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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **(SOUTHERN DIVISION)**

13 MARIO R. FERLA, an individual;;  
14 STEVE SALEEN, an individual;  
15 THOMAS DEL FRANCO, an  
16 individual; MARTIN H. KARO, an  
17 individual; and JACK PITLUK, an  
18 individual,

19 Plaintiffs,

20 v.

21 TWIN CITY FIRE INSURANCE  
22 COMPANY, an Indiana corporation;  
23 THE HARTFORD FINANCIAL  
24 SERVICES GROUP, INC., a Delaware  
25 corporation; and DOES 1 through 10,  
26 inclusive,

27 Defendants.

CASE NO.

**COMPLAINT AGAINST TWIN CITY  
FIRE INSURANCE COMPANY AND  
THE HARTFORD FINANCIAL  
SERVICES GROUP, INC. FOR:**

1. **BREACH OF INSURANCE  
CONTRACT [DUTY TO DEFEND];**
2. **BREACH OF INSURANCE  
CONTRACT [DUTY TO  
INDEMNIFY];**
3. **INSURANCE BAD FAITH;**
4. **TORTIOUS INTEFERENCE  
WITH INSURANCE CONTRACT;**
5. **VIOLATIONS OF CAL. BUS. &  
PROF. CODE § 17200 *et. seq.*; and**
6. **DECLARATORY RELIEF**

28 **DEMAND FOR JURY TRIAL**

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13 0231655-07.  
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16 Twin City and HFP in the United States District Court for the  
17 Western District of Texas (Austin Division), Civil No. A: 06-CV-  
18 431 SS.  
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23 Auto NA Inc. and ZX Auto North America Distribution Company,  
24 and Shaffer Auto Holdings, LLC.  
25 EXHIBIT E: Complaint entitled "*Thomason Auto Group LLC, Plaintiff, v. Mario  
26 R. Ferla, et al., Defendants*, U.S.D.C., District of New Jersey, Civil  
27 Action No. 2:08-cv-04143-JLL-CCC.  
28

1 **I. INTRODUCTORY STATEMENT**

2 Plaintiffs Mario R. Ferla, Steve Saleen, Thomas Del Franco, Martin H. Karo, and  
3 Jack Pitluk (collectively, "Plaintiffs") bring this diversity action under 28 U.S.C. §  
4 1332(a) as insureds against Defendant Twin City Fire Insurance Company ("Twin City")  
5 and Twin City's direct or indirect parent, The Hartford Financial Services Group, Inc.  
6 ("Hartford"), to vindicate their rights under a Directors and Officers ("D&O") liability  
7 insurance contract issued by Twin City. Plaintiffs claim, and Twin City and Hartford  
8 dispute, that Plaintiffs are entitled to receive defense and indemnity coverage in a  
9 lawsuit presently pending against them in the United States District Court, District of  
10 New Jersey entitled *Thomason Auto Group, LLC v. Mario R. Ferla, Jack Pitluk, Martin*  
11 *H. Karo, Steve Saleen, Thomas Del Franco, Alex Miskov, Richard L. Kalika and*  
12 *Alexander Keeler*, Civ. Action No. 2:08-CV-04143-JLL-CCC (the "Thomason Federal  
13 Action"). Having wrongfully denied its defense and indemnity obligations to its  
14 insureds at Hartford's behest, Twin City has abandoned Plaintiffs in the face of  
15 mounting defense costs and liability exposure that are pushing Plaintiffs towards  
16 financial ruin.

17 **II. PARTIES**

18 **A. Plaintiffs**

19 1. Plaintiff Mario R. Ferla is an individual who resides in Los Angeles  
20 County, California. At all relevant times, Mr. Ferla was the Chief Executive Officer of  
21 China America Cooperative Automotive, Inc. ("Chamco"), a New Jersey corporation,  
22 and a member of its Board of Directors.

23 2. Plaintiff Steve Saleen is an individual who resides in Orange County,  
24 California. At all relevant times, Mr. Saleen was a member of the Board of Directors of  
25 Chamco. Mr. Saleen also was at all relevant times the Chief Executive Officer of ZX  
26 Automobile Company of North America, Inc. (hereafter "ZXAuto NA" or "ZXNA"),  
27 working from its headquarters in Anaheim, California.

1           3.       Plaintiff Thomas Del Franco is an individual who resides in Bridgewater,  
2 New Jersey. At all relevant times, Mr. Del Franco was the Chief Operating Officer of  
3 Chamco and, since February 11, 2008, a member of its Board of Directors.

4           4.       Plaintiff Martin H. Karo is an individual who resides in Yardley,  
5 Pennsylvania. At all relevant times, Mr. Karo was the General Counsel and Secretary of  
6 Chamco, and, since February 11, 2008, a member of its Board of Directors.

7           5.       Plaintiff Jack Pitluk is an individual who resides in Farmington Hills,  
8 Michigan. At all relevant times, Mr. Del Franco was the Chief Financial Officer of  
9 Chamco and, since February 11, 2008, a member of its Board of Directors.


10           **B.     Defendants**

11           6.       Defendant Twin City Fire Insurance Company (hereafter "Twin City") is  
12 an Indiana insurance corporation that is part of the The Hartford Financial Services  
13 Group, Inc., and is authorized to do and does business in California. Twin City's  
14 principal place of business is located at Hartford Plaza, Hartford, Connecticut 06115.  
15 Twin City issued Hartford's Private Choice Encore! Policy No. KB 0231655-07 (the  
16 "Policy") to Chamco which provides the Directors and Officers ("D&O") liability  
17 coverage for Plaintiffs that is the subject of this lawsuit. (A true and correct copy of the  
18 Policy is attached hereto as **Exhibit A** and fully incorporated herein by this reference.)

19           7.       Defendant The Hartford Financial Services Group, Inc. ("Hartford") is a  
20 Delaware corporation that provides insurance and financial services through its direct  
21 and indirect subsidiaries, including Twin City. It maintains its principal place of  
22 business at Hartford Plaza, Hartford, Connecticut 06115. Hartford Financial Products  
23 ("HFP") is merely a Hartford division or underwriting unit that is not a direct or indirect  
24 wholly-owned subsidiary of Hartford. (Attached hereto as **Exhibit B** is a true and  
25 correct copy of "Defendant Hartford Financial Products and Twin City Insurance  
26 Company's Rule 7.1 Statement" filed on or about August 4, 2006 by Twin City and HFP  
27 in the United States District Court for the Western District of Texas (Austin Division),  
28

1 Civil No. A: 06-CV-431 SS, in which Twin City and HFP certify that "Defendant  
2 Hartford Financial Products is an underwriting unit of Hartford Financial Services  
3 Group, Inc. a publicly traded corporation.") As stated on HFP's website, "Hartford  
4 Financial Products (HFP) represents The Hartford's significant presence in the financial  
5 and professional insurance markets. The Hartford is one of the largest providers of  
6 Directors & Officers (D&O) . . . in the nation." (See  
7 [http://www.hfpinsurance.com/servlet/Satellite?pagename=HFP/Page/HFP\\_LandingPage](http://www.hfpinsurance.com/servlet/Satellite?pagename=HFP/Page/HFP_LandingPage)  
8 [&c=Page&cid=1199710091383HFP.](#)) Accordingly, HFP has no juridical existence  
9 (corporate or otherwise) separate, distinct and apart from Hartford, and HFP's actions  
10 and omissions as alleged herein are Hartford's actions and omissions. HFP is located in  
11 2 Park Avenue, 5th Floor, New York, New York 10016. (Hartford and HFP  
12 sometimes hereafter are referred to collectively as "Hartford.")

13 8. Hartford is named as a Defendant herein because Plaintiffs are informed  
14 and believe that Hartford was responsible, in whole or in part, for the bad faith coverage  
15 analyses and decisions that resulted in the denial of Plaintiffs' D&O coverage under the  
16 Policy and Plaintiffs' resulting damages as alleged herein, for the reasons identified in  
17 the following subparagraphs (among others):

18 a) The Policy is a standard Hartford Financial Products D&O policy form on  
19 which is prominently affixed Hartford's logo --  -- on both the  
20 first and last pages of the Policy and on the first page of its Declarations,  
21 effectively "bookmarking" the Policy at its beginning and end with  
22 Hartford's brand.

23 b) There are references to Hartford's registered service marks "© 2004 The  
24 Hartford" and "© 2002 The Hartford" posted on the bottom of various  
25 pages of the Policy, and the use of the service mark "Hartford" is liberally  
26 interspersed throughout the Policy. These markings and imprimaturs  
27

28

1 indicate that the Policy is a standard Hartford D&O Policy that Hartford  
2 has drafted and disseminated to Plaintiffs and other directors and officers  
3 insured by Hartford in California and nationwide.

4 c) Hartford and HFP have made clear in repeated public statements, in press  
5 releases and otherwise, the Hartford's Private Choice Encore! policy was  
6 and is a Hartford-generated, marketed, and serviced insurance product, not  
7 a product generated, marketed, or serviced primarily by Hartford  
8 subsidiaries (such as Twin City). For example, and not by way of  
9 limitation, in a November 8, 2005 press release issued from Hartford's  
10 Connecticut headquarters (available on HFP's website at  
11 <http://www.hfpinsurance.com/pr/pr051108.htm> ), Hartford announced that  
12 "The Hartford Financial Services Group, Inc. (NYSE: HIG), one of the  
13 nation's largest providers of management liability coverage, has just  
14 introduced Private Choice Encore! Plus, a new suite of endorsements that  
15 builds on its industry-leading Private Choice Encore! management liability  
16 package policy to offer companies even more protection. The enhanced  
17 endorsements are offered to middle market customers at no additional  
18 premium. . . .' When we introduced Private Choice Encore! two years ago,  
19 it quickly became an industry leader in protecting private companies  
20 against management liability issues,' said Paul Sullivan, vice president at  
21 The Hartford's Hartford Financial Products division. (HFP) 'Now, when  
22 producers think about providing insurance protection for private company  
23 clients, the choice remains easy with Plus. Whether the issue involves  
24 D&O (directors & officers), E&O (errors and omissions), EPL  
25 (employment practices liability), Fiduciary Liability, Kidnap & Ransom or  
26 Crime, producers know their clients are well protected.'" While the  
27 November 8, 2005 press release goes on to state that, "Coverage is  
28

1 provided by The Hartford companies . . . " -- as occurred in this case  
2 through Hartford's subsidiary, Twin City -- Hartford and HFP in their  
3 public pronouncements, marketing and representations made clear that the  
4 Private Encore! D&O policy, such as the Twin City Policy at issue here,  
5 was and is a Hartford product that was designed, marketed, underwritten  
6 and claims-adjusted by Hartford and HFP.

- 7 d) Potential insureds in California (and nationwide) are invited to apply for  
8 Private Choice Encore! D&O policies directly through HFP's official  
9 Hartford website,  
10 [http://www.hfpinsurance.com/onlineapps/applications/PE00H00103\\_finalex.pdf](http://www.hfpinsurance.com/onlineapps/applications/PE00H00103_finalex.pdf).  
11 Plaintiffs are informed and believe and thereon allege that Twin  
12 City does generate, market, issue, or sell any Twin City D&O insurance  
13 policies, but only enters into D&O insurance contracts created, generated,  
14 marketed, and issued by and through Hartford.
- 15 e) The first page of the Policy -- the "Policy Separator Page" -- which carries  
16 the Hartford logo in large, bolded font over the name "Hartford Financial  
17 Products," also in large, bolded font, states that the "Underwriter" is Dan  
18 Astrosiglio. If a potential insured navigates HFP's website under the  
19 subheading for the Private Choice Encore! policy, there is a "Guide me to  
20 the right underwriter" button in the "Toolbar" section that, when one enters  
21 the former zip code for Chamco (i.e., 07054), Mr. Astrosiglio name,  
22 telephone number and Hartford email address appear ( i.e.,  
23 Dan.Antrosiglio@thehartford.com). Thus, just as it is clear that Hartford's  
24 HFP Claims Department was responsible for wrongly denying Plaintiff's  
25 claims under the Twin City Policy, Hartford (and not Twin City) was  
26 responsible for the Policy's pre-issuance underwriting.



- 1 f) Item 9 of the Policy's Declarations (at page 3 of 3) specifies the "Address  
2 For Notices To Insurer" -- (i) "For Claims other than Kidnap and  
3 Ransom/Extortion," is "The Hartford, Claims Department, 2 Park Ave., 5th  
4 Floor New York, New York 10016," and (ii) "For all notices other than  
5 claims," is "The Hartford, Compliance Department, Hartford Financial  
6 Products, 2 Park Ave., 5th Floor New York, New York 10016" (emphasis  
7 added).
- 8 g) The Declarations for the Kidnap and Ransom/Extortion Coverage Part of  
9 the Policy similarly require condition-precedent notices to be given to "The  
10 Hartford, Attn: Joseph Coppolla, Hartford Financial Products, Claims  
11 Department -- Middle Market, 2 Park Ave., 5th Floor New York, New  
12 York 10016, 212-277-0970."
- 13 h) HFP's website drives home the point that Hartford, through HFP, is the real  
14 insurer which makes the fundamental claims payment or denial decisions  
15 on its website, wherein it states:
- 16 "The Hartford Financial Products Claims Department is well  
17 equipped to respond to the challenges that **our clients** . . . present.  
18 These challenges are ever evolving and have resulted in the  
19 development of a pro-active team of highly qualified individuals  
20 who are ready and able to respond to claims-specific issues as well  
21 as commercial transactions in a manner which reflects policy  
22 integrity **as well as an understanding of an insured's business**  
23 **concerns.** [¶] There are several ways you can report your claim.  
24 Please always refer to Notice Section in your policy or your policy  
25 Declaration Page. [¶] A written notification can be mailed to:
- 26 The Hartford  
27 Claims Department  
28 2 Park Avenue, 5th Floor

1 New York, NY 10016." (Emphasis added.)

2 This address is, not surprisingly, the same notice address provided in  
3 Plaintiffs' Policy. (See

4 [http://www.privatecompanyinsurance.com/servlet/Satellite?c=Page&cid=1](http://www.privatecompanyinsurance.com/servlet/Satellite?c=Page&cid=1201874638788&noindex=true&nt_page_id=1201874638788&pagename=HFP%2FPage%2FHFP_FullWidth.)  
5 [201874638788&noindex=true&nt\\_page\\_id=1201874638788&pagename=](http://www.privatecompanyinsurance.com/servlet/Satellite?c=Page&cid=1201874638788&noindex=true&nt_page_id=1201874638788&pagename=HFP%2FPage%2FHFP_FullWidth.)  
6 [HFP%2FPage%2FHFP\\_FullWidth.](http://www.privatecompanyinsurance.com/servlet/Satellite?c=Page&cid=1201874638788&noindex=true&nt_page_id=1201874638788&pagename=HFP%2FPage%2FHFP_FullWidth.))

- 7 i) Almost all of the Policy's Endorsements bear the photocopy of the  
8 signature of "David Zweiner, President," who (Plaintiffs are informed and  
9 believe) was the President of HFP and a Hartford Board member at all  
10 relevant times, but was not an officer or Board member of Twin City.
- 11 j) The coverage denial letter dated April 30, 2008, sent to Plaintiffs regarding  
12 the "Thomason State Action" and "Ferla Action" both filed on March 3,  
13 2008 (as defined in Paragraphs 37 through 39, below, and which are  
14 interrelated claim with the claims asserted in the Thomason Federal Action)  
15 was issued by a Hartford "Claims Consultant" on "The Hartford" with logo  
16 official stationery from HFP' s New York offices at 2 Park Avenue, New  
17 York, NY 10016.
- 18 k) The coverage denial letter dated May 29, 2008, sent to Plaintiffs regarding  
19 the "Daspin Action" filed March 31, 2008 (as defined in Paragraph 40,  
20 below, and which is an interrelated claim with the claims asserted in the  
21 Thomason Federal Action) also was issued by a Hartford "Claims  
22 Consultant" on "The Hartford" (with logo) official stationery from  
23 "Hartford Financial Products, 2 Park Avenue, 6th Floor, New York, NY  
24 10016, [www.thehartford.com](http://www.thehartford.com)."
- 25 l) With respect to the Thomason Federal Action filed on August 14, 2008, the  
26 first coverage denial letter dated September 4, 2008, the second coverage  
27 denial letter dated April 21, 2009, and the final coverage denial letter dated  
28 April 24, 2009 (peremptorily sweeping aside Plaintiffs' appeal of Hartford's

1 coverage denials), also all were by a Hartford "Claims Consultant" on "The  
2 Hartford" (with logo) official stationery from HFP' s New York offices at 2  
3 Park Avenue, New York, NY 10016.

4 m) On its official company website, Hartford refers to itself and its many  
5 subsidiaries, including Twin City, collectively as "The Hartford." By  
6 making its imprint and imprimatur on every key aspect of the Policy, by  
7 holding out and using its representatives as the insured's contacts with  
8 respect to claims under the Policy, and by using its personnel to adjust  
9 claims made under the Policy, Hartford is estopped from denying that it is  
10 equally responsible with Twin City in fulfilling the Policy's promises.

11 9. Accordingly, while Hartford blithely asserts in numerous official filings it  
12 has submitted to the Securities and Exchange Commission ("SEC"), in federal court  
13 filings in California (wherein it is seeking dismissal from claims or other relief on the  
14 purported grounds that it is merely a "holding company" that does no business in this  
15 forum), and in its other public pronouncements that it is merely "a holding company that  
16 is separate and distinct from its subsidiaries" and that it supposedly "has no significant  
17 business operations of its own," this assertion is demonstrably false. Hartford: (i)  
18 through its HFP division and marketing arm crafts, generates, markets, disseminates,  
19 and underwrites the Private Choice Encore! D&O policies that are sold to and/or purport  
20 to cover insureds residing or located in California and other states -- such as the Policy  
21 at issue here; (ii) chooses, by unopposed diktat (either through HFP or Hartford  
22 authorized agents and brokers), which of its subsidiaries, such as Twin City, it will  
23 deem appropriate in its discretion to insert as the named "Insurer" in its D&O insurance  
24 forms it disseminates, markets, underwrites and sells in California and nationwide; and  
25 (iii) through HFP's Claims Department, makes the coverage decisions on claims  
26 asserted by its California insureds under its Private Choice Encore! D&O policies that  
27 are supposedly issued by Twin City or other Hartford subsidiaries named as "Insurer"

1 which Hartford claims are "separate and distinct" from it. This is not conduct  
2 consistent with a holding company's purported limited states as an "investor" in the  
3 shares of its subsidiaries, and goes far beyond that mere monitoring of Twin City's  
4 performance, supervision its finance and capital budget decisions, or the articulation of  
5 general policies and procedures. Hartford, through HFP, has usurped Twin City's most  
6 central day-to-day function as an insurance company: the determination of which  
7 claims it will pay and which ones it will deny.

8 10. HFP is not a third party provider of claims adjustment services. The claims  
9 adjustment process and coverage analyses and determinations made by Hartford,  
10 through its HFP underwriting unit, are not mere recommendations to Twin City but  
11 instead operate and are treated as binding instructions and commands. These services  
12 are at the core of the business of insurance. Plaintiff alleges that the claims  
13 investigation, processing and handling -- which HFP undertook here with respect to  
14 Twin City's California insureds -- are inextricably wound up with the business of an  
15 insurance company, because the settlement of claims is an integral and crucial aspect of  
16 the business of insurance. Yet Plaintiffs are informed and believe and thereon allege  
17 that Hartford -- as a Delaware holding company -- is not licensed or regulated as an  
18 insurance company in California; Hartford is admitted or qualified to engage in the  
19 business of insurance in California (or any other state); nor has it registered to do  
20 business in this jurisdiction with the California Secretary of State, as required by law;  
21 nor has it properly designated and appointed any agent for service of process or any  
22 agent or other representative to do business in this jurisdiction on its behalf, even though  
23 it knows full well that California residents and citizens (such as Plaintiffs Ferla and  
24 Saleen) are officers and directors who are its insureds under its Private Choice Encore!  
25 D&O policies.

26 11. Plaintiffs do not know the true names and capacities of the Doe Defendants  
27 1-10 and, therefore, sues such Defendants by such fictitious names. Each of the  
28

1 fictitiously-named Defendants was responsible in some manner for the occurrences and  
2 misconduct herein alleged, and that Plaintiffs' damages as herein alleged were  
3 proximately caused by the conduct of such Defendants. The Doe Defendants 1-10 are  
4 persons or entities who, directly or indirectly, participated in the transactions at issue  
5 and aided and abetted and conspired to cause or caused the primary violations alleged  
6 herein. These persons or entities proximately caused damages to Plaintiffs as alleged  
7 herein, but Plaintiffs presently do not know their names and identities. Once the true  
8 names and identities of such fictitious Defendants are discovered, Plaintiffs will seek  
9 leave to amend this Complaint to assert the Doe Defendants' true names, capacities and  
10 conduct. Each of the Doe Defendants is liable for the harm suffered by Plaintiffs as set  
11 forth herein, or their inclusion in this action is otherwise necessary for the granting for  
12 effective relief by this Court. (Defendants Twin City, Hartford, and Does 1 through 10  
13 hereafter sometimes are referred to collectively as the " Defendants").

14 **III. JURISDICTION AND VENUE**

15 **A. Diversity Jurisdiction**

16 12. Diversity jurisdiction exists in this case under 28 U.S.C. § 1332, in that:  
17 first, on the one hand, Defendant Twin City is incorporated and maintains its principal  
18 place of business in Hartford Connecticut, and Defendant Hartford is incorporated in  
19 Delaware and also maintains its principal place of business in Hartford, Connecticut,  
20 and, therefore, the Hartford Defendants are "citizens" of Connecticut under 28 U.S.C. §  
21 1332(a), whereas, on the other hand, each Plaintiff is domiciled in and is a "citizen" of a  
22 state other than Connecticut (or Delaware or Indiana for that matter), i.e., Plaintiffs  
23 Ferla and Saleen reside and are domiciled in California; Plaintiff Karo resides and is  
24 domiciled in Pennsylvania; Plaintiff Pitluk resides and is domiciled in Michigan; and  
25 Plaintiff Del Franco resides and is domiciled in New Jersey; and second, the matter in  
26 controversy exceeds the sum of \$75,000.

1           **B. Personal Jurisdiction**

2           13.   **Twin City:** Defendant Twin City has submitted to personal jurisdiction in  
3 California and the Central District of California ("Central District" or "District") for the  
4 following reasons, among others:

- 5           a) Twin City does regular, systematic and continuous insurance business in  
6 California and in the Central District.
- 7           b) The claims asserted herein specifically and directly arose in substantial part  
8 from Twin City's business activities directed to and occurring in this  
9 District, including but limited to its provision of insurance to Plaintiffs  
10 Saleen and Ferla, who are domiciled and reside in this District , and its  
11 provision of insurance to and acceptance of premiums from ZXNA, the  
12 corporation whose officers and directors included Plaintiffs Saleen and  
13 Ferla, to cover the ZXNA business activities and premises in, *inter alia*, the  
14 Central District; and acceptance of premiums from Chamco, which  
15 maintains significant offices and business in this District, from which the  
16 insurance claims at issue here arose in substantial part).
- 17           c) Twin City is qualified to conduct insurance business in this State and  
18 District through its authorized agent, Twin City Insurance Services, and  
19 Twin City has appointed an authorized agent to accept service of process  
20 on its behalf for complaints filed by California residents, thereby  
21 consenting to jurisdiction in this State and District.

22           14.   **Hartford:** Defendant Hartford has submitted to personal jurisdiction in  
23 California and the Central District (on information and belief) for the following reasons,  
24 among others:

- 25           a) Hartford, through its HFP division and marketing arm crafts, generates,  
26 markets, disseminates, and underwrites the Private Choice Encore! D&O  
27 policies that are sold to insureds in California and other states -- such as the  
28

1 Policy at issue here. Because HFP is merely an unincorporated division of  
2 Hartford -- its "underwriting unit" -- HFP does not possess the formal  
3 separateness required to consider it to be an independent entity for  
4 jurisdictional purposes. Accordingly, HPF's contacts with this forum are  
5 attributable to Hartford, as there is no formal distinction between them.

- 6 b) Hartford chooses, by veritable dictat, which of its subsidiaries, such as  
7 Twin City, it will deem appropriate to insert as the named "Insurer" in its  
8 D&O insurance forms it disseminates, markets, underwrites and sells in  
9 California and nationwide. The contacts of a subsidiary, such as Twin City,  
10 may and should be considered for personal jurisdiction purposes when, as  
11 here, Twin City has acted merely as an "agent" of Hartford, its parent, such  
12 that it essentially serves as the parent's representative in California.
- 13 c) Hartford, through the Claims Department of its HFP division, makes the  
14 coverage decisions on claims asserted by its California insureds under its  
15 Private Choice Encore! D&O policies issued by Twin City or other  
16 Hartford subsidiaries from which Hartford supposedly is "separate and  
17 distinct," but which Hartford actually completely dominates and controls  
18 with respect to critical claim coverage determinations under those policies.  
19 Twin City's contacts with this jurisdictions therefore should be attributed to  
20 Hartford, its ultimate parent, because Hartford (through its HFP  
21 underwriting unit) instigated Twin City's local activity in denying coverage  
22 for California insureds that gave rise to Plaintiffs' claims asserted herein.
- 23 d) Hartford and Twin City should be deemed to be merged or operating as a  
24 single enterprise for jurisdictional purposes because the two entities are so  
25 closely aligned that it is reasonable for Hartford to anticipate being "haled"  
26 into court in this State. Not only do Hartford employees provide critical  
27 management functions for Twin City, interchanging personnel between the  
28

- 1 company's, the two companies also exchange documents and records  
2 between themselves, are operated primarily out of Hartford's Connecticut  
3 main offices, and Twin City's key underwriting and claims coverage  
4 determinations are made by Hartford (through its HFP underwriting unit).
- 5 e) Hartford markets, disseminates and sells its Private Choice Encore! D&O  
6 policies in California and nationally as providing national D&O coverage  
7 for insured officers and directors no matter where their liability claims arise,  
8 in California and throughout the continental United States. This duty to  
9 defend, combined with the territorial reach of the Policies into the United  
10 States, makes apparent Hartford's agreement to appear in United States  
11 courts. Hartford was aware, or was reckless or negligent in not knowing,  
12 the directors and officers of entities such as Chamco to which its Private  
13 Choice Encore! D&O policies were marketed and sold would reside in,  
14 and/or face covered claims arising in this forum. As such, it was  
15 reasonably foreseeable to Hartford that it might be haled into court in  
16 California, especially in light of the fact that the Policy provided for a duty  
17 to defend Plaintiffs for potentially-covered damages occurring in this  
18 jurisdiction.
- 19 f) As noted previously, at all relevant time potential insureds (such as  
20 Plaintiffs) were and are invited to apply for Private Choice Encore! D&O  
21 policies directly through HFP's official Hartford website,  
22 [http://www.hfpinsurance.com/onlineapps/applications/PE00H00103\\_finalex.pdf](http://www.hfpinsurance.com/onlineapps/applications/PE00H00103_finalex.pdf). The commercial nature of the website and its level of interactivity –  
23 directed at the sale of insurance products – support the assertion of  
24 jurisdiction over Hartford.
- 25  
26 g) Hartford both underwrites and makes coverage decisions under its D&O  
27 policies with respect to its insureds located in California, thereby (i)  
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1 deriving income (indirectly via dividends up-streamed from the  
2 subsidiaries it unilaterally -- through HFP or Harford authorized agents and  
3 brokers) inserts as the "Insurer" in its form D&O policies) as a result of its  
4 insurance contracts covering California residents, and also (ii) increasing  
5 its profits and the profits of its subsidiaries such as Twin City by  
6 minimizing their and its costs through the wrongful denial of the claims of  
7 its insureds at the behest of the Claims Department at its HFP division in  
8 New York, which Hartford controls.

- 9 h) By making its coverage denial decisions through its HFB division, which  
10 decisions were made in bad faith and in a manner that tortiously interfered  
11 with Plaintiffs' rights and benefits under the Twin City Policy, Hartford  
12 engaged in wrongful conduct that was not privileged but instead was  
13 motivated by an illegal design to obtain in bad faith unwarranted premium  
14 windfalls and to reduce claims costs through the tortious interference with  
15 Twin City's contract with Plaintiffs. It was foreseeable that Hartford's bad  
16 faith would cause substantial harm to its Twin City insureds in California.
- 17 i) On information and belief, Plaintiffs further allege that Hartford, through  
18 HFP, has engaged in pattern and practice of wrongful denial of claims  
19 tendered to Twin City and to its other subsidiaries it places (directly or  
20 indirectly) into its Private Choice Encore! D&O policies as the nominally  
21 named "Insurer." Hartford knows or is reckless in not knowing that its bad  
22 faith claim decisions would have a direct and immediate harmful impact on  
23 its other insureds in California.
- 24 j) For these reasons, Plaintiffs also allege that Hartford effectively, but  
25 surreptitiously, engages in the business of insurance in this District because  
26 it conducts the underwriting and claims adjustment functions for its hand-  
27 picked subsidiaries such as Twin City that issue D&O policies providing  
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1 coverage for California residents for claims arising in California, and,  
2 therefore, Hartford is intimately involved in activities that impact the  
3 transferring or spreading a policyholder risk for California insureds , which  
4 is an integral part of the policy relationship between the insurer (Twin City,  
5 as the nominal "Insurer") and its insureds (e.g., California residents Ferla  
6 and Saleen).

7 k) Plaintiffs are further informed and believe that Hartford's underwriting and  
8 coverage analysis and related claims adjusting roles with respect to its  
9 Private Choice Encore! D&O policies that cover California residents  
10 constitute practices that are limited to and customarily only undertaken by  
11 entities within the insurance industry. These surreptitious California-  
12 centric and California-impacting activities are not isolated or sporadic, but  
13 rather comprise a business practice and pattern of conduct that is  
14 systematic, ongoing and continuous. Because Hartford has secretly  
15 engaged in the business of insurance in this forum via its HFP underwriting  
16 unit acting as the puppeteer for the hand-picked Hartford subsidiaries  
17 inserted into its Hartford-copyrighted D&O policy forms, Hartford is  
18 estopped from denying the propriety of this State's assertion of jurisdiction  
19 over it for insurance claims arising here.

20 l) Although the Twin City Policy at issue here technically was formed and  
21 issued outside California, Hartford nonetheless has availed itself of the  
22 advantages of doing business in California by taking foreign actions from  
23 its Connecticut headquarters and its New York HFP division that have  
24 substantial effects in California, such as the wrongful denial of benefits for  
25 California residents and citizens such as Plaintiffs Ferla and Saleen.  
26 Named insured ZXNA, of which Plaintiffs are officers and/or directors,  
27 also is headquartered in Anaheim (in this District). The Private Choice  
28

1 Encore! D&O policies may be applied for online at HFP's interactive  
2 website that is available to potential California insureds. There is no  
3 comparable website policy access provided by Twin City. For these and  
4 other reasons, as previously alleged, Hartford cannot honestly assert that it  
5 was or is unforeseeable that it would be haled into court in this forum as a  
6 result of its bad faith conduct directed to and harming individuals and  
7 entitites who reside and do business in this forum.

8 m) The subjection of Hartford to personal jurisdiction in this District also is  
9 reasonable. The State Court Actions (discussed at Paragraphs 36 through  
10 40 below) have been transferred from New Jersey to the United States  
11 District Court for the Central District of California and, therefore, because  
12 the claims asserted in those actions involve alleged "Interrelated Wrongful  
13 Acts" (as defined below) together with the claims asserted in the Thomason  
14 Federal Action, Plaintiffs' claim for declaratory relief concerns defense  
15 and indemnity obligations arising from lawsuits pending in this District  
16 against insureds residing in this District. California's interests in enforcing  
17 insurance promises that protect its citizens are substantial, as are its  
18 interests in ensuring that companies engaging in business in this State with  
19 citizens of this State abide by this State's laws and regulations.

20 n) Hartford has purposefully interjected itself into this forum, since it has  
21 denied coverage for D&O defense and indemnity costs that covered  
22 injuries by its California insureds that are presently being adjudicated in  
23 this District in the State Court Actions pending in the United States  
24 Bankruptcy Court for the Central District of California. The common  
25 interest in convenience and efficiency also makes this District an  
26 appropriate forum for adjudicating this action because the State Court  
27 Actions are pending in this District, as are Chamco's and ZXNA  
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1 bankruptcy cases (as discussed in Paragraph 41, below). The federal  
2 judicial system as a whole benefits when a series of cases arising from or  
3 related to the same core of operative facts are administered and adjudicated  
4 in a single forum. Therefore, judicial economy as well as the convenience  
5 of the plaintiffs and other witnesses support the reasonableness of the  
6 assertion of personal jurisdiction over Hartford in this District. Hartford  
7 has incontestably sufficient resources to defend against Plaintiffs' claims in  
8 this District.

9 **C. Venue**

10 15. Venue is properly laid in the Central District of California under 28 U.S.C.  
11 1391(a)(2) because a substantial part of the events giving rise to the claims asserted  
12 herein took place in the Central District, in that: (a) Plaintiff Ferla's office as CEO of  
13 Chamco, a primary named insured herein (as discussed below) at all relevant times was  
14 located in the Central District; (b) Plaintiff Saleen's office as CEO of ZXNA, the other  
15 primary named insured herein (as discussed below) at all relevant times was located in  
16 the Central District; (c) at all relevant times four Chamco/ZXNA Directors resided in  
17 the Central District and worked on Chamco/ZXNA matters from ZXNA's offices in the  
18 Central District; (d) ZXNA carried on the bulk of its business in the Central District;  
19 and (e) the facts and circumstances giving rise to the Thomason Federal and State  
20 Actions -- which Plaintiffs assert triggers Twin City's defense and indemnity obligations  
21 under the Twin City Policy at issue (as described below) -- occurred in substantial part  
22 in the Central District.

23 **IV. AGENCY, ALTER EGO, AND JOINT VENTURE/ENTERPRISE  
24 LIABILITY ALLEGATIONS**

25 16. Each of the Defendants was an agent, partner, joint venturer, co-conspirator  
26 or alter ego of each of the remaining Defendants and, in doing the acts hereinafter  
27 alleged, was acting within the scope of its authority as such and with the permission and  
28 consent of each of the remaining Defendants.

1           17. Every Defendant, and each of them, instigated, encouraged, promoted,  
2 aided and abetted, and/or rendered substantial assistance to the wrongdoing alleged  
3 herein, with knowledge of the wrong and the role that each Defendant played in it.  
4 Every Defendant, and each of them, conspired to commit that wrongdoing which is  
5 alleged herein to have been intentional, with knowledge of the wrongful purpose of the  
6 wrongdoing, by and in contravention of their duties, actively participating in the  
7 wrongdoing, failing to stop or prevent the wrongdoing from occurring or continuing,  
8 and/or actively participating in the concealment and non-disclosure of the wrongdoing,  
9 as alleged with greater particularity in the Paragraphs 18 and 19, below.

10           **A. Principal/Agent Liability**

11           18. Twin City should be considered to be, and at all relevant times herein acted  
12 as, Hartford's agent with respect to the matters alleged herein, for the following reasons,  
13 among others:

- 14           a) Hartford (through HFP or its authorized agents and brokers) unilaterally  
15 chooses which of its subsidiaries it wishes to insert as the named "Insurer"  
16 in its Private Choice Encore! D&O policies that cover insureds residing in  
17 California for claims arising in whole or in part from California-centric  
18 activities; and Hartford followed that very business practice in this case,  
19 inserting Twin City as the "Insurer" in the Policy providing D&O coverage  
20 for Plaintiffs.
- 21           b) Hartford, through the Claims Department of its HFP division in New York  
22 -- but not through Plaintiffs' named "Insurer," Twin City -- makes the  
23 actual coverage decisions for claims asserted by California insureds such as  
24 Plaintiffs Ferla and Saleen and, on information and belief, also unilaterally  
25 makes the initial underwriting decision to issue the Policy in the first place.
- 26           c) Twin City in effect merely acts as one of Hartford's representatives in this  
27 jurisdiction with respect to Hartford's critical D&O line of business  
28

1 implemented through (among other D&O policies) the Private Choice  
2 Encore! D&O policies that HFP markets, disseminates and sells to  
3 California residents and other individuals and entities residing and/or doing  
4 business in this State, and/or whose claims are likely to arise in this State.

5 d) Hartford's instruction and command to Twin City to be the named "Insurer"  
6 on the Policy issued to Plaintiffs and thereby to contract with Plaintiffs,  
7 constituted a manifestation by Hartford that Twin City would act on  
8 Hartford's behalf; Twin City accepted and consented to so act, by  
9 acquiescing to Hartford's command to be listed as the named "Insurer" in  
10 the Policy issued to Plaintiffs and by entering into a contract with Plaintiffs  
11 thereby; and both Hartford and Twin City fully understood that Hartford  
12 would be in control of Twin City's undertakings on Hartford's behalf, in  
13 that Hartford would be responsible not only for the pre-contracting  
14 underwriting but also the post-contract claims adjustment, coverage  
15 analysis, and coverage-approval and coverage-denial determinations under  
16 the Policy (and like policies).

17 e) In making and implementing these critical coverage decisions, Hartford,  
18 through HFP, gave Twin City instructions that go beyond the scope of  
19 instructions of a customer to a provider or a buyer to a seller and that  
20 encompass basic and substantial business decisions that would normally be  
21 made internally by officers, directors or employees of the subsidiary but,  
22 here, were instead made by Hartford's HFP division.

23 f) While at all relevant times Hartford falsely held and continues to hold itself  
24 out as a mere holding company whose only business pursuit is its  
25 investments in its subsidiaries, in actuality Hartford itself controls Twin  
26 City's key claims adjustment and coverage-acceptance/denial function that  
27 is critical to its own income stream, and uses Twin City (and other if its  
28

1 subsidiaries) to assist its own business in that regard. To that end, Hartford  
2 controls these critical internal affairs of Twin City, and determines how  
3 Twin City will be operated with respect to these critical internal affairs in  
4 addition to other key operational matters on a day-to-day basis.

5 g) The de facto and de jure agency relationship between Hartford, as principal,  
6 and Twin City, as agent, with respect to the matters alleged herein, is  
7 further supported by the pro-forma and standard use by Twin City of a  
8 Hartford policy form -- i.e., Hartford's Private Choice Encore! D&O policy  
9 -- that is replete with references to Hartford and its executives and agents  
10 throughout the form, and that only lists Twin City as the named "Insurer"  
11 in blanks filled in on the first page of the Policy's Declarations and on its  
12 endorsements. While Twin City acted as the nominal issuing "Insurer," the  
13 very form and structure of the Policy, and the repeated indicia of Hartford  
14 dominance and control throughout the Policy-- including HFP's President's  
15 signature on the Policy's Endorsements, and HFP claim representatives  
16 designated as the official recipients of an insured's notice of any claims  
17 under the Policy -- make clear that Hartford, not Twin City, is the principal  
18 in control of Twin City's performance of the Policy's promises and  
19 obligations.

20 **B. Alter Ego/Joint Venture/Enterprise Liability**

21 19. Twin City is and should be deemed Hartford's alter ego, with both Hartford  
22 and Twin City engaging in a joint and common enterprise or joint venture, for the  
23 following reasons, among others:

- 24 a) Hartford effectively chooses and directs Twin City and other of its  
25 subsidiaries to be the named "Insurer" in its Private Choice Encore! D&O  
26 policies, at Hartford's instruction and behest.  
27 b) Hartford makes the critical underwriting and claim payment/denial

1 decisions itself under its Private Choice Encore! D&O policies nominally  
2 issued by Twin City, with no control or veto power vested in Twin City  
3 with respect to those decisions.

4 c) Hartford provides key marketing, sales, administrative services and support,  
5 and financial management for Twin City from Hartford's main offices in  
6 Hartford, Connecticut and claims decisions from its HFP division in New  
7 York. Plaintiffs are informed and believe, further, that there exists an  
8 identical equitable ownership in the two entities, in addition to the use of  
9 the same offices and employees, officers, and directors.

10 o) Hartford shares profits and losses with Twin City from these joint and  
11 coordinated activities, directly or indirectly, by (i) deriving income  
12 indirectly via dividends up-streamed from the subsidiaries it unilaterally  
13 inserts as the "Insurer" in its form D&O policies) as a result of its insurance  
14 contracts covering California residents, and also (ii) increasing its profits  
15 and the profits of its subsidiaries such as Twin City by minimizing their  
16 and its costs through the wrongful denial of the claims of its insureds at the  
17 behest of the Claims Department at its HFP division in New York, which  
18 Hartford controls. By choosing the insureds with whom Twin City  
19 contracts under Hartford's Private Choice Encore! D&O policies nominally  
20 issued by Twin City, Hartford effectively controls the premium revenue  
21 Twin City will derive from such policies. By choosing which D&O claims  
22 it will honor or reject, Hartford effectively controls the claim costs that  
23 Twin City will incur for claims made by its insureds under such policies.

24 d) For these reasons, among others, Hartford used and uses Twin City as a  
25 mere shell or conduit for its D&O insurance business directed to and  
26 derived from its insureds under Hartford's Private Choice Encore! D&O  
27 policies in California (and other states). If Twin City's acts and omissions  
28



1 were treated as its alone, a manifestly inequitable result would follow.

2 **V. PLAINTIFFS' TWIN CITY INSURANCE COVERAGE**

3 20. Twin City issued the Policy to Chamco as the first named insured (the  
4 "Named Entity" on Item 1 of the first page of the Policy's Declarations [PE 00 H002 02  
5 1204]), for the policy period of May 12, 2007 to May 12, 2008. The Policy includes a  
6 "Coverage Part" for "Directors, Officers, and Entity Liability" (the "D&O Coverage  
7 Part"), providing for D&O defense and indemnity coverage for Chamco's officers and  
8 directors, such as Plaintiffs, subject to any applicable exclusions. The Policy has a limit  
9 of liability of \$5 million in the aggregate, and is subject to a self-insured retention of  
10 \$50,000 (PE 00 H013 00 0502).

11 21. The Policy contains the following pertinent provisions in Section II of the  
12 "Common Terms and Conditions" of the Policy, entitled "Common Definitions":

13 **"COMMON DEFINITIONS**

14 The following terms, whether used in the singular or plural, shall have the  
15 meanings specified below:

16 \* \* \*

17 (C) **"Claim"** shall have the meaning specified for such term in each  
18 Coverage Part.

19 \* \* \*

20 (E) **"Defense Costs"** means reasonable and necessary legal fees and  
21 expenses incurred in the investigation, defense or appeal of a Claim.  
22 Defense Costs shall include the costs of appeal, attachment or similar  
23 bonds, provided that the Insurer shall have no obligation to furnish  
24 such bonds. Defense Costs shall not include salaries, wages,  
25 remuneration, overhead or benefit expenses associated with any  
26 Insureds.

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- (I) **"Insured Entity"** means:
  - (1) the **Named Entity**; or
  - (2) any **Subsidiary**.
- \* \* \*
- (J) **"Insured Person"** shall have the meaning specified for such term in each Coverage Part.
- (K) **"Insureds"** shall have the meaning specified for such term in each Coverage Part.
- (L) **"Interrelated Wrongful Acts"** means Wrongful Acts that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- (M) **"Liability Coverage Part"** means the Directors, Officers and Entity Liability, Employment Practices Liability, Fiduciary Liability and Miscellaneous Professional Liability Coverage Parts, if included in ITEM 5 of the Declarations.
- (N) **"Loss"** shall have the meaning specified for such term in each Coverage Part.
- (O) **"Manager"** means any natural person who is a past, present or future:
  - (1) duly elected or appointed director, officer, member of the board of managers or management committee member of an Insured Entity;
  - (2) in-house general counsel of an Insured Entity;
- \* \* \*
- (P) **"Named Entity"** means the entity named in ITEM 1 of the Declarations.
- \* \* \*

- 1 (T) "**Subsidiary**" means any:  
2 (1) corporation in which and so long as the **Named Entity** owns  
3 or controls, directly or indirectly, more than 50% of the  
4 outstanding securities representing the right to vote for the  
5 election of the board of directors of such corporation;  
6 (2) limited liability company in which and so long as the **Named**  
7 **Entity** owns or controls, directly or indirectly, the right to  
8 elect, appoint or designate more than 50% of such entity's  
9 managers;  
10 (3) corporation operated as a joint venture in which and so long as  
11 the **Named Entity** owns or controls, directly or indirectly,  
12 exactly 50% of the issued and outstanding voting stock and  
13 which, pursuant to a written agreement with the owner(s) of  
14 the remaining issued and outstanding voting stock of such  
15 corporation, the Named Entity solely controls the  
16 management and operation of such corporation . . ."

17 \* \* \*

18 22. Section VII of the Policy, entitled "Defense and Settlement," contains the  
19 following pertinent provisions :

20 "**DEFENSE AND SETTLEMENT**

21 Solely with respect to all **Liability Coverage Parts**:

- 22 (A) The Insurer shall have the right and duty to defend any **Claim** for  
23 which the **Insureds** give notice to the Insurer, even if such **Claim** is  
24 groundless, false or fraudulent. The Insurer may make any  
25 investigation it deems appropriate.  
26 (B) The Insurer's duty to defend any **Claim** shall cease upon exhaustion  
27 of any applicable Limit of Liability."  
28

1           23. Section VIII of the Policy, entitled "Notice of Claim," contains the  
2 following pertinent provisions:

3                   **"NOTICE OF CLAIM**

4                   Solely with respect to all **Liability Coverage Parts**:

5           (A) As a condition precedent to coverage under this Policy, the Insureds  
6 shall give the Insurer written notice of any Claim as soon as  
7 practicable, provided that such notice shall be given not later than  
8 sixty (60) days after any Manager becomes aware that such Claim  
9 has been made. Such notice shall specify the Coverage Part under  
10 which notice is being given.

11           (B) If, during the **Policy Period**, the Insureds become aware of a  
12 **Wrongful Act** that may reasonably be expected to give rise to a  
13 Claim, and, if written notice of such **Wrongful Act** is given to  
14 the Insurer during the **Policy Period**, including the reasons for  
15 anticipating such a **Claim**, the nature and date of the **Wrongful Act**,  
16 the identity of the **Insureds** allegedly involved, the alleged injuries  
17 or damages sustained, the names of potential claimants, and the  
18 manner in which the Insureds first became aware of the **Wrongful**  
19 **Act**, then any Claim subsequently arising from such **Wrongful Act**  
20 shall be deemed to be a **Claim** first made during the **Policy Period**  
21 on the date that the Insurer receives the above notice."

22           24. Section X of the Policy, entitled "Interrelationship of Claims," provides as  
23 follows:

24                   **"INTERRELATIONSHIP OF CLAIMS**

25                   Solely with respect to all Liability Coverage Parts:

26           All **Claims** based upon, arising from or in any way related to the same  
27 **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to be a  
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1 single **Claim** first made on the earliest date that:

2 (A) any of such **Claims** was first made, regardless of whether such date  
3 is before or during the Policy Period;

4 (B) notice of any **Wrongful Act** described above was given to the  
5 Insurer under this Policy pursuant to Section VIII. NOTICE OF  
6 CLAIM (B); or

7 (C) notice of any **Wrongful Act** described above was given under any  
8 prior insurance policy."

9 25. Section II of the D&O Coverage Part of the Policy, entitled "Definitions,"  
10 contains the following pertinent provisions:

11 "(A) **"Claim"** means any:

12 (1) **Insured Person Claim;**"

13 \* \* \*

14 (E) **"Insured Person"** means any:

15 (1) **Manager;** or

16 (2) Employee.

17 (F) **"Insured Person Claim"** means any:

18 (1) written demand for monetary damages or non-monetary relief  
19 commenced by the receipt of such demand;

20 (2) civil proceeding commenced by the service of a complaint or  
21 similar pleading;"

22 \* \* \*

23 (I) **"Loss"** means the amount that the Insureds are legally obligated to  
24 pay as a result of a **Claim**, including, without limitation, **Defense**  
25 **Costs, Investigation Costs**, damages, settlements, judgments, and  
26 pre- and post-judgment interest.

27 **Loss** shall include punitive and exemplary damages where insurable

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1 by law. Regarding the insurability of such damages, the Insurer shall  
2 not contend for any reason, unless appropriate to do so as a matter of  
3 law or public policy, that such damages are uninsurable. The  
4 insurability of such damages shall be governed by the laws of any  
5 applicable jurisdiction that permits coverage of such damages."

6 \* \* \*

7 (L) "**Wrongful Act**" means any actual or alleged:

8 (1) error, misstatement, misleading statement, act, omission, neglect or  
9 breach of duty . . ."

10 26. Section IV of the D&O Coverage part of the Policy, entitled "Exclusions  
11 Applicable To All Insuring Agreements," contains the following pertinent provisions:

12 The **Insurer** shall not pay Loss for any **Claim**:

13 \* \* \*

14 (F) by or on behalf of any **Insureds** . . ."

15 \* \* \*

16 27. Endorsement 1 to the D&O Coverage Part of the Policy provides in  
17 pertinent part as follows:

18 "It is agreed that **D&O Liability Coverage Part Section IV.**

19 **EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS**

20 is amended to add:

21 IV. The Insurer shall not pay **Loss** for any **Claim**:

22 By or on behalf of any over of 5% or more of the outstanding securities of  
23 an **Insured Entity**, either directly or beneficially."

24 28. Endorsement 2 to the Policy adds (among other entities not pertinent here)  
25 ZX Automobile Company of North America, Inc., i.e., ZXNA, as an additional "**Named**  
26 **Entity**" along with with Chamco on Item 1 of the Policy's Declarations.

1 **VI. BACKGROUND**

2 **A. Chamco**

3 29. Chamco is a management holding corporation whose mission was and is to  
4 own and operate subsidiaries as the North American distributors, importers, and  
5 marketers of pickups and SUVs built by Hebei Zhongxing Automobile Manufacturing  
6 ("ZX Auto China") -- a Chinese manufacturer of relatively low-cost automobiles, trucks  
7 and SUVs. One of these Chamco subsidiaries is ZXNA. Motor vehicles imported by ZX  
8 Auto China were to be modified and upgraded though, among other things, a process  
9 known a "homologation" (e.g., bringing the vehicles up to federal, state and local  
10 emission standards and safety standards).

11 **B. ZX Auto NA Inc. (aka ZXNA)**

12 30. ZXNA is a Chamco subsidiary which was intended to be the operating  
13 entity regarding the importation and sale of automobiles from China pursuant to an  
14 Importation, Marketing, Sales and Distribution Agreement ("Chinese Auto Distribution  
15 Agreement") with ZX Auto China. Pursuant to the Chinese Auto Distribution  
16 Agreement, Chamco and ZXNA also were granted the exclusive right to import, market,  
17 sell, distribute and assemble ZX China automotive parts in North America. ZXNA has  
18 no current operations and effectively has had none since at least March 2008. Plaintiff  
19 Saleen is the Chief Executive Officer of ZXNA; Plaintiff Del Franco is ZXNA's Chief  
20 Operating Officer; Plaintiff Karo is ZXNA's General Counsel; and Plaintiff Pitluk is  
21 ZXNA's Vice President and Controller.

22 **C. The Thomason Distributorship Agreement And The Aborted  
23 Formation of ZX Auto West**

24 31. In furtherance of its business plan, in or about December 2007, ZXNA  
25 signed a distribution agreement (the "Thomason Distributorship Agreement") with  
26 Thomason Auto Group, LLC ("Thomason"). (A true and correct copy of the Thomason  
27 Distributorship Agreement is attached hereto as **Exhibit C** and fully incorporated herein  
28 by this reference.) The Thomason Distributorship Agreement provided, at § 2.1[a] at

1 page 3, that immediately upon the execution of the Agreement, ZXNA (therein called  
2 "ZXAUTO NA"), was supposed to form a Delaware Limited Liability Company called  
3 ZXAUTO DISTRIBUTION WEST USA, LLC. ("ZX Auto West"). ZX Auto West was  
4 supposed to act as ZXNA's West Coast distributor of ZX Auto China automobiles and  
5 aftermarket parts. Following its formation as a Delaware Limited Liability Company,  
6 ZX Auto West was supposed to issue one thousand (1000) Membership Units, 720  
7 (72%) of which were supposed to be issued to ZXNA and 280 (28%) of which were  
8 supposed to be issued to Thomason. *Id.* Upon entering into the Thomason  
9 Distributorship Agreement, Thomason paid \$6 million to ZXNA.

10 32. Simultaneously and in synchronicity with the Thomason Agreement, in or  
11 about December 2007, ZXNA signed a distribution company investment agreement (the  
12 "Shaffer Agreement") with Shaffer Auto Group, LLC ("Shaffer"). (A true and correct  
13 copy of the Shaffer Agreement is attached hereto as **Exhibit D** and fully incorporated  
14 herein by this reference.) The Shaffer Agreement provided, at § 2.1[a] at page 3, that  
15 Shaffer agreed to pay \$7.5 Million to ZXNA for a 22% share of ZX Auto West, to be  
16 handled as a silent partner investment; Shaffer had no active duties, although it had the  
17 right to appoint one of the five "managing members" of the ZX Auto West Board. ZX  
18 Auto West was supposed to immediately issue to Shaffer Auto Group 220 (22%) of the  
19 total one thousand (1000) Membership Units.

20 33. However, ZX Auto West was never formed as a Delaware Limited  
21 Liability Company, and, therefore, never could or did issue any Membership Units  
22 either to Thomason, Shaffer, ZXNA or any to other investor because ZX Auto West  
23 never had any legal existence as a Delaware Limited Liability Company, much less  
24 conducted any business of any kind whatsoever as such. ZX Auto West instead merely  
25 remained an inchoate concept as part of a stillborn plan that was never realized under an  
26 executory contract -- the Thomason Distributorship Agreement -- which was never fully  
27 performed. Nor (Plaintiffs are informed and believe) did any other Chamco or ZXNA  
28



1 Limited Liability Company ever issue any actual membership units or interests to  
2 Thomason at any time.

3 34. *If ZX Auto West had ever been properly and fully formed as a Limited*  
4 *Liability Company under Delaware law as originally contemplated under the Thomason*  
5 *Distributorship Agreement; if ZX Auto West had ever issued membership units to*  
6 *Thomason, Shaffer and ZXNA once it was properly formed as a Delaware Limited*  
7 *Liaibility Company; and if ZX Auto West had actually commenced business thereafter,*  
8 *then, under those circumstances which never came to pass, the Thomason*  
9 *Distributorship Agreement provided, among other things, that:*

10 "2.5 THOMASON shall be in charge of the day-to-day management of  
11 ZXAUTO WEST.

12 [a] THOMASON shall report to the Managing Members of ZXAUTO  
13 WEST. The Managing Members shall consist of THOMASON or  
14 his designee; one person appointed by the 22% owner referenced in  
15 Paragraph 2.1[f], if there is such an investor; and three Managing  
16 Members appointed by ZXAUTO NA. If for any reason there is a  
17 deadlock on any issue brought by a Membership Unit holder to  
18 ZXAUTO WEST (e.g., if two Managing Members vote one way and  
19 two other Managing Members vote to the contrary and one  
20 Managing Member abstains), ZXAUTO NA shall have the  
21 final and binding vote, as required under the China contract. For all  
22 practical purposes, ZXAUTO WEST shall be run by the  
23 Managing Members, outside of day to day management."

24 35. As previously alleged, however, these provisions of the Thomason  
25 Distributorship Agreement were never implemented; no Member Units ever issued and  
26 no Member Unit holder ever existed; ZXNA never appointed any managing members;  
27 and no other managers were ever installed by Thomason, nor did any management  
28

1 activities ever take place, because ZX Auto West was never formed or operated as a  
2 Delaware Limited Liability Company or otherwise. Nor (Plaintiffs are informed and  
3 believe) did ZXNA or Thomason ever obtain any membership units, appoint any  
4 managers, or otherwise manage or control any other Chamco Limited Liability  
5 Company.

6 **D. The New Jersey State Court Actions**

7 36. After several months of operations, the senior officers and directors of  
8 both Chamco and ZXNA broke into two hostile camps, each accusing the other of  
9 serious financial improprieties and fiduciary breaches, among other misconduct.

10 37. On the morning of March 3, 2008, Thomason filed an action in the New  
11 Jersey State Court, Docket No. MRS-C-27-08, against Chamco, ZXNA, the Daspin  
12 Defendants, and several other individuals and entities alleging the following claims: (1)  
13 Fraud in the Inducement; (2) Unjust Enrichment; (3) Conversion; and (4) Constructive  
14 Trust (the "Thomason State Action"). In the Thomason State Action, Thomason makes  
15 claims against ZXNA and Chamco seeking, among other things, rescission of the  
16 Thomason Distribution Agreement on the ground that Thomason's \$6 million payment  
17 to ZXNA was procured by fraud.

18 38. Later in the day on March 3, 2008, Plaintiffs and three other individuals,  
19 individually and derivatively on Chamco's behalf, filed an action in New Jersey  
20 Superior Court of Morris County: Chancery Division (the "New Jersey State Court") ,  
21 Docket No. MRS-C-28-08, against Edward Michael Daspin ("Daspin"), Joan Daspin,  
22 William L. Pollack, Sam Tropello, Ronald A. Stella, Bradford Shaffer, Michelle  
23 Shaffer, the 1st Capital Corporation, Capital Corporation of America a/k/a Capital  
24 Corporation a/k/a Capcorp, Daspin & Co. Merchant Bank Holding Co., Property  
25 Development Group, LLC a/k/a Properties Development Group, LLC (collectively,  
26 "Daspin Defendants") alleging the following claims: (1) Derivative Claim; (2)  
27 Shareholder Oppression; (3) Fraud; (4) Constructive Fraud; (5) Breach of Fiduciary  
28

1 Duty; (6) Breach of Contract; (7) Breach of Implied Covenant of Good Faith and Fair  
2 Dealing; (8) Conversion; (9) Abuse of Control; (10) Gross Mismanagement; (11)  
3 Corporate Waste; (12) Failure to Provide Books and Records; (13) Accounting; (14)  
4 Rescission of Stock Grants; (15) Unjust Enrichment; and (16) Constructive Fraud (the  
5 "Saleen Action").

6 39. On March 31, 2008, certain Daspin Defendants, allegedly also on behalf of  
7 Chamco and ZXNA, caused to be filed a retaliatory action in the New Jersey Court  
8 Docket No. MRS-C-47-08, against Plaintiffs, Thomason, and other individuals and  
9 entities alleging the following claims: (1) Fraud; (2) Constructive Fraud; (3) Breach of  
10 Fiduciary Duty; (4) Breach of Contract; (5) Breach of Implied Covenant of Good Faith  
11 and Fair Dealing; (6) Conversion; (7) Tortious Interference with Prospective Economic  
12 Advantage; (8) Abuse of Control; (9) Accounting; (10) Tortious Interference with  
13 Contract; (11) Violation of Common Law Duty of Loyalty; (12) Conspiracy; (13)  
14 Statutory and Common Law Unfair Competition; (14) Violation of New Jersey Business  
15 and Corporations Act; (15) Federal Unfair Competition; (16) Federal Dilution; (17)  
16 Federal Cyber-Squatting; (18) Breach of Duty of Loyalty; (19) Constructive Trust; (20)  
17 Unjust Enrichment; and (21) Self-Dealing (the "Daspin Action").

18 40. The Thomason State Action, Saleen Action, and Daspin Action are  
19 sometimes collectively referred to as the "State Court Actions." The State Court  
20 Actions were consolidated under Case No. MRS-C-27-08 in the New Jersey Court. The  
21 State Court Actions were consolidated under Case No. MRS-C-27-08 in the New Jersey  
22 Court.

23 **E. The ZXNA And Chamco Bankruptcy Filings**

24 41. On June 3, 2008, an Involuntary Petition under Chapter 7 of the United  
25 States Bankruptcy Code was filed against ZXNA in the United States Bankruptcy Court  
26 for the Central District of California (the "ZXNA Bankruptcy Action"). On July 7,  
27 2008, an Involuntary Petition under Chapter 7 of the Bankruptcy Code was filed against  
28

1 Chamco in the United States Bankruptcy Court for the Central District of California (the  
2 “Chamco Bankruptcy Action”). The ZXNA Bankruptcy Action and the Chamco  
3 Bankruptcy Action are presently being jointly administered by the Bankruptcy Court.  
4 The three State Court Actions also were removed to the United States District Court for  
5 the District of New Jersey on bankruptcy "related to" grounds, and have since been  
6 transferred to the United States Bankruptcy Court for the Central District of California  
7 for coordination with the jointly-administered ZXNA Bankruptcy Action and the  
8 Chamco Bankruptcy Action.

9 **F. The Thomason Federal Action Against Plaintiffs That Is The Primary  
10 Subject Of The Parties' Coverage Dispute**

11 42. On August 14, 2008, Thomason filed a complaint against Plaintiffs in the  
12 United States District Court for the District of New Jersey (Case No. 2:2008-CV-04143-  
13 JLL-CCC ). The Thomason Federal Action asserts purported claims against Plaintiffs  
14 under the Federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18  
15 U.S.C. § 1962(c) [Counts I & II]; 18 U.S.C. § 1962(d) [Count III]; tortious interference  
16 with prospective business relations [Count IV]; fraud in the inducement [Count V];  
17 unjust enrichment [Count VI]; conversion [Count VII]; common law fraud [Count VIII];  
18 intentional misrepresentation [Count IX]; negligent misrepresentation [Count X];  
19 equitable fraud [Count XI]; aiding and abetting the commission of a tort [Count XII];  
20 conspiracy to commit a tort [Count XIII]; breach of fiduciary duty [Count XIV]; and  
21 constructive trust [Count XV]. (A true and correct copy of the complaint in the  
22 Thomason Federal Action is attached hereto as **Exhibit E** and fully incorporated herein  
23 by this reference.)

24 **VII. SUMMARY OF THE PARTIES' COVERAGE DISPUTE**

25 **A. The Thomason Federal Action Alleges Covered Claims Under The  
26 Twin City Policy**

27 43. The Thomason Federal Action alleges covered or potentially covered  
28 wrongdoing by Plaintiffs under the Policy issued by Twin City to "Insured Entity"

1 Chamco. The Policy's D&O Coverage Part provides coverage to Plaintiffs, as Chamco  
2 "Managers," for any "Loss" or "Defense Costs" arising from any "Claim" or "Injured  
3 Person Claim" based on an alleged "Wrongful Act" or "Interrelated Wrongful Act" --  
4 i.e., any alleged "error, misstatement, misleading statement, act, omission, neglect or  
5 breach of duty" by a "Manager" of an "Insured Entity."

6 44. Among other alleged errors, misstatements, misleading statements, acts,  
7 omissions, and breaches of duty supposedly committed by Plaintiffs, the complaint in  
8 the Thomason Federal Action alleges that: Plaintiffs "negligently made false  
9 representations of material facts to" Thomason (complaint ¶ 293); Plaintiffs breached  
10 their "fiduciary duties of loyalty, good faith and fair dealing" (*id.* ¶¶ 325 & 326); and  
11 Plaintiffs made "inaccurate, incomplete, and misleading statements" to Thomason. (*Id.*  
12 ¶¶ 318 & 321.) The Thomason Federal Action therefore constitutes a "Claim" and  
13 "Injured Person Claim" for a "Wrongful Act" and "Interrelated Wrongful Act" within  
14 the defined meaning of those terms in the Twin City Policy.

15 45. The facts and circumstances giving rise to the claims asserted in the  
16 Thomason Federal Action also gave rise to the State Court Actions. Therefore, the  
17 "Claim" in the Thomason Federal Action arises from an "Interrelated Wrongful Act" as  
18 defined in Section II(L) of the Policy.

19 46. Each of the Plaintiffs here falls within the definition of "Manager" under  
20 the Policy because each Plaintiff at all relevant times was an officer and/or director of  
21 Chamco and/or ZXNA, which are both a "Named Entity" under Item 1 of the Policy's  
22 Declarations.

23 47. A "Loss" and "Defense Costs" include attorneys' fees and costs incurred to  
24 defend against a "Claim" -- which Plaintiffs have incurred in defending against the  
25 "Claims" and "Injured Person Claims" asserted against them in the Thomason Federal  
26 Action.

**B. Twin City Received Proper And Timely Notice Of The Covered Claims**

48. Although the Thomason Federal Action was filed and served on August 14, 2008 -- after the May 12, 2008 expiration of the Policy's policy period -- notice of the Thomason Federal Action "Claim" was still timely given to Twin City, as Twin City has acknowledged in writing. The notice of the pendency of the three State Court Actions was timely provided to Twin City during the applicable policy period. The State Court Actions and the Thomason Federal Action all arise from and relate to the same "Wrongful Acts" or "Interrelated Wrongful Acts" as defined in the Policy. Accordingly, under Section X of the Policy, entitled "Interrelationship of Claims," the "Claims" asserted in the Thomason Federal Action and in the State Court Actions are deemed to be a single "Claim" first made on the earliest date any of such "Claims" were made (which occurred during the policy period), so long as notice of any such "Wrongful Act" or "Interrelated Wrongful Act" was given during the policy period (which occurred here, as Twin City itself has admitted in its September 4, 2008 coverage denial letter discussed below). Twin City received proper and timely notice of the "Claims" arising from "Wrongful Acts" or "Interrelated Wrongful Acts" as asserted in the Thomason Federal Action because Plaintiffs provided notice of those "Claims" to Twin City within 60 days of their becoming aware of the Thomason Federal Action, and the same alleged "Wrongful Acts" and "Interrelated Wrongful Acts" gave rise to the "Claims" asserted in the State Court Actions for which notice was properly and timely given during the applicable policy period.

**C. Twin City Has Wrongfully Denied And Breached Its Coverage Obligations**

49. Twin City denied coverage of the Thomason State Action, filed on March 3, 2008 (and also the Saleen Action) by letter dated April 30, 2008, alleging that the insured vs. insured exclusion in the Policy was applicable. Twin City denied coverage of the Daspin Action (filed on March 31, 2008) by letter dated May 29, 2008, alleging

1 that the insured vs. insured exclusion in the Policy (at § IV(F) of the D&O Coverage  
2 Part) was applicable.

3 50. Twin City subsequently also denied coverage of the Thomason Federal  
4 Action (filed on August 14, 2008) by letter dated September 4, 2008, alleging that the  
5 insured vs. insured exclusion in the Policy (at § IV(F) of the D&O Coverage Part) was  
6 applicable, as reiterated by a subsequent coverage denial letter dated April 24, 2009.

7 51. In particular, Twin City asserted and continues to assert that coverage for  
8 the Thomason Federal Action is excluded pursuant to Endorsement No. 1 of the Policy,  
9 on two primary grounds:

10 First, Twin City asserts that ZX Auto West is a "**Subsidiary**" of ZXNA,  
11 which was added by Endorsement No. 2 as a "**Named Entity**," because ZXNA  
12 supposedly was able to appoint three out of the five "Managing Members" of ZX Auto  
13 West under Section 2.5[a] of the Thomason Distributorship Agreement; and

14 Second, the Thomason Distributorship Agreement provides that Thomason  
15 is the owner of a 28% interest in ZX Auto West -- whereas Endorsement No. 1 provides  
16 that "The **Insurer** shall not pay **Loss** for any **Claim**: By or on behalf of any over of 5%  
17 or more of the outstanding securities of an **Insured Entity**, either directly or  
18 beneficially. Therefore (Twin City claims), the insured-vs.-insured exclusion at Section  
19 IV(F) of the D&O Coverage Part applies because Thomason supposedly owns 5% or  
20 more of the outstanding securities of an "Insured Entity," i.e., ZX Auto West (as a  
21 "Subsidiary" of "Named Entity" ZXNA).

22 52. That Twin City's abandonment of Plaintiffs based upon its purported  
23 coverage analysis was and is being undertaken in bad faith, without proper or  
24 reasonable grounds, and with intentional or reckless disregard of Plaintiffs' contractual  
25 and statutory rights and interests, is demonstrated by the following five points (among  
26 others):

1            First, ZX Auto West was never formed as a Delaware Limited Liability  
2 Company, ZX Auto West never existed and therefore could not be a "Subsidiary"  
3 of ZXNA within the defined meaning of that term in the Policy, or for any other  
4 reason. Nor did any other Chamco Limited Liability Company ever issue any  
5 Membership Units to Thomason, nor did he ever receive any. Nor did Thomason  
6 ever control any any other Chamco or ZXNA-created Limited Liability Company  
7 or subsidiary.

8            Second, ZXNA did not have the power to choose 50% or more of the  
9 "managers" of ZX Auto West (if it had ever been formed). Plaintiffs allege and  
10 contend, and so informed Hartford, that the term "managers" encompasses not  
11 only "Managing Members" as that term is used in the Thomason Distributorship  
12 Agreement, but also includes ZX Auto West's operational managers, such as the  
13 Chief Executive Officer to be chosen by Thomason under Section 3.11 of the  
14 Thomason Distributorship Agreement, and other managers Thomason may have  
15 chosen as the Managing Member "in charge of the day-to-day management of  
16 ZXAUTO WEST." (Thomason Distributorship Agreement § 2.5.) Further, if  
17 there were any ambiguity on this point -- and there is none -- it should be resolved  
18 in Plaintiffs' favor -- particularly with regard to Defendants' primary defense  
19 obligation to Plaintiffs.

20            Third, because ZX Auto West was never formed as a Delaware Limited  
21 Liability Company, ZX Auto West never issued any membership interests to  
22 Thomason or anyone else. The ZX Auto West Membership Units were not  
23 "outstanding securities" within the meaning of Policy Endorsement No. 1,  
24 because they never issued and therefore could not be and never were  
25 "outstanding." Nor did any other Chamco or ZXNA-created Limited Liability  
26 Company ever issue any membership units to Thomason which give him 5% of  
27 such units, or otherwise.



1            Fourth, the Thomason Distributorship Agreement provided for Thomason:  
2            (i) to be responsible for ZX Auto West's day-to-day management (§ 2.5); (ii) to  
3            be appointed as a "Managing Member" of ZX Auto West (§ 2.5[a]); (iii) to  
4            provide ZX Auto West with its management information systems technology and  
5            computer systems "for all purposes" (§ 2.9[b]); and (iv) to provide ZX Auto West  
6            "all vehicle, parts, service and repair, manufacturer, retailer, transportation,  
7            manufacturing, sales and technical information in its possession (§ 2.9[a]). These  
8            provisions demonstrate that ZX Auto West was supposed to be a "member  
9            managed LLC" that was actively managed by its Managing Members (and other  
10           subordinate managers appointed and supervised by Thomason); it was not  
11           conceived as a "manager managed LLC" in which non-member managers operate  
12           the LLC for the benefit of passive investors seeking to generate profit primarily if  
13           not solely from the efforts of others.

14           Fifth, Thomason's Membership Units, if they had ever issued, would not  
15           have been not freely saleable or transferable, but instead were highly restricted  
16           under Sections 4.2 and 4.3 of the Thomason Distributorship Agreement.

17           53. As such, Thomason's LLC Membership Units were not and could not be  
18           deemed "outstanding securities" because: (1) they never existed or were issued; (2)  
19           Thomason himself was supposed be the primary manager of ZX Auto West's operations  
20           and was not investing his money looking for a return on investment due solely or  
21           primarily to efforts of others over whom he had no control; and (3) the Membership  
22           Units were restricted to "Managing Members" that were highly-sophisticated entities  
23           experienced in the automobile industry who were required to actively participate in the  
24           management the company.

25           **D. Twin City Has Breached Its Insurance Policy Wilfully And In Bad**  
26           **Faith**

27           54. D&O policies typically require a carrier to reimburse defense costs, but  
28           Twin City's Policy here imposes a duty to defend commonly associated with

1 occurrence-based general liability policies. The Policy states (as Section VII) that Twin  
2 City "shall have the right and duty to defend any **Claim** for which the Insureds give  
3 notice to the Insurer, even if such **Claim** is groundless, false or fraudulent." In  
4 handling, investigating and adjusting Plaintiffs' claims arising out of the Thomason  
5 Federal Action, Twin City had a duty to defend its insureds as soon as it ascertained  
6 facts, based upon the allegations of the Thomason Federal Action, that gave rise to the  
7 mere potential or possibility of liability under the Policy. Before denying coverage,  
8 Twin City was obligated to make a thorough, good faith, and diligent investigation and  
9 inquiry, including seeking appropriate legal consultation, before determining that there  
10 was no potential or possibility of coverage for the claims asserted against Plaintiffs in  
11 the Thomason Federal Action. Twin City was obligated to resolve any doubt about the  
12 possibility or potential of coverage in Plaintiffs' favor. If any claim raised in the  
13 Thomason Federal Action triggered the potential or possibility for coverage for  
14 Plaintiffs, Twin City was required to step up and defend Plaintiffs immediately and  
15 continuously, as soon as possible after the tender of the Thomason claim until the  
16 lawsuit is resolved or Twin City has established by reference to undisputed facts that the  
17 claims asserted against Plaintiffs in the Thomason Federal Action cannot possibly be  
18 covered under the Policy.

19 55. But Twin City (and the Doe Defendants at Hartford's behest) turned these  
20 duties on their head, denying coverage based on an incomplete and superficial  
21 investigation and analysis that they believed suggested that there might be the potential  
22 or possibility that the claims asserted against Plaintiffs in the Thomason Federal (and  
23 State Court Actions) were not covered. Defendants denied coverage in the Thomason  
24 Federal (and in the State Court Actions) without any review of the Thomason  
25 Distributorship Agreement whatsoever, and thereafter stood by their denial based only  
26 on a cursory and inaccurate reading of the Agreement's provisions. In doing so,  
27 Defendants have allowed Plaintiffs to fend for themselves against much better funded  
28

1 litigation adversaries, hoping that before Defendants are called to task for their bad faith  
2 conduct an adverse judgment will be entered against Plaintiffs in the State Court  
3 Actions or in the Thomason Federal Action for fraud or other intentional misconduct --  
4 due not to any true culpability on Plaintiffs' part, but, rather, due solely to their inability  
5 to mount an effective defense for lack of resources. Defendants then could attempt to  
6 further profit from their delay and intransigence by attempting to use such a judgment to  
7 justify their bad faith denial of their defense and indemnity obligations after-the-fact on  
8 the basis of the Policy's intentional misconduct exclusion.

9         56. After Plaintiffs appealed to Defendants for reconsideration of the denial of  
10 coverage, Defendants informed Plaintiffs that Twin City did not even have a copy of the  
11 Thomason Distributorship Agreement. Plaintiffs provided Defendants with a copy.  
12 Defendants then made a superficial and cursory review of the Thomason Distributorship  
13 Agreement, and denied coverage on the basis that Thomason supposedly owned 5% or  
14 more of the "outstanding securities" of ZX Auto West, which they deemed to be a  
15 "Subsidiary" of ZXNA. But Thomason did not own any "outstanding securities" of ZX  
16 Auto West because ZX Auto West never was formed as a Delaware Limited Liability  
17 Company -- a fact remarkably easy to verify simply by examining the official website of  
18 the Delaware Secretary of State (which lists, on inquiry, Delaware LLCs). Moreover,  
19 even if ZA Auto West had issued 28% of ZX Auto West's "Membership Units" to  
20 Thomason, Twin City should have realized that such "Membership Units" -- which in  
21 all events never issued -- would not and could not be deemed "securities" because the  
22 Thomason Distributorship Agreement makes clear that ZA Auto West was supposed to  
23 be a "member managed" LLC that was actively run and operated by Thomason in  
24 consultation with the other "Managing Members." Twin City also adopted an  
25 impermissibly narrow interpretation of the the word "manager" for purposes of the  
26 manager-control definition of "Subsidiary" in the Policy, rather than considering the  
27 actual references to and role of managers and their management activities as articulated  
28

1 in the Thomason Distributorship Agreement upon which Twin City purported to base its  
2 negative coverage analysis. These examples, which are not exhaustive but only  
3 illustrative, show the lengths to which Twin City was willing to go to shirk its coverage  
4 responsibilities and deny Plaintiffs' claims in bad faith.

5 57. Thus, in handling, investigating and adjusting Plaintiffs' claims arising out  
6 of the Thomason Federal Action, Twin City (and the Doe Defendants at Hartford's  
7 behest) systematically, methodically and generally engaged in the following improper,  
8 unfair and unreasonable claims practices directed at Plaintiffs:

- 9 a) Deliberately, unjustifiably and unreasonably withholding the benefits  
10 Plaintiffs were entitled to receive;
- 11 b) Deliberately, unjustifiably and unreasonably adopting an unwarranted  
12 interpretation and application of the provisions and exclusions of the  
13 Policy, contrary to the facts presented them by Plaintiffs and otherwise  
14 readily ascertainable upon reasonable investigation and inquiry, so as to  
15 limit Twin City's own financial exposure and contractual obligations and to  
16 maximize its profits at Plaintiffs' expense;
- 17 c) Unreasonably refusing to defend Plaintiffs in the Thomason Federal Action;
- 18 d) Denying a defense to Plaintiffs in the Thomason Federal Action without  
19 conducting an adequate investigation concerning the potential for coverage  
20 under the insurance policies after learning of the underlying lawsuits;
- 21 e) Denying a defense to Plaintiffs in the Thomason Federal Action without  
22 seeking an independent legal opinion concerning the insurers' duties and  
23 obligations from a qualified attorney;
- 24 f) Failing to protect Plaintiffs' reasonable expectations of coverage, including  
25 but not limited to refusing to timely, promptly, and without delay, pay for  
26 the reasonable and necessary defense costs incurred by Plaintiffs from the  
27 time of tender through the present, thereby knowingly and intentionally  
28

- 1 causing extreme hardship to Plaintiffs;
- 2 g) Failing to give Plaintiffs' interests at least as much consideration as its own
- 3 in evaluating the formers' tender of defense in the underlying actions;
- 4 h) Deliberately, unjustifiably and unreasonably failing to adopt and
- 5 implement reasonable standards for the prompt processing of Plaintiffs'
- 6 claim, all the while knowing and/or hoping that Plaintiffs would be unable
- 7 to pursue the full benefits of these insurance policies or would become
- 8 frustrated with pursuing the full benefits of the Policy and abandon their
- 9 claims;
- 10 i) Deliberately, unjustifiably and unreasonably refusing to attempt in good
- 11 faith to make a prompt, fair and equitable settlement of the claims against
- 12 Plaintiffs, thereby relieving Plaintiffs from the expense, annoyance and
- 13 stigma attendant to the Thomason Federal Action;
- 14 j) Deliberately, unjustifiably and unreasonably failing to communicate
- 15 promptly with Plaintiffs, thereby causing Plaintiffs to undertake their own
- 16 defense in the underlying actions;
- 17 k) Deliberately, unjustifiably and unreasonably compelling Plaintiffs to secure
- 18 attorneys at considerable cost to obtain from Twin City the defense and
- 19 indemnity owed to Plaintiffs under the Policy, in an attempt to cause
- 20 Plaintiffs to incur additional attorneys' fees so as to become frustrated and
- 21 financially crippled so that they would not pursue the full benefits of the
- 22 insurance policies;
- 23 l) Deliberately, unjustifiably and unreasonably compelling Plaintiffs to
- 24 institute litigation to recover amounts due under the insurance policies in
- 25 an effort to further discourage Plaintiffs from pursuing the full policy
- 26 benefits; and
- 27 m) Deliberately, unjustifiably and unreasonably refusing to reconsider their
- 28

1 denial of coverage despite their lack of reasonable or diligent investigation  
2 and analysis regarding the bases for such coverage, and despite having  
3 received from Plaintiffs information that established more than sufficient  
4 grounds to conclude that coverage existed and continue to exist under the  
5 Policy.

6 58. Defendants carried out the above-described actions with a conscious  
7 disregard for Plaintiffs' rights and interests. These actions constitute conduct which is  
8 despicable behavior executed with an intent to injure Plaintiffs, such as to constitute  
9 oppression, fraud or malice under California Civil Code section 3294, entitling Plaintiffs  
10 to punitive damages.

11 59. As a result of Twin City's bad faith denial of its coverage obligations to  
12 Plaintiffs, Plaintiffs have been forced to fund their own defense of the Thomason  
13 Federal Action (and the State Court Actions), and, in doing so, have incurred crushing  
14 costs and attorneys' fees far in excess of the \$50,000 retention provided for in the  
15 Policy.

## 16 **VIII. CLAIMS FOR RELIEF**

### 17 **FIRST CLAIM FOR RELIEF** 18 **(Against All Defendants For Breach of Contract [Failure to Defend])**

19 60. Plaintiffs re-allege and incorporate by reference all allegations contained in  
20 Paragraphs 1 through 59 above as though fully set forth herein.

21 61. Twin City and the Doe Defendants, through the Policy, promised to defend  
22 Plaintiffs against any lawsuit seeking damages or covered losses. The Thomason  
23 Federal Action seeks to recover covered losses or damages against Plaintiffs. The  
24 Thomason State Action imposed defense costs on Plaintiffs arising from a "Claim"  
based on an alleged "Wrongful Act" or "Interrelated Wrongful Act".

25 62. Chamco and ZXNA paid significant premiums to Defendants to obtain  
26 D&O defense and liability coverage for Plaintiffs, Chamco's officers and directors.  
27 Plaintiffs provided proper notice to Twin City of the State Court Actions and the  
28

1 Thomason Federal Action, and in all other respects complied with each and every  
2 obligation required to be performed under Twin City's Policy.

3 63. Despite Plaintiffs' complete performance, Defendants breached the terms of  
4 the Policy by failing to provide Plaintiffs with a defense to the Thomason Federal  
5 Action. Defendants have failed to pay any money toward Plaintiffs' defense despite the  
6 contractual obligations under the Policy.

7 64. By virtue of its status as Twin City's principal, alter ego, and joint venturer  
8 in a common (but illicit) enterprise to wrongfully deny defense and indemnity coverage  
9 to its insureds in this jurisdiction (and in other states), as more fully alleged in Paragraphs  
10 16 through 19, above, Defendant Hartford also is responsible for Twin City's breach of  
11 the defense and indemnity obligations in the Policy.

12 65. As a direct and proximate result of Defendants' total and material breach of  
13 the Policy, Plaintiffs have suffered and will continue to suffer reasonable, foreseeable  
14 and ascertainable damages, including but not limited to defense fees and costs incurred  
15 in defense of the Thomason Federal Action and any judgment or settlement of the  
16 Thomason Federal Action.

17 **SECOND CLAIM FOR RELIEF**  
18 **(Against All Defendants For Breach of Contract [Failure to Indemnify])**

19 66. Plaintiffs re-allege and incorporate by reference all allegations contained in  
20 Paragraphs 1 through 59 above as though fully set forth herein.

21 67. Twin City and the Doe Defendants, through the Policy, promised to  
22 indemnify Plaintiffs against any liability resulting from covered losses or damages,  
23 including pursuing reasonable efforts to make a prompt, fair and equitable settlement of  
24 the claims against Plaintiffs (subject to any applicable exclusions\_, thereby relieving  
25 Plaintiffs from the expense, annoyance and stigma attendant to the Thomason Federal  
26 Action. The Thomason Federal Action seeks to impose liability on Plaintiffs for  
27 covered losses or damages alleged caused to Thomason.  
28

1 68. Chamco paid significant premiums to Defendants to obtain D&O defense  
2 and liability coverage for Plaintiffs, Chamco's officers and directors. Plaintiffs provided  
3 proper notice to Twin City of the State Court Actions and the Thomason Federal Action,  
4 and in all other respects complied with each and every obligation required to be  
5 performed under Twin City's Policy.

6 69. Despite Plaintiffs' complete performance, Defendants breached the terms of  
7 the Policy by denying any indemnity obligation to Plaintiffs, and unjustifiably and  
8 unreasonably refusing to attempt in good faith to make a prompt, fair and equitable  
9 settlement of the claims against Plaintiffs.

10 70. By virtue of its status as Twin City's principal, alter ego, and joint venturer  
11 in a common enterprise to wrongfully deny defense and indemnity coverage to its  
12 insureds in this jurisdiction (and in other states), as more fully alleged in Paragraphs 16  
13 through 19, above, Defendant Hartford also is responsible for Twin City's breach of the  
14 defense and indemnity obligations in the Policy.

15 71. As a direct and proximate result of Defendants' total and material breach of  
16 the Policy, Plaintiffs have suffered and will continue to suffer reasonable, foreseeable  
17 and ascertainable damages, including but not limited to defense fees and costs incurred  
18 in defense of the Thomason Federal Action and any judgment or settlement of the  
19 Thomason Federal Action.

20 **THIRD CLAIM FOR RELIEF**  
21 **(Against All Defendants For Tortious Breach Of The Implied Covenant**  
22 **Of Good Faith And Fair Dealing)**

23 72. Plaintiffs re-allege and incorporate by reference all allegations contained in  
24 Paragraphs 1 through 59 above as though fully set forth herein.

25 73. Plaintiffs, acting through Chamco as its officers and directors, purchased  
26 the Policy from Defendants with the understanding and expectation that Defendants  
27 would act in good faith and deal fairly pursuant to the Policy and the obligations created  
28 thereunder.



1           74. The Policy issued by the Defendants to Plaintiffs contained an implied  
2 covenant that neither party would do anything to deprive the other party of the benefits  
3 of the Policy. The implied covenant also obligated Defendants to act in good faith with  
4 regard to their dealings with Plaintiffs, giving Plaintiffs' interests at least as much  
5 consideration as their own.

6           75. Defendants' refusal to defend Plaintiffs against the claims asserted in the  
7 Thomason Federal Action was unreasonable, without proper investigation, and without  
8 proper justification; it demonstrated a failure or refusal to discharge a known and  
9 obvious contractual responsibility; and it was prompted not by an honest mistake, bad  
10 judgment, advice of counsel, or mere negligence, but rather by a conscious and  
11 deliberate act, which unfairly frustrated an agreed-upon purpose of the Policy and  
12 disappointed their insureds' reasonable expectations, thereby depriving Plaintiffs of the  
13 bargained-for benefits of the Policy.

14           76. Defendants' refusal to defend was also unreasonable and without proper  
15 cause because it was made without a proper investigation, or any investigation at all, but  
16 instead was initially predicated on no review at all of the Thomason Distributorship  
17 Agreement, and when challenged on the denial predicated on an unreasonable and  
18 superficial reading of select provisions of the Thomason Distributorship Agreement that  
19 was belied by readily-ascertainable facts that Defendants conveniently chose to ignore.

20           77. Plaintiffs are informed and believe and based thereon allege that  
21 Defendants did not request the advice of counsel before refusing to defend Plaintiffs  
22 against the underlying actions. In the absence of any reasonable basis for doing so, and  
23 with full knowledge and/or reckless disregard for the consequences to be borne by its  
24 insured, Defendants have failed and refused to defend or indemnify Plaintiffs under the  
25 Policy of insurance issued by Defendants for damages, costs and attorneys' fees  
26 occasioned by the Thomason Federal Action.

1           78. Plaintiffs are informed and believe and based thereon allege that  
2 Defendants engaged in, and continues to engage in, a course of conduct to further its  
3 own economic interests in direct violation of their obligations to Plaintiffs. This  
4 conduct includes, but is not limited to the conduct described above.

5           79. As a proximate result of Defendants' wrongful conduct, Plaintiffs were  
6 compelled to defend themselves against the Thomason Federal Action, utilizing their  
7 own resources.

8           80. As a further proximate result of Defendants' aforementioned wrongful  
9 conduct, Plaintiffs suffered additional harm, expense, costs and attorneys' fees as well as  
10 other damage in an amount to be proven at trial.

11           81. Defendants' conduct described herein was undertaken by its officers or  
12 managing agents, identified herein as Does 1 through 10, who are responsible for  
13 Defendants' general management and operations and including, but not limited to,  
14 claims supervision and operation, underwriting, communications and decisions. The  
15 aforementioned conduct of these managing agents and individuals was therefore  
16 undertaken on behalf of Defendants and with conscious disregard for Plaintiffs'  
17 contractual and other rights. Defendants further had advance knowledge of the action  
18 and conduct of these individuals whose actions and conduct were ratified, authorized  
19 and approved by said managing agents whose precise identities are unknown to  
20 Plaintiffs at this time and who are therefore identified and designated herein as Does 1  
21 through 10, inclusive.

22           82. As a direct and proximate result of Defendants' bad faith conduct and their  
23 total and material breach of the Policy Plaintiffs have suffered and will continue to  
24 suffer reasonable, foreseeable and ascertainable damages, including but not limited to  
25 defense fees and costs incurred in defense of the Thomason Federal Action and any  
26 judgment or settlement of the Thomason Federal Action, as well as related expenses in  
27 an amount not yet fully ascertained.

1 83. By virtue of its status as Twin City's principal, alter ego, and joint venturer  
2 in a common (but illicit) enterprise to wrongfully deny defense and indemnity coverage  
3 to its insureds in this jurisdiction (and in other states), as more fully alleged in Paragraphs  
4 16 through 19, above, Defendant Hartford also is responsible for Twin City's breach of  
5 the defense and indemnity obligations in the Policy.

6 84. The conduct described herein constitutes "oppression, fraud or malice" as  
7 those terms are defined in Civil Code § 3294, and Plaintiffs are therefore entitled to  
8 punitive damages in an amount according to proof. Plaintiffs are further informed and  
9 believes, and based upon such information and belief, alleges that:

10 (a) The conduct described herein constituting oppression, fraud or  
11 malice was committed by one or more officers, directors, or managing agents of  
12 Defendants who acted on their behalf; or

13 (b) The conduct described herein constituting oppression, fraud or  
14 malice was authorized by one or more officers, directors, or managing agents of  
15 Defendants; or

16 (c) One or more officers, directors, or managing agents of Defendants  
17 knew of the conduct constituting malice, oppression, or fraud and adopted or approved  
18 that conduct after it occurred.

19 **FOURTH CLAIM FOR RELIEF**  
20 **(Against Defendant Hartford For Tortious Interference With Contract)**

21 85. Plaintiffs re-allege and incorporate by reference all allegations contained in  
22 Paragraphs 1 through 59 above as though fully set forth herein.

23 86. The Twin City Policy attached hereto as Exhibit B is a valid and existing  
24 insurance contract between Plaintiffs and Defendant Twin City. Defendant Hartford  
25 knew of the existence of the Policy because it selected Twin City to be the nominal  
26 named "Insurer" in the Policy, conducted the underwriting for the Policy, undertook the  
27 superficial coverage investigation and analysis with respect to the claims Plaintiffs' have  
28 tendered under the Policy, and denied Plaintiffs' claims perfunctorily based upon their

1 inadequate investigation, analysis and review, without good reason and in a manner  
2 designed to deny Plaintiffs the D&O insurance coverage to which they were entitled  
3 under the Policy.

4 87. Defendant Hartford intended to, and fulfilled its intention to induce Twin  
5 City to breach its D&O defense and indemnity obligations to Plaintiffs under the Policy  
6 by usurping the claims adjustment, investigation and analysis function that Twin City  
7 should have and was required to reasonably conduct under the Policy, thereby using its  
8 position of domination and control over Twin City to induce and cause it to breach the  
9 Policy by and through the following misconduct:

- 10 a) Deliberately, unjustifiably and unreasonably withholding the benefits  
11 Plaintiffs were entitled to receive;
- 12 b) Deliberately, unjustifiably and unreasonably adopting an unwarranted  
13 interpretation and application of the provisions and exclusions of the  
14 Policy, contrary to the facts presented them by Plaintiffs and otherwise  
15 readily ascertainable upon reasonable investigation and inquiry, so as to  
16 limit Twin City's own financial exposure and contractual obligations and to  
17 maximize its profits at Plaintiffs' expense;
- 18 c) Unreasonably refusing to defend Plaintiffs in the Thomason Federal Action;
- 19 d) Denying a defense to Plaintiffs in the Thomason Federal Action without  
20 conducting an adequate investigation concerning the potential for coverage  
21 under the insurance policies after learning of the underlying lawsuits;
- 22 e) Denying a defense to Plaintiffs in the Thomason Federal Action without  
23 seeking an independent legal opinion concerning the insurers' duties and  
24 obligations from a qualified attorney;
- 25 f) Failing to protect Plaintiffs' reasonable expectations of coverage, including  
26 but not limited to refusing to timely, promptly, and without delay, pay for  
27 the reasonable and necessary defense costs incurred by Plaintiffs from the  
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1 time of tender through the present, thereby knowingly and intentionally  
2 causing extreme hardship to Plaintiffs;

3 g) Failing to give Plaintiffs' interests at least as much consideration as its own  
4 in evaluating the formers' tender of defense in the underlying actions;

5 h) Deliberately, unjustifiably and unreasonably failing to adopt and  
6 implement reasonable standards for the prompt processing of Plaintiffs'  
7 claim, all the while knowing and/or hoping that Plaintiffs would be unable  
8 to pursue the full benefits of these insurance policies or would become  
9 frustrated with pursuing the full benefits of the Policy and abandon their  
10 claims;

11 i) Deliberately, unjustifiably and unreasonably refusing to attempt in good  
12 faith to make a prompt, fair and equitable settlement of the claims against  
13 Plaintiffs, thereby relieving Plaintiffs from the expense, annoyance and  
14 stigma attendant to the Thomason Federal Action;

15 j) Deliberately, unjustifiably and unreasonably failing to communicate  
16 promptly with Plaintiffs, thereby causing Plaintiffs to undertake their own  
17 defense in the underlying actions;

18 k) Deliberately, unjustifiably and unreasonably compelling Plaintiffs to secure  
19 attorneys at considerable cost to obtain from Twin City the defense and  
20 indemnity owed to Plaintiffs under the Policy, in an attempt to cause  
21 Plaintiffs to incur additional attorneys' fees so as to become frustrated and  
22 financially crippled so that they would not pursue the full benefits of the  
23 insurance policies;

24 l) Deliberately, unjustifiably and unreasonably compelling Plaintiffs to  
25 institute litigation to recover amounts due under the insurance policies in  
26 an effort to further discourage Plaintiffs from pursuing the full policy  
27 benefits; and  
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1 m) Deliberately, unjustifiably and unreasonably refusing to reconsider their  
2 denial of coverage despite their lack of reasonable or diligent investigation  
3 and analysis regarding the bases for such coverage, and despite having  
4 received from Plaintiffs information that established more than sufficient  
5 grounds to conclude that coverage existed and continue to exist under the  
6 Policy.

7 88. In interfering with Plaintiffs' contractual relationship with Twin City,  
8 Hartford did not act for the sole purpose of protecting its legitimate business interest  
9 from being prejudiced. Rather, it acted for the illegitimate business purpose of reaping  
10 illicit gains due to its bad faith effort to cause Twin City to deny the insurance benefits  
11 to which Plaintiff was entitled. It did not employ proper means to do so, but instead  
12 employed wrongful means of interjecting itself, through its HFP division, in the  
13 underwriting and claims adjustment processes of its subsidiary (Twin City), and thereby  
14 engaged in the business of insurance without first obtaining proper licenses and  
15 authorizations to do so in California and other jurisdictions in which Twin City issues  
16 Private Choice Encore! D&O policies at Hartford's behest and command.

17 89. In doing so, Defendant Hartford's misconduct, as described above, was  
18 undertaken with the express purpose and design of causing Twin City to breach its  
19 obligations under the Policy it issued to Plaintiffs. Hartford therefore has directly  
20 caused and continues to cause Twin City's breach of its Policy obligations to its  
21 insureds, and has disrupted and harmed the contractual relationship between insurer and  
22 insureds that properly should exist under and by the terms and conditions of the Policy.  
23 Given Hartford's control and domination over Twin City with respect to the coverage  
24 acceptance/denial process and decision-making, Hartford is the moving or procuring  
25 cause of the breach of Plaintiffs' insurance contract with Twin City. If Hartford had not  
26 so dominated and controlled Twin City's performance of its claim investigation, analysis  
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1 and approval functions, Twin City would have been able to honor and would not have  
2 breached its contractual obligations to Plaintiffs.

3 90. As a direct and proximate result of Hartford's tortious interference with  
4 Twin City's insurance contract with Plaintiffs, Plaintiffs have suffered and will continue  
5 to suffer reasonable, foreseeable and ascertainable damages, including but not limited to  
6 defense fees and costs incurred in defense of the Thomason Federal Action and any  
7 judgment or settlement of the Thomason Federal Action, as well as related expenses in  
8 an amount not yet fully ascertained.

9 91. The conduct described herein constitutes "oppression, fraud or malice" as  
10 those terms are defined in Civil Code § 3294, and Plaintiffs are therefore entitled to  
11 punitive damages in an amount according to proof. Plaintiffs are further informed and  
12 believes, and based upon such information and belief, alleges that:

13 (a) The conduct described herein constituting oppression, fraud or  
14 malice was committed by one or more officers, directors, or managing agents of  
15 Defendant Hartford who acted on its behalf; or

16 (b) The conduct described herein constituting oppression, fraud or  
17 malice was authorized by one or more officers, directors, or managing agents of  
18 Defendant Hartford; or

19 (c) One or more officers, directors, or managing agents of Defendant  
20 Hartford knew of the conduct constituting malice, oppression, or fraud and adopted or  
21 approved that conduct after it occurred.

22 **FIFTH CLAIM FOR RELIEF**  
23 **(Against All Defendants For Violation of Cal. Bus. Prof. Code § 17200 et seq.)**

24 92. Plaintiffs re-allege and incorporate by reference all allegations contained in  
25 Paragraphs 1 through 59 above as though fully set forth herein.

26 93. The California Unfair Competition Act, set forth in California Business and  
27 Professions Code section 17200 et seq. ("Section 17200"), prohibits acts of unfair  
28 competition, which include "any unlawful, unfair or fraudulent business act or practice .

1 . . .” Section 17200 imposes strict liability for violations and does not require proof that  
2 Defendants intended to injure anyone. Section 17200 borrows violations of other laws  
3 and treats those transgressions, when committed as a business activity, as "unlawful"  
4 business practices. Thus, the "unlawful" practices prohibited by Section 17200 are any  
5 practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory,  
6 regulatory, or court-made. Such “unlawful” business practices are independently  
7 actionable under Section 17200 and subject to the distinct remedies provided hereunder.

8 94. Moreover, pursuant to California Business and Professions Code section  
9 17205, Plaintiffs' remedies under Business and Professions Code sections 17200 *et seq.*  
10 are cumulative with remedies under all other statutory and common law remedies  
11 available in this State, including all remedies provided under the California Civil Code  
12 and Insurance Code.

13 95. Plaintiffs are informed and believe and based thereon allege that these  
14 Hartford, in concert with its subsidiaries such as Twin City, has a bad faith corporate  
15 practice of withholding D&O policy benefits which Defendants know are due to their  
16 insureds. Defendants' bad faith practice of denying D&O defense claims, when there is  
17 the slightest question regarding an obligation to defend or indemnify, forces insureds to  
18 litigate those claims. Defendants engage in this practice on the theory that, if an insurer  
19 denies most of their claims, the majority of insureds will abandon their claims after the  
20 denial, rather than take on the prospect of defending the underlying suit and at the same  
21 time litigating against their insurer. Defendants engage in this corporate practice in  
22 order to discourage claims and maximize profits.

23 96. Hartford (in concert with Twin City) has engaged in "unfair" insurance  
24 practices within the meaning of Section 17200, as enumerated in Paragraph 87, above,  
25 are a pervasive part of their well-established, overall business plan. Plaintiffs are  
26 informed and believe and based thereon allege that Defendants have employed each of  
27 the alleged practices on their other insureds in this State.



1           97. Hartford has engaged in an "unlawful" insurance practices within the  
2 meaning of Section 17200 by engaging by subterfuge in the business of insurance in this  
3 state, through its HFP subsidiary, including the underwriting and claims adjustment of  
4 D&O policies issued to and/or insuring California residents and other individuals and  
5 business who do business here and whose claims under Hartford's policies arise here.  
6 Yet Hartford has failed to register to do business in this State either with the California  
7 Department of Insurance or the California Secretary of State.

8           98. Hartford has engaged in "fraudulent" conduct within the meaning of  
9 Section 17200 because it falsely claims that is merely "a holding company that is  
10 separate and distinct from its subsidiaries" and that it supposedly "has no significant  
11 business operations of its own, even though it: (i) uses HFP to craft, generate, market,  
12 disseminate, and underwrite the Private Choice Encore! D&O policies that are sold to  
13 insureds in California and other states -- such as the Policy at issue here; (ii) chooses  
14 unilaterally and peremptorily which of its subsidiaries, such as Twin City, it deems  
15 appropriate in its sole discretion to insert as the named "Insurer" in the D&O insurance  
16 forms it disseminates, markets, underwrites and sells in California and nationwide; and  
17 (iii) through HFP's Claim Department, makes the coverage decisions on claims asserted  
18 by its California insureds under its Private Choice Encore! D&O policies that are  
19 supposedly issued by Twin City or other Hartford subsidiaries from which Hartford  
20 claims to be "separate and distinct."

21           99. Twin City also has engaged in "unfair" and "fraudulent" insurance  
22 practices within the meaning of Section 17200 by acquiescing in Hartford's practice of  
23 dictating the D&O contracts in which Twin City will be inserted as "Insurer" when it  
24 knows that Hartford actually will make the crucial decisions regarding which insureds'  
25 claims will be paid, and which will be denied. The public is likely to be deceived by  
26 this conduct and practice, because while the D&O contracts issued by Twin City with  
27 respect to insureds located in this State expressly state that Twin City is the "Insurer," in  
28

1 fact the most crucial insurance decision -- whether a claim will be paid or not -- is not  
2 made by Twin City as "Insurer" but, instead, is made by the Claims Department in  
3 Hartford's HFP division in New York.

4 100. As a result of Hartford's unlawful, unfair and fraudulent conduct performed  
5 in furtherance of the Defendants' joint venture enterprise, Defendants have been  
6 unjustly enriched in an amount as yet is unascertained, which will be determined  
7 according to proof at trial, but which includes their ill-gotten receipt from Plaintiffs of  
8 the proceeds from their purchase of the Securities at issue.

9 101. Plaintiffs have suffered concrete and substantial monetary harm directly as  
10 a result of Hartford's unfair, illegal and fraudulent conduct, including onerous attorneys'  
11 fees and defense costs incurred in the Thomason Federal Action (and in the State Court  
12 Actions).

13 102. Defendants' practice of adjusting insurance claims offends established  
14 public policy, is immoral, unethical, oppressive, unscrupulous and so substantially  
15 injurious to consumers such as to constitute an unfair business practice and warrant  
16 injunctive relief. Plaintiffs and other members of the public who have purchased  
17 insurance from Defendants have been and are likely to continue to be deceived by  
18 Defendants' actions. Defendants' conduct is unlawful and constitutes an unfair business  
19 practice forbidden by California law and for which injunctive relief should issue  
20 immediately. Plaintiffs seek injunctive relief to prevent Defendants from continuing to  
21 engage in the conduct alleged.

22 103. Defendants' unlawful insurance practices as alleged herein have caused  
23 Defendants to gain a cash windfall in the form of earned premiums and unpaid claims.  
24 By reason of the above-alleged unlawful, immoral, unethical, oppressive and  
25 unscrupulous acts on Defendants' part, Plaintiffs seek disgorgement of Defendants' ill-  
26 gotten gains. Plaintiffs accordingly are entitled to equitable relief under California  
27 Business and Professions Code section 17203, in the form of an accounting, restitution  
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1 and disgorgement of all ill-gotten gains, earnings, profits, compensation and benefits  
2 obtained by Defendants as the result of their aforementioned unlawful, unfair and  
3 fraudulent business acts and practices.

4 104. Pursuant to California Business and Professions Code Section 17203,  
5 Plaintiffs seek a further order by this Court enjoining Defendants from continuing to  
6 conduct business through the unlawful, unfair and fraudulent business practices and acts  
7 described in this Complaint; and from failing to fully disclose to the true nature of their  
8 business practices in this State.

9 **SIXTH CLAIM FOR RELIEF**  
10 **(Against All Defendants For Declaratory Relief)**

11 105. Plaintiffs re-allege and incorporate by reference all allegations contained in  
12 Paragraphs 1 through 59 above as though fully set forth herein.

13 106. An actual controversy and dispute has arisen and exists between Plaintiffs,  
14 on the one hand, and Defendants, on the other hand, regarding their respective rights  
15 and obligations under the Policy.

16 107. Defendants contend, on the one hand, that there is no D&O coverage under  
17 the Policy for the claims asserted against Plaintiffs in the Thomason Federal Action; that  
18 Defendants are under no obligation to defend Plaintiffs under the Policy; and that  
19 Defendants have no indemnity obligation to Plaintiffs in connection with any settlement  
20 or judgment in the Thomason Federal Action.

21 108. Plaintiffs, on the other hand, dispute Defendants' contentions regarding the  
22 lack of coverage as set forth above and contend that the Policy provides defense and  
23 indemnity coverage for them.

24 109. In particular, Defendants contend, as a basis for their denial of coverage,  
25 that coverage for the Thomason Federal Action is excluded pursuant to Endorsement  
26 No. 1 of the Policy, for two reasons Defendants claim are dispositive of the coverage  
27 issue:  
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1            First, Defendants assert that ZX Auto West is a "**Subsidiary**" of ZXNA,  
2 which was added by Endorsement No. 2 as a "**Named Entity**," because ZXNA  
3 supposedly was able to appoint three out of the five "Managing Members" of ZX  
4 Auto West under Section 2.5[a] of the Thomason Distributorship Agreement; and

5            Second, the Thomason Distributorship Agreement provides that Thomason  
6 is the owner of a 28% membership interest in ZX Auto West -- whereas  
7 Endorsement No. 1 provides that "The **Insurer** shall not pay **Loss** for any **Claim**:  
8 By or on behalf of any over of 5% or more of the outstanding securities of an  
9 **Insured Entity**, either directly or beneficially."

10           110. Based on these two arguments, Defendants assert that the insured v.  
11 insured exclusion under Section IV(F) of the Policy's D&O Coverage Part applies  
12 because Thomason supposedly own 5% or more of the outstanding securities of an  
13 "Insured Entity," i.e., ZX Auto West (as a "Subsidiary" of ZXNA, which was named by  
14 Endorsement No. 2 as an additional named insured of the Policy).

15           111. Plaintiffs dispute Defendants' contentions and assert that, contrary to  
16 Defendants' coverage analysis and position, D&O coverage for Plaintiffs in the  
17 Thomason Federal Action exists under the Twin City Policy because ZA Auto West  
18 neither falls within the Policy's definition of "Subsidiary," nor does Thomason own 5%  
19 or more of the outstanding securities of ZA Auto West, for at least five reasons:

20           First, ZX Auto West was never formed as a Delaware Limited Liability  
21 Company, ZX Auto West never existed and therefore could not be a "Subsidiary"  
22 of ZXNA within the defined meaning of that term in the Policy, or for any other  
23 reason. Nor (Plaintiffs are informed and believe) did ZXNA or Thomason ever  
24 obtain any membership units, appoint any managers, or otherwise manage or  
25 control any other Chamco Limited Liability Company.

26           Second, ZXNA did not have the power to choose 50% or more of the  
27 "managers" of ZX Auto West, because the term "managers" encompasses not  
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1 only "Managing Members," but also operational managers, such as the Chief  
2 Executive Officer to be chosen by Thomason not by ZXNA under Section 3.11 of  
3 the Thomason Distributorship Agreement, as well as other managers Thomason  
4 may have chosen as the Managing Member "in charge of the day-to-day  
5 management of ZXAUTO WEST." (Thomason Distributorship Agreement §  
6 2.5.)

7 Third, because ZX Auto West was never formed as a Delaware Limited  
8 Liability Company, ZX Auto West never issued any membership interests to  
9 Thomason or anyone else. The ZX Auto West Membership Units were not  
10 "outstanding securities" within the meaning of Policy Endorsement No. 1 because  
11 they never issued and therefore could not be and never were "outstanding"; rather,  
12 they did not exist at all. Nor (Plaintiffs are informed and believe) did ZXNA or  
13 Thomason ever obtain any other "outstanding" membership units, appoint any  
14 managers, or otherwise manage or control any other Chamco Limited Liability  
15 Company.

16 Fourth, in any event, the Thomason Distributorship Agreement provided  
17 for Thomason: (i) to be responsible for ZX Auto West's day-to-day management  
18 (§ 2.5), (ii) to be appointed as a "Managing Member" of ZX Auto West (§ 2.5[a]),  
19 (iii) to provide ZX Auto West with its management information systems  
20 technology and computer systems "for all purposes" (§ 2.9[b]), and (iv) to  
21 provide ZX Auto West "all vehicle, parts, service and repair, manufacturer,  
22 retailer, transportation, manufacturing, sales and technical information in its  
23 possession (§ 2.9[a]). This was supposed to be a "member managed LLC"  
24 actively managed by its Managing Members and the executive officers; it was not  
25 a "manager managed LLC" in which non-member managers operate the LLC for  
26 the benefit of passive investors.


1 Fifth, Thomason's Membership Units, if they had ever issued, were not  
2 freely saleable or transferable, but instead were highly restricted under Sections  
3 4.2 and 4.3 of the Thomason Distributorship Agreement.

4 112. In order to resolve this actual controversy and dispute between the  
5 Parties, Plaintiffs seek a declaration from this Court over the parties' respective rights  
6 and obligations under the Twin Policy attached as Exhibit B hereto, in light of the  
7 parties' contentions under the terms of the Thomason Distributorship Agreement  
8 attached as Exhibit B hereto, in accordance with 28 U.S.C. § 2201(a) and Rule 57 of the  
9 Federal Rules of Civil Procedure.

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14 **IX. DEMAND FOR JURY TRIAL**

15 In accordance with F.R.Civ.P. 38(b) or L.R. 38-1 and 38-2, Plaintiffs demand a  
16 trial by jury of all claims set forth herein, apart from any claims or parts of claims  
17 sounding in equity, which Plaintiffs request be tried by the Court.

18   
19 By: \_\_\_\_\_  
20 Mark Anchor Albert

21 Attorneys for Plaintiffs Martin H. Karo, Mario R. Ferla, Thomas Del Franco,  
22 Steven Saleen, and Jack Pitluk

23 **X. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, and each of them, pray for judgment as follows:

25 **ON THE FIRST CLAIM FOR RELIEF**

26 **(Against All Defendants)**

- 27 1. For compensatory damages according to proof at trial, but in an amount within  
28

1 the jurisdiction of this Court;

- 2 2. For pre-judgment interest and costs of suit, according to proof.

3 **ON THE SECOND CLAIM FOR RELIEF**

4 **(Against All Defendants)**

- 5 1. For compensatory damages according to proof at trial, but in an amount within  
6 the jurisdiction of this Court;  
7 2. For pre-judgment interest and costs of suit, according to proof.

8 **ON THE THIRD CLAIM FOR RELIEF**

9 **(Against All Defendants)**

- 10 1. For compensatory damages according to proof at trial, but in an amount within  
11 the jurisdiction of this Court;  
12 2. For attorneys' fees and costs of suit incurred in obtaining the benefits owed under  
13 the Twin City Policy, pursuant to *Brandt v. Superior Court*, 37 Cal. 3d 813  
14 (1985), according to proof;  
15 3. For punitive and exemplary damages according to proof;  
16 4. For costs of suit, according to proof.

17 **ON THE FOURTH CLAIM FOR RELIEF**

18 **(Against Hartford And The Doe Defendants)**

- 19 1. For compensatory damages according to proof at trial, but in an amount within  
20 the jurisdiction of this Court;  
21 2. For punitive and exemplary damages according to proof; and  
22 3. For costs of suit, according to proof.

23 **ON THE FIFTH CLAIM FOR RELIEF**

24 **(Against All Defendants)**

- 25 1. For equitable relief in the form of an accounting, restitution and disgorgement of  
26 all ill-gotten gains, earnings, profits, compensation and benefits obtained by  
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1 Defendants as the result of their aforementioned unlawful, unfair and fraudulent  
2 business acts and practices;

- 3 2. For a permanent injunction prohibiting and enjoining Defendants from issuing  
4 insurance policies in California to insureds when it has no intention of funding a  
5 defense of its insureds when they are sued; and
- 6 3. For a permanent injunction prohibiting and enjoining Defendants from issuing  
7 insurance policies in California to insured when it has no intention of paying  
8 indemnity obligations on behalf of its insureds for covered damages; and
- 9 4. For an order by this Court enjoining Defendants from continuing to conduct  
10 business through the unlawful, unfair and fraudulent business practices and acts  
11 described in this Complaint; and from failing to fully disclose to the true nature of  
12 their business practices in this State.

13 **ON THE SIXTH CLAIM FOR RELIEF**

14 **(Against All Defendants)**

- 15 1. For a declaratory judgment by the Court under 28 U.S.C. § 2201(a) and Rule 57  
16 of the Federal Rules of Civil Procedure that the Twin City Policy provides D&O  
17 coverage for defense obligations and potential indemnity liability in the Thomason  
18 Federal Action, and, in particular: (a) that Twin City, Hartford, and each Doe  
19 Defendants must defend and indemnify Plaintiff as to the claims asserted against  
20 them in the Thomason Federal Action; (b) that Twin City, Hartford, and each Doe  
21 Defendant are obligated to provide a full and complete defense to Plaintiffs in the  
22 Thomason Federal Action; and (c) that Twin City, Hartford, each Doe Defendant  
23 are jointly and severally obligated to fully indemnify Plaintiffs, and each of them,  
24 in the Thomason Federal Action (and in any other actions against Plaintiffs in  
25 which the Court deems Twin City coverage applicable); and
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2. For a declaratory judgment by the Court that Twin City, Hartford, and each Doe Defendant must reimburse Plaintiffs for the legal fees and costs incurred in this action.

**ON ALL CLAIMS FOR RELIEF**

1. For such other and further relief as the Court deems just and proper.

DATED: June 22, 2009

**LAW OFFICES OF MARK ANCHOR ALBERT**



By: \_\_\_\_\_

Mark Anchor Albert  
Attorneys for Plaintiffs Martin H. Karo, Mario R. Ferla,  
Thomas Del Franco, Steven Saleen, and Jack Pitluk