IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

KEY WEST DIVISION

Civil Action No. 08-10084-CIV .MARTINEZ-BROWN

PETER HALMOS, INTERNATIONAL YACHTING CHARTERS, INC. AND HIGH PLAINS CAPITAL,	§
Plaintiffs,	§
v.	§
INSURANCE COMPANY OF NORTH AMERICA AND STRICKLAND MARINE INSURANCE, INC. (F/K/A STRICKLAND MARINE AGENCY, Inc.),	§
Defendants.	

THIRD AMENDED COMPLAINT

Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, Plaintiffs, Peter Halmos (“Halmos”), International Yachting Charters, Inc. (“IYC”) and High Plains Capital (“High Plains”), (jointly “Plaintiffs”), file this Third Amended Complaint and allege:

I. PARTIES

1. Plaintiffs Peter Halmos ("Halmos"), a U.S. citizen, is a resident of Key West, Florida.

2. Plaintiffs IYC, is a Cayman Islands corporation, with its principal place of business in Key West, Florida.

3. Plaintiffs, High Plains is a Wyoming corporation, with its principal place of business in Key West, Florida.

4. Defendant Insurance Company of North America ("INA") is one of 11 subsidiaries of ACE USA Group, itself a subsidiary of ACE Ltd., a Swiss corporation. INA is a Pennsylvania corporation licensed to do and doing business in the State of Florida, which throughout the pertinent time frame in this complaint acted through its agents, subsidiaries or affiliates of ACE USA Group. As a result, INA, at times, is referred to ACE/INA in the complaint.

5. Defendant Strickland Marine Insurance, Inc., formerly Strickland Marine Agency Inc. ("Strickland"), is a South Carolina corporation having its principal place of business in Charleston, South Carolina.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this civil action under 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of different states and in which a citizen or subject of a foreign state is a party in interest.

7. Further, this Court has subject matter jurisdiction over some of the causes of action presented herein under 28 U.S.C. § 1333 in that certain claims invoke this Court's original maritime jurisdiction.

8. This Court has personal jurisdiction over INA because it is licensed to do business in the State of Florida and it does, in fact, do business in the State of Florida.

9. This Court has personal jurisdiction over Strickland pursuant to Fla. Stat. § 48.193(d) and (g) because Strickland has sufficient minimum contacts with the State of

Florida to require it to defend a suit here because it has contracted to insure a person, property or risk located within the State of Florida, and at the time of contracting, committed a breach of contract, tortious acts and other breaches of duty, in whole or in part, within the State of Florida.

10. Venue is proper to bring this action in the Southern District of Florida and in the Key West Division because a substantial part of the events or omissions giving rise to the claims occurred here and because a substantial part of property that is the subject of the action is situated there.

III. CASE SUMMARY/GENERAL ALLEGATIONS

IYC RETAINS STRICKLAND

11. Using various insurance intermediaries, Plaintiffs insured about 25 different vessels ranging in size from eight to 158 feet from 1977 through 2006. For the first 24 years, from 1977 to 2001, not a single loss or damage claim was filed.

12. In 1995, IYC launched its flagship 158-foot Italian built sailing vessel, S/Y *Legacy*, designed and intended for circumnavigation. IYC's then-Florida-licensed insurance agent did not have direct access to marine insurers with the capacity to cover a yacht of *Legacy's* prominence, size, value, design capabilities and intended use, nor did IYC's agent have the expertise required to determine appropriate coverages to protect IYC, *Legacy*, *Legacy's* Beneficial Owner and designated Operator[1] Halmos,

[1] IYC designated Mr. Halmos as the Operator of the vessel. Mr. Halmos, as Operator, is responsible for everything regarding all of IYC's vessels, except for safety determinations and navigational decisions as delegated by Halmos to the captain. Mr. Halmos has had thousands of hours at the helm of IYC's vessels with him personally navigating the *Legacy.* Since 1986 HPC designated Halmos as Operator of the Mongoose, which has never had an employed captain – but on occasion has had Legacy's captain navigate it when Halmos is unable, or chose not to. Further, Mr. Halmos has individually been trained by

Legacy's crew of seven, passengers and others ("IYC et al.") from the myriad risks to which they were exposed daily.

13. So, IYC, HPC and Halmos (IYC et.al) went to Strickland as their agent and fiduciary and trusted it to secure the appropriate coverage and to assist with claims should they be needed.

14. On an annual basis, as it renewed policies, Strickland determined what coverages were appropriate for IYC et al. IYC timely paid all amounts Strickland billed and became a "huge" and immensely profitable account for Strickland.

15. As has subsequently learned through discovery in this action, in mid-1999, Strickland leveraged IYC's no-claims record to increase its own commissions, without regard to the interests of IYC et al.

16. Despite coverages being the same, and without disclosing those facts to IYC, Strickland secured coverage for IYC effective August 7, 1999, at a cost of $83,555, when the exact same coverage with ACE/CIGNA was available for $78,912.

17. The following year, as a result of market conditions, and to maintain its inflated commission rate, Strickland canceled IYC's coverages with U.S. carrier, CIGNA, and instead placed IYC's coverage with a London-based carrier, Independent Insurance Company ("Independent"). Independent offered comparable coverage, *listed Halmos as a named insured*, would pay Strickland's commission requirements and a bonus policy known as “no claims bonus”, all unbeknownst to IYC.

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the various captains of the Legacy to navigate and control IYC’s vessels. Simply put, Mr. Halmos has individually navigated the majority of the vessels covered by the policies.

18. In June 2001, Independent was seized by U.K. insurance regulators. Independent's Policy purchased by IYC and Halmos individually was worthless. Strickland concealed these material facts from IYC et al, and also pocketed Independent's unearned premiums to IYC and Halmos.

19. To procure replacement coverage for the defunct Independent, Strickland frantically bound IYC's coverage with ACE American Insurance Company ("ACE American"), another ACE USA Group member, without ever informing IYC as to why.

20. As part of its cover-up of the "Independent" fiasco, Strickland prepared the application for replacement insurance with ACE and improperly secured $15 million in coverage as opposed to the actual value of the vessel. Further, without informing Halmos, Strickland dropped Halmos from coverage.

21. In fact, the value of the Legacy on that date was at least $25 million, which meant that its hull value for loss or damage coverage purposes was at least $20 million actual cash value (replacement cost less depreciation).

22. By securing coverage at only $15 million, Strickland was able to again secure for itself a hefty 15 percent commission. Simply put, Strickland raised its commission and lowered coverage to keep premium constant. Had Strickland accepted the standard nine percent commission, IYC loss and damage coverage would have increased to $20 million at the same premium level.

23. Strickland intentionally under-insured *Legacy* to line its own pockets. And to make matters worse, Strickland bound the policy prior to even IYC having filled out the application for the appropriate coverage. Lastly, Halmos was never informed that he was dropped from the coverage.

24. Moreover, Strickland did not procure Increased Value coverage for IYC, which bridges the gap between loss or damage coverage and market value, because the artificially low loss or damage coverage Strickland set raised the cost of Increase Value coverage.

25. Furthermore, because undisclosed "contingent commissions" to brokers, including Strickland, are based on INA's profits, it was in Strickland's *best financial interest* to obstruct and/or delay claims by IYC, because lower claims means greater revenue to INA and higher commission fees for Strickland. Strickland never disclosed the fact to IYC or Halmos.

S/Y *LEGACY*

26. In 2001, *Legacy* was anchored in its pre-selected "hurricane hole" in "Lake Worth" – a comparatively wide area of Florida's Intracoastal Waterway separating Palm Beach from West Palm Beach.

27. After her 1995 launch, between 1995 and 1999, *Legacy* spent about two and one-half years in various shipyards for warranty work, including an entire year back at the builder's yard in Italy. Then, in 1999-2000, *Legacy* spent another nine months in West Palm Beach's Rybovich Spencer yard for a $4 million final completion including all new paint, varnishes, and other cosmetics. At that point, *Legacy's* cost was $17 million. In or about June 2001, with *Legacy*'s work for the first time being substantially complete, *Legacy*'s crew of seven was busily preparing her for an extended voyage. Such preparations continued into August 2001 when, on August 7, 2001, Strickland bound IYC's coverages with ACE American. When, thereafter, the actual Policy issued upon

Strickland's signature as INA's authorized representative, INA had been substituted that same day for ACE American as the carrier.

28. Shortly thereafter, in mid-September 2001, the following was happening in the vicinity of where *Legacy* was securely anchored in her "hurricane hole":

(a) About one mile south, a 100-foot converted cargo ship, M/V *Sol,* lay negligently anchored without anyone aboard. The owner of M/V *Sol* had contracted with the boat yard, Rybovich Spencer, to sell *Sol* and was paying a Rybovich Spencer employee to "moonlight" *Sol*'s care, custody and control.

(b) On September 14, 2001, at 3:00 a.m., the National Hurricane Center in Miami issued a tropical storm warning for Jupiter Inlet (a few miles north of *Legacy's* anchorage) to St. Augustine, Florida. The next day, September 15, 2001, *Sol's* single, improperly set anchor began to drag northward with the wind and outgoing tide, despite the fact that there was no tropical storm in the area. Without crew or even a look-out aboard, *Sol* became 200 tons of steel drifting north at an accelerated speed.

(c) *Sol's* loose and single dragging anchor caught one of *Legacy's* securely set anchors, causing *Sol* to swing around and broadside *Legacy*.

S/Y *Legacy* And the *Sol* Damage

28. IYC immediately notified Strickland of the collision which, in turn, notified ACE on behalf of INA. IYC and *Legacy*'s crew continued to aggressively protect against further damage.

29. The damages to *Legacy* were severe, but easily determinable. Unfortunately, the collision damaged much of the $4 million work *Legacy* had just completed at

Rybovich Spencer. IYC engaged experts and also docked *Legacy* at Rybovich Spencer for a week to obtain safety repairs estimates.

29. More complex and difficult to determine is the extent of structural damage to *Legacy*'s hull. Critical to her sailing integrity is her longitudinal tortional alignment. Her design accommodates for massive forces at her bow (for anchoring purposes) and masts (for sailing purposes). There is much less protection from lateral forces such as when *Sol* crashed into *Legacy* broadside. Such massive lateral forces inevitably cause structural and alignment consequences to a sailing vessel such as *Legacy*. Only by doing an out-of-water comprehensive survey by marine architects, engineers, and other experts, can such damages be determined.

30. IYC promptly provided to *Sol*'s insurer, with copy to Strickland, the readily determinable safety and other repairs estimates based upon the just-completed Rybovich Spencer work. Thereafter, IYC requested both *Sol*'s insurer and Strickland to make arrangements for the all-important structural survey. Instead, *Sol*'s owner, Upham, sued IYC in this District, improperly seeking to apply a liability limitation from an 1850's law pertaining to collisions at sea. While *Sol*'s insurer did not reject payment for the partial repairs IYC had submitted, neither did it pay one cent.

31. Both Strickland and INA manifestly ignored IYC's claims arising from and relating to the *Sol* collision and *Legacy*'s damaged condition. Nor did either ACE or INA defend and/or pay the cost of defending against *Sol*'s lawsuit in this District. To mitigate damages, IYC and Halmos, individually, sued *Sol*'s owner in Palm Beach County circuit court, a case that continues to this day with the recent amended complaint adding

punitive damages against Upham. Not until October 27, 2008 did IYC and Halmos learn that INA was attempting to evade its obligations.

32. Intentionally Left Blank.

33. IYC nevertheless spent millions of dollars annually to keep *Legacy* semi-operational and in full ABS certification compliance, while waiting for INA to pay its obligations pursuant to the applicable insurance contract. However, no substantive repairs could be made until INA determined the scope and costs of the repairs.

34. *The INA Policy required the costs of repair to be determined by yacht repair yards, equipment repairers, or surveyors "agreeable" to INA.* Absent INA's agreement, the Legacy could not be repaired. IYC repeatedly requested Strickland, verbally and in writing, to have INA complete its scope and repairs – a process that continued right through the Wilma incident in 2005.

35. Due to the timing of the *Sol* collision occurring just five weeks after Strickland bound IYC's coverage with ACE American and the ruinous impact on Strickland's contingent commissions, Strickland and INA, had direct financial interest to obstruct and evade the contract-required settlement of IYC's claims for the *Sol* collision damages, costs to protect against further damage, defense costs, among others.

36. Thus, at the time of the *Sol* collision in mid-2001, just five weeks after binding coverage, Strickland had (a) secretly lined its own pockets with inflated commissions from Independent, its London-based defunct carrier; (b) concealed from IYC and Halmos that Independent went belly-up; (c) pocketed IYC's premium payments despite that Independent went belly-up; (d) bargained for continuation of its 15 percent commission from ACE while concurrently intentionally under-insuring *Legacy* as

detailed above; and (e) feathered its own nest with the undisclosed "contingent commissions" that ACE paid to brokers such as Strickland to fatally conflict their interests. These acts continued through 2005.

37. As further detailed below, IYC continued to press Strickland and ACE through 2005, to identify and confirm costs to repair *Legacy*. Despite ACE having surveyed *Legacy* in October 2004, documenting identified and confirmed *Sol* collision damages, INA continued to stonewall. In 2005, Halmos became so insistent that on September 6, 2005, ACE engaged another surveyor, Stewart Hutcheson, to inspect *Legacy* as she lay at anchor in Key West, promising to promptly issue payment thereafter to "get the file to closure."

38. After Hutcheson's inspection, including taking of photographs identifying and confirming the detectible *Sol* collision damages, INA did not pay then nor has INA paid one cent now.

39. At the time this action was filed, INA has not offered to pay, nor has INA paid, nor has Strickland obtained one cent of IYC's 2001 claims for (a) *Sol* collision damages; (b) reimbursement of costs to protect *Legacy* against further damage; (c) reimbursement of litigation defense and subrogation costs; and (d) reimbursement of essential safety repairs mandated by ABS for class certification purposes.

40. Despite having contracted orally and in writing, through all of its communications with Halmos to provide claims settlement assistance to IYC et al., Strickland did nothing to assist IYC with claims settlement. Nevertheless, IYC and Halmos (a) attempted to get *Sol*'s insurer to at least help pay for *Sol* collision damage to *Legacy*; (b) defended against *Sol's* liability limitations lawsuit in this District; (c) mitigated INA's exposure by

filing and prosecuting an action against *Sol's* owner, litigation continuing now, entirely funded by Halmos; (d) protected *Legacy* from further damage; (e) paid for repairs of damage caused by *Sol* as to all safety issues and other ABS certification requirements; (f) severely restricted *Legacy*'s navigational area on the rare occasion when she departed Miami; and (g) other than for the unrepaired *Sol* damages, maintained *Legacy* to the highest "better than new" standard under the circumstances. All repairs for ABS certification purposes were promptly effected and paid for by Halmos for the benefit of IYC, with the exception of defective workmanship in 2001 by Rybovich Spencer causing rust in *Legacy*'s fresh water tanks.

2003 POLICY YEAR

41. Despite not having paid one cent for any of IYC's 2001 *Sol* collision claims, INA and Strickland renewed IYC's insurance coverage and issue a new policy in August 2002 by increasing premium from $83,393 to $88,088.

42. On July 28, 2003, one of *Legacy's* custom-built tenders with a $250,000 replacement cost and minimum 18-month build time, *Island Runner*, was lost in heavy Bahamian weather. Halmos was not aboard. *Legacy*'s crew searched a 50-square-mile area extensively for 48 hours, but was unable to find *Island Runner*. Weeks later, *Island Runner* was located in the Turks Islands. *Legacy* and her crew traveled from Florida to the Turks (a 500-mile trip) and attempted repairs to no avail.

43. Despite timely notice of this loss to Strickland, IYC's claim was rejected by ACE/INA because ACE represented that the *Island Runner's* loss was less than the $250 Policy deductible. Halmos disputed ACE's denial and for another year, continued

to provide ACE with information in response to its redundant, duplicative information requests.

44. Strickland and INA knew that *Island Runner* was a scheduled tender in IYC's Policy with a $250 deductible and *Island Runner's* actual cash value at the time of loss was $200,000. ACE continued to redundantly request information, delaying any payment on the *Island Runner* claim. Finally, on June 20, 2005, Strickland's Barker had to admit that INA's purported 30-day contractual claims payment process "[h]as been drug out way too long."

45. After Strickland's long-delayed intervention, ACE made a bad faith $50,000 settlement offer rather than Island Runner's $200,000[2] actual cash value (replacement cost minus depreciation). This caused additional, frustrating communications by Halmos such that ACE increased its settlement offer in September 2005 to $70,000. This required more communications from Halmos continuing into 2006.

46. On July 3, 2006, *three years after* the *Island Runner* loss occurred, ACE offered what it represented to be the Policy limit on this claim of $88,940 plus $5,400 reimbursement for protection against loss expenses. ACE, in bad faith, disregarded *Island Runner's* actual cash value of $200,000 and IYC's contractually required reimbursable expenses had by then ballooned to $150,000 (excluding the value of time expended by Halmos and others) due to ACE's *three year* run-around. INA paid $88,940 to IYC in 2006 and $5,400 reimbursement in 2009.

2004-2005 POLICY YEAR
Bad Faith *Sol* Collision Claims Run-Arounds

[2] Prior to the loss, Strickland had erroneously valued *Island Runner* for Policy purposes which required nearly a year of communications by IYC and its agents to correct.

47. Despite repeated requests in 2002 and 2003, neither INA or its agents, nor Strickland, made any substantial effort to comply with their contractual obligations for the 2001 *Sol* collision claims. When INA renewed coverage and issued a new policy on August 7, 2003 (for a premium of $96,912), ACE, INA and Strickland continued to conceal, among others, their prohibited reinsurance scheme called "finite reinsurance," whereby reinsurers are protected from claims payments for at least *three years* (as opposed to the Policy-required *30 days***)**.

48. In early 2004, Halmos first became aware that Strickland's $14 million insurance valuation of *Legacy* for the August 7, 2001 Policy was less than half of *Legacy*'s replacement cost of $30 million (excluding the five-year waiting list for the Italian builder, Perini Navi).[3] Based upon (a) *Legacy*'s $30 million replacement cost and (b) estimated $35 million fair market value, Halmos realized Strickland's $14 million loss or damage coverage as determined by Strickland for the August 7, 2001 Policy was fatally low. As a result, Halmos requested Strickland to fix the mistake, a process that continued until Hurricane Wilma.

49. Surprised that Strickland had not procured adequate coverage when renewals of the August 7, 2001 Policy occurred, despite annually increasing premiums, Halmos again requested Strickland to procure hull damage on loss coverage for Legacy of at least $27 million actual cash value, Increased Value insurance covering the difference between cost ($17 million) and fair market value ($35 million) in 2004.

[3] A lightly used vessel such as *Legacy*, absent *Sol damages,* maintained in "better than new condition" and ABS certified without interruption from the day her build started, actually had a fair market value higher than replacement cost due to immediate availability as opposed to at least a five-year wait.

50. Strickland advised Halmos that INA/ACE required a valuation survey by its own surveyor prior to increasing coverage.

51. In October 2004, INA/ACE's marine surveyor did an in-water valuation of *Legacy* at anchor in Miami. As a result of INA/ACE's valuation survey, INA increased *Legacy*'s loss or damage coverage from $14 million to $16 million, $11 million less than Legacy's minimum $27 million actual cash value.

52. Strickland concealed from IYC and Halmos that ACE's October 2004 survey assumed 2001 *Sol* collision damages would not be repaired.

53. Strickland also fraudulently led Halmos to believe the increase hull coverage to $16 million was prior to ACE's survey, just a stop-gap measure, when this was not the case.

54. In or about November 2004, Halmos asked Strickland for a copy of INA/ACE's October 2004 valuation survey. Strickland replied that INA/ACE refused to divulge the survey.

55. This Catch-22 led Strickland to send a letter to Halmos in December 2004, in which Barker unequivocally (a) concealed the reason for ACE's $16 million loss and damage determination; (b) suggested additional delay until 2005 for another ACE valuation survey; (c) advocated the benefits to IYC of renewing the INA Policy rather than procuring coverage from other sources; (d) attempted to satisfy Halmos' and IYC's hull loss or damage coverage concerns by selling IYC a worthless "agreed value" excess damage Policy from another carrier for $40,000 premium. Halmos and IYC rejected the worthless excess coverage.

56. Had INA then and there paid IYC $11 million for repairs to *Legacy* for the 2001 *Sol* collision damages, IYC could have (a) repaired all *Sol* collision damages; (b) procured either from INA or other sources actual cash value hull coverage of at least $27 million; and, (c) procured Increased Value coverage for the difference between actual cash value ($27 million) and fair market value ($35 million). Instead, ACE and INA refused to disclose the October 2004 valuation survey report and, through Strickland, lied to Halmos and IYC about the scheme to indefinitely delay the Sol claims.

57. On February 10, 2005, more than three months later, Barker emailed IYC's Florida insurance agent Cindy Franzino informing her that Strickland had rates up to $27,000,000.00.

58. That continued through 2005, including in May of 2005 where Halmos requested an update with respect to the increase of coverage. Yet, despite having those rates and Halmos' instruction to bind $27 million hull coverage, no increase in loss or damage coverage was bound. With Halmos now losing patience, ACE reassigned the 2001 *Sol* collision file to ACE USA's Connie Dennis.

59. On September 6, 2005, INA/ACE arranged for yet another surveyor (Hutcheson) "agreeable" to it, to inspect Legacy for the purpose of identifying and confirming the 2001 *Sol* collision damages.

2004 Hit-And-Run Claim

60. On July 31, 2004, *Legacy* was anchored off Key Biscayne when around noon-time, two teenagers in a 20-foot sailboat collided into *Legacy's* hull broadside. Halmos, despite his then lack of vision, managed to grapple with the aluminum mast of the teenager's sailboat as their boat and its mast gouged the entire length of *Legacy's* hull.

The teenagers fled the scene of their collision. Halmos was injured during the incident, as he protected *Legacy* from further damage.

61. IYC promptly notified Strickland of the incident. After the police investigated, calling the incident a criminal Hit-and-Run collision, Halmos located the owner of the teenager's boat.

62. On August 6, 2004, ACE/INA acknowledged receiving the Hit-and-Run Collision claim. Halmos forwarded to ACE/INA all information available, including the insurance carrier of the teenager's boat, urging ACE/INA to seek relief from the perpetrator's insurer. On September 27, 2004, INA/ACE notified IYC that the file on this claim was being closed.[4]

2005-2006 POLICY YEAR

63. In January 2005, to maintain her ABS certification, *Legacy* traveled to Grand Bahamas Island to be lifted out of the water at Bradford Marine. The ABS inspector traveled to Grand Bahama to survey *Legacy's* hull, shafts, propellers and, most importantly, anchor systems, including chains and anchors. The ABS inspector decided that a minor repair needed to be done by Bradford to an anchor chain – which was done and surveyed. Because Halmos had paid for the benefit of IYC to have all visible and detectible safety issues involved in the 2001 *Sol* collision fully repaired and maintained to ABS standards, *Legacy's* hull and anchors system were re-certified by ABS. Having satisfactorily completed the current portion of her annual ABS certification, *Legacy* headed back to Miami.

[4] After extensive communications, on March 29, 2005, ACE finally reinstated IYC's claim. In September 2005, as part of Hutcheson's inspection of *Legacy* for 2001 *Sol* collision damages, Hutcheson separately surveyed the Hit-and-Run damages.

64. Due to *Legacy's* draft, there were two places in South Florida where *Legacy* had sheltered and secured "hurricane hole" anchorage, either Lake Worth, where the *Sol* collision occurred in 2001, or Key West.

65. Returning to the *Sol* incident anchorage where other boats might drag anchor and collide with Legacy was not all that appealing. Key West, on the other hand, offered secure and sheltered anchorage with little or no risk of a *Sol*-type collision.

66. In or about August of 2005, Legacy anchored in a pre-selected "hurricane hole" about two miles from the Key West Coast Guard station, just east of the main Northwest channel connecting the Atlantic Ocean with the Gulf of Mexico. Surrounded by islands and shallow expanses of flats, there could be no pounding waves in the event of a storm. Nor was there much, if any, risk of a *Sol*-type collision.

Hurricane Katrina – Mongoose

67. IYC contracted with HPC for M/V *Mongoose*, a 46-foot custom-built Merritt fishing boat, to be moored alongside *Legacy* for overnight expeditions.

68. In August 2005, as Hurricane Katrina approached the Gulf, *Legacy's* options to stay-or-run were limited by the unrepaired *Sol* collision damages.

69. Confident in the pre-selected "hurricane hole" just two miles from the Key West Coast Guard station, *Legacy* could safely endure Hurricane Katrina.

70. To protect *Mongoose* from Hurricane Katrina, a commercially available mooring was rented in Man-of-War Harbor where about 100 other boats were moored. During the onslaught of Katrina, this and many other commercial moorings failed. *Mongoose* was pushed aground, upright on the sand flats about 200 yards from where she was moored.

71. Strickland was notified of the *Mongoose* Hurricane Katrina incident on August 27, 2005. ACE, on behalf of INA, responded by asking for the claim number even though ACE had not yet assigned a claim number. As of September 13, 2005 *Mongoose* remained aground, with Halmos and the crew of *Legacy* protecting *Mongoose* and the environment from further damage.

72. Then, the State of Florida sued HPC and the captain of *Legacy* for remediation damage to the environment. The *Mongoose* Policy provided $25 million protection for environmental damage and unlimited defense costs.

73. On September 14, ACE, on behalf of INA, directed HPC to communicate with its claims adjuster/litigation lawyer Michael Pennekamp, and only Pennekamp, as to all *Mongoose* matters. The next day, September 15, Pennekamp denied HPC's claim for the appointment of defense counsel for the State of Florida's lawsuit and/or reimbursement of defense cost, falsely representing there was no coverage under the *Mongoose* Policy.

74. On September 25, ACE/INA's purportedly "independent" marine surveyor Hutcheson, inspected the damage to *Mongoose* as she lay aground. ACE/INA authorized Halmos to select the repair facility. Halmos, on behalf of HPC, wanted *Mongoose* to be towed to the Merritt Boat Yard in Pompano Beach where she was constructed. Hutcheson refused, insisting that *Mongoose* be taken to a repair facility in Key West of his choosing because only costs of repair determinations made by facilities and experts agreeable to ACE would be considered for Policy purposes. Pennekamp and Hutcheson ordered Halmos to "cooperate," anticipating Hutcheson to have *Mongoose* hauled under ACE's care, custody and control. Once hauled, *Mongoose* sat

baking in the sun at Hutcheson's hand-selected repair facility when, on October 24, *Mongoose* was further severely damaged by Hurricane Wilma.[5]

HURRICANE WILMA – DEVASTATING LOSS OF S/Y *LEGACY*

75. Hurricane Wilma began as a large and dangerous storm. Although Wilma headed west toward Mexico, Halmos refueled *Legacy*'s 10,000 gallon tanks full, and Halmos' captain at his direction, and got the Legacy ready just in case.

76. On Saturday, October 22, Wilma suddenly began to reorganize. NOAA reported Wilma as heading toward Florida about 305 miles from Key West, pushing seas of six to twelve feet. NOAA forecast winds of 65 knots expected in the Key West area. Just 12 hours later, NOAA reported Wilma to be 210 miles from Key West with accelerating

[5] As opposed to the *Sol* collision claims, where ACE, INA, and Strickland manifestly ignored substantive claims settlement, *Mongoose* claims received hands-on bad faith claims management by claims adjuster/litigation lawyer Pennekamp and ACE's marine surveyor Hutcheson. Although prohibitively requiring HPC to contract and pay for *Mongoose* repairs at ACE's selected repair facility, ACE and Hutcheson only solicited bids for the "scope of work" Hutcheson unilaterally and secretly determined. The *Mongoose* Policy had a $20,000 deductible. ACE's purported repairs facility determined repair costs to be $19,800. This being below the *Mongoose* Policy deductible, ACE denied HPC's claim. Halmos and HPC objected, whereupon ACE revised its estimates to $23,463.38 for Hurricane Katrina and $16,497.38 for Hurricane Wilma, the combined total being under $40,000 for which ACE/INA again determined that no payment was due.

Extensive communications followed, while HPC had to pay storage and other charges for *Mongoose*. Continuing to refuse Halmos' request that *Mongoose* be towed to and repaired at her builder in Pompano Beach, Pennekamp and Hutcheson instead solicited repair estimates only for Hutcheson's scope of work from a boatyard whose owner, Walter Schurtenberger is an undisclosed crony of Hutcheson's. Schurtenberger's estimate of $84,935.75 was substantially less than independent estimates Halmos obtained. After months of run-arounds, Halmos arranged for *Mongoose* to be transported to Merritt's boatyard. Merritt could not give a finite estimate until repairs were underway, but estimated $350,000 exclusive of electronics, engines, shafts, props and all other machinery, likely to exceed $500,000. In 2007, ACE's authorized representative, Ms. Pamela Harting-Forkey, met with Merritt's management at the Pompano yard and agreed that Merritt's $350,000 in identified and confirmed estimates are "reasonable and customary." However, ACE required HPC to sign a general release even to get a partial payment, which Halmos, on behalf of HPC, declined to do.

Thereafter HPC and Halmos incurred compounding storage, dockage, maintenance and other expenses to protect *Mongoose* from further damage, in addition to legal fees and the value of Halmos' time attempting to get payment from INA. After filing of this action, on February 23, 2009 – more than three years after *Mongoose* was damaged – ACE hired another surveyor (identity not disclosed) to dispute Merritt's estimates and sent a check in partial payment for $393,034.34 without requiring a general release. Simply put, *after three* years of obstruction and delay, the amount ACE paid as partial settlement after this case was filed is 20 times greater than ACE's original $19,800 offer in 2006.

forward speed approaching 20 mph, causing Gulf of Mexico and Florida Atlantic seas of 15-25 feet. Alarming to all aboard *Legacy*, NOAA concurrently reported that a dangerous Tropical Storm Alpha was near the eastern end of Cuba moving north-northeast toward Miami at about 15 mph, causing 12-foot seas.

77. Six hours later, at 11:00 p.m. October 22, NOAA reported Wilma to be 120 miles from Key West with forward speed of 20 mph causing 15-25 foot seas. At the same time, NOAA reported Alpha's forward speed toward Miami had increased to about 18 mph, and combined with the storm's 50 mph winds, Alpha caused 12-15 foot seas. NOAA predicted Alpha to collide with and be "absorbed" by Wilma in the vicinity of Florida.

78. When NOAA first reported that Hurricane Wilma was "extremely dangerous" and had changed course toward Florida, Captain Collins had three options: (a) running offshore to try to avoid the hurricane, and if not able to avoid it, to try to ride it out at sea; (b) go to a dock, tie up, and remove all persons from the boat for them to seek shelter; or (c) remain at anchor in the pre-selected "hurricane hole."

79. With the unrepaired *Sol* collision damages and possible compromise of her structural integrity, combined with the risk of losing navigational control because the Italian parts had not yet arrived, *Legacy* could not hope to outrun Wilma by going east to the Lake Worth hurricane hole where the *Sol* collision occurred.

80. Wilma was approaching much faster than *Legacy* could travel in 6-12 foot seas, building to 15-25 feet, and the *Sol* collision damages to *Legacy's* hull created unacceptable risks. The replacement parts from Italy were needed for navigation and their absence added additional risk. Simply put, *Legacy* could not outrun Wilma

81. Captain Collins and Halmos were keenly aware and influenced by the fate of the commercial sailing vessel *Fantome* in 1998, among others. The *Fantome* was a 282-foot steel hulled vessel, much larger and more formidable than *Legacy*. The captain and crew of the *Fantome* tried to run offshore to avoid Hurricane Mitch. They tried without success to guess which direction that hurricane was going. Unable to outrun or outmaneuver the hurricane, the Fantome became trapped between the hurricane and the coasts of Honduras and Belize. The attempt to then ride out the storm at sea resulted in the total loss of the vessel and all 31 crew members. *Legacy* could not survive 15-25 foot seas in a hurricane and certainly not the 35-45 foot seas likely had Alpha collided with Wilma. Evading Wilma was not an option.

82. Docking was also not an option. Commercial docks are not designed for a sailboat of *Legacy's* shape with her curved sides

83. Having tested the holding-power of the "hurricane hole" seabed during Katrina, and with NOAA predicting maximum winds of only 65 knots for Key West, Captain Collins decided to remain at anchor. Halmos approved that decision. The full complement of *Legacy's* crew and Halmos remained aboard *Legacy* although every crew member had the option to go ashore.

84. The full 400 feet of chain for each of *Legacy's* two main anchors were deployed. This amounted to a 20:1 ratio of chain length to depth. The standard for anchoring with a storm approaching is 10:1 with more the better. A third anchor with 600 feet of line was deployed equidistant between the two main anchors. *Legacy* was positioned at anchor so as to face into the wind and to allow for 360 degrees of rotation as the wind direction changed.

85. As Wilma approached, NOAA forecasted maximum winds of only 64 knots in the area where *Legacy* was anchored, with Wilma's eye predicted to pass well to the north.

86. Although Wilma was hours away and winds affecting *Legacy* were only 60-70 knots, one of *Legacy's* two main anchors inexplicably failed. Aboard *Legacy*, it felt as if the anchor began to drag, but then was halted by the second anchor. Unknown to all aboard at the time, *Legacy*'s anchor did not drag but actually broke into two pieces – the top of the anchor remained connected to the anchor chain while the anchor's bottom remained firmly embedded in the "hurricane hole." The anchor that broke into two parts is the one that was damaged by the 2001 *Sol* collision. Although repaired by Rybovich Spencer and certified by ABS, the *Sol* collision apparently caused undetectable structural weakness. Aboard *Legacy,* Captain Collins thought one anchor had started to drag. He already had *Legacy's* engines idling and engaged them to assist the other main anchor, which continued to hold.

87. Shortly after the first anchor signaled a problem, as Halmos climbed stairs leading to *Legacy's* wheelhouse, the second main anchor (the third auxiliary being irrelevant at this point) could not continue holding.[6] Unknown to all aboard *Legacy*, the second anchor broke into two pieces, just as did the first. Attached to each 400 feet of chain was the top part of each anchor. The bottom part of each anchor remained embedded in the "hurricane hole." There was no way for Captain Collins and Halmos to know or even suspect that each anchor identically separated into two. Instead, all appearances were that the anchors were dragging.

[6] The anchor's failure caused *Legacy* to lurch to port, hurling Halmos down the stairs, a 12-foot drop to varnished wood floors.

88. Because the winds were only 70 knots, Captain Collins was able to control *Legacy* using her two main engines and bow thrusters within the main northwest navigational channel. Captain Collins held her steady, bow to the wind, slowly backing up for approximately an hour while attempting to have her anchors (believed to be at the end of each 400 feet of chain) re-attach to the seabed.

89. Concurrently, Wilma was approaching with increasing intensity and alarming speed of 20 mph on a track, which, if maintained would take the storm's eye just north of Key West. With *Legacy* and Key West in the storm's front, right quarter, the dramatically-accelerating wind pulled *Legacy* further out into the Gulf in front of the approaching Wilma. The further *Legacy* was pulled into the Gulf, the larger became the seas, as the shelter from the tidal flats and surrounding islands disappeared. As the winds reached 125 knots, *Legacy* suddenly and violently lurched and rotated, causing her 170-foot masts and booms to come crashing down on top of the wheelhouse where Halmos and Captain Collins were located. *Legacy*, out of control, was thrust into the Gulf ahead of the rapidly-approaching Wilma. The pounding waves crested at about 25 feet. *Legacy* was thrown around as if she were a cork. She began taking on water. An electrical fire blazed in the galley. After extinguishing the fire, all electrical and mechanical systems were shut down to avoid the risk of another fire. Completely in the dark, *Legacy* and all those on board were at the mercy of the storm as *Legacy* was sucked out into the Gulf of Mexico ahead of the approaching eye of Hurricane Wilma.

90. Because of (a) Wilma's extraordinary fast forward speed, (b) the resistance from *Legacy's* two 400 feet lengths of anchor chains, and (c) combined with remnants of her masts dragging in the water, the speed at which *Legacy* was being sucked into the Gulf

was slower than it would otherwise have been. Consequently and most fortunately, Wilma's eye passed just to the north of *Legacy* as the storm headed for the west coast of Florida.[7] As the wind direction changed, *Legacy* began to be pushed back toward Key West. Those aboard *Legacy* did not know the wind direction had changed until the waves started to lift *Legacy* and slam her hull into the shallowing sea floor. Now, all aboard realized their earlier nightmare had changed from being sucked out in front of Wilma to at any minute to having *Legacy's* hull cracked open like an egg shell. The pounding continued until daybreak as the egg-shell cracking became less pronounced and more frequent. Suddenly *Legacy* came to a stop, completely upright as if at anchor, with her anchor chains stretched as if her anchors had finally re-attached.

91. As the winds subsided to 75-or-so knots with the first light of day, one of Captain Collins' cell phones had a signal. He began calling for help in fear the anchors might again start to drag. Nobody knew what *Legacy's* location was, the visibility being only about 100 feet, and there was no way to tell the water depth. As daylight brought better visibility and the rain lessened, Captain Collins and Halmos realized they were hard aground about four miles north of Key West in the Great White Heron National Marine Sanctuary. Miraculously, *Legacy* was aground sitting upright, but she then began to list. Halmos, Captain Collins, and the entire crew except one remained aboard *Legacy* to secure her from listing and protect her and the environment from further damage

[7] Hurricane Wilma crossed the State of Florida and hit West Palm Beach, where the storm ripped the roof off the office building where Halmos had just completed five years of restoration (including a new roof).

92. The first non-family-related telephone call Halmos made that morning was to Strickland's Barker. Halmos told Barker to notify all applicable carriers.[8] Halmos' son Nick Halmos ("Nick") directly communicated with ACE. At 12:11 p.m. the same day, ACE/INA faxed a letter to Peter Halmos, in care of Nick, requiring Mr. Halmos, individually, *as the vessel owner to take all steps necessary to mitigate damages to the Legacy.*

93. On or about October 25, 2005, ACE directed IYC and Halmos to communicate with Pennekamp and Hutcheson as to all *Legacy* matters. In early November 2005, Pennekamp, Hutcheson, and numerous others engaged by ACE (naval architect, salvage support expert Ron Milardo, etc.) came aboard *Legacy*.

94. At their first meeting aboard *Legacy*, Pennekamp and Hutcheson fraudulently convinced Halmos that, pursuant to IYC's Policy, (a) any damage to *Legacy* caused by efforts to remove her from the Sanctuary were not covered; and, (b) because of Pennekamp's political influence with NOAA, ACE intended to minimize its liability for the first $25 million of damage to a Sanctuary natural resources claim NOAA would be assessing.

95. Pennekamp took control of all communications with NOAA and *Legacy* salver selection, repeatedly threatening Halmos with a breach of the "cooperation" provision of the Policy whenever what Halmos wanted to do differed from Pennekamp's directives. Although on October 24, 2005, ACE's Janet Thomas authorized Halmos and IYC to select a salvor and sign a salvage contract, Pennekamp selected four salvers

[8] Well before Hurricane Wilma, Strickland procured for IYC $25 million excess liability and $5 million pollution liability. The Pollution Policy was redundant, benefiting INA and Strickland, because the $25 million liability coverage for which IYC contracted with INA covered pollution.

"agreeable" to ACE. Pennekamp fraudulently represented that it was IYC's obligation to *contract and pay for* salvage charges. Later, when caught, Pennekamp said INA would reimburse "reasonable" amounts.

96. Pennekamp and Hutcheson repeatedly affirmed Ms. Thomas' October 24, 2005 ACE directive for Halmos to take *"all necessary steps to protect Legacy and the environment from further damage*," and that INA would reimburse all "reasonable" expenses. Pennekamp and Hutcheson repeatedly explained that IYC and Halmos were entitled, pursuant to IYC's Policy, to be put back to their position immediately before the storm except for salvage and other damages after the storm.

Salvers "Agreeable to ACE"

97. One of the four salvers presented by ACE/INA introduced and endorsed as being the "intellectual salver" who used brain rather than brawn, offered to negotiate a fixed price of $900,000 with a $200,000 warranty to repair salvage-caused damage to *Legacy*. American Oceanic/Wayne Licina's ("Licina") proposal was highly favored by ACE due to cost, and his $200,000 warranty to pay for damages to *Legacy* was unique among the four salvers "agreeable" to ACE/INA.

98. Pennekamp then began to pressure Halmos to enter into a contract with Licina because, according to Pennekamp, unless salvage arrangements were quickly made, NOAA would "federalize" *Legacy*. Licina continued to represent his ability to safely refloat *Legacy* without further damage to her or the environment, although his proposed contract was not near as specific. After some 20 contract drafts, IYC – under threat of "non-cooperation" by ACE/INA – executed a salvage contract with Licina to which ACE/INA agreed to consent. ACE/INA held veto power over all contracts to the extent

Halmos and IYC intended to seek reimbursement for "reasonable" amounts from INA/ACE.

99. Because Pennekamp and Hutcheson continued to fraudulently misrepresent to Halmos and IYC that there was no coverage for any damage to *Legacy* caused by salvage operations after Hurricane Wilma, for damage claims purpose it was essential to determine the extent of *Legacy's* structural and tortional damage from Wilma. By mid-December 2005, Hutcheson and "experts" engaged by ACE/INA had thoroughly inspected *Legacy* as she lay aground, entirely out of the water at low tide except for her fixed keel.

100. To obtain his own costs of repair determination, Halmos arranged for an executive from Perini Navi, *Legacy's* builder in Viareggio, Italy, to survey *Legacy's* condition and estimate costs of repair. Ranieri Quinzii, of Perini Navi, ("Quinzii") traveled to Key West for that purpose.

101. On December 17, 2005, aboard *Legacy* to meet with Quinzii were Pennekamp, Hutcheson, Milardo and others engaged by ACE/INA. Among other identified and confirmed damages to *Legacy* from Hurricane Wilma, Quinzii worried about apparent longitudinal tortional damage (twisting along the longitudinal axis of *Legacy's* hull). Beyond a certain limited parameter, tortional damage is not reparable and is fatal to the sailing capability and structural integrity of a sailboat such as *Legacy*. Excluding tortional damage and possible additional damage from reflotation of *Legacy*, Quinzii detailed the various categories of identifiable and confirmable damages from Wilma, estimating the costs to repair Wilma damages to *Legacy* to be $20 million and possibly more. Neither Pennekamp nor Hutcheson took issue with, objected to, or rebutted

Quinzii's identified and confirmed Hurricane Wilma-caused damages and repair costs estimate. Based on Quinzii's costs of repair determination, for Policy purposed, *Legacy* is a "total loss" due to being fatally under-insured.

102. Instead of complying with the 30-day claims payment provision in IYC's Policy, however, ACE/INA engaged Hutcheson to perform a bogus, self-serving laser survey ("Sham Laser Survey") to falsify results showing *Legacy* had suffered no tortional damage from either of the *Sol* collision or subsequent Hurricane Wilma. To assist with the Sham Laser Survey, ACE/INA engaged Hutcheson's Key West crony, Walter Schurtenberger. Taking "measurements" inside *Legacy's* engine room, they intentionally used inexpensive and malfunctioning laser measuring equipment. To further corrupt the "measurements," Hutcheson placed the shoddy laser equipment on top of a magazine prior to taking the "measurements." Hutcheson then rolled-up the magazine and stuffed it into his pants pocket.

103. The Sham Laser Survey was nothing more than a deceptive attempt by ACE/INA to falsely "confirm" the *absence* of tortional damage. By documenting such false tortional readings with his crony "expert" Schurtenberger in tow, ACE/INA intended for them to take “accurate” tortional measurements post-salvage. ACE/INA’s purpose for this bad faith maneuver was to be able to claim that *Legacy's* tortional damage was caused by salvage operations. The Sham Laser Survey was just one of many such tricks, each requiring IYC and Halmos to incur substantial fees, expenses, and time to obtain independent and offsetting expert reports.

ACE/INA's $25 Million Policy Liability Evasion

104. One of INA's biggest financial exposure was to NOAA's natural resource damages assessment of $22 million covered by IYC's $25 million Policy liability protection. That is where ACE/INA's claims adjuster/litigation lawyer Pennekamp and his political influence were to come into play. Pennekamp, the grandson of a Miami crusading journalist for whom Pennekamp State Park is named, allegedly had access to and influence with NOAA officials (a) from whom a "Permit" was required to remove *Legacy* from the Marine Sanctuary; (b) enforcing Federal law assessing environmental damage caused to the Sanctuary; (c) with authority to "federalize" (i.e., confiscatory forfeiture) *Legacy* and levy fines against Halmos as *Legacy's* Beneficial Owner; and (d) with Justice Department referral authority.

105. Without disclosure to Halmos and IYC, Pennekamp and ACE/INA negotiated with NOAA's Lisa Symons ("Symons") in Washington, D.C., NOAA's prosecuting lawyers in California, and others for NOAA to change its minimum $22 million natural resource damage claim against IYC (covered by $25 million liability protection in the INA Policy) to a $22 million *fine* to be levied upon Halmos *individually* (for which ACE/INA intended to assert a lack of coverage). NOAA's Symons agreed to Pennekamp's $22 million natural resources damage assessment-to-fine shifting proposal on March 30, 2006, by issuing a "Permit" *to Pennekamp,* as ACE/INA's claims adjuster lawyer, for *Legacy's* removal from the Marine Sanctuary.

106. In doing so, Pennekamp and ACE, on behalf of INA, falsified, concealed, and covered up by trick, scheme or device a material fact; made materially false, fictitious and fraudulent statements or representations, and made or used a false writing or document, transmitted via U.S. Mail, knowing the same to contain materially false,

fictitious or fraudulent statements or entries, with the federal government issuing the Permit. ACE, on behalf of INA, by and through its claims adjuster/litigation lawyer Pennekamp, (a) obtained the NOAA Permit; (b) with the covert agreement – intentionally concealed from IYC and Halmos – whereby NOAA would not assert $22 million natural resource damages against IYC's Policy with INA; (c) but, instead, NOAA would levy a $22 million fine against Halmos, individually, for which ACE intended to disclaim liability. Simply put, ACE, on behalf of INA, covertly negotiated to evade its $22 million natural resource damages liability by secretly causing NOAA to instead fine Halmos, personally, for the same $22 million for which ACE would assert no contractual liability.

107. ACE, on behalf of INA, planned and conspired to then reinvest such illegally procured money for its own benefit and to use these sums to operate itself as an enterprise engaged in, or the activities of which affect, interstate or foreign commerce.

108. ACE, on behalf of INA, held final authority and veto power over all contracts and financial decisions pursuant to the INA Policy. ACE/INA exercised its veto power as to which salver it selected and to the salvage operations methods employed. However, when Halmos presented Licina's contract and methods to Quinzii, the Perini Navi expert objected to some of Licina's methods as being dangerous, even fatal to *Legacy*. In the meantime, Ms. Thomas' boss at ACE/INA USA, Pamela Harting-Forkey, assumed day-to-day management of IYC's and HPC's claims. Ms. Harting-Forkey admitted by letter dated June 15, 2006, that any damage to *Legacy* from salvage operations is covered by the INA Policy. Consequently, ACE/INA required Licina to revise his methods that

NOAA had already approved. Pennekamp then procured a second Permit from NOAA on June 22, 2006, pursuant to the same covert liability-shifting to Halmos agreement.

109. ACE/INA's hand-picked salver, Licina, mobilized to Key West with a motor home and a surfboard. After a week of frolicking in the water, Licina announced that salvage conditions had changed, requiring a modification of the salvage contract, even though IYC had already advanced the contractually-required $400,000 to Licina. Licina proposed an open-ended contract rather than the existing $900,000 fixed-price contract, concealing that he had secretly sub-contracted the entire job to another salver by the name of Fas-Dam. When Halmos uncovered Licina's deceit, the Fas-Dam subcontract was startling for yet another reason: As part of their due diligence, Halmos, Captain Collins, and Nick researched the salver community and had independently found Fas-Dam prior to signing Licina's contract. In fact, Halmos had questioned Licina about Fas-Dam in February 2006. Licina had nothing good to say about Fas-Dam, calling them unprofessional.

110. Licina's new proposed contract simply marked-up Fas-Dam's open-ended charges by 300 percent. Pennekamp and ACE/INA refused to believe their hand-picked salver Licina to be a crook, but after two weeks of intensive work by Halmos, including having obtained the subcontract documents from Fas-Dam, ACE, on behalf of INA, reluctantly consented to IYC's termination of its contract with Licina. ACE repaid IYC's $400,000 advance to Licina in exchange for IYC's written subrogation. ACE then engaged Pennekamp to file an action against Licina in this District (Case No. 07-10081-CIV-King/Garber). However, ACE/INA quickly settled with Licina.

111. Due to the delays caused by ACE/INA, *Legacy* and Halmos to the 2006 hurricane season. Contracting directly with Fas-Dam was the only "quick fix" option to which ACE quickly consented. The substitution of Fas-Dam for Licina then required yet another NOAA Permit as the 2006 "high hurricane season" approached.

112. In the process of Pennekamp obtaining the third NOAA Permit, for the first time Halmos and IYC realized the prior Permits had been issued to Pennekamp – ACE's lawyer – rather than to IYC. This, Halmos now realized, had grave consequences as neither IYC nor he had standing to object to anything NOAA and Pennekamp decided. Concurrently, Halmos had picked-up rumors of NOAA planning to levy a fine upon him, personally, rather than a covered natural resource damage assessment against IYC. Confronting Pennekamp elicited evasive responses which amounted to a representation of NOAA's intent to impose a "token" fine against Halmos. Pressing the issue caused Pennekamp to disclose the "token" to be "small," quantified as $2 million. Pennekamp lied; NOAA's intended fine was $22 million.

113. Halmos notified ACE, Pennekamp, and NOAA that this third Permit would have to be issued to IYC in the same form and content as the prior Pennekamp Permits. NOAA responded that there would be no problem in doing that. Thereafter, NOAA, Pennekamp, and Fas-Dam representative, Herb Wiseman, had interstate telephonic and written communications in which neither IYC, Halmos, nor the lawyers Halmos recently engaged were involved. NOAA again represented to Fas-Dam's Wiseman in such discussions that a Permit in the same form and content as had been issued in Pennekamp's name would be issued in IYC's name. However, as a predicate to commencement, NOAA insisted and directed Fas-Dam to urgently mobilize to Key

West, purportedly because the high hurricane season was about to start. Relying on NOAA's representation to Fas-Dam about the Permit to be issued, Halmos funded the $200,000 advance by IYC to Fas-Dam for the mobilization of equipment and personnel.

114. In late July, Fas-Dam had mobilized trucks, equipment, barges, boats, and personnel to Key West and was poised to begin. Yet, NOAA had not issued the required Permit to IYC upon Fas-Dam's arrival in Key West. Each day Fas-Dam sat idle cost Halmos $20,000. For five days, Fas-Dam's operation sat in Key West awaiting the issuance of NOAA's Permit.

115. At 4:45 p.m. on August 4, 2006, NOAA finally released IYC's Permit. It was back-dated to July 28, 2006. Halmos and Wiseman were stunned; rather than the one-page Permit issued to Pennekamp, the IYC Permit turned out to be a civil rights-bashing, multi-page contract requiring IYC and Halmos, personally, to waive any and all rights to object to any environmental damage assessment, cost, fine, and/or any other decision by NOAA, including forfeiture of *Legacy*. When Halmos refused to sign, NOAA threatened him with Department of Justice referral.

116. NOAA flat-out refused to issue to IYC and/or Halmos the same Permit that NOAA had so willingly issued to Pennekamp. Halmos then had to pay Fas-Dam $200,000 to de-mobilize. Consequently, Halmos had to hire more lawyers to confront NOAA's covert deal with ACE to hang him personally with NOAA's bogus $22 million damage assessment. For five months, Halmos, personally and on behalf of IYC, and his lawyers engaged NOAA with intensive pre-litigation "negotiations." In the meantime, *Legacy* remained stranded in the Marine Sanctuary degrading daily, while the costs and interferences experienced by IYC, Halmos, and his corporate affiliates mounted. Every

time a storm threatened Key West, Halmos and *Legacy's* crew scrambled for days to prepare and then weeks to recover. Halmos set a deadline of midnight, December 31, 2006, for NOAA to release him and IYC of all liability having to do with *Legacy* and to cooperate with *Legacy's* removal from the Sanctuary. Finally, at 11:00 p.m. December 31, 2006, IYC and Halmos, individually, each agreed upon the terms of contracts with NOAA that were executed on January 5, 2007.

117. INA became the primary beneficiary of those NOAA contracts. Among provisions of these contracts, all parties released each other from all claims, thereby saving INA at least $22 million. Halmos was required to place $750,000 into escrow to assure that salvage efforts for *Legacy* would continue under his direct control. Halmos, personally, also agreed to do whatever was needed to recover *Legacy* from the Marine Sanctuary. The practical effect was that Halmos became personally responsible for funding and performing all salvage operations.[9] As yet another precondition, NOAA required IYC to enter into a new contract with Fas-Dam despite that Halmos by then had expressed serious concerns about Fas-Dam's competency in *Legacy*'s unique circumstances. Nevertheless, ACE had final authority and consented to a new Fas-Dam contract despite Halmos' concerns. ACE's consent included a waiver of subrogation rights.

118. In early 2007, Halmos paid Fas-Dam another $200,000 to remobilize. As Fas-Dam's salvaging operations progressed, Halmos became increasingly adamant that

[9] In order to continue with the salvage operation, Halmos personally had to enter into an agreement with NOAA in which Halmos had to release NOAA of any claims Halmos had against NOAA—this was a predicate to NOAA releasing IYC of all liabilities including releasing IYC of any liabilities which would implicate claims against the policy limits. Furthermore, NOAA entered into an agreement with IYC in which the agreement held Halmos responsible in a corporate capacity to the terms and conditions to which IYC agreed to, including as to salvage and remediation operation. Neither execution nor funding are within the course and scope of Halmos' employment by IYC.

Fas-Dam was incapable of doing what they contracted to do given *Legacy's* location and circumstances. Fas-Dam disputed Halmos' concerns. Months and millions of dollars later, ACE and NOAA came to the same conclusion as Halmos. Fas-Dam was ordered off the site by NOAA and in the process, Fas-Dam scattered remnants of its equipment all over the area. IYC had to hire other salvers just to clean up the mess, funds personally advanced by Halmos.

Halmos Takes Over Salvage Operations

119. On October 24, 2005, ACE/INA's Janet Thomas had authorized Halmos to sign a salvage contract and he set out to find a salver without any connection to, or interference by ACE/INA, Pennekamp, NOAA or anyone else. After extensive research, Halmos put his trust in Byrd Diving, a third generation Miami Salver operating from the same Miami River location for 80 years. In collaboration with Byrd, IYC purchased equipment and modified same for *Legacy's* unique circumstances. In February 2008, after many millions of dollars more pre-funded by Halmos, the Byrd/Halmos collaboration successfully floated *Legacy*. Moreover, the equipment they modified for *Legacy's* circumstances caused minimal injury to the Marine Sanctuary, magnitudes less than that which would have been caused by any other salver.

120. Once *Legacy* was afloat and securely anchored off Key West in Man-of-War Harbor, it was essential to make her seaworthy for towing to a shipyard. Any mishap in towing *Legacy* could cause damage to natural resources such as coral reefs and further damage to Legacy. The NOAAs contract general releases did not clearly apply to natural resource damages after *Legacy* departed Key West. While preparing *Legacy* for towing, her 40-ton, swinging lead keel dropped, creating a 26-foot draft. Had this

happened en route to a shipyard, the consequences could have been seriously problematic. Months of efforts to repair *Legacy's* keel-raising mechanism at anchor failed as did all other efforts to raise her keel. Experts were brought in from Miami – divers, engineers, shipyard owners – without success. Halmos then arranged for Quinzii from Perini Navi in Italy to devise a procedure whereby *Legacy's* keel was raised and secured.

ACE/INA'S SYSTEMIC CLAIMS OBSTRUCTION

121. Since 2001, Plaintiffs' two marine insurance contracts with INA (covering seven vessels, eight crew and a myriad of "covered persons" including guests, charters, and certain operators on direct and prior permission of the insured) have the open *Sol* collision claims for which, in bad faith, *not one cent has been paid* as detailed above.

122. Since 2003, Plaintiffs' two marine contracts with INA (covering 10 different vessels) have the open Island Runner claim for which, in bad faith, partial payment was made over *three years* late as detailed above.

123. Since 2004, Plaintiffs' two marine contracts with INA (covering 10 different vessels) have the open Hit and Run claim for which, in bad faith, *not one cent has been paid* as detailed above.

124. Since 2005 – a hyper-active hurricane year – Plaintiffs' two marine contracts with INA (covering 13 vessels) have: (a) The open *Mongoose* claims[10] for which, in bad faith, partial payment was made over *three years* late as described above; (b) The open

[10] Hurricane Wilma's damage to *Mongoose* occurred while ACE, on behalf of INA, had care, custody and control of *Mongoose*.

Legacy claims for which, in bad faith, partial payment was made over *three years* late as described below.

125. None of the claims, as described herein, were directly or indirectly the fault of Plaintiffs'. All conditions precedent to coverage have occurred.

126. Plaintiffs timely and properly gave the required notices and devoted extraordinary time, financial resources, and efforts in fully complying with their Policies and applicable law. As to every claim, ACE and INA (pursuant to their general and ordinary course of business) obstructed settlement of Plaintiffs' Policy entitlements. When ACE did make partial and entirely inadequate loss or damage payment,[11] each such payment was at least *three years* late. Plaintiffs have filed statutory notice of bad faith with the State of Florida, a copy of which is attached as Exhibit 1.

127. In addition, ACE and INA – in bad faith – (a) required Plaintiffs to make advance payments that INA was contractually obligated to directly pay; (b) denied reimbursements that INA was contractually obligated to promptly pay; (c) required Plaintiffs to rely upon misrepresented coverages, contract terms, settlement procedures, historical facts; (d) forced Plaintiffs to capitulate to improper demands and payments not required by the contract out of fear of having INA claim “lack of cooperation;” (e) required Plaintiffs to cooperate with ACE's and INA's litigation lawyers in their concurrent role as claims adjusters to deprive Plaintiffs of their contractual and due

[11] Because such partial reimbursement and fatally three-years-late loss or damage payment were made, all were from a bank account that combines and commingles the funds of "ACE American Insurance Company, ACE Property and Casualty Company, Westchester Fire Insurance Company and Affiliated Insurers." It is impossible to identify and confirm the identity of the payor(s).

process rights; and (f) required Plaintiffs to overcome interferences with efforts to protect and repair their damaged property.

128. These bad faith violations of applicable law – general and ordinary ACE, INA and Strickland business practices – directly and foreseeably caused, among others, losses, damages (including physical injury and property damage), expenses and costs, liabilities and obligations to third parties either incurred with ACE's consent or ratification and/or caused by ACE's wrongdoings, advance payments by Plaintiffs coerced by ACE, even though those payments were and continue to be INA's obligations.

129. Plaintiffs' insurance Policies require payment "for any covered loss under this Policy within 30 days." The table below summarizes the protection for which Plaintiffs contracted only for those years in which claims under the Policies were made.

CONTRACTED FINANCIAL PROTECTION		
Policy Coverages	Policy YWRY06973504(2005) Policy YWRY06973504(2004) Policy YWRY06973504 (2001)	Policy YKRY05031205 (2005)
Payment Method	Amount of Policy Limits	Amount of Policy Limits
Property Damage (Direct payment)	2005: $16 million 2004: $14 million 2003: $14 million 2001: $14 million	2005: $660,000 $660,000
Salvage Charges (Direct payment)	2005: $16 million 2004: $14 million	2005: $660,000 $660,000

	2003: $14 million 2001: $14 million	
Protection Against Loss (Reimbursement)	2005: $16 million 2004: $14 million 2003: $14 million 2001: $14 million	2005: $660,000 $660,000
Commercial Towing and Assistance (Direct payment)	2005: $50,000 2004: $50,000 2003: $50,000 2001: $50,000	2005: $1,500 $1,500
Jones Act/ Maritime Liability (Direct payment)	2005: $25 million 2004: $25 million 2003: $25 million 2001: $25 million	2005: $25 million 2005: $25 million
Medical Payments (per person occurrence) (Direct payment)	2005: $100,000 2004: $50,000 2003: $50,000 2001: $50,000	2005: $25,000 $25,000
Uninsured Boater (Direct payment)	2005: $2 million 2004: $2 million	2005: $2 million $2 million

	2003: $2 million 2001: $2 million	
Federal Longshoremen's and Harbor Workers' Compensation (Direct payment)	2005: Statutory limits 2004: Statutory limits 2003: Statutory limits 2001: Statutory limits	2005: Statutory limits Statutory limits
Personal Property (each covered loss family members and unlimited guests) (Direct payment)	2005: $100,000 2004: $100,000 2003: $100,000 2001: $100,000	2005: $2,500 $2,500
Operating Other Vessels (Direct payment)	2005: $25 million liability $16 million property damage 2004: $25 million liability $16 million property damage 2003: $25 million liability $16 million property damage 2001: $25 million liability $16 million property damage	2005: $25 million liability $660,000 property damage $25 million liability $660,000 property damage
Defense Costs and Related Expenses (Reimbursement or direct payment)	2005: unlimited 2004: unlimited 2003: unlimited 2001: unlimited	2005: unlimited unlimited

Rental Reimbursement (Reimbursement)	2005: $50,000 2004: $50,000 2003: $50,000 2001: $50,000	
Crew Personal Property (Direct payment)	2005: $20,000 per crew member, or $140,000 for 7 person crew 2004: $10,000 per crew member, or $70,000 for 7 person crew 2003: $10,000 per crew member, or $70,000 for 7 person crew 2001: $10,000 per crew member, or $70,000 for 7 person crew)	
Loss of Charter Income (Direct payment)	2005: $100,000 2004: $100,000 2003: $100,000 2001: $100,000	
Terrorism	2005: Statutory 2004: Statutory	2005: Statutory
Total available Coverages at issue	$663,693,000 Unlimited defense costs and expenses Statutory FLHWC Statutory terrorism	

130. For 24 years, IYC and HPC never filed a vessel-related insurance claim. When a claim finally arose in 2001, Plaintiffs relied on INA to honor its contractual obligations and on Strickland for claims' assistance.

131. Instead of the "protection" for which Plaintiffs contracted with INA as detailed in each Policy, they were victimized by ACE's pattern of routine and continuing violations of contractual and legal obligations. The following chart summarizes the incidents, claims, and insurance contracts at issue in this case:

CLAIMS MADE				
Date	**Incident**	**Vessel**	**Owner**	**Policy[12]/Premium**
Sept. 2001	*Sol* collision	*Legacy*	IYC	2001 Legacy Policy (Exhibit 2) $83,393.00/yr
July 2003	Missing Tender	*Island Runner*	IYC	2002 Legacy Policy (Exhibit 3) $88,088.00/yr
July 2004	Hit and Run collision	*Legacy*	IYC	2003 Legacy Policy (Exhibit 4) $96,912.00/yr
Aug. 2005	Hurricane Katrina	*Mongoose*	HPC	2005 Mongoose Policy (Exhibit 5) $14,820.00
Oct. 2005	Hurricane Wilma	*Mongoose*	HPC	2005 Mongoose Policy (Exhibit 5) $14,820.00/yr
Oct. 2005	Hurricane Wilma	*Legacy*	IYC	2005 Legacy Policy (Exhibit 6)

[12] The insurance Policies are attached as Exhibits 2 to 6.

				$114,695.00/yr

ACE, INA, AND STRICKLAND ACTED INTENTIONALLY

132. It is no coincidence in that every partial loss or damage payment on IYC's and HPC's claims at issue in this case were made at least *three years* late, even though the policy calls for payment within 30 days. Thus, INA had a clear policy of delaying payments for a period of three years to improve its profits at the expense of its policy commitments to IYC and HPC in clear breach of the respective policies.

133. ACE, on behalf of INA, has refused to (a) reimburse IYC and Halmos for amounts INA is contractually obligated to have directly paid, but coerced Halmos into paying for the benefit of IYC; (b) reimburse IYC and Halmos for expenses INA is contractually obligated to reimburse and/or amounts to which ACE consented and ratified; (c) pay for the value of Halmos' time and expenses required to engage experts and take other actions to defend against ACE's wrongdoings and fabrications; (d) pay for Halmos' time and expenses to "*take all steps necessary to mitigate*" pursuant to ACE's October 24, 2005 directive; and (e), among others, timely pay all Policy entitlements as implicated by the incidents and claims, including for loss and damage. In fact, even though INA was well aware that the damages to *Legacy* would easily exceed the limits of coverage that it claimed, yet it did not pay the $16 million in a timely fashion, but rather dragged-out the process which resulted in various charges that reduced the recovery to the Plaintiffs.

134. On October 27, 2008, ACE USA declared *Legacy* a "total loss" despite Policy requirements to confirm $16 million for Wilma Damages.

135. The purpose of this declaration was an attempt by INA to cancel its obligations for the losses claimed in 2001 in Sol collision, as well as to absorb its hundreds of thousands of dollars in policy offsets which were charged as INA stretched out the claims process to accommodate its three year “no pay” policy on claims.

136. On October 23, 2008, the day before the third anniversary of Hurricane Wilma, Plaintiffs filed this action.

137. Within four days, on October 27, 2008, ACE USA (a separate corporation from ACE American and INA) enclosed a check (with multiple affiliated payors, none INA) for $4,807,468.46 as "the balance of the limits available" under IYC's $16 million hull coverage, stating "This payment exhausts the available" coverage.

138. In so doing, INA’s paperwork actually mixed 2001 *Sol* collision damages with damages attributed to Hurricane Wilma.[13]

139. In addition, with October 15, 2008 identified and confirmed Wilma Damages substantially below the $16 million "total loss" threshold[14] while blatantly disregarding the pending 2001 *Sol* collision and Hit-and-Run claims, on October 27, 2008, ACE nevertheless stated: "we have been advised by Mr. Knowles that the vessel was in a pristine state prior to the damage caused by Hurricane Wilma...."

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[13] The October 15 survey report includes 100,000 euros for *Legacy's* side boarding ladder, which is an identified and confirmed *Sol* damage. Other identified and confirmed *Sol* damages erroneously included reduction of the total identified and confirmed Wilma Damages to approximately $13.5 million. These *Sol* collision damages are fully documented in Rybovich Spencer's 2001 safety repairs estimates; IYC's repairs estimates submitted to *Sol's* insurer in 2001 and 2002; ACE's 2004 valuation survey; and, among others, Hutcheson's September 2005 photographs and inspection report.

[14] Mr. Knowles could not otherwise determine the existing additional Wilma Damage to *Legacy* with *Legacy* at anchor.

141. Then ACE, in the same October 27 letter, stated, "ACE will not pay the resultant damages for any accident or loss which occurred before August 7, 2005...."

142. By making this claim, INA has breached its contractual obligations for the SoI claim, breached its obligation to properly provide coverage limits for *Legacy* when requested, and has attempted to avoid, its actual exposure to IYC of the total SoI damages, plus the Hurricane Wilma damages without any setoff for charges incurred to accommodate INA's three year "no pay" window, plus costs, interest, and attorneys' fees.

Deceptive and Fraudulent Corporate Shell Game

143. INA contends in this case that it and it alone is the contracting insurer. However, Plaintiffs never have received one communication directly from INA, nor has a directly employed INA person appeared. All decisions are made for INA by other ACE entities without any confirmation of authority. Whereas each Policy at issue states no action or representation is valid unless signed by an authorized INA officer, every action, representation and/or omission at issue is perpetrated by officers from other ACE subsidiaries and their agents.

144. Moreover, Plaintiffs are compelled through threats of coverage termination to "cooperate" with ACE subsidiaries purporting to act for INA. The day of Hurricane Wilma, ACE USA officer, Ms. Janet Thomas, purportedly acting for INA, compelled Halmos personally to an impossible task that continues today:

> **Further, as the vessel owner,[15] we remind you of your obligation under the Policy to take all steps necessary to mitigate damages to the Legacy....**

145. Despite the fact that INA knew that Halmos at the time was in traumatic shock, ACE USA sent its contractual compulsion addressed to "**Mr. Peter Halmos**" c/o his son Nick, then a student at Brown University in Providence, Rhode Island. ACE USA knew but manifestly disregarded its own Policy – written exclusively by ACE – to hold Halmos, in writing, to a standard far beyond what had been contractually agreed. Quoting from the applicable Policy:

> "...If **your**[16] vessel ... is damaged, **you** must take all **reasonable** steps to protect it from further damage." (Emphasis added)(Policy, at p. 9)

146. Everything that INA did after both losses was part of its plan to delay, diminish and deny coverage under two policies to one claim. Further, to delay the payment of all claims for a period of three years to accommodate its "profits at the expense of policyholders" policy, which it further exacerbated by various charges occasioned not by the needs for repairs, but for the need of certain expenses essential if a claim was to be delayed for three years.

Strickland Deceptive Acts and Practices

147. Strickland represents itself to be an "independent" broker without ties to any particular carrier and, consequently, it claims its duties run solely to its clients, *i.e.*, IYC and Halmos. Nevertheless, the applicable Policies at issue become effective only when

[15] Repeatedly and emphatically in their papers filed with this Court, INA's lawyers consistently assert that (a) IYC is *Legacy's* owner; (b) IYC is the named insured; (c) Halmos has no standing in this case, nor is he entitled to any benefits under the applicable Policies.

[16] Both ACE's and INA's lawyers repeatedly and emphatically assert in this case that "your" and "you" refer to IYC.

signed by Strickland as "authorized representative" of INA. As it turns out, Strickland is not independent. Moreover, by accepting undisclosed "contingent commissions" based upon ACE's and INA's profitability on policies placed with them by Strickland, Strickland is fatally conflicted as to its financial interests being contrary to the financial interests of its clients, *i.e.,* Plaintiffs. In effect, Strickland becomes a joint venture with ACE/INA through this arrangement.

148. Another Strickland client, Gary Jacobs (former CEO of Laredo National Bancshares), discussed with Barker by telephone *Legacy*'s demise due to Hurricane Wilma. In this discussion, Barker admitted to Mr. Jacobs that Strickland and he are in an "underwriting hole" as a consequence of *Legacy's* claims. Strickland is not an "underwriter," but rather a commissioned broker purportedly paid as a percentage of premium. To be in an "underwriting hole," Strickland had to be referring to its undisclosed contingent commissions that are based on the profitability to ACE and INA of policies placed with them by Strickland. Thus, it is in Strickland's direct financial interest to obstruct, evade, delay and underpay its clients' claims, to fatten its own roll of cash.

149. Strickland, inflated IYC's premiums by increasing its own commissions from nine to 15 percent, with IYC directly paying the difference. In other words, IYC could buy through Strickland the exact same 2001 IYC Policy for $78,000 that Strickland sold to IYC for $83,000. Without disclosure to IYC, the extra $5,000 went directly into Strickland's pocket.

150. Strickland demanded carriers to pay it at 35 percent excess commission to maintain IYC's premium within competitive range, however, Strickland caused insurers

to reduce IYC's coverages to do so. Moreover, Strickland *shopped Plaintiffs' coverages to get the highest commission* without regard to the issuers' financial condition, resulting in IYC coverages by Independent – the bankrupt London carrier chosen by Strickland for the 2000 Policy year – being worthless.

151. Strickland brokered insurance on behalf of the plaintiffs and therefore was their agent and fiduciary. Strickland breached its fiduciary duty to plaintiffs by choosing a carrier engaged in an enterprise that would profit from the loss ratio bonuses (a/k/a contingent commissions) and the finite insurance scheme because of INA's history of manipulating of the claims handling process in concert with the proven track record of the "claims gang." The gang members being those identified herein as co-conspirators. Specifically, Strickland (a) engaged in prohibited bait-and-switch dirty tricks such as binding IYC's coverage with ACE American and then switching the coverage to INA; (b) concealed material facts and misrepresented others to deceive and mislead Plaintiffs as to their coverages, claims, entitlements, and Strickland's serial breaches of fiduciary duties; (c) neglected to procure coverages such as in 2001, grossly low-balling *Legacy's* present value and, consequently, the amount of hull coverage that could be bound; and, among others; (d) procured redundant coverages to garner even more commissions and contingent commissions, *i.e.*, procured a separate $5 million pollution coverage from Navigators when (i) INA's $25 million liability provides pollution coverage and (ii) INA's coverage is excess to other insurance purchased by Plaintiffs, and (f) dropping Halmos from coverage so that it could obtain a higher commission, when prior to ACE/INA coverage, Halmos had been included in the policies as a named insured.

152. These above communications, were made via wire and the mails, including wire transfers of funds, bank drafts, and survey reports, which included interstate travel, all of which violated 18 U.S.C. §§ 1341 and 1343--which in turn amount to criminal activity as defined in Fla. Stat. § 722.102(4). These multiple mailings, emails, wire transfers of embezzled funds, and the other violations alleged herein, directly and definitively demonstrate that ACE, Strickland, INA, Pennekamp and Hutcheson and affiliated insurers and reinsurers, conducted an enterprise through a pattern of criminal activity in violation, with others, of Fla. Stat. § 722.103(3) and/or (4).

153. Specifically, March 29, 2009 Pamela King sent an email to Halmos representing that she represented ACE USA "your insurance carrier," knowing that INA is the insurance carrier on the policy. On April 6, 2005 Strickland again represents that ACE American insurance is the underwriter. On August 8, 2004 Strickland bills a renewal of redundant pollution policy. On August 5, 2005, improper payments were made on the policies. In February of 2005, Strickland's Vance Barker sents an email declaring he had rates up to $27 million despite not having obtained the $27 million coverage.

SYSTEMATIC UNTIMELY PAYMENTS

154. Hurricane Wilma savaged *Legacy* on October 24, 2005. Pursuant to IYC's Policy, payment for the loss was required within 30 days. On December 17, 2005, INA's claims adjuster/litigation lawyer Pennekamp and INA's purportedly "independent" surveyor Hutcheson, gathered aboard *Legacy* as she lay aground to meet with her builder's expert, Perini Navi's Quinzii from Viareggio, Italy. At the meeting, Quinzii detailed, identified and confirmed *Legacy's* Wilma Damages and corresponding costs of repair. A highly educated and trained naval engineer who is in charge of Perini Navi's

shipyard where all yacht repairs are done, on December 17, 2005, Quinzii unequivocally determined costs of repair for Wilma Damages to *Legacy* of at least $20 million. INA's agents and its "independent" surveyor Hutcheson did not dispute Quinzii's repairs determinations.

155. Nevertheless, neither ACE nor INA paid one cent. Then, on June 16, 2006, ACE USA, under the signature of its officer Ms. Harting-Forkey, wrote to Halmos stating:

> our initial evaluation of repairs is in the area of $5 million. This amount is more intuitive as her rigging was attached when she was inspected with many unknowns ... Further, none of us have any idea if (when) she will be further damaged during the salvage operations or if her hull is twisted."

156. Halmos responded June 18, 2006: "**Stewart's estimate of $5 million for Legacy repairs is news to me.**" Only later did ACE reveal that its retention for reinsurance purposes IYC's Policy is $5 million, meaning all payments in excess of $5 million go to the reinsurer(s) with whom ACE, on behalf of INA, contracted.

157. Another provision in INA's Policy controlling the amount to be paid for repairs states: "The cost of repairs shall be determined by yacht repair yards, equipment repairers or surveyors **agreeable** to us." (Emphasis added)

158. Without having expressly so stated, ACE USA's June 16, 2006 letter determined that Perini Navi's Quinzii was not agreeable to ACE and INA for determination of the costs to repair Legacy for Wilma Damages. Instead, ACE USA found its so-called "independent" surveyor Hutcheson, who upon information and belief provided to INA whatever it wanted, including the ridiculous $5 million repairs determination, much more acceptable to INA and Strickland, whose income would be bettered the lower the claims paid, than Mr. Quinzii's $20 million. Despite the inexplicable difference in Hutcheson's

$5 million (agreeable to ACE and INA) and Quinzii's $20 million (not agreeable to ACE and INA), neither ACE nor INA paid IYC the $5 million low-ball estimate or one cent anyway.

159. **Three years** later, ACE hired another marine surveyor, Mr. Anthony Knowles. On April 14, 2008, Mr. Knowles and Mr. Quinzii (the same Perini Navi expert whose cost of repairs on December 17, 2005 was not agreeable to ACE and INA) met aboard *Legacy* as she lay at anchor just north of Key West. Mr. Knowles thoroughly inspected *Legacy*, including arranging for divers to inspect her hull below the waterline. Mr. Quinzii was there to provide the same cost of repair determinations that he provided to Pennekamp and Hutcheson on December 17, 2005. Mr. Knowles' survey report, dated April 24, 2008, *relied upon the cost of repairs determined by Mr. Quinzii*.

160. On May 8, 2008, ACE, on behalf of "ACE American Insurance Company, ACE Property and Casualty Company, Westchester Fire Insurance Company and Affiliated Insurers," sent partial payment for Wilma Damage to *Legacy* in the amount of $11,192,531.54. ACE's transmittal letter states: "Mr. Knowles believes that the final repair costs to S/Y Legacy could be in the range of $18,480,000 to $23,100,000.00," entirely consistent with the $20 million December 17, 2005 determinations by Mr. Quinzii.

161. Four days after this lawsuit was filed, on October 27, 2008, ACE wrote to Halmos: "[W]e have concluded that the S/Y LEGACY is a total loss as that term is used in the Policy. This determination was based upon the information that we received from Mr. Knowles in his report of October 15, 2008." ACE's October 27 letter acknowledges that most costs of repair determinations were obtained from Mr. Quinzii of Perini Navi.

Now, **three years** later, ACE is agreeable to the same costs of repairs determinations by Mr. Quinzii that on June 16, 2006, ACE found not so agreeable. Enclosed with ACE's October 27 transmittal was a check in the amount of $4,807,458.46, arriving *three days after the magic three year following loss time* had been reached.

162. Because of ACE-INA's acts and/or omissions, Plaintiffs have been required to retain the services of the undersigned counsel to prosecute their claims in this action. Plaintiffs are entitled to recover, and request the award of, attorneys' fees, expenses, and costs expended in connection with this action, and any appeals therefrom, pursuant to Florida law (Fla. Stat. §§ 624.155, and 627.428). Plaintiffs are also entitled to recover their attorneys' fees, expenses and costs in accordance with the federal Declaratory Judgment Act, 28 U.S.C. §2202. Plaintiffs have been required to retain counsel to pursue these claims and have obligated themselves to pay them fees for their services.

IYC AND HPC CAUSES OF ACTION

Count 1. Breach of Contract – *Sol Damage*

163. Plaintiff, IYC re-alleges paragraphs 26-40, 47-59, 63-66 and 129 - 142 as if fully set forth herein.

164. Plaintiff, IYC obtained insurance for the *S/Y Legacy* and paid all applicable premiums. *See Exhibit 2.*

165. In September of 2001, the *SOL* collided with and damaged the *S/Y Legacy.*

166. IYC timely and properly submitted claims under the ACE-INA Policy for the incident.

167. ACE/INA, breached the contract by, among other things: (1) unreasonably delaying claims processing; (2) promulgating bogus estimates and surveys; (3) making artificially low offers; (4) refusing to pay or settle legitimate and valid claims; (5) failing to make timely payment of legitimate claims; and (6) failing to properly increase Policy limits when requested, or by concealment, failing to disclose the basis for the failure to properly increase Policy limits.

168. As a result of these breaches, IYC suffered harm and was deprived of benefits under the ACE/INA Policy.

169. All conditions precedent and subsequent to IYC's right to recover have occurred, been performed, or been waived by ACE-INA. As a result IYC is entitled to recovery for their damages.

WHEREFORE, IYC demands judgment against ACE/INA, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper.

Count 2. Breach of Contract – *Island Runner*

170. Plaintiff, IYC re-alleges paragraphs 41-46 and 129-142 as if fully set forth herein.

171. Plaintiff, IYC obtained insurance for the *S/Y Legacy* and paid all applicable premiums. *See Exhibit 3.*

172. In July of 2003, *S/Y Legacy* lost and damaged its tender.

173. IYC timely and properly submitted claims under the ACE-INA Policy for the incident.

174. ACE/INA, breached the contract by, among other things: (1) unreasonably delaying claims processing; (2) promulgating bogus estimates and surveys; (3) making artificially low offers; (4) refusing to pay or settle legitimate and valid claims; (5) failing to

make timely payment of legitimate claims; and (6) failing to properly increase Policy limits when requested, or by concealment, failing to disclose the basis for the failure to properly increase Policy limits.

175. As a result of these breaches, IYC suffered harm and was deprived of benefits under the ACE-INA Policy.

176. All conditions precedent and subsequent to IYC's right to recover have occurred, been performed, or been waived by ACE/INA. As a result IYC is entitled to recovery for their damages.

WHEREFORE, IYC demands judgment against ACE/INA, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper.

Count 3. Breach of Contract – *Hit And Run*

177. Plaintiff, IYC re-alleges paragraphs 60-62 and 129-142 as if fully set forth herein.

178. Plaintiff, IYC obtained insurance for the *S/Y Legacy* and paid all applicable premiums. *See Exhibit 4.*

179. In July of 2004, the *S/Y Legacy* was damaged by a Hit and Run incident.

180. IYC timely and properly submitted claims under the ACE/INA Policy for the incident.

181. ACE/INA, breached the contract by, among other things: (1) unreasonably delaying claims processing; (2) promulgating bogus estimates and surveys; (3) making artificially low offers; (4) refusing to pay or settle legitimate and valid claims; (5) failing to make timely payment of legitimate claims; and (6) failing to properly increase Policy limits when requested, or by concealment, failing to disclose the basis for the failure to properly increase Policy limits.

182. As a result of these breaches, IYC suffered harm and was deprived of benefits under the ACE/INA Policy.

183. All conditions precedent and subsequent to IYC's right to recover have occurred, been performed, or been waived by ACE/INA. As a result IYC is entitled to recovery for their damages.

WHEREFORE, IYC demands judgment against INA/ACE, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper.

Count 4. Breach of Contract – *Mongoose*

184. Plaintiff, HPC re-alleges paragraphs 63-73 and 129-142 as if fully set forth herein.

185. Plaintiff, HPC obtained insurance for the *Mongoose* and paid all applicable premiums. *See Exhibit 5.*

186. In August and October of 2005 the *Mongoose* was damaged by Hurricanes Katrina and Wilma respectively.

187. HPC timely and properly submitted claims under the ACE/INA Policy for the incident.

188. ACE/INA, breached the contract by, among other things: (1) unreasonably delaying claims processing; (2) promulgating bogus estimates and surveys; (3) making artificially low offers; (4) refusing to pay or settle legitimate and valid claims; (5) failing to make timely payment of legitimate claims; and (6) failing to properly increase Policy limits when requested, or by concealment, failing to disclose the basis for the failure to properly increase Policy limits.

189. As a result of these breaches, HPC suffered harm and was deprived of benefits under the ACE/INA Policy.

190. All conditions precedent and subsequent to HPC's right to recover have occurred, been performed, or been waived by ACE/INA. As a result HPC is entitled to recovery for their damages.

WHEREFORE, IYC demands judgment against ACE/INA, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper.

Count 5. Breach of Contract – *S/Y Legacy Wilma*

191. Plaintiff, IYC re-alleges paragraphs 75 – 120, and 129-142 as if fully set forth herein.

192. Plaintiff, IYC obtained insurance for the *S/Y Legacy* and paid all applicable premiums. *See Exhibit 6.*

193. In October of 2005, the *S/Y Legacy* was severely damaged by Hurricane Wilma.

194. IYC timely and properly submitted claims under the ACE/INA Policy for the incident.

195. ACE/INA, breached the contract by, among other things: (1) unreasonably delaying claims processing; (2) promulgating bogus estimates and surveys; (3) making artificially low offers; (4) refusing to pay or settle legitimate and valid claims; (5) failing to make timely payment of legitimate claims; (6) failing to properly increase Policy limits when requested, or by concealment, failing to disclose the basis for the failure to properly increase Policy limits; and (7) failing to pay claims arising out of NOAA's requirements/agreements as detailed in paragraphs 104-120.

196. As a result of these breaches, IYC suffered harm and was deprived of benefits under the ACE-INA Policy.

197. All conditions precedent and subsequent to IYC's right to recover have occurred, been performed, or been waived by ACE/INA. As a result IYC is entitled to recovery for their damages.

WHEREFORE, IYC demands judgment against ACE/INA, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper.

Count 6. Strickland – Breach of Contract For Failure To Procure Appropriate Coverage

198. Plaintiff IYC re-alleges paragraphs 11-25, 47-59 and 147-151.

199. Plaintiffs retained the services of Strickland both orally and in writing to obtain the appropriate insurance policies for the S/Y Legacy.

200. In early 2004, Halmos first became aware that Strickland had procured insufficient coverage for the S/Y Legacy. As a result, Halmos requested for Strickland to procure adequate insurance for the S/Y Legacy. Strickland undertook that duty.

201. The process to procure adequate insurance continued throughout 2004 and well into 2005 when Hurricane Wilma hit.

202. In fact, the acts which constitute a breach on behalf of Strickland are not those when Halmos first noticed there was insufficient coverage, but when Strickland subsequently failed to procure the coverage when it agreed to do and yet failed to do so. The final act that culminates in the breach is the date of Hurricane Wilma in October of 2005 which is the date that Strickland should have obtained the increase policy and did not.

203. Defendant Strickland is liable for having undertaken to obtain increased replacement-cost coverage for *Legacy* and for having failed to disclose the true nature of ACE/INA's wrongful valuation of *Legacy* or to follow through and ascertain whether ACE/INA had definitively accepted or rejected IYC's request for increased coverage limits, even up to and just prior to the Wilma incident, as a result of which IYC suffered damages.

WHEREFORE, IYC demands judgment against Strickland, together with interest, costs, and such further relief as the Court deems just and proper.

Count 7. Strickland – Breach of Contract For Failure To Assist

204. Plaintiffs IYC and HPC re-alleges paragraphs 11-120 and 147-151.

205. Plaintiffs retained the services of Strickland both orally and in writing from 2001 to the date of the filing of this action in 2008 to not only obtain the appropriate insurance policies for the S/Y Legacy and the Mongoose, but to also assist in pursuing any and all claims that may be made.

206. Strickland was the broker of record on all of the policies attached as Exhibits 2-6.

207. Strickland had a duty pursuant to the oral and written[17] contract (a) give notice to all applicable insurers (and/or to advise Plaintiffs to give such notice), (b) advise Plaintiffs of all potentially applicable coverages through the various policies procured by Strickland for Plaintiffs; and (c) assist Plaintiffs in pursuing claims submitted to INA for

[17] The written contract was entered into by Strickland through all the communications via email and letters wherein Strickland agreed to act as insurance broker for IYC and HPC.

losses incurred as a result of Sol, Island Runner, Mongoose and Legacy damages. A process which continued well into 2008.

208. Strickland's duty began from the date of the first insurance policy was procured and breached its duty as of the filing of this action in October of 2008 when it failed to obtain payments for all claims made by IYC and HPC against INA, and forced Plaintiffs to file this action.

209. Moreover, Strickland breached its contract, up through and after the October 2005 Wilma loss, by failing to notify all applicable carriers, failing to advise Plaintiffs of potentially applicable coverages and assist in pursuing claims submitted to INA for payment regarding the Sol, Island Runner, Mongoose and Legacy damages, and for failure to obtain for IYC increased replacement-cost coverage for *Legacy* when it had the information to increase such coverage, and/or for failure to advise IYC that increased replacement cost coverage had not, or could not, be obtained.

210. Plaintiffs were harmed by these failures, and IYC in particular was harmed by having experienced a significant loss while underinsured.

WHEREFORE, IYC and HPC demand judgment against Strickland, together with interest, costs, and such further relief as the Court deems just and proper.

Count 8. Breach of Fiduciary Duty—Strickland

211. Plaintiff IYC re-alleges paragraphs 11-25, 47-59 and 147-153 as if fully set forth herein.

212. Strickland agreed to obtain insurance for IYC.

213. As a result, Strickland became IYC's agent for that purpose.

214. As agent, Strickland owed IYC a duty of care and a duty to exercise the skill of broker.

215. Strickland was required to inform IYC that it had not obtained the appropriate coverage on the Legacy in 2005 and before, and failed to warn IYC that the requested insurance was not obtained.

216. Strickland failed to inform IYC and as a result breached its fiduciary duty which caused damaged to IYC.

WHEREFORE, IYC demands judgment against Strickland, together with interest, costs, and such further relief as the Court deems just and proper.

Count 9. Declaratory Judgment – ACE/INA Policies

217. Plaintiffs re-allege paragraphs 26-120 and 129-142 as if fully set forth herein.

218. There is a present controversy between Plaintiffs and ACE/INA regarding coverage under each of the applicable ACE/INA Policies attached as Exhibits 2-6. This Court may entertain that claim pursuant to 28 U.S.C. § 2201.

219. There now exists an actual, real and substantial controversy between Plaintiffs and ACE/INA.

220. The applicable ACE/INA Policies were in effect at all relevant times.

221. Plaintiffs have, at all relevant times, complied with all conditions for coverage under the applicable ACE/INA Policies to the extent required by law.

222. Plaintiffs are entitled to coverage as insureds under the applicable ACE/INA Policies.

223. Those policies provide coverage for the losses submitted as claims to ACE/INA for the *SOL*, *Island Runner*, Hit and Run, *Mongoose* and *Legacy*/Wilma incidents,

except as to the policy limits expressed for hull damage coverage for the *Legacy*/Wilma incident.

224. Furthermore, the hull damage policy limit for the *Legacy*/Wilma incident was for replacement cost, not agreed value.

225. The value of the *Legacy* immediately prior to being grounded by Hurricane Wilma should have been calculated and insured at the $27 million level.

226. That ACE knew or should have known that policy limits with regard to the hull damage had been reached shortly after the grounding, and in any event no later than 30 days from the date of loss, and should have paid full policy limits at that time.

227. That Peter Halmos was and is a "Covered Person" under the Policies in question, among other things, he is and was an "operator" of IYC and HPC vessels.

WHEREFORE, IYC and HPC seek a decree of this Court declaring the entitlement to recovery under the policies as described above, together with attorneys' fees, costs, interest, and such other relief as this Court deems just and proper just and proper.

Count 10. Common Law and Statutory Bad Faith/Extra-Contractual Claims – ACE/INA [ABATED]

228. Plaintiffs re-allege paragraphs 26-146 through 154-162 as if fully set forth herein.

229. ACE/INA and its adjusters, including but not limited to Hutcheson and Pennekamp, violated Fla. Stat. § 626.877, in that they failed to adjust or investigate each of the claims herein and the damages or losses therefrom, in accordance with the terms and conditions of the contract and the applicable laws of Florida (including Fla. Stat. § 620.860).

230. ACE/INA, by their acts and omissions, for each of the *SOL*, *Island Runner*, Hit and Run, *Mongoose* and *Legacy*/Wilma incidents, and for all of these incidents combined, violated the provisions of Fla. Stat. § 624.155. More specifically, ACE/INA:

a. Made material misrepresentations to an insured or other person having an interest in the proceeds payable under such contract or policy, for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract or policy on less favorable terms than those provided in, and contemplated by such contract or policy;

b. Committed or performed with such frequency as to indicate a general business practice some or all of the following:

1. Delaying the payment of policy limits for a period of years when it knew or should have known that the damages exceeded policy limits.

2. Failing to adopt and implement standards for the proper investigation of claims;

3. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

4. Failing to acknowledge and act promptly upon communications with respect to claims;

5. Failing to promptly provide a reasonable explanation in writing to the insured of the basis in the insurance policy, in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement;

6. Failing to promptly notify the insured of any additional information necessary for the processing of a claim; or

7. Failing to clearly explain the nature of the requested information and the reasons why such information is necessary;

c. Did not attempt in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests;

d. Failed to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

231. By virtue of their failure to comply with the requirements of Fla. Stat. § 624.155, ACE/INA are liable to Plaintiffs, in addition to the amount of the claim, for additional damages caused by the alleged violations of the statute, including, but not limited to damages caused by the delays instituted by ACE-INA as they adversely and individually affected IYC and High Plains, court costs, attorneys' fees, and interest on all of the foregoing amounts at the maximum rate allowed by law. These additional damages are separate and apart from the unpaid policy benefits.

232. Additionally, Plaintiffs would show that the acts and/or omissions of ACE/INA giving rise to the aforesaid violations occur with such frequency, involving separate claims by different insureds on different vessels, as to indicate a general business practice and such acts and/or omissions were willful, wanton, and malicious, or in reckless disregard for the rights of any insured. Therefore, Plaintiffs are entitled under Fla. Stat. § 624.155(5) to judgment against ACE/INA for punitive damages.

233. The requisite statutory notice, attached and incorporated herein, has been filed with the State of Florida and provided to ACE-INA on or about March 5, 2009. A copy of that statutory notice is attached as Exhibit 1 and incorporated herein.

WHEREFORE, IYC and HPC demand judgment against INA and ACE, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper

Count 11. Insurance Intermediary Liability—Strickland

234. Plaintiffs IYC and HPC re-alleges paragraphs 11-120 and 147-151.

235. Plaintiffs retained the services of Strickland both orally and in writing from 2001 to the date of the filing of this action in 2008, to not only obtain the appropriate

insurance policies for the S/Y Legacy (IYC's Claims) and the Mongoose (HPC's Claims), but to also assist in pursuing any and all claims that may be made by Plaintiffs against INA.

236. Strickland was the broker of record on all of the policies attached as Exhibits 2-6.

237. Strickland had a duty pursuant to the oral and written[18] contract (a) give notice to all applicable insurers (and/or to advise Plaintiffs to give such notice), (b) advise Plaintiffs of all potentially applicable coverages through the various policies procured by Strickland for Plaintiffs; and (c) assist Plaintiffs in pursuing claims submitted to INA for losses incurred as a result of Sol, Island Runner, Mongoose and Legacy damages. A process and obligations that continued well into 2008.

238. Strickland's duty began from the date of the first insurance policy was procured and breached its duty as of the filing of this action in October of 2008 when it failed to obtain payments for all claims made by IYC and HPC against INA, and forced Plaintiffs to file this action.

239. Moreover, Strickland breached its contract by failing to notify all applicable carriers, failing to advise Plaintiffs of potentially applicable coverages and assist in pursuing claims submitted to INA for payment regarding the Sol, Island Runner, Mongoose and Legacy damages, and for failure to obtain for IYC increased replacement-cost coverage for *Legacy* when it had the information in October 2004

[18] The written contract was entered into by Strickland through all the communications via email and letters wherein Strickland agreed to act as insurance broker for IYC and HPC. Those communications continued through the filing of this action.

through February of 2005 to increase such coverage, and/or for failure to advise IYC that increased replacement cost coverage had not, or could not, be obtained.

WHEREFORE, IYC and HPC demand judgment against Strickland, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper.

Count 12. Negligence-Strickland

240. IYC and HPC re-allege paragraphs 11-120 and 147-151 as if fully set forth herein.

241. Strickland owed a duty to IYC to obtain an increase in the insurance coverages applicable to the *Legacy*/Wilma loss described above and to inform IYC regarding the precise basis for the wrongful valuation of *Legacy* before the 2005 Policy was bound.

242. Strickland also owed a duty to obtain payments on all claims submitted to INA for damages resulting from Sol, Island Runner, Mongoose and Legacy damages. These were obligations and duties that Strickland undertook and continued to profess to be performing well into 2008 when this action was filed.

243. Strickland failed to perform these duties as shown above by failing to obtain payments for the claims submitted and for failing to obtain increase in coverage.

244. IYC and HPC suffered damages arising out Strickland's negligence.

WHEREFORE, IYC and HPC demand judgment against Strickland, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper.

Count 13. Negligent Misrepresentation-Strickland

245. Plaintiff, IYC, re-alleges paragraphs 11-25, 47-59 and 147-151 as if fully set forth herein .

246. Strickland undertook to obtain for IYC an increase in the hull damage liability limits for *Legacy*. Such increase was to be effective immediately after the surveys were completed.

247. Strickland owed a duty of care to see that it communicated truthful information to IYC.

248. Strickland breached that duty by failing to exercise due care and negligently making the statements and representations enumerated in paragraphs 52-57 supra, because it should have known that the statements and representations were false.

249. Strickland intended for IYC to rely on its representations.

250. IYC justifiably relied on the statements and representations.

251. IYC suffered a pecuniary loss, injury or damage as the proximate result of its reliance on the statements and representations in connection with the incidents described above.

WHEREFORE, IYC demands judgment against STRICKLAND, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper.

Count 14. Fraudulent Inducement – ACE/INA

252. Plaintiffs re-allege paragraphs 26-120 and 129-142 as if fully set forth herein.

253. Prior to entering into each of the policies attached as Exhibits 2 -6, ACE/INA made representations in the policy to Plaintiffs IYC and HPC that the policy terms provide for payment within 30 days of the loss.

254. ACE/INA knew that such representations were false prior to Plaintiffs entering into each of the policies, yet did not disclose to Plaintiffs that ACE/INA had a three year hold on payment for claims submitted.

255. ACE/INA intended that the representations induce each of the Plaintiffs to act on the representations by purchasing insurance policies from it, paying it the premiums assessed on such policies, incurring costs and executing contracts knowing at the time the Plaintiffs signed the policies that it did not intend to pay any claims within the 30 day time period.

256. Plaintiffs were subsequently injured when payments were not forthcoming within the 30 day time period.

WHEREFORE, IYC and HPC demand judgment against ACE/INA, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper.

Count 15. Fraud-ACE/INA

257. Plaintiffs re-allege paragraphs 26-120 and 129-146 as if fully set forth herein.

258. ACE/INA made representations at the time of finalizing the contracts attached as Exhibits 2-6 to Plaintiffs that in exchange for the premiums paid, it would take on the risk of losses and mobilize an international group of experts to provide a quick and fair resolution of damage claims, including payment of certain losses within 30 days pursuant to the Policy terms. When, none of the claims were paid within that time.

259. ACE/INA also committed the following specific acts of fraud:

a. Wrongfully representing that the 2005 *Legacy* Policy did not cover additional property damage that might occur during salvage. This representation was made directly to Peter Halmos by ACE/INA through its agents Pennekamp and/or Hutcheson on or about November 2005. The records regarding the precise timing of this fraudulent representation are likely within Defendants' possession or control: at the time, IYC and its President, was stranded on a damaged vessel, which was marooned in a National Marine Sanctuary. Plaintiffs relied on this representation to their detriment. In addition, the salvage was needlessly delayed as a direct result of ACE/INA's fraud, which caused additional pecuniary losses and property damage to Plaintiffs IYC;

b. As laid out in full detail in paragraphs 93-120 supra, wrongfully represented, through its agents Pennekamp and Hutcheson, that the salvage damages portion of the 2005 *Legacy* Policy was an indemnity-type coverage: meaning that IYC and/or Peter Halmos had to contract and pay for the salvage operation and ACE/INA's only responsibility was to "reimburse," as it deemed appropriate within its own unilateral discretion. Plaintiffs relied on this representation to their detriment. ACE/INA stood to gain from this fraud, and did in fact gained, significant financial advantage at the expense of Plaintiffs, by having Plaintiffs "front" the funding of ACE/INA's liability for salvage damages. In addition, the salvage was needlessly delayed as a direct result of ACE/INA's fraud, which caused additional pecuniary losses and property damage to Plaintiffs IYC;

c. ACE/INA regularly engaged in a pattern of fraudulent conduct in connection with its "normal" claims handling as described in the allegations above pertaining to each event of loss. The fraudulent pattern involved (1) beginning the claims adjustment process with a repugnantly low proposed estimate, coupled with an unrealistically limited "scope of work," for repair of the damaged vessel; (2) circulating the scope of work and these repair estimates to repair facilities potentially capable of repairing the damaged vessels, which thereby limited and interfered with Plaintiffs' ability to obtain a realistic scope of work and estimate. As a direct result, Plaintiffs were drawn into ACE/INA's war of

attrition; ACE/INA's fraudulent claims handling practices and their representations related thereto, put Plaintiffs into an allegorical "insurance claims adjustment meat grinder." In order to protect their interests, Plaintiffs had no choice but to become integrally and intimately involved in the fine details of the claims handling and adjustment process—all at great cost and expense to Plaintiffs, in terms of time and money; and (3) only after the application of sufficient pressure by Plaintiffs, ACE/INA would invariably increase the claims' adjusted loss valuation to its true value (a value that was known to ACE/INA all along), which in some of the incidents described above amounted to as much as twenty (20) times the value of ACE/INA's original loss estimate and proposed scope of work. Thus, as to the *Mongoose* claim (see supra 67-74), ACE/INA initially offered $19,800, which was just under the deductible for the applicable Policy; ultimately, on or about the time Plaintiffs were forced to file this lawsuit, ACE/INA paid approximately $393,000 for the *Mongoose* loss without reservation of rights—twenty times the initial, repugnantly low proposed estimate from ACE/INA. ACE/INA still has not paid anything for the years of dockage, protection against further damage, legal, administrative, and other expenses which now exceed the damages repair estimates and could have been avoided had ACE/INA honestly settled the M/Y *Mongoose*, claim in October 2005. ACE/INA entered into a similar course of conduct with regard to *Island Runner* and ultimately the *Legacy* also.

260. The representations described above were made with the intent that each of the Plaintiffs would rely on them.

261. These representations were false at the time they were made, and ACE/INA knew at the time the representations were made that they were false, or made such representations in reckless disregard of their truth or falsity.

262. Each such representation was material. Each of the Plaintiffs had the right to rely on such representations, and in fact did rely on such representations. None of the Plaintiffs knew of the falsity of the representations.

263. As a result, each of the Plaintiffs suffered damages in connection with the incidents described above.

WHEREFORE, IYC and HPC demand judgment against ACE/INA, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper.

Count 16. Fraud-Strickland

264. Plaintiff IYC re-alleges paragraphs 11-25, 47-59 and 147-151.

265. Strickland made certain representations to IYC that it would obtain an increase in the hull damage policy limits for *Legacy* as full set out in paragraphs 47-59 supra.

266. These representations were false at the time they were made, and Strickland knew at the time of making these representations that they were false, or made such representations in reckless disregard of their truth or falsity.

267. Each such representation was material. IYC had the right to rely on such representations, and in fact did rely on such representations.

268. IYC did not know of the falsity of the representations.

269. As a result, IYC suffered damages in connection with the incidents described above.

WHEREFORE, IYC demands judgment against STRICKLAND, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper

VI. PETER HALMOS'S CAUSES OF ACTION

Count 17. Common Law and Statutory Bad Faith/Extra-Contractual Claims

269. Halmos re-alleges paragraphs 11-25, 60-62, 75-120 and 129-142 as if fully set forth herein.

270. ACE/INA's adjusters, including but not limited to Hutcheson and Pennekamp, violated Fla. Stat. § 626.877, in that they failed to adjust or investigate each of the claims herein and the damages or losses therefrom, in accordance with the terms and conditions of the contract and the applicable laws of Florida (including Fla. Stat. § 620.860).

271. ACE/INA, by their acts and omissions, for each of the Hit and Run, and *Legacy*/Wilma incidents, and for all of these incidents combined, violated the provisions of Fla. Stat. § 624.155. More specifically, ACE-INA:

a. Made material misrepresentations to an insured or other person having an interest in the proceeds payable under such contract or policy, for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract or policy on less favorable terms than those provided in, and contemplated by such contract or policy;

b. Committed or performed with such frequency as to indicate a general business practice some or all of the following:

1. Delaying the payment of policy limits for a period of years when it knew or should have known that the damages exceeded policy limits.

2. Failing to adopt and implement standards for the proper investigation of claims;

3. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

4. Failing to acknowledge and act promptly upon communications with respect to claims;

5. Failing to promptly provide a reasonable explanation in writing to the insured of the basis in the insurance policy, in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement;

6. Failing to promptly notify the insured of any additional information necessary for the processing of a claim; or

7. Failing to clearly explain the nature of the requested information and the reasons why such information is necessary;

c. Did not attempt in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests;

d. Failed to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

272. By virtue of their failure to comply with the requirements of Fla. Stat. § 624.155, ACE/INA are liable to Halmos, in addition to the amount of the claim, for additional damages caused by the alleged violations of the statute, including, but not limited to damages caused by the delays instituted by ACE/INA as they adversely and individually affected Halmos, court costs, attorneys' fees, and interest on all of the foregoing amounts at the maximum rate allowed by law. These additional damages are separate and apart from the unpaid policy benefits.

273. Additionally, Plaintiffs would show that the acts and/or omissions of ACE/INA giving rise to the aforesaid violations occur with such frequency, involving separate claims by different insureds on different vessels, as to indicate a general business practice and such acts and/or omissions were willful, wanton, and malicious, or in reckless disregard for the rights of any insured. Therefore, Halmos is entitled under Fla. Stat. Ann. § 624.155(5) to judgment against ACE-INA for punitive damages.

274. The requisite statutory notice, attached and incorporated herein, has been filed with the State of Florida and provided to ACE/INA on or about the dated this amended complaint is filed. A copy of that statutory notice is attached as Exhibit 7 and incorporated herein.

Count 18. Negligent Misrepresentation-ACE/INA

275. Halmos re-alleges paragraphs 26-120 and 129-142 as if fully set forth herein.

276. ACE/INA made the following representations to Halmos: (1) falsely representing to Halmos that the Mongoose claims were not covered (see paragraphs 72-74); (2) representing to Halmos in October of 2005 that he must "take all steps necessary to mitigate damages to the Legacy." A requirement that went above and beyond that which was required of IYC under the policy; (3) falsely convincing Halmos in October/November of 2005 that damage caused by to the sanctuary by the Legacy was not covered under the policy; and (4) falsely representing to Halmos that the Legacy did not have any tortional damage after the Sol incident.

277. These representations are further detailed in paragraphs 92-103 supra.

278. ACE/INA intended for Halmos to personally rely on these representations.

279. As a result, Halmos did rely on these representations and incurred personal expenses and damages. And, had to take a hands-on approach to the claims were in he personally funded many of the operations and lived on the vessel to protect it from further damage.

280. The wrongful acts of ACE/INA have placed Peter Halmos, individually, in such a relation to the situation that it became necessary for him to incur expenses, attorneys fees, the loss of value of his own time, and other costs, in order to protect his interests,

all of which he is entitled to recover as a legal consequence of the original wrongful acts of ACE-INA.

WHEREFORE, Halmos demands judgment against INA and ACE, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper.

Count 19. Negligent Misrepresentation-Strickland

281. Halmos re-alleges paragraphs 11-25, 47-59 and 147-151 as if fully set forth herein.

282. Strickland undertook to obtain coverage for Halmos individually and for IYC an increase in the hull damage liability limits for *Legacy*. Such increase was to be effective immediately after the surveys were completed.

283. Strickland owed a duty of care to see that it communicated truthful information to IYC and Halmos.

284. In turn, Strickland intended for Halmos individually to rely on the representations made to IYC and to Halmos individually.

285. Strickland breached that duty by failing to exercise due care and negligently making the statements and representations enumerated in paragraphs 11-25 and 52-57 supra, because it should have known that the statements and representations were false.

286. Halmos justifiably relied on the statements and representations from Vance Barker that the hull damage liability for the Legacy would be increased to $27 million. Further, Halmos justifiably relied that the ACE/INA policy would have him as a named

insured, as the previous policy obtained through Strickland with Independent had Halmos as a named insured.

287. Halmos suffered a pecuniary loss, injury or damage as the proximate result of its reliance on the statements and representations in connection with the incidents described above.

288. Strickland is liable to Plaintiffs for the aforementioned negligence under the "wrongful acts doctrine" pursuant to Florida law.

289. The wrongful acts of Strickland have placed Peter Halmos, individually, in such a relation to the situation that it became necessary for him to incur expenses, attorneys fees, the loss of value of his own time, and other costs, in order to protect his interests, all of which he is entitled to recover as a legal consequence of the original wrongful acts of Strickland.

WHEREFORE, Halmos demands judgment against STRICKLAND, together with interest, costs, and such further relief as the Court deems just and proper.

Count 20. Fraud-ACE/INA

290. Halmos re-alleges paragraphs 26-120 and 129-142 as if fully set forth herein.

291. ACE/INA made certain representations to Halmos prior to and at the time of entering into the policies attached as exhibits 2-6, in exchange for the premiums paid, it would take on the risk of losses and mobilize an international group of experts to provide a quick and fair resolution of damage claims, including payment of certain losses within 30 days pursuant to the Policy terms.

292. That representation was knowingly false when made and intended to deceive Halmos.

293. ACE/INA also committed the following specific acts of fraud which are alleged in more detail in paragraphs 92 – 120 above:

a. Wrongfully representing that the 2005 *Legacy* Policy did not cover additional property damage that might occur during salvage. This representation was made directly to Plaintiffs, including Peter Halmos, by ACE-INA through its agents Pennekamp and/or Hutcheson on or about November 2005. Plaintiffs relied on this representation to his detriment, the consequence of which was that Peter Halmos, individually, had to become intimately involved in the process of securing a suitable salvage methodology, all at great costs and expense to him, both in terms of the value of his time and money. In addition, the salvage was needlessly delayed as a direct result of ACE/INA's fraud, which caused additional pecuniary losses and property damage to Plaintiffs;

b. Wrongfully representing, through its agents Pennekamp and Hutcheson, that the salvage damages portion of the 2005 *Legacy* Policy was an indemnity-type coverage: meaning that IYC and/or Peter Halmos had to contract and pay for the salvage operation and ACE/INA's only responsibility was to "reimburse," as it deemed appropriate within its own unilateral discretion. Plaintiffs relied on this representation to his detriment, the consequence of which was that Plaintiffs, individually, had to become intimately involved in the process of securing and paying for a suitable salvage methodology, all at great costs and expense to him, both in terms of the value of his time and money. ACE/INA stood to gain from this fraud, and did in fact gain, significant financial advantage at the expense of Plaintiffs, by having Plaintiffs "front" the funding of ACE/INA's liability for salvage damages, and by having Plaintiffs devote countless hours, days, and months of his time in negotiating a salvage plan. In addition, the salvage was needlessly delayed as a direct result of ACE/INA's fraud, which caused additional pecuniary losses and property damage to Plaintiffs;

c. The facts above make clear that ACE-INA regularly engaged in a pattern of fraudulent conduct in connection with its "normal" claims handling. The fraudulent pattern involved (1) beginning the claims adjustment process with a repugnantly low proposed estimate, coupled with an unrealistically limited "scope of work," for repair of the damaged vessel; (2) circulating the scope of work and these repair estimates to repair facilities potentially capable of repairing the damaged vessels, which thereby limited and interfered with Plaintiffs' ability to obtain a realistic scope of work and estimate. As a direct result, Plaintiffs were drawn into ACE-INA's war of attrition; ACE-INA's fraudulent claims handling practices and their representations related thereto, put Plaintiffs into an allegorical "insurance claims adjustment meat grinder." In order to protect his interests, Plaintiffs had no choice but to become integrally and intimately involved in the fine details of the claims handling and adjustment process—all at great cost and expense to Plaintiffs, in terms of time and money, and at great personal expense, sacrifice, and frustration; and (3) only after the application of sufficient pressure by Plaintiffs and the other insureds, ACE-INA would invariably increase the

claims' adjusted loss valuation to its true value (a value that was known to ACE-INA all along), which in some of the incidents described above amounted to as much as twenty (20) times the value of ACE-INA's original loss estimate and proposed scope of work. Thus, as to the *Mongoose* claim, ACE-INA initially valued the loss at $19,800, which was just under the deductible for the applicable Policy; ultimately, on or about the time Plaintiffs were forced to file this lawsuit, ACE-INA paid approximately $393,000 for the *Mongoose* loss without reservation of rights—twenty times the initial, repugnantly low proposed estimate from ACE-INA. ACE-INA still has not paid anything for the years of dockage, protection against further damage, legal, administrative, and other expenses which now exceed the damages repair estimates and could have been avoided had ACE-INA honestly settled the M/Y *Mongoose*, claim in October 2005. ACE-INA entered into a similar course of conduct with regard to *Island Runner* and ultimately the *Legacy* also.

295. The representations described above were made with the intent that Halmos would rely on them.

296. These representations were false at the time they were made, and ACE-INA knew at the time the representations were made that they were false, or made such representations in reckless disregard of their truth or falsity.

297. Each such representation was material. Halmos had the right to rely on such representations, and in fact did rely on such representations

298. As a result, Halmos suffered damages in connection with the incidents described above.

299. In addition to the above, ACE-INA are liable to Plaintiffs for the aforementioned fraud under the "wrongful acts doctrine" pursuant to Florida law. The wrongful acts of ACE-INA have placed Halmos, individually, in such a relation to the situation that it became necessary for him to incur expenses, including without limitation attorneys fees, the loss of value of his own time, and other costs, in order to protect his interests, all of which he is entitled to recover as a legal consequence of the original wrongful acts of ACE-INA.

WHEREFORE, Halmos demands judgment against INA and ACE, together with interest, costs, and such further relief as the Court deems just and proper.

Count 21. Fraud-Strickland

300. Halmos re-alleges paragraphs 11-25, 47-59 and 147-151.

301. Strickland made representations to Halmos individually that it would obtain an increase in the hull damage policy limits for *Legacy* as fully set out in paragraphs 47-59 supra *and* that Halmos would be an insured under the policy as he had previously been insured with Independent.

302. These representations were false at the time they were made, and Strickland knew at the time of making these representations that they were false, or made such representations in reckless disregard of their truth or falsity and that Halmos would rely on them.

303. Each such representation was material and made with the intention that Halmos would rely on them.

304. Halmos did not know of the falsity of the representations—in fact, only during the course of discovery in this action found out that he was not a named insured.

305. As a result, Halmos suffered damages in connection with the incidents described above.

306. In addition to the above, Strickland is liable to Plaintiffs for the aforementioned fraud under the "wrongful acts doctrine" pursuant to Florida law. The wrongful acts of Strickland knowingly has placed Halmos, individually, in such a relation to the situation that it became necessary for him to incur expenses, including without limitation attorneys fees, the loss of value of his own time, and other costs, in order to protect his

interests, all of which he is entitled to recover as a legal consequence of the original wrongful acts of Strickland.

WHEREFORE, Halmos demands judgment against STRICKLAND, together with interest, costs, and such further relief as the Court deems just and proper.

CLAIMS OF ALL THREE PLAINTIFFS

Count 22. Violation of Florida Civil Remedies for Criminal Practices Act (FCRCPA; Fla. Stat.§772.101-772.19) –ACE/INA/STRICKLAND

307. Paragraphs 11-16, 20-74 and 91-161 are adopted and incorporated by reference.

308. Various facts alleging several grounds to support a violation of the RICO counts are alleged in the forgoing paragraphs and will not be repeated here. In addition thereto, the Plaintiffs would show grounds in further support of RICO violations.

309. Defendant INA, in concert with independent entities Strickland, Hutcheson, Pennekamp, Licina, ACE INA, its subsidiaries and related ACE USA corporations, Joseph Ackerman of Fowler White, Luis G. Dominguez of Fowler Rodriguez, and Kenneth Engerrand in his claims adjuster have violated Fla. Stat. 722 and 18 U.S.C. §§ 1961, 1962, common law conspiracy and common law aiding and abbiding by conducting an enterprise of developing guidelines, timelines and standards to deny, diminish and delay claims by engaging co-conspirators and others to further a system to manipulate claims for the purpose of minimizing INA's costs as well as the costs of its parent corporation and related corporations by participating in a pattern of racketeering activity.

310. Strickland willingly participated in said scheme for the purpose of increasing its profits while minimizing the cost of the enterprise to the detriment of its instant

policyholders IYC & HPC and Halmos. Strickland brokered insurance on behalf of the plaintiffs and therefore was their agent and fiduciary. Strickland breached its fiduciary duty to plaintiffs by choosing a carrier engaged in an enterprise that would profit from the loss ratio bonuses (a/k/a contingent commissions) and the finite re-insurance scheme because of INA's history of manipulating of the claims handling process in concert with the proven track record of the "claims gang." INA and Strickland and other co-conspirators are guilty of fraud by failing to disclose the claims delay, diminishment and denial purposes of their finite reinsurance contingent commission arrangement.

311. Without disclosing to Plaintiffs, INA reimburses Strickland a percentage of premiums collected for each policy year based on the loss-profit of each insurance policy and did so or attempted to do so. Although a contingent commission contract may not be unlawful per se, in this case, the concealed manipulation of the adjustment of claims to artificially create a gain to the enterprise to the detriment of Policyholders IYC, HPC and to Halmos is actionable. Thus they share the profits of each policy by delaying, diminishing and denying. It is to the mutual benefit of all participants in the enterprise that claims are denied, diminished and delayed. The scheme involves the evading of payment of legitimate claims, such as occurred in this case whereby benefits owed for damage to the subject vessels, other insured property, salvage claim benefits, repair, and other legitimate claims were denied, diminished and delayed for the purpose of seeking unearned profits from the contingent commission arrangement. The participants engaged in a pattern of said racketeering in the incidents cited in this complaint as well as with other policyholders. The denial, diminishment and delay of payment caused injury and damage to insured and uninsured property and increases

loss to the policyholder's property, physical injury, as well as a loss of use of money to all plaintiffs.

312. The contingent commission arrangement was either known or recklessly disregarded by others conducting the enterprise, *to wit:* Hutcheson, Pennekamp, Licina, ACE INA, its subsidiaries and related ACE USA corporations, Joseph Ackerman of Fowler White, Luis G. Dominguez of Fowler Rodriguez, and Kenneth Engerrand in his claims adjuster capacity.

313. The pattern of predicate acts cannot be carried out without the participation of adjusters, surveyors, and salvors willing to provide offers to settle known to be grossly undervalued, grossly undervalued surveyor and estimates of repair, and grossly undervalued salvage operations and falsely representing to all Plaintiffs that claims are not covered under the applicable policy when in fact coverages has been paid for and does exist. The allegations adopted and referenced above describe the occurrences of these misrepresentations in this case involving *Island Runner*, *M/V Mongoose*, and *S/Y Legacy* on various occasions relating to separate incidents, and cover a period of time starting in 1995 and continuing to the present time which circumstances demonstrate a pattern of predicate acts.

314. Defendant INA has a fundamental and undeniable duty to provide fair compensation in a timely manner for covered losses and not to engage in a fraudulent scheme to avoid its obligations for the purpose of minimizing its costs.

315. The conduct of the illegal enterprise took place over a period of 14 years involving several distinct incidents, while in concert with and aided and abetted by the various said participants.

316. In order to further the subject scheme INA invited the participation of entities such as surveyor/estimator Hutcheson, when they knew he would "play along" because he would be well compensated and re-hired time and again so that he would continue to "cooperate."

317. Another aspect of the improper enterprise is referred within the industry as "finite reinsurance." This enterprise involved INA, its parent and related corporations, acting in concert with reinsurers and other said participants for the purpose of delaying payment for a three-year period. Under this scheme, reinsurers are protected by INA and the participants from claims for a period of at least three years in exchange for reduced or reimbursement of premiums which minimize the insurer's costs. Like the contingent commission arrangement, their concealed finite re-insurance scheme also requires the cooperation of said participants. The scheme was well known or recklessly disregarded by the participants. This scheme, also by its very nature, resulted in a denial, diminishment, and delay of the alleged claims and was in effect from 1995 to the present time to the detriment of all three Plaintiffs demonstrates a pattern of predicate acts involving said co-conspiracy. The longer the delay, the greater the reward to the enterprise.

318. The violations described herein involved the use of U.S. mail, electronic messaging, and the telephone. A substantial portion of the said communications crossed state lines.

319. ACE-INA and Strickland violated FCRCPA, Fla. Stat. § 772.103(1), (2), (3), and (4), in that they are persons who have received income derived, directly or indirectly, from a pattern of racketeering activity, and they used some part or all of that income,

directly or indirectly, in the operation of an enterprise which is engaged in or the activities of which affect interstate or foreign commerce.

320. They are persons who through a pattern of racketeering activity acquired or maintained, directly or indirectly, an interest in or control of an enterprise which is engaged in, or the activities of which affected interstate or foreign commerce; they are persons associated with an enterprise engaged in, or the activities of which affect, interstate or foreign commerce, and they conducted or participated, directly or indirectly, in the conduct of that enterprise's affairs through a pattern of racketeering activity; and/or they are persons which conspired to violate provisions of Fla. Stat. § 772.103(1), (2) and/or (3).

321. Defendants engaged in a pattern of criminal activity as defined in §772.102 and in doing so engaged in a series of two or more related predicate acts extending over a substantial period of time. Said predicated acts are related to one another and demonstrate criminal conduct of continuous nature.

322. Defendants, at all times material, with criminal intent received proceeds derived directly and/or indirectly from a pattern of criminal activity in the establishment or operation of an enterprise. At all times material, Defendants engaged in the establishment or operation of an enterprise to conduct or participate in such enterprise through a pattern of criminal activity by denying and/or diminishing and/or delaying payment of claims of Plaintiffs. The said enterprise consisted of defendants INA, Strickland, Hutchinson, Pennekamp, and other persons. The said criminal activities violated with criminal intent and is subject to indictment or information or a criminal

offense under 18 U.S.C. 1961 (1)(a), (b), (c), and or (d). The conduct made the basis of this Count is set forth in Paragraphs 1-160 of the Complaint, *supra* and in this Count.

323. That conduct was conducted by an enterprise comprised of Defendant ACE-INA, Strickland and other agents, including their employees and purportedly "independent" third-parties. These include the individuals identified above, and the statutory notice of bad faith incorporated and attached hereto as Exhibit 1, which consist of ACE-INA and Strickland employees, outside attorney(s) hired by ACE-INA, and "surveyor(s)" hired by ACE-INA.

324. The enterprise conducted its racketeering activities through a pattern of systematic, routine and continuous acts and omissions as alleged in detail below.

325. This pattern has spanned several years, across multiple ACE-INA policies involving multiple ACE-INA insureds and concerning a number of different incidents that give rise to the insurance claims.

326. The racketeering activity included, and was accomplished by, the use of the mails or wires as described in more detail below.

327. That conduct was designed to, and in fact did, result in deprivation of money or property that Plaintiffs should have received or which Plaintiffs should not have otherwise had to pay or been deprived of. Plaintiffs lost the use of such money or property while it has and continues to remain in the possession or for the benefit, of Defendants ACE-INA and Strickland.

328. Plaintiffs relied on the misrepresentations detailed below.

329. Such misrepresentations would have been relied on by a reasonable person.

Plaintiffs suffered injury as a result of such reliance, and he incurred a specifiable amount of damages. Those damages are currently estimated at $25 million.

The specific predicate acts and improper scheme are the following:

a. On June 28, 2003, ACE-INA insured the S/Y *Legacy* and corresponding vessels, all of which were owned by IYC. This insurance was obtained through Strickland and delivered through the use of the mail to Plaintiffs; and Strickland was supposed to assist Plaintiffs in recovering on their claims. However, Strickland failed and refused to do so.

b. On June 28, 2003 one of *Legacy*'s tenders, the *Island Runner*, was lost at sea. After two days of searching for her, Plaintiffs located the *Island Runner*. Upon reporting the incident, ACE-INA first fraudulently claimed that the loss did not exceed the deductible. That communication was sent via U.S. Mails in furtherance of delaying payments known to be due.

c. On May 27, 2004, ACE-INA requested through the use of U.S. mails additional information in order to intentionally delay the claims process. Then, roughly two years after the loss (July 2005), ACE-INA intentionally made a "low ball" settlement offer of only $50,000. In September 2005, ACE-INA increased this offer to $78,000. That communication was sent via U.S. Mails in furtherance of delaying payments known to be due.

d. Finally, roughly three years after the loss (July 3, 2006), ACE-INA ultimately offered what it claimed to be the policy limits for *Island Runner*. These statements as to the amount of damages incurred, requests for additional information, and disingenuously low settlement offers, were made by employees of ACE-INA by U.S. mail and/or email.

e. Each was intentionally made as a false representation of the amount of damages owed under the policy and with a criminal intent for a design to delay the claims process in an attempt to illegally reduce the amount of money that ACE-INA would have to pay on this loss, and illegally obtain the time value of the money for ACE-INA. Furthermore, a portion of such money was used to pay Strickland additional contingent commissions via wire transfer.

f. Each of these mailings and emails violated 18 U.S.C. §§ 1341 and 1343, which in turn then amount to racketeering activity as defined in 18 U.S.C. § 1961 and criminal activity as defined at Fla. Stat. § 772.102.

g. Such false representations also violated Fla. Stat. § 817.034 (Florida Communications Fraud Act) and § 817.29 (gross fraud or cheating at common law), and as such amount to criminal activity as defined at Fla. Stat. § 772.102.

h. Since these multiple mailings and emails, show that ACE-INA received income derived, directly or indirectly, from a pattern of racketeering/criminal activity and used or invested, directly or indirectly, a part of such income or the proceeds of such income, in the operation of an enterprise which is engaged in or the activities of which affect interstate or foreign commerce, that ACE-INA, through a pattern of racketeering/criminal activity, acquired or maintained, directly or indirectly, an interest in or control of an enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce, and that ACE-INA conducted an enterprise through a pattern of racketeering activity, ACE-INA and Strickland have violated Fla. Stat. § 772.103(1), (2), and (3).

i. On July 31, 2004, ACE-INA insured the *Legacy* and corresponding vessels, all of which were owned by IYC. This insurance was obtained through Strickland, and Strickland was supposed to assist Plaintiffs in recovering on their claims. However, Strickland failed and refused to do so. Strickland delivered the Policy via U.S. mail, and/or wire and acknowledged its obligation to assist via communications via mail or wire.

j. On July 31, 2004, *Legacy* was the victim of a collision with a small pleasure craft. Halmos was injured as a result of this collision. The incident was reported to ACE-INA that day. However, many months went by without ACE-INA clarifying the nature of the possible claims, which caused confusion and delay. ACE-INA did not formally begin processing this claim until more than a year had passed.

k. This confusion was intentionally caused by mail and email from employees of ACE-INA, designed with criminal intent to delay the claims process in order to try to save ACE-INA money on the claim and illegally obtain the time value of the money that should have been paid to IYC and Halmos.

l. Specifically on the following dates communications were sent to Halmos with the intent to deceive Plaintiffs: on August 27, 2004, September 27, 2004, October 8, 2004, March 23, 2005, March 29, 2005, May 2, 2005, June 20, 2005, August 29, 2005, August 30, 2005, September 1, 2005, September 2, 2005, September 9, 2005 and September 16, 2005 communications were sent from ACE/INA to Halmos with the intent to deceive Halmos and delay the claims process. Those communications were sent via U.S. Mails in furtherance of delaying payments known to be due. Furthermore, a portion of such money was used to pay Strickland additional contingent commissions.

m. Each of these mailings and emails violated 18 U.S.C. §§ 1341 and 1343, which in turn then amount to racketeering activity as defined in 18 U.S.C. § 1961 and criminal activity as defined at Fla. Stat. § 772.102. Such mailings and emails also violated Fla. Stat. § 817.29, and as such amount to criminal activity as defined at Fla. Stat. § 772.102.

n. Since these multiple mailings and emails, show that ACE-INA received income derived, directly or indirectly, from a pattern of racketeering/criminal activity and used or invested, directly or indirectly, a part of such income or the proceeds of such income, in the operation of an enterprise which is engaged in or the activities of which affect interstate or foreign commerce, that ACE-INA, through a pattern of racketeering/criminal activity, acquired or maintained, directly or indirectly, an interest in or control of an enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce, and that ACE-INA conducted an enterprise through a pattern of racketeering activity, ACE-INA and Strickland have violated Fla. Stat. § 772.103(1), (2), and (3).

o. As previously alleged, in 2005, ACE-INA insured the *Mongoose*. That insurance was obtained through Strickland, and Strickland was supposed to assist Plaintiffs in recovering on their claims. However, Strickland failed and refused to do so. Ultimately, ACE-INA offered policy limits, which were many multiples higher than its initial offer. The arrangements for the surveys, the communications concerning the damages and survey results, and the lowball offers were made by ACE-INA and/or its agents Hutcheson and Pennekamp, and by Strickland, by mail and email.

p. Specifically, the following communications were sent to Halmos with the intent to deceive Plaintiffs: on September 14, ACE/INA directed HPC to communicate with its claims adjuster lawyer Pennekamp. The next day, on September 15, 2005 Pennekamp improperly and fraudulently denied HPC's claim falsely representing there was no coverage under the policy. After numerous correspondence and low ball offers, on February 23, 2009 ACE hired another surveyor and sent a check in partial payment to Halmos.

q. Those communications were sent via U.S. Mails in furtherance of delaying payments known to be due.

r. These activities were false representations designed to reduce the amount of money that ACE-INA would have to pay for the loss, and in an attempt to have Plaintiffs capitulate to accept an unreasonably low settlement. ACE-INA used the money illegally saved by such actions to acquire or maintain an interest in, and to operate an enterprise, *i.e.,* ACE-INA, which is engaged in or the activities of which affect, interstate commerce. Furthermore, a portion of such money was used to pay Strickland additional contingent commissions. Therefore, ACE-INA and Strickland have violated Fla. Stat. § 722.103(1) (2) and (3). Each of the aforementioned mailings and emails violated 18 U.S.C. §§ 1341 and 1343, which amount to racketeering activity as defined in 18 U.S.C. § 1961 and criminal activity as defined in Fla. Stat. § 722.102(4). Such false representations also violated Fla. Stat. §§ 817.034 and 817.29, and as such amount to criminal activity as defined at Fla. Stat. § 772.102. Since these multiple mailings and emails, along with the other similar violations alleged herein, show that ACE-INA conducted an enterprise through a pattern of racketeering activity and/or conspired with Strickland, Pennekamp and/or Hutcheson to violate Fla. Stat. § 722.103(1), (2), and (3), ACE-INA has violated Fla. Stat. § 722.103(4).

s. Beginning in late 2003, prior to Hurricane Wilma, IYC and Halmos repeatedly asked ACE-INA, through Strickland, to increase the damage limits of the *Legacy* Policy to reflect $27 million cash value (replacement cost minus depreciation). ACE-INA increased the damage coverage from $14 million to $16 million without paying IYC the $11 million in sol collision damages that rendered Legacy's from $27 million to $16

million. In the meantime, the 2004-2005 *Legacy* Policy went into effect in August 2004. Neither Strickland nor ACE-INA informed Plaintiffs that INA would not pay for the $11 million SoI collision damages, nor would INA increase the Legacy Policy to the $30 million cash value level.

t. Although the 2004-2005 *Legacy* Policy reflects the $16 million damage limit, ACE/INA and Strickland knew IYC and Halmos expected prompt payment of the $11 million SoI collision damages and, after repairs increased in coverage to at least $27 million. ACE-INA, Strickland, IYC, Halmos – knew the damage limit was to increase to $30 million after completion of the survey. Due to ACE-INA's delay after completion of the 2004 survey, ACE-INA dispatched its "independent surveyor" Hutcheson to inspect and take photographs of *Legacy* in September 2005, as she was anchored in Key West. Thereafter, Plaintiffs expected to receive the $11 million SoI collision payment within days, and subsequent increase in the hull coverage to at least $27 million. At no time did IYC and/or Halmos agree to the nominal $16 million damage limit instead of the $30 million cash value, nor was there any discussion with anyone that *Legacy's* insurance contract is an "agreed value" policy. There is no reference to "agreed value" in any of *Legacy's* insurance contracts.

u. At the time, IYC and Halmos were unaware that Strickland had a contingent commission arraignment with ACE-INA. Based upon information and belief, from information provided by another individual who has used Strickland as his broker to obtain insurance on his vessel, and that individual's conversations with Vance Barker, the Strickland agent of record for the ACE-INA Policies at issue herein, it is alleged that Strickland was involved in the contingent commission scheme found by the Attorney General of New York, and was thus involved in a conspiracy with ACE-INA to cheat Plaintiffs out of their premiums and proceeds that should have been paid to Plaintiffs on their legitimate claims.

v. Communications between ACE-INA and Strickland concerning the request to increase the policy limits were made by both mail and email, which therefore each constitute a violation of 18 U.S.C. §§ 1341 and 1343, which in turn then amount to

racketeering activity as defined in 18 U.S.C. § 1961 and criminal activity as defined in Fla. Stat. § 722.102(4).

w. Specifically on the following dates, communications were sent to Halmos with the intent to deceive Plaintiffs: on April 20, 2004, September 27, 2004, November 3, 2004, February 2, 2005, May 6, 2005, June 15, 2005, July 1, 2005, July 18, 2005, September 7, 2005 and September 11, 2005 ACE/INA and Strickland sent communications to Halmos intended to deceive Halmos in furtherance of undervalued and more restrictive coverage to obtain for Strickland an increase in commission, obstructing claims to collect contingent commissions. Furthermore, on or about August of 2001, Strickland sent a communication to induce IYC to sign an application for coverage, when Strickland had already bound the policy prior to any application having been filled out by IYC. The most damning communication of all was sent on October of 2005 via U.S. mail from ACE/INA where in they demanded he must "take all steps necessary to mitigate damages to the Legacy." An act that was above and beyond what the policy required.

x. Since these multiple mailings and emails, along with the other similar violations alleged herein, show that ACE-INA and Strickland conducted an enterprise through a pattern of racketeering activity and/or conspired with each other and/or Hutcheson to do so, ACE-INA and Strickland have violated Fla. Stat. § 722.103(1), (2), (3) and/or (4).

y. Pennekamp's aforementioned conduct in connection with obtaining NOAA permits in his own name was in violation of Fla. Stat. § 817.02 (obtaining property by false personation). Communications concerning these permits were made by both mail and email, which therefore each constitute a violation of 18 U.S.C. §§ 1341 and 1343, which in turn then amount to racketeering activity as defined in 18 U.S.C. § 1961 and criminal activity as defined in Fla. Stat. § 722.102(4). Additionally, since the obtaining of the permits by Pennekamp violated Fla. Stat. § 817.02, that also amounts to criminal activity as defined at Fla. Stat. § 772.102.

z. Specifically on the following dates, communications were sent to Halmos with the intent to deceive Plaintiffs: On November 4, 2005 – a Hutcheson email, on February 6, and 13 2006 – a Pennekamp email, on March 30 – another Pennekamp email, on April

15 and 27 – more Pennekamp emails, on June 1, 2, 22 and 24 2006 several more Pennekamp emails. These communication were sent via U.S. Mails/emails in furtherance of delaying payments known to be due and obstructing the permitting process. Each of these emails copies various members of the enterprise identified above.

aa. Since these multiple mailings and emails, along with the other similar violations alleged herein, show that ACE-INA conducted an enterprise through a pattern of racketeering activity and/or conspired with Pennekamp to do so, ACE-INA has violated Fla. Stat. § 722.103(3) and/or (4).

bb. In March or April, 2006, ACE-INA had its representative, Hutcheson (asserted to be "independent"), conduct a supposed laser survey of *Legacy*. During this survey, Hutcheson represented to Halmos and IYC that any damage to *Legacy* during the salvage operation would not be covered. The bogus survey was nothing more than an attempt with criminal intent to provide ACE-INA with false evidence to support its false premise that any tortional damage that might be later found to have occurred to *Legacy* occurred during recovery operations, not during the hurricane or its grounding. If this scheme had been successful, ACE-INA stood to reduce the amount it would have had to pay out under the property damage portion of its policy. The scheduling of the "survey," the results of the "survey," and multiple communications concerning the "survey," were sent by mail and email by employees of ACE-INA, including but not limited to its agents, Hutcheson and Pennekamp, all on behalf of ACE-INA.

cc. Specifically, the following communications were sent to Halmos with the intent to deceive Plaintiffs and obstruct payments due to IYC: a April 20, 2006 email from Pennekamp, June 16, 2006 email from Pamela Harting-Forkey, July 13, 2006 email from Pamela Harting-Forkey, July 12, 2006 email from Pamela Harting-Forkey, August 18, 2006 email from Pamela Harting-Forkey and a November 8, 2006 emails from Pamela Harting-Forkey. Each of these communications were sent via U.S. Mails in furtherance of delaying payments known to be due.

dd. Each of these mailings and emails violated 18 U.S.C. §§ 1341 and 1343, which in turn then amount to racketeering activity as defined in 18 U.S.C. § 1961 and criminal

activity as defined at Fla. Stat. § 772.102. Such false representations also violated Fla. Stat. § 817.034 and § 817.29, and as such amount to criminal activity as defined at Fla. Stat. § 772.102.

ee. As to specific instances of wire fraud, Halmos incorporates paragraphs 154 – 161 detailing ACE/INA's wire payments to Halmos knowing that the amounts due were not those that were claimed and which should have been paid. ACE/INA made these payments with the intent to deceive Halmos in furtherance of its scheme to line its pocket.

ff. Since these multiple mailings and emails, along with the other similar violations alleged herein, show that ACE-INA received income derived, directly or indirectly, from a pattern of racketeering/criminal activity and used or invested, directly or indirectly, a part of such income or the proceeds of such income, in the operation of an enterprise which is engaged in or the activities of which affect interstate or foreign commerce, that ACE-INA, through a pattern of racketeering/criminal activity, acquired or maintained, directly or indirectly, an interest in or control of an enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce, and that ACE-INA conducted an enterprise through a pattern of racketeering activity, ACE-INA has violated Fla. Stat. § 772.103(1), (2), and (3). Additionally, since these multiple mailings and emails, along with the other similar violations alleged herein, show that ACE-INA conspired with Hutcheson and/or Pennekamp to violate Fla. Stat. § 772.103(1), (2), and/or (3), ACE-INA has violated Fla. Stat. § 772.103(4).

gg. Some of Defendants' aforementioned mailings and emails related to the allocation of payment for Plaintiffs' attorneys fees, as well as the payment of fines and penalties, the effect of which was for ACE-INA to improperly allocate attorneys fees into a diminishing coverage limit, rather than have such fees allocated under a different, and proper, coverage. These communications violated 18 U.S.C. §§ 1341 and 1343, which in turn then amount to racketeering activity as defined in 18 U.S.C. § 1961 and criminal activity as defined in Fla. Stat. § 722.102(4). Since these multiple mailings and emails, along with the other similar violations alleged herein, show that ACE-INA conducted an

enterprise through a pattern of racketeering activity and/or conspired with Hutcheson and/or Pennekamp to do so, ACE-INA has violated Fla. Stat. § 722.103(3) and/or (4). In addition to ACE-INA and Strickland, the other wrongdoers are Pennekamp and/or Hutcheson, and/or those individuals listed in the statutory notice of bad faith attached hereto as Exhibit 1 and incorporated herein.

330. All three Plaintiffs are victims. They were injured by the delay caused by the above alleged violations of RICO by ACE-INA and Strickland, resulting in additional deterioration of the vessels involved, resulting in total damages above and beyond ACE-INA's policy's limits, resulting in the loss of the time value of the money that should have been paid to Plaintiffs, and additional costs incurred in having to protect such vessels for an extended period of time, made longer by ACE-INA's violations, all of which caused and resulted in Halmos having to use his own personal assets to fund salvage, maintenance and repairs of the vessels, and other expenses that ACE-INA should have been paying for.

331. As a result of ACE-INA's and Strickland's pattern of racketeering activity and criminal activity, and the conspiracy to violate the FCRCPA, Plaintiffs have been damaged.

332. Plaintiffs are also entitled to treble damages pursuant to Fla. Stat. § 772.104.

WHEREFORE, Plaintiffs demand judgment against INA and ACE and Strickland, including treble damages, together with attorneys fees, interest, costs, and such further relief as the Court deems just and proper.

VII. Jury Demand

369. PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY FOR ALL ISSUES SO TRIABLE.

WHEREFORE, Plaintiffs respectfully pray that upon trial of this cause the Court enter judgment awarding them:

a. All actual damages suffered by Plaintiffs as a result of ACE-INA's acts and omissions, and those of its agents;

b. All actual damages as a result of Strickland's acts and omissions;

c. The declaratory relief sought by Plaintiffs as set forth above;

d. Punitive damages based on the foregoing conduct, including but not limited to treble damages as authorized in Fla. Stat. § 772.104;

e. Pre- and post-judgment interest at the highest rate allowed by law;

f. Attorneys fees and costs; and

g. Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

Joseph P Klock, Jr., Esq. FBN 156678
Jack C. Shawde FBN 0449874
JuanCarlos Antorcha, Esq., FBN 0523305
RASCO KLOCK REININGER PEREZ ESQUENAZI VIGIL & NIETO
283 Catalonia Ave
Coral Gables, Florida 33134
jklock@rascolock.com
jantorcha@rascoklock.com

- and –

Hugh J. Morgan, Esq.
THE LAW OFFICE OF HUGH J. MORGAN
P.O. Box 1117
Key West, Florida 33041
Telephone: (305) 296-5676
Facsimile: (305)296-4331
hugh@hjmorganlaw.com

Attorneys for Plaintiffs IYC and High Plains

- and –

PETER HALMOS, *pro se*
c/o Meyers & Associates, CPA
5725 Corporate Way, #101
West Palm Beach, FL 33407
Telephone: (561) 684-6604
Facsimile: (561) 684-3381
gail@meyerscpa.com

/s/ by permission

By: /s/ Hugh J. Morgan
Hugh J. Morgan
Principal Coordinating Counsel for IYC and High Plains
and as designated agent for this filing of Peter Halmos, *pro se*

OF COUNSEL:

SPOTTSWOOD, SPOTTSWOOD & SPOTTSWOOD
Jack Spottswood
500 Fleming Street
Key West, Florida 33040
Telephone: (305) 294-9556
Fax: (305) 292-1982
jack@spottswood.com

PILLSBURY WINTHROP SHAW PITTMAN LLP
Thomas A. Campbell, pending pro Hac vice
John F. Easton, pending pro Hac vice
909 Fannin, Suite 2000
Houston, Texas 77010
Telephone: (713) 276-7676
Fax: (281) 582-6037

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was served by CM/ECF and/or facsimile on counsel of record in this action on this 12th day of February:

Frank J. Sioli
Zascha B. Abbott
Brown Sims p.c.
Datran One – Suite 908
9100 South Dadeland Boulevard
Miami, Florida
Telephone: (305) 274-5507
Facsimile: (305) 274-5517
fsioli@brownsims.com

Kenneth G. Engerrand
Michael A. Varner
P. Michael Bowdoin
Brown Sims p.c.
1177 West Loop South
Tenth Floor
Houston, Texas 77027-9007
Telephone: (713) 629-1580
Facsimile: (713) 629-5027
kengerrand@brownsims.com
mvarner@brownsims.com

Scott Bassman
Dara Jebrock
Counsel for Defendant, Strickland
Cole, Scott & Kissane, P.A.
Dadeland Centre II
9150 S. Dadeland Blvd, Suite 1400
Miami, FL 33156
Facsimile: 305.373.2294
dara.jebrock@csklegal.com
scott.bassman@csklegal.com

David P. Horan
HORAN, WALLACE & HIGGINS, LLP
608 Whitehead Street
Key West, FL 33040
Telephone: (305) 294-4585
Facsimile: (305) 294-7822
dph@horan-wallace.com

Clinton Sawyer Payne
DeMahy Labrador Drake Payne & Cabeza
Alhambra Center – Penthouse
150 Alhambra Circle
Coral Gables, FL 33134
Telephone: (305) 443-4850
Facsimile: (305) 443-5960
cpayne@dldlawyers.com

/s/ JuanCarlos Antorcha

4822-3240-9093, v. 1