



captioned lawsuit, by and through its counsel, Stalker Vogrin Bracken & Frimet, LLP, allege the following:

1. This is an action for declaratory judgment pursuant to 28 U.S.C.A. § 2201 for the purpose of determining a question in actual controversy between the parties as to the relative rights, liabilities, and obligations, if any, ACE American Insurance Company (hereinafter “ACE American”) and Federal National Mortgage Association a/k/a Fannie Mae (hereinafter “Fannie Mae”) have to Plaintiffs and Plaintiffs’ insured, Keystone Asset Management, Inc. (hereinafter “Keystone”) under a commercial general liability policy issued by ACE American to Fannie Mae with respect to the claims described below against Keystone.

#### **PARTIES AND JURISDICTION**

2. Plaintiff, American Fire, is a New Hampshire corporation duly licensed to issue policies of insurance in the Commonwealth of Pennsylvania and maintains its principal place of business at 175 Berkeley Street, Boston, Massachusetts.

3. Plaintiff, Ohio Casualty, is a New Hampshire corporation duly licensed to issue policies of insurance in the Commonwealth of Pennsylvania and maintains its principal place of business at 175 Berkeley Street, Boston, Massachusetts.

4. Defendant, ACE American Insurance Company, is a Pennsylvania corporation regularly transacting business in the Commonwealth of Pennsylvania, with its principal place of business located at 436 Walnut Street, Philadelphia, Pennsylvania.

5. Interested party, Federal National Mortgage Association a/k/a Fannie Mae, is a Congressionally chartered corporation with a principal place of business located at 14221 Dallas Parkway, Suite 1000, Dallas, Texas 75254.

6. Interested party, Keystone, is a Pennsylvania corporation regularly transacting business in the Commonwealth of Pennsylvania, with its principal place of business located at 100 West Main Street, Lansdale, Pennsylvania.

7. This controversy arises under the provisions of a commercial general liability policy of insurance issued by Defendant ACE American to Fannie Mae, which Plaintiffs assert provides primary insurance coverage to Plaintiffs' insured, Keystone, with respect to a lawsuit filed against Fannie Mae and others in *Maria Clara Rodriguez v. County of Westchester, et al*, venued in the Supreme Court of New York, County of Westchester, Index No. 26027/10; Third Party Index No. 26027/107 (hereinafter "underlying lawsuit" or "underlying Complaint"). See a true and correct copy of the underlying lawsuit attached as Exhibit A.

8. On or about August 2, 2011, Fannie Mae filed a Notice of Impleader / Third Party Complaint against Keystone in the underlying lawsuit (the "Third Party Complaint"). See a true and correct copy of the Third Party Complaint attached as Exhibit B.

9. Pursuant to the commercial general liability insurance policy issued by ACE American to Fannie Mae, namely, ACE American Policy HDOG2493536A for the policy period of October 31, 2009 to October 31, 2010 (the "ACE American Policy"), Keystone is ACE American's insured. As set forth below, the ACE American Policy provides coverage to any person or organization that acts as a real estate manager for Fannie Mae.

10. By Fannie Mae's own admissions in the underlying matter, Keystone was Fannie Mae's real estate manager in the underlying matter.

11. Thus, Keystone is a “real estate manager” for Fannie Mae and, therefore, is an insured under the ACE American Policy.

12. As such, the ACE American Policy provides primary coverage for Keystone.

13. Accordingly, Plaintiffs assert that ACE American owes defense and indemnity for Keystone in the underlying lawsuit.

14. As set forth above, ACE American is licensed to conduct business in Pennsylvania and has a principal place of business located at 436 Walnut Street, Philadelphia, Pennsylvania, and is regulated by Pennsylvania law.

15. As set forth above, Plaintiffs’ principal places of business are located in Massachusetts.

16. Jurisdiction is based on diversity pursuant to 28 U.S.C.A. § 1332(a)(1), because the parties are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000.

17. Venue is proper in this Court pursuant to 28 U.S.C.A. § 1391(a)(1).

#### **BACKGROUND**

18. On or about April 1, 2008, Keystone and Fannie Mae entered into an Asset Management Provider Agreement (the “Asset Management Agreement”) that defines Keystone as the “Asset Management Provider.” Pursuant to the Asset Management Agreement, Keystone was required to manage those properties for Fannie Mae at all pertinent times. A copy of the Asset Management Agreement is attached as Exhibit C.

19. The underlying lawsuit and the Third party Complaint allege that on February 28, 2010, Maria Rodriguez slipped and fell on ice and snow on a public sidewalk located at 106 Maple Street, Yonkers, New York. (para. 22 of the underlying complaint and para. 3-4 of the Third Party Complaint)

20. The underlying lawsuit and the Third Party Complaint allege at the time of the accident, the subject sidewalk was a public sidewalk owned by the City of Yonkers, and Fannie Mae owned the property located at 106 Maple Street, Yonkers, New York, which Fannie Mae obtained through foreclosure. (para. 5 and 13 of the underlying complaint and para 6-7 of the Third Party Complaint)

21. The Third Party Complaint alleges that prior to the subject accident, Fannie Mae retained third party defendant, Keystone, to be the exclusive agent for the management and sale of the property pursuant to the Asset Management Agreement. (para. 8).

22. In the Third Party Complaint, Fannie Mae asserts that Keystone is Fannie Mae's exclusive agent for the management and sale of the property pursuant to the Asset Management Agreement between Fannie Mae and Keystone and that Keystone was required to maintain and manage the subject property at 106 Maple Street, Yonkers, New York." (para. 8 & 10).

23. In the Third Party Complaint, Fannie Mae admits that Keystone was Fannie Mae's real estate manager by pleading "Keystone was required to maintain and manage the subject property at 106 Maple Street, Yonkers, New York." (para 11).

24. In the Third Party Complaint, Fannie Mae alleges in pertinent part that Keystone's negligence caused Rodriguez's injuries; Keystone must indemnify Fannie

Mae for any of Rodriguez's damages and owes Fannie Mae contribution and/or indemnification; Keystone was required to procure insurance for Fannie Mae as an additional insured under a General Liability policy, and pursuant to the Asset Management Agreement between Keystone and Fannie Mae, Keystone was required to procure insurance for Fannie Mae as an additional insured, and Keystone's failure to do so was a breach of the Asset Management Agreement.

25. As a result of the underlying lawsuit, Fannie Mae has tendered defense and indemnification to Plaintiffs, asserting that the Asset Management Agreement required Keystone to procure insurance for Fannie Mae as an additional insured.

26. Plaintiffs have denied Fannie Mae's tender because Fannie Mae is not listed as an insured or additional insured under the American Fire Policy (as hereinafter defined) or the Ohio Casualty Umbrella Policy (as hereinafter defined).

27. Plaintiffs have also denied Fannie Mae's tender because under Paragraph 12 of the Asset Management Agreement, there is no requirement for Fannie Mae to be listed as an additional insured under the American Fire Policy .

28. Plaintiffs have further denied Fannie Mae's tender because the allegations in the underlying lawsuit do not trigger defense and indemnification under the Asset Management Agreement.

29. Plaintiffs in turn, have tendered defense and indemnification of Keystone to ACE American, to which ACE American has not responded. See Exhibit D.

30. Plaintiffs assert that because there is no coverage for Keystone under the American Fire Policy; and that the subject ACE American Policy provides primary

coverage for Keystone because Keystone was the real estate manager for ACE American's insured, Fannie Mae.

31. Despite the fact that it is excess to the ACE American Policy, Ohio Casualty has been paying for the defense of its insured, Keystone, with respect to the underlying lawsuit and has filed this Declaratory Judgment Complaint, along with American Fire, to seek a declaration that ACE American owes Keystone defense and indemnification, among other issues, as set forth more fully herein.

### **THE POLICIES**

32. Plaintiffs incorporate paragraphs 1 through 31 above as though the same were fully set forth at length herein.

#### **American Fire Policy**

33. American Fire issued Policy BZA (10) 53 76 09 27 to Keystone for the policy period of November 1, 2009 to November 1, 2010 (the "American Fire Policy").

34. The American Fire Policy issued to Keystone included commercial general liability coverage and contains a "Real Estate Operations – Limitation of Coverage Endorsement" which provides:

With respect to real estate operations, this insurance applies only to "bodily injury", "property damage" or "personal and advertising injury" arising out of the ownership, operation, maintenance or use of:

1. Such part of any premises you use for general real estate office purposes; and
2. Premises listed with you for sale or rental, if:
  - a. You do not own, operate, manage or rent the premises;
  - b. They are not in your care, custody or control; or
  - c. You do not act as agent for the collection of rents or in any

supervisory capacity.

See Exhibit E.

35. Accordingly, there is no coverage for Keystone for the subject matter under the American Fire Policy because the foregoing Endorsement does not provide coverage for Keystone as the real estate manager for Fannie Mae.

**ACE American Policy**

36. The ACE American Policy that was in place at time of the underlying loss contains an “each occurrence” limit of \$2,000,000 with an aggregate of \$10,000,000.

The ACE American Policy contains the following pertinent language:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE  
LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies.

\* \* \*

SECTION II – WHO IS AN INSURED

\* \* \*

2. Each of the following is also an insured:

\* \* \*

b. Any person (other than your “employee” or “volunteer worker”), or any organization while acting as your real estate manager.

\* \* \*



See Exhibit F.

37. Thus, the ACE American Policy provides coverage to any person or organization that acts as a real estate manager for Fannie Mae.

38. The Third Party Complaint filed by Fannie Mae against Keystone includes admissions by Fannie Mae that Keystone was its “real estate manager”:

8. Prior to the subject accident, FANNIE MAE retained Third Party Defendant Keystone to be the exclusive agent for the management and sale of the property pursuant to the subject contract.

\* \* \*

10. That prior to subject accident on February 28, 2010, Defendant/Third Party Plaintiff entered into a written agreement with KEYSTONE as the exclusive agent to manage and sell the subject property known as 106 Maple Street, Yonkers, NY.

11. That pursuant to that agreement, KEYSTONE was required to maintain and manage the subject property at 106 Maple Street, Yonkers, NY. *See also* Paragraphs 16, 17, 22, 23, 28, 29

\* \* \*

See Exhibit B.

39. Accordingly, Keystone was the real estate manager for Fannie Mae and entitled to coverage under the ACE American Policy.

40. In addition to the foregoing, Endorsement 3 to the ACE American Policy provides:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

The endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COERAGE FORM

Condition 4, the “Other Insurance” condition is amended to read as follows:

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A and B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over:

(1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(a) That is Fire, Extended Coverage, Builder’s Risk, Installation Risk or similar coverage for your work;

(b) That is Fire insurance for premises rented to you or temporarily occupied by you with the permission of the owner;

(c) That is insurance purchased by you to cover your liability as a tenant for “property damage” to premises rented to you or temporarily occupied by you with permission of the owner; or

(d) If the loss arises out of the maintenance of aircraft, “autos” or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.

(2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of endorsement.

\* \* \*

See Exhibit F.

41. Endorsement 3 clearly states that the ACE American Policy is primary for Keystone, since nothing in 4(b)(1) and (2) is applicable to make the ACE American Policy excess.

**Ohio Casualty Umbrella Policy**

42. Ohio Casualty issued a Commercial Umbrella Policy, UBO (10) 53 40 86 14 to Keystone for policy period November 1, 2009 to November 1, 2010 (the “Ohio Casualty Umbrella Policy”). The Ohio Casualty Umbrella Policy provides limits in the amount of \$5,000,000.00 per occurrence in excess of underlying insurance.

43. The Ohio Casualty Umbrella Policy includes the following pertinent provisions:

I. COVERAGE

We will pay on behalf of the “Insured” those sums in excess of the “Retained Limit” that the “Insured” becomes legally obligated to pay by reason of liability imposed by law or assumed by the “Insured” under an “insured contract” because of bodily injury... that takes place during the Policy Period and is caused by an “occurrence” happening anywhere. The amount we will pay for damages is limited as described below in the Insuring Agreement Section II. LIMITS OF INSURANCE.

\* \* \*

G. Retained Limit

We will be liable only for that portion of damages, subject to the Each Occurrence Limit stated in the Declarations, in excess of the “retained limit,” which is the greater of:

1. the total amounts stated as the applicable limits of the underlying policies listed in the Schedule of Underlying Insurance and the applicable limits of *any other insurance providing coverage to the “Insured” during the Policy Period;*

\* \* \*

III. DEFENSE

A. We will have the right and duty to investigate any “claim” and defend any “suit” seeking damages covered by the terms and conditions of this policy when:

1. the applicable Limits of Insurance of the underlying policies listed in the Schedule of Underlying Insurance *and the Limits of Insurance of any other insurance providing coverage to the “Insured” have been exhausted* by actual payment of “claims” for any “occurrence” to which this policy applies;

\* \* \*

VI. Conditions

J. Other Insurance

*If other insurance applies to a loss that is also covered by this policy, this policy will apply excess of the other insurance.* Nothing herein will be construed to make this policy subject to the terms, conditions and limitations of such other insurance. However, this provision will not apply if the other insurance is specifically written to be excess of this policy.

\* \* \*

[emphasis added]

See Exhibit G.

44. Pursuant to Article VI(J) of the Ohio Casualty Umbrella Policy, the Ohio Casualty Umbrella Policy is “excess of the other insurance....” Accordingly, the ACE American Policy is primary since the Ohio Casualty Umbrella Policy is excess of the applicable limits of the underlying policies and is excess to any other insurance providing coverage to the Insured during the policy period. See Exhibit G.

45. Further, pursuant to the provisions of Article III of the Ohio Casualty Umbrella Policy, Ohio Casualty does not owe a defense in the underlying lawsuit until “the applicable Limits of Insurance of the underlying policies listed in the Schedule of

Underlying Insurance and the Limits of Insurance of any other insurance providing coverage to the “Insured” have been exhausted...” See Exhibit G.

\* \* \*

**COUNT I**

**DECLARATORY JUDGMENT –  
KEYSTONE IS AN INSURED UNDER THE ACE AMERICAN INSURANCE  
POLICY & ACE AMERICAN OWES AMERICAN FIRE DEFENSE AND/OR  
INDEMNIFICATION FOR THE UNDERLYING LAWSUIT**

46. Plaintiff American Fire incorporates paragraphs 1 through 45 above as though the same were fully set forth at length herein.

47. The American Fire Policy contains a “Real Estate Operations – Limitation of Coverage Endorsement” which provides:

With respect to real estate operations, this insurance applies only to “bodily injury”, “property damage” or “personal and advertising injury” arising out of the ownership, operation, maintenance or use of:

1. Such part of any premises you use for general real estate office purposes; and
2. Premises listed with you for sale or rental, if:
  - a. You do not own, operate, manage or rent the premises;
  - b. They are not in your care, custody or control; or
  - c. You do not act as agent for the collection of rents or in any supervisory capacity.

See Exhibit E.

48. Accordingly, there is no coverage for Keystone for the subject matter under the American Fire Policy.

49. The ACE American Policy is a commercial general liability policy issued to Fannie Mae that was in place on the date of loss. The ACE American Policy contains

an “each occurrence” limit of \$2,000,000 with an aggregate of \$10,000,000. The ACE Policy contains the following pertinent language:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies.

\* \* \*

SECTION II – WHO IS AN INSURED

\* \* \*

2. Each of the following is also an insured:

\* \* \*

b. Any person (other than your “employee” or “volunteer worker”), or any organization while acting as your real estate manager.

\* \* \*

See Exhibit F.

50. Thus, the ACE American Policy provides coverage to any person or organization that acts as a real estate manager for Fannie Mae.

51. Fannie Mae admits that Keystone was Fannie Mae’s “real estate manager” for the property at issue; Keystone is, therefore, an insured under the ACE American Policy.

52. Specifically, the Third Party Complaint filed by Fannie Mae against Keystone (the underlying lawsuit) includes admissions by Fannie Mae that Keystone was its “real estate manager”:

8. Prior to the subject accident, FANNIE MAE retained Third Party Defendant Keystone to be the exclusive agent for the management and sale of the property pursuant to the subject contract.

\* \* \*

10. That prior to subject accident on February 28, 2010, Defendant/Third Party Plaintiff entered into a written agreement with KEYSTONE as the exclusive agent to manage and sell the subject property known as 106 Maple Street, Yonkers, NY.

11. That pursuant to that agreement, KEYSTONE was required to maintain and manage the subject property at 106 Maple Street, Yonkers, NY. *See also* Paragraphs 16, 17, 22, 23, 28, 29

\* \* \*

See Exhibit B.

53. Accordingly, Keystone was the real estate manager for Fannie Mae and is entitled to coverage under the ACE American Policy.

54. In addition to the foregoing, Endorsement 3 to the ACE American Policy provides:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

The endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COERAGE FORM

Condition 4, the “Other Insurance” condition is amended to read as follows:

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A and B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over:

(1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for your work;

(b) That is Fire insurance for premises rented to you or temporarily occupied by you with the permission of the owner;

(c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(d) If the loss arises out of the maintenance of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.

(2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of endorsement.

\* \* \*

See Exhibit F.

55. Endorsement 3 clearly states that the ACE American Policy is primary for Keystone, since nothing in 4(b)(1) and (2) is applicable to make the ACE Policy excess.



56. Accordingly, Keystone is an insured under the ACE American Policy and is entitled to defense and indemnification and all applicable coverage under the ACE American Policy.

57. As a result of ACE American's failure to provide coverage to Keystone, American Fire has suffered prejudice.

58. American Fire has suffered damages including, but not limited to, monetary damages expended for the defense of its insured, Keystone Asset Management, Inc. in the underlying lawsuit captioned in *Maria Clara Rodriguez v. County of Westchester, et al*, venued in the Supreme Court of New York, County of Westchester, Index No. 26027/10; Third Party Index No. 26027/107, arising from the accident that occurred on February 28, 2010.

59. American Fire will continue to suffer damages in the future based on ACE American Insurance Company's refusal to defend and indemnify under the ACE American Policy issued to Fannie Mae, under which Keystone is an insured and entitled to coverage.

**WHEREFORE**, Plaintiff, American Fire and Casualty Company respectfully requests relief in the form of an Order:

- a. Declaring that Keystone Asset Management, Inc. is an insured under ACE American Insurance Company Policy HDOG2493536A issued to Federal National Mortgage Association a/k/a Fannie Mae, and ACE American Insurance Company must provide a defense and indemnification to Keystone Asset Management, Inc. in connection with any claims resulting at issue in the underlying lawsuit captioned

*Maria Clara Rodriguez v. County of Westchester, et al*, venued in the Supreme Court of New York, County of Westchester, Index No. 26027/10; Third Party Index No. 26027/107, arising from the accident that occurred on February 28, 2010;

- b. Declaring that ACE American Insurance Company must indemnify American Fire and Casualty Company for any judgments, verdicts, settlements, fees, costs, damages or other sums in connection with any claims resulting at issue in the underlying lawsuit captioned *Maria Clara Rodriguez v. County of Westchester, et al*, venued in the Supreme Court of New York, County of Westchester, Index No. 26027/10; Third Party Index No. 26027/107, arising from the accident that occurred on February 28, 2010; and
- c. Such other relief as this Honorable Court deems just and reasonable.

## COUNT II

### **DECLARATORY JUDGMENT – ACE AMERICAN INSURANCE COMPANY PROVIDES PRIMARY INSURANCE COVERAGE TO KEYSTONE ASSET MANAGEMENT, INC. & OHIO CASUALTY INSURANCE COMPANY PROVIDES EXCESS INSURANCE COVERAGE**

60. Plaintiffs incorporates paragraphs 1 through 59 above as though the same were fully set forth at length herein.

61. Plaintiff Ohio Casualty issued the Ohio Casualty Umbrella Policy, which provides limits in the amount of \$5,000,000.00 per occurrence in excess of underlying insurance.

62. The Ohio Casualty Umbrella Policy includes the following pertinent provisions:

I. COVERAGE

We will pay on behalf of the "Insured" those sums in excess of the "Retained Limit" that the "Insured" becomes legally obligated to pay by reason of liability imposed by law or assumed by the "Insured" under an "insured contract" because of bodily injury... that takes place during the Policy Period and is caused by an "occurrence" happening anywhere. The amount we will pay for damages is limited as described below in the Insuring Agreement Section II. LIMITS OF INSURANCE.

\* \* \*

G. Retained Limit

We will be liable only for that portion of damages, subject to the Each Occurrence Limit stated in the Declarations, in excess of the "retained limit," which is the greater of:

- 2. the total amounts stated as the applicable limits of the underlying policies listed in the Schedule of Underlying Insurance and the applicable limits of *any other insurance providing coverage to the "Insured" during the Policy Period;*

\* \* \*

III. DEFENSE

A. We will have the right and duty to investigate any "claim" and defend any "suit" seeking damages covered by the terms and conditions of this policy when:

- 1. the applicable Limits of Insurance of the underlying policies listed in the Schedule of Underlying Insurance *and the Limits of Insurance of any other insurance providing coverage to the "Insured" have been exhausted* by actual payment of "claims" for any "occurrence" to which this policy applies;

\* \* \*

VI. Conditions

J. Other Insurance

*If other insurance applies to a loss that is also covered by this policy, this policy will apply excess of the other insurance.* Nothing herein will be construed to make this policy subject to the terms, conditions and limitations of such other insurance. However, this provision will not apply if the other insurance is specifically written to be excess of this policy.

\* \* \*

[emphasis added]

See Exhibit G.

63. Pursuant to Article VI(J) of the Ohio Casualty Umbrella Policy, the Ohio Casualty Umbrella Policy is “excess of the other insurance....” Accordingly, the ACE American Policy is primary since the Ohio Casualty Umbrella Policy is excess of the applicable limits of the underlying policies and is excess to any other insurance providing coverage to the Insured during the policy period. See Exhibit G.

64. Further, pursuant to the provisions of Article III of the Ohio Casualty Umbrella Policy, Ohio Casualty does not owe a defense in the underlying lawsuit until “the applicable Limits of Insurance of the underlying policies listed in the Schedule of Underlying Insurance and the Limits of Insurance of any other insurance providing coverage to the “Insured” have been exhausted....” See Exhibit G.

65. Accordingly, ACE American Insurance Company Policy HDOG2493536A provides primary coverage to Keystone Asset Management, Inc. and Ohio Casualty Insurance Company Commercial Umbrella Policy UBO (10) 53 40 86 14 provides excess insurance coverage, once all applicable other insurance coverage has been exhausted.

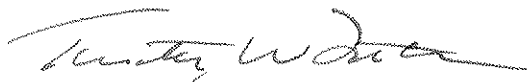
66. Plaintiff, Ohio Casualty has incurred and will continued to incur damages based on ACE American Insurance Company's wrongful refusal to defend and indemnify under the ACE American Insurance Policy issued to Fannie Mae, under which Keystone is an insured and entitled to coverage.

**WHEREFORE**, Plaintiff, Ohio Casualty Insurance Company, respectfully requests relief in the form of an Order:

- a. Declaring that ACE American Insurance Company Policy HDOG2493536A provides primary coverage to Keystone Asset Management, Inc. and Ohio Casualty Insurance Company Commercial Umbrella Policy UBO (10) 53 40 86 14 is excess of the applicable limits of the underlying policies and is excess to any other insurance providing coverage to the Insured during the policy period.
- b. Declaring that Ohio Casualty Insurance Company Commercial Umbrella Policy UBO (10) 53 40 86 14 has no duty to defend or indemnify or provide coverage for any judgments, verdicts, settlements, fees, costs, damages or other sums in connection with any claims resulting at issue in the underlying lawsuit captioned *Maria Clara Rodriguez v. County of Westchester, et al*, venued in the Supreme Court of New York, County of Westchester, Index No. 26027/10; Third Party Index No. 26027/107, arising from the accident that occurred on February 28, 2010 until such coverage is triggered by exhaustion of all underlying insurance policies providing coverage to the Insured during the policy period;

- c. Declaring that ACE American Insurance Company must indemnify Ohio Casualty Insurance Company for any judgments, verdicts, settlements, fees, costs, damages or other sums in connection with any claims resulting at issue in the underlying lawsuit captioned *Maria Clara Rodriguez v. County of Westchester, et al*, venued in the Supreme Court of New York, County of Westchester, Index No. 26027/10; Third Party Index No. 26027/107, arising from the accident that occurred on February 28, 2010;
- d. Declaring that ACE American Insurance Company owes Ohio Casualty Insurance Company its attorney fees and costs in defending Keystone; and
- e. Such other relief as this Honorable Court deems just and reasonable.

**STALKER VOGGIN BRACKEN & FRIMET, LLP**

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Dated: 12/20/12