone and his advisory firm Harbinger Capital were charged 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 (See August 19, 2013 SEC press release).

Corcoran thereupon spent the next several years trying to keep Falcone honest. For example, in a March 12, 2019 HC2 Fourth Quarter 2018 Conference Call for analysts and the investing public, Falcone stated that HC2 management was "not concerned ... at all" about HC2's liquidity position because HC2 did "have a number of different levers to pull," including taking advantage of an end of a "moratorium on dividends" from another indirect subsidiary, Continental General Insurance Company ("CGIC"). When asked about the magnitude of dividends, HC2's Chief Financial Officer stated that CGIC could pay up to 10% of its surplus, amounting to a potential \$25 million dividend.

These statements were inaccurate because CGIC could not pay HC2 a dividend based solely on its surplus, but instead had to have adequate earnings to support the dividend, which it did not at the time. CGIC could not pay any dividend, let alone a \$25 million dividend. Moreover, even if CGIC did have earnings sufficient to support a dividend, any dividend would need to be declared and paid by and under the authority of CGIC's Board of Directors, not by officers of HC2 pulling on "levers." Corcoran advised HC2 management that he believed its statements to be inaccurate, and he repeatedly suggested that HC2 should correct them.

Similarly, Corcoran sent an August 27, 2019 email to Falcone and certain CGIC board members reiterating prior concerns and objections he had raised to an attempt to forward a \$12.5 million investment from the CGIC portfolio (meant to secure payments to long-term care policyholders),

to an 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 (See September 14, 2004 SEC press release). Corcoran successfully stopped that transaction, notwithstanding Falcone strongly advocating the deal.

Further, on September 26, 2019, HC2 filed a Form 8-K which wrongly claimed that Continental had “ring fenced” liabilities with no parent guarantees. That was inaccurate because it was contrary to orders of various departments of insurance which required that if CGIC 's total adjusted capital and authorized control risk-based capital level fell below statutorily-specified levels, HC2 had to contribute cash or other admitted assets as necessary to restore the total adjusted capital to authorized control risk-based capital levels. Accordingly, HC2's liabilities to CGIC were not "ring fenced." Corcoran made this point to HC2's general counsel, Joseph Ferraro (“Ferraro”) the following day, on September 27, telling him that if these statements were not corrected Corcoran would need to raise these issues to the SEC. Corcoran then followed that up with a September 30 email to Ferraro, stating that Corcoran presumed that the necessary corrections would be made. In yet another email to Ferraro on November 11, 2019, Corcoran noted that these misstatements did not appear to have been corrected yet, as they still appeared on HC2's website.

In both of these emails to Ferraro, Corcoran outlined a variety of conduct by Falcone which constituted an improper attempt to interfere with the operations of CGIC, which was in contravention of various consent orders and commitments made to insurance regulators in Texas, Florida and South Carolina. Corcoran told Ferraro that Corcoran had an obligation to disclose Falcone's improper interference into CGIC's operations to the insurance regulators at the Texas Department of Insurance (“TDI”), and that he intended to fulfill that obligation. Accordingly, on

two separate occasions in December of 2019 Corcoran met with and briefed the TDI about the issues raised in his September 30 and November 11 emails to Ferraro, which included his concerns about HC2's misleading public statements of March and September 2019. Subsequent to Corcoran's meetings, the TDI requested documents from CGIC on January 2, 2020, CGIC turned over the requested documents on January 8, and on January 13, 2020, Corcoran provided Ferraro a copy of what was provided to the TDI.

Ultimately, Corcoran was forced to hire the law firm of Ropes & Gray as independent counsel to follow up on these concerns, since HC2 had failed to correct its previously discussed inaccurate statements. On February 27, 2020, Ropes & Gray escalated the matter to the Board of Directors of HC2, specifically identifying its inaccurate public statements. Around the same time, HC2 stated to the market in successive February 10, 2020 and March 16, 2020 press releases that it was in "advanced discussions with a potential buyer" for the sale of CIGL and CGIC, when in fact there was no real buyer, but instead only a shell company, without assets, acting as broker, and looking to find a buyer for a potential acquisition. Corcoran was concerned that this was done in order to both increase the perception in the marketplace of the value of HC2, and to create a false narrative that under Falcone's leadership HC2 was producing value to its shareholders during the time when dissident shareholders were looking to gain control of the company and were impugning the work and reputation of Falcone.

HC2 responded to Ropes & Gray's February 27 letter via a March 19, 2020 letter from its outside counsel, Skadden Arps, arguing that HC2's subsequent 2018 Form 10k adequately qualified the alleged false statements made on the March 2019 conference call about which Corcoran complained (which by itself was an implicit admission that HC2's statements on the

conference call were inaccurate and required qualification). HC2 also claimed that it did not have parent guarantees, but instead only “commitments” (which is a distinction without a difference). Corcoran made all these points, and others, through Ropes & Gray in a March 30, 2020 written response. 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 wholly owned subsidiary of HC2, sent a formal letter terminating Corcoran (HC2’s board of directors, chaired by Falcone, was the ultimate controlling person of CIGL and directed his termination). Importantly, in the termination notice itself, it was admitted that Corcoran was being terminated “without cause.”

In addition to being terminated, Corcoran was subjected to additional adverse actions by HC2. As directed by Falcone, after firing him, CIGL commenced a meritless lawsuit against Corcoran in Texas, despite the fact that Corcoran’s employment was governed by an arbitration agreement that required any disputes to be arbitrated, in New York. The lawsuit in Texas was designed to intimidate and harass Corcoran, because it made public a range of defamatory statements about Corcoran designed to damage his reputation in the insurance industry, which defamatory statements would not have been public had the arbitration agreement been abided by. In addition, the lawsuit in Texas was also designed to impose additional costs and inconvenience upon Corcoran, who lives in New York and worked in HC2’s offices in New York.

The contacts for HC2 are:

Avram Glazer, Chairman of the Board, 212-339-5888

Wayne Barr, Chief Executive Officer, 212-235-2691

HC2

450 Park Avenue, 29th Floor

New York, NY 10022

James Corcoran can be contacted through undersigned counsel, who will serve as his designated representative.

Thank you for your attention to this matter

Sincerely,

/s/

Martin Murray