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Defendant United States Holdings, L.L.C.

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

(1) NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH PENNSYLVANIA, a
Pennsylvania corporation,

Plaintiff,

vs.

(2) UNITED STATES HOLDINGS, L.L.C.,
a Delaware Limited Liability Corporation;
(3) JEFFREY A. MATZ; and (4) G.J.
SKIBBEE,

Defendants.

Case No. CIV 01 0657 PHX JWS

**AMENDED ANSWER AND
COUNTERCLAIM OF MICHAEL J.
QUILLING, SUCCESSOR-IN-INTEREST
OF DEFENDANT UNITED STATES
HOLDINGS, L.L.C.**

(Jury Trial Demanded)

Michael J. Quilling, as Successor-in-Interest of defendant United States Holdings,
L.L.C. ("Defendant"), hereby files this Amended Answer to the Complaint filed by plaintiff
National Union Fire Insurance Company of Pittsburgh, Pennsylvania.

1. Defendant is without knowledge or information sufficient to form a belief as
to the truth of paragraph 1.

2. Defendant is without knowledge or information sufficient to form a belief as
to the truth of paragraph 2.

1 3. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of paragraph 3. Michael J. Quilling affirmatively alleges that he is the Successor-in-
3 Interest to defendants Jeffrey A. Matz's and United States Holdings, L.L.C.'s rights, title and
4 interest to any fidelity bonds issued to United States Holdings, L.L.C. by virtue of a court order.
5

6 4. Defendant is without knowledge or information sufficient to form a belief as
7 to the citizenship of Jeffrey Matz. However, Mr. Matz is currently incarcerated in the Santa
8 Rosa County Jail in Milton, Florida.

9 5. Defendant is without knowledge or information sufficient to form a belief as
10 to the truth of paragraph 5.

11 6. Defendant is without knowledge or information sufficient to form a belief as
12 to the truth of paragraph 6.

13 7. Defendant is without knowledge or information sufficient to form a belief as
14 to the truth of paragraph 7. However, with respect to issues of jurisdiction and venue, at this
15 time defendant does not dispute the Court's jurisdiction or venue.
16

17 8. As to the allegations in paragraph 8, defendant hereby incorporates its
18 responses to paragraphs 1 through 7 of the Complaint as set forth above.
19

20 9. As to the allegations in paragraph 9, defendant at this time has no reason to
21 doubt plaintiff's allegations that Skibbee and Matz made efforts to acquire a fidelity bond from
22 plaintiff through Resource Bonding, Inc. However, defendant is without knowledge or
23 information to form a belief as to the date(s) those efforts were undertaken or the amount of the
24 fidelity bond being sought.
25

1 10. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of paragraph 10.

3 11. As to the allegations in paragraph 11, Defendant is without knowledge or
4 information sufficient to form a belief as to the reasons plaintiff issued Commercial Crime
5 Policy No. 856-69-28 (“the Bond”) to USH and to the policy period. Defendant admits that
6 National Union issued the Bond to USH.
7

8 12. Defendant admits the allegations in paragraph 12.

9 13. With respect to the allegations in paragraph 13, defendant is generally
10 without knowledge or information sufficient to form a belief as to the truth of the allegations.
11 However, defendant admits that at some point in time USH desired to increase the fidelity
12 coverage.
13

14 14. Defendant is without knowledge or information sufficient to form a belief as
15 to the truth of paragraph 14.

16 15. As to the allegations in paragraph 15, Defendant is without knowledge or
17 information sufficient to form a belief as to the reasons plaintiff issued Commercial Crime
18 Policy No. 857-37-90 (“the Excess Bond”) to USH and the policy period. Defendant admits
19 that National Union issued the Excess Bond to USH.
20

21 16. Defendant is without knowledge or information sufficient to form a belief as
22 to the truth of paragraph 16.

23 17. Defendant admits the allegations in paragraph 17.

24 18. As to the allegations in paragraph 18, defendant affirmatively alleges that the
25 Bond and Excess Bond speak for themselves.

1 19. As to the allegations in paragraph 19, defendant affirmatively alleges that the
2 Bond and Excess Bond speak for themselves.

3 20. Defendant is without knowledge or information sufficient to form a belief as
4 to the truth of paragraph 20.

5 21. Defendant is without knowledge or information sufficient to form a belief as
6 to the truth of paragraph 21.

7 22. Defendant is without knowledge or information sufficient to form a belief as
8 to the truth of paragraph 22.

9 23. Defendant is without knowledge or information sufficient to form a belief as
10 to the truth of paragraph 23.

11 24. Defendant is without knowledge or information sufficient to form a belief as
12 to the truth of the first sentence of paragraph 24. Defendant admits the second sentence.

13 25. Defendant is without knowledge or information sufficient to form a belief as
14 to the truth of paragraph 25.

15 26. Defendant is without knowledge or information sufficient to form a belief as
16 to the truth of paragraph 26.

17 27. Defendant is without knowledge or information sufficient to form a belief as
18 to the truth of paragraph 27.

19 28. Defendant is without knowledge or information sufficient to form a belief as
20 to the truth of paragraph 28.

21 29. Defendant is without knowledge or information sufficient to form a belief as
22 to the truth of paragraph 29.

1 30. Defendant is generally without knowledge or information sufficient to form a
2 belief as to the truth or falsity of paragraph 30. However, defendant admits that a USH holding
3 account at Smith Barney was frozen.

4 31. Defendant is without knowledge or information sufficient to form a belief as
5 to the truth of paragraph 31.

6 32. Defendant is without knowledge or information sufficient to form a belief as
7 to the truth of paragraph 32.

8 33. Defendant is without knowledge or information sufficient to form a belief as
9 to the truth of paragraph 33.

10 34. Defendant admits the allegations in paragraph 34.

11 35. Defendant is without knowledge or information sufficient to form a belief as
12 to the truth of paragraph 35.

13 36. Generally defendant is without knowledge or information sufficient to form a
14 belief as to the truth of paragraph 36. Defendant is aware of an investigation conducted by the
15 Securities Division of the Arizona Corporation Commission, in cooperation with the United
16 States Attorney's Office in Phoenix.

17 37. Defendant is without knowledge or information sufficient to form a belief as
18 to the truth of paragraph 37.

19 38. Defendant is without knowledge or information sufficient to form a belief as
20 to the truth of paragraph 38.

21 39. Defendant is without knowledge or information sufficient to form a belief as
22 to the truth of paragraph 39.

1 40. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of paragraph 40.

3 41. Defendant is without knowledge or information sufficient to form a belief as
4 to the truth of paragraph 41.

5 42. Defendant is without knowledge or information sufficient to form a belief as
6 to the truth of paragraph 42.

7 43. Defendant is without knowledge or information sufficient to form a belief as
8 to the truth of paragraph 43.

9 44. Defendant is without knowledge or information sufficient to form a belief as
10 to the truth of paragraph 44.

11 45. Defendant is without knowledge or information sufficient to form a belief as
12 to the truth of paragraph 45.

13 46. Defendant is without knowledge or information sufficient to form a belief as
14 to the truth of paragraph 46.

15 47. Defendant is without knowledge or information sufficient to form a belief as
16 to the truth of paragraph 47.

17 48. Generally defendant is without knowledge or information sufficient to form a
18 belief as to the truth of paragraph 48. However, defendant is aware that some investors have
19 taken actions to recover their losses against the Bond and Excess Bond.

20 49. Defendant is without knowledge or information sufficient to form a belief as
21 to the truth of paragraph 49.

1 50. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of paragraph 50.

3 51. Defendant is without knowledge or information sufficient to form a belief as
4 to the truth of paragraph 51.

5 52. Defendant admits the allegations in paragraph 52.

6 53. As to the allegations in paragraph 53, defendant admits that Matz submitted a
7 Notice of Claim (Exhibit 3). Defendant affirmatively alleges that the Notice of Claim speaks
8 for itself. Defendant is without knowledge or information sufficient to form a belief as to the
9 truth or falsity as to the remaining allegations in paragraph 53.
10

11 54. Defendant is without knowledge or information sufficient to form a belief as
12 to the truth of paragraph 54.

13 55. Defendant is without knowledge or information sufficient to form a belief as
14 to the truth of paragraph 55.

15 56. Defendant admits the allegations in paragraph 56. However, Matz's criminal
16 trial has concluded.
17

18 57. As to the allegations in paragraph 57, defendant hereby incorporates its
19 responses to paragraphs 1 through 56 of the Complaint as set forth above.
20

21 58. Defendant is without knowledge or information sufficient to form a belief as
22 to the truth of paragraph 58.

23 59. Defendant is without knowledge or information sufficient to form a belief as
24 to the truth of paragraph 59.
25

1 60. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of paragraph 60.

3 61. Defendant is without knowledge or information sufficient to form a belief as
4 to the truth of paragraph 61.

5 62. Defendant is without knowledge or information sufficient to form a belief as
6 to the truth of paragraph 62.

7 63. Defendant is without knowledge or information sufficient to form a belief as
8 to the truth of paragraph 63.

9 64. Defendant is without knowledge or information sufficient to form a belief as
10 to the truth of paragraph 64.

11 65. Defendant is without knowledge or information sufficient to form a belief as
12 to the truth of paragraph 65.

13 66. Defendant is without knowledge or information sufficient to form a belief as
14 to the truth of paragraph 66.

15 67. Defendant is without knowledge or information sufficient to form a belief as
16 to the truth of paragraph 67.

17 68. Defendant is without knowledge or information sufficient to form a belief as
18 to the truth of paragraph 68.

19 69. As to the allegations in paragraph 69, defendant incorporates its responses to
20 paragraphs 1 through 68 of the Complaint as set forth above.

21 70. Defendant admits the allegations in paragraph 70.
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COUNTERCLAIM

For his counterclaim against plaintiff/counter-defendant National Union Fire Insurance Company of Pittsburgh, Pennsylvania (“National Union”), counterclaimant Michael J. Quilling, as Successor-In-Interest of defendant United States Holding, L.L.C. (“Quilling”) alleges as follows:

1. Quilling is a resident of Texas and the appointed S.E.C. receiver of the Hammersmith Trust, et al.

2. National Union is a Pennsylvania corporation with its principal place in Pittsburgh, Pennsylvania. National Union is a citizen of Pennsylvania pursuant to 28 U.S.C. § 1332(c)(1).

3. At all times material hereto, National Union was engaged in the business of issuing fidelity bonds and other types of insurance contracts in Maricopa County, Arizona.

4. The United States District Court, Northern District of Florida, Pensacola Division, Jeffrey A. Matz and Jeffrey A. Matz on behalf of United States Holdings LLC transferred to Quilling any and all interest in two insurance policies, numbers 856-69-28 and 857-37-90, issued by National Union. A true and correct copy of that order is attached hereto as Exhibit A and incorporated herein by reference. By virtue of that order, Quilling is the successor in interest of claims of defendant United States Holdings, L.L.C. (USH) against National Union.

5. All events that have given rise to this action occurred in Arizona. The amount in controversy exceeds \$75,000. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

1 6. On or about August 14, 1998, National Union issued a Commercial Crime
2 Policy, No. 856-69-28 to USH (“the Policy”). The Policy included a coverage limit of
3 \$5,000,000 with a deductible amount of \$10,000. The policy period for the Policy was from
4 August 13, 1998 to August 13, 1999. A true and correct copy of the Policy is attached to
5 plaintiff’s complaint as Exhibit 1.
6

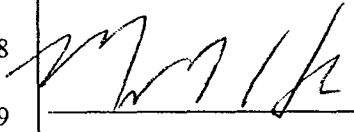
7 7. On or about November 30, 1998, National Union issued a Commercial
8 Crime Policy No. 857-37-90 (“the Excess Policy”) to USH. The policy included a coverage
9 limit of \$5,000,000 with a deductible amount of \$5,000,000. The policy period for the Excess
10 Policy was from November 20, 1998 to November 20, 1999. A true and correct copy of the
11 Excess Policy is attached to plaintiff’s complaint as Exhibit 2.
12

13 8. Upon information and belief, USH on its own behalf and on behalf of the
14 certain loss payees named in the Policy and Excess Policy (“Loss Payees”), submitted to
15 National Union a Notice of Claim in the amount of \$9,000,000 for losses of money, securities
16 or other property as a result of “employee dishonesty” as defined in the Policy. Specifically,
17 USH stated in the Notice of Claim that substantial sums of money have been stolen or have
18 disappeared via criminal means and that the thefts were allegedly committed by “agents” of
19 USH.
20

21 9. Upon information and belief, USH on its own behalf and on behalf of the
22 Loss Payees claimed that the identified losses were suffered through acts committed or events
23 occurring during the Policy Period and that USH and/or the loss payees were entitled to
24 recovery under the Policy and the Excess Policy.
25

1 COPY of the foregoing mailed
2 this 6 day of September, 2001,
3 to:

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5 Marc Cullen Goldsen, Esq.
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8 Phoenix, AZ 85012
9 Telephone (602) 258-6200
10 Attorneys for Plaintiff

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