STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY SUPERIOR COURT

No. 09-E-_____

Peter C. Hildreth, Bank Commissioner for the State of New Hampshire, as Liquidator for Noble Trust Company and Aegean Scotia Holdings, LLC

v.

Colin P. Lindsey, Eve Prachar Lindsey, Lisa Elliott (f/k/a Lisa Ordway), Medray Carpenter, George Owens, Chris Norwood, Thomas R. Anderson, AGTAX, Inc., Kerry T. Piandes, Kenneth J. Bojarski, Spencer Johnson, Anastasia Coravos, Global Financial Investors & Insurance Brokerage, Inc. (f/k/a Global Financial, Inc.), and Balcarres Group LLC

PETITION FOR ACCOUNTING, RESCISSION, RESTITUTION, AND DAMAGES, WITH JURY TRIAL DEMAND

NOW COMES the Petitioner, Peter C. Hildreth, Bank Commissioner for the State of New Hampshire, as Liquidator for Noble Trust Company and Aegean Scotia Holdings, LLC, and complains against the Respondents named above as follows:

Parties

1. Peter C. Hildreth is the Bank Commissioner for the State of New Hampshire. His business address is 53 Regional Drive, Concord, New Hampshire 03301. By order dated March 27, 2008 in the related proceeding entitled *In the Matter of the Liquidation of Noble Trust Company* (Docket No. 08-E-0053) (the "Liquidation Proceeding"), this Court appointed him as Liquidator (the "Liquidator") for Noble Trust Company ("Noble") and Aegean Scotia Holdings, LLC ("Aegean Scotia").

2. Noble is a non-depository banking institution organized and chartered under the laws of the State of New Hampshire. At all times relevant herein, its principal office was located at 900 Elm Street, Manchester, New Hampshire 03101.

3. Colin P. Lindsey ("Lindsey") is the President and a director of Noble. His address is 30 Hanover Street, #402, Manchester, New Hampshire 03101.

4. Eve Prachar Lindsey is a director of Noble. Her address is 30 Hanover Street, #402, Manchester, New Hampshire 03101. She has served as a director since September 19, 2005, and is married to Colin Lindsey.

5. Lisa Elliott (formerly known as Lisa Ordway) ("Elliott") is a director of Noble. Her address is 29 Prospect Avenue, Epsom, New Hampshire 03234. She has served as a director since May 3, 2005.

6. Medray Carpenter ("Carpenter") is a director of Noble. His mailing address is P.O. Box 540, Pagosa Springs, Colorado 81147. He has served as a director since January 18, 2006.

7. George Owens ("Owens") is a director of Noble. His address is 1524 Crystal, Kansas City, Missouri, 64126. He has been a director since September 11, 2003.

8. Chris Norwood ("Norwood") is a former director of Noble. His address is 89 Chestnut Hill Road, Amherst, New Hampshire 03031. He was a director from January 18, 2006 to December 31, 2007.

9. Thomas R. Anderson ("Anderson") is the former Vice-President and Chief Financial Officer of Noble. His address is 5858 Huntington Hills Drive, Fort Collins, Colorado 80525. His business address is 401 Matthews Street, Fort Collins, Colorado. He served as a director of Noble from September 11, 2003 to March 26, 2007.

10. Kerry T. Piandes ("Piandes") is a former director of Noble. His address is 76 Heritage Hill Road, Windham, New Hampshire 03087. He was a director from September 11, 2003 until November 15, 2005. On information and belief, Piandes is the sole owner of Global Financial Investors & Insurance Brokerage, Inc., formerly known as Global Financial, Inc. ("Global"), an insurance agent licensed to do business in the State of New Hampshire. Global's address is 254 Nashua Road, Londonderry, New Hampshire 03053. Among other things, Global is the agent of record on all insurance policies procured for the benefit of Noble's clients residing in the State of North Carolina.

11. Kenneth J. Bojarski ("Bojarski") is a former director of Noble. His mailing address is 1613 Lincoln Avenue, South Park, Pennsylvania 15129. He was a director from September 11, 2003 to July 1, 2005.

12. Spencer Johnson ("Johnson") is a former director of Noble. His mailing address is 4201 Porpoise Drive SE, St. Petersburg, Florida 33705. He was a director from May 3, 2005 to February 23, 2006.

13. Anastasia Coravos ("Coravos") is the former General Counsel of Noble. Her mailing address is 96 Village Drive, Dracut, Massachusetts 01826.

14. Balcarres Group, LLC ("Balcarres") is a Nevada limited liability company. According to records of the New Hampshire Secretary of State, Balcarres has a mailing address of 900 Elm Street, Suite 701, Manchester, New Hampshire 03101. Its registered agent is Lindsey. On information and belief, the membership interests in Balcarres are held by Lindsey, Terry Duncan, and Kevin Sullivan.

15. Aegean Scotia is a limited liability company organized under the laws of the State of New Hampshire on January 24, 2003, with a principal place of business at 900 Elm Street,

Manchester, New Hampshire 03101. Aegean Scotia was initially owned by Lindsey and Piandes. In 2006, Piandes transferred his interest in Aegean Scotia to Lindsey. Aegean Scotia is Noble's sole shareholder of record.

16. Children's Community Foundation ("CCF") is an entity organized under the laws of the State of Kansas on March 19, 1998. The initial trustees of CCF were Lindsey; Sean Campbell, of 8401 Richland Colony Road, Knoxville, Tennessee 37923; and Ramona Willits, of 923 N. 2000 Road, Lawrence, Kansas 66049. At all times relevant herein, Lindsey was the Executive Director of CCF. CCF retained Noble to serve as co-trustee or, alternatively, as trust administrator for various trusts in which CCF served as trustee.

17. AGTAX, Inc. ("AGTAX") is a corporation with a place of business at 401 Mathews Street, Fort Collins, Colorado 80524. Anderson is a principal of AGTAX.

Jurisdiction and Venue

18. This Court has jurisdiction over this proceeding pursuant to RSA 395:5; 395:9; 498:1, and 491:7.

19. Venue in this Court is proper under RSA 507:9, since the Liquidator's principal office is located in Merrimack County, and Noble's liquidation proceeding is pending in this Court.

The Liquidation Proceeding

20. Noble was chartered on September 11, 2003 as a New Hampshire domiciled nondepository bank authorized by, licensed by, and subject to regulation by the New Hampshire Banking Department (the "Department").

21. During the course of the Department's 2008 examination of Noble, numerous irregularities were discovered in Noble's operations.

22. As a result of the facts uncovered by the Department in its examination, Commissioner Hildreth concluded that Noble was conducting its business in an unsafe and unauthorized manner and that, in the interest of public safety, Noble should cease transacting business.

23. Accordingly, on February 11, 2008, Commissioner Hildreth commenced the Liquidation Proceeding by filing a Verified Petition for Liquidation (the "Liquidation Petition") in this Court, seeking the appointment of a liquidator for Noble pursuant to RSA 395:1, as well as related injunctive relief against Noble pending the Court's ruling on the Liquidation Petition. On that same day, Commissioner Hildreth appointed Deputy Commissioner Robert A. Fleury as Conservator of Noble, pursuant to RSA 396:5.

24. On March 30, 2008, this Court entered an Order (the "Liquidation Order") appointing Commissioner Hildreth as Liquidator of both Noble and Aegean Scotia.

25. The Liquidation Order gave the Liquidator broad powers, including:

a. All the powers of the officers and managers of Noble and Aegean Scotia;

b. The exclusive possession, custody, and control, of all property, contracts, and rights of action of Noble and Aegean Scotia; and

c. The right to transfer, invest, or otherwise deal with the assets of Noble and Aegean Scotia so as to effectuate their liquidation.

26. The Liquidator is in the process of marshaling the assets of Noble in order to maximize the value of its assets and its estate for the benefit of its creditors.

27. The Liquidator's investigation into Noble's assets, liabilities and financial affairs revealed that the Respondents acted in a grossly negligent fashion with client and trust funds; in

some cases, defrauded Noble and Noble's clients by concealing the true nature of Noble's investment and loss of funds entrusted to Noble by its clients; and breached their fiduciary and statutory duties as officers, directors and employees of Noble—all of which conduct was detrimental and injurious to Noble, Noble's clients and creditors, and Aegean Scotia.

The Sierra Investment

28. Beginning in 2004, Noble began investing funds held in certain CCF trusts in Sierra Factoring, LLC, ("Sierra"), a company based in Windsor, Colorado. As Noble continued to solicit and receive funds from other individuals, it continued to invest additional funds in Sierra. Typically, the investments would be made through trusts formed, created or administered by Noble for the benefit of its clients and investors.

29. Sierra purportedly engaged in the purchase of accounts receivable, a lending practice commonly known as "factoring."

30. To generate what it represented was working capital to make the account receivable purchases, Sierra solicited investments through a private placement memorandum (the PPM"), a copy of which was provided to Noble. The PPM represented that investments in Sierra would be used to purchase commercial paper and make asset-backed loans in a manner consistent with the factoring of commercial accounts receivable. The PPM also stated that any investment in Sierra would be a high-risk investment with the distinct possibility of loss.

31. Investments in Sierra were evidenced by short-term promissory notes (the "Sierra Notes") bearing high interest rates ranging, on information and belief, from 12% to 18%.

32. Sierra came to the attention of Noble's officers, directors, and investment committee in 2004 through Thomas Anderson, who was both a director and Chief Financial Officer of Noble. At the time, Anderson and/or AGTAX were also performing accounting

services for Sierra, and knew and/or advised several of the individuals running Sierra. Anderson's wife worked for Sierra in a capacity that gave her check-signing authority on Sierra's bank accounts. Anderson subsequently left Noble and went to work for Sierra.

33. At all times relevant herein, Noble's board of directors had a Trust Investment Committee and a Trust Oversight Committee. Each committee consisted of all of the members of Noble's board of directors, and each had its own written policies.

34. None of the officers, employees, or directors of Noble engaged in any sort of reasonable inquiry or due diligence into either Sierra's business or the prudence of Noble's investing its clients' funds in Sierra, prior to the time that the initial investments were made. Although some of the Sierra investments were later approved by the board for some (but not all) of Noble's clients, the directors and officers failed to make sufficient inquiry into Sierra, either in general or with respect to any particular Noble client, that would have allowed them to make reasonable and informed decisions in exercising their respective management, oversight and fiduciary responsibilities.

35. Had they engaged in any such reasonable inquiry or due diligence, they would or should have discovered that Sierra was part of a larger group of affiliated factoring and holding companies known as "Blue Bear" and run by three individuals in Colorado: Virginia Brinkman, Russell Disberger, and David Karst. Each of these factoring companies, on information and belief, was insolvent at the time of Noble's first transaction with Sierra, and was relying on funds provided by new investors (such as Noble's clients) to pay the interest on the short-term promissory notes issued to earlier investors. Upon information and belief, Brinkman, Disberger, and Karst operated a "Ponzi scheme" of which Sierra was a part.

36. Without properly evaluating the propriety of investing in Sierra or the soundness of Sierra's business, Noble's officers and directors caused or permitted Noble to invest over $15 million of Noble's trust funds into Sierra, which investments were evidenced by the Sierra Notes. Noble continued to invest in Sierra through the summer of 2007, even though Blue Bear itself had already filed its own bankruptcy case in the United States Bankruptcy Court for the District of Colorado on August 22, 2005—two years earlier.

37. The Sierra investment ultimately constituted approximately 80% of Noble's clients' funds, and for many clients represented close to 100% of the funds that they entrusted to Noble. Noble's clients were the source of nearly all the funds invested in Sierra. Despite their fiduciary duties, Noble's officers and directors failed to consider whether such a heavily concentrated investment in Sierra—an entity that had virtually no other source of investors—was either appropriate in and of itself, or appropriately diversified the funds over which Noble and/or Lindsey was trustee.

38. Although Noble had a fiduciary duty to keep its clients informed as to the status of their investments, Noble failed to inform its clients that they held investments in Sierra at all. Rather, Noble identified the Sierra investments (both in its own records and in its communications to its clients) as shares in the "Noble Alternative Income Fund" or the "Noble Loan Portfolio." Such a fund would have had to have been established and reported separately in accordance with Regulation 9 of the Office of the Comptroller of the Currency, 12 C.F.R. §§ 9.1 to 9.101 ("Reg 9"). However, despite using the name "Noble Alternative Income Fund" in its monthly statements and communications with its clients, Noble never properly established such a fund; the Noble directors simply changed the name "Sierra/Noble Loan Portfolio" on its books and records to the "Noble Alternative Income Fund." Each dollar of principal from the

Sierra Notes was reflected on Noble's books (and on its clients' account statements) as one share of the Noble Alternative Investment Fund.

39. In addition, some of Noble's officers and directors, including Lindsey, Carpenter, Bojarski and Anderson, received commissions from Sierra for every new Noble client whose funds were loaned to Sierra. These commissions violated certain provisions of the PPM, as well as provisions of New Hampshire law, including RSA 384:18. Ultimately, Noble's officers and directors received approximately $850,000 million in illegal commissions relating to the Sierra Notes. In addition, Piandes received a loan of $125,000 from Sierra, creating a conflict of interest with his duties as director of Noble.

40. Sierra ceased making any payments on its obligations to Noble clients altogether in August 2006, when funds from new investors were insufficient to continue to make the interest payments to earlier investors.

41. In the fall of 2006, Sierra offered to settle its outstanding obligations to Noble by transferring all of its assets to Noble. Lindsey rejected that offer, and Sierra's faltering financial performance resulted in Lindsey's communications with Sierra becoming more urgent and confrontational. However, not until a year later, on September 28, 2007, did Lindsey and Noble commence a civil proceeding against Sierra and related entities in an attempt to recover the lost Sierra investments, which had already become worthless.

42. During the remainder of 2006 and throughout 2007, Lindsey continued to solicit and accept deposits totaling (at a minimum) $781,564 from at least fourteen new clients, under the same promises of 12% returns that had been made to Noble's existing clients. Instead of investing the new clients' money in a manner that was consistent with the fiduciary duty he owed to them, however, Lindsey caused Noble to use the newly obtained client funds to fulfill Noble's

obligation to make periodic payments to other Noble clients, and to redeem principal and pay accrued interest to existing clients who terminated their relationship with Noble for reasons that were unrelated to Sierra's failure.

43. Despite a duty to do so, Noble's officers and directors did not disclose to Noble's clients that the funds invested in Sierra had been lost. Instead, certain officers and/or directors began a concerted effort to hide the losses and recoup them through even more risky and dubious investments.

44. Both Lindsey and Elliott continued to cause Noble to mail to its clients their regular periodic account statements, which continued to reflect the full original principal amount of the clients' funds as dollar-equivalent shares in the "Noble Alternative Income Fund," without disclosing the Sierra investments or any loss of their principal.

45. Lindsey and possibly others also continued to cause Noble to make payments or distributions to its clients in the same frequency and amount that they had customarily received and expected to receive, as if the Sierra Notes were paying their stated interest according to their terms. Instead of coming from Sierra, however, the payments or distributions that Noble's clients received came from a variety of other sources. In some instances, clients who wanted to redeem the principal and accrued interest in their Noble accounts received checks from Noble funded by money that Lindsey and other Noble officers, employees, and directors had solicited or otherwise received from new Noble clients, or from new funds provided by existing Noble clients. In at least one instance, the recipient of such funds was Elliott, who knew or should have known that the funds she provided to Noble were lost in the Sierra transaction, and that her principal and accrued interest payment was funded by money received from Noble clients. In

many instances, Lindsey and other Noble officers, employees, and directors delayed honoring requests by clients to redeem the principal and accrued interest in their accounts.

46. Noble also received funds from Lindsey and his affiliate, Balcarres, for the purpose of continuing to make interest and principal payments to Noble clients whose funds were invested in Sierra Notes.

47. Thus, in effect, to avoid disclosing the fact that Noble had lost its clients' money in a Ponzi scheme, Lindsey and other officers and employees of Noble created another Ponzi scheme, shuttling money from newer clients to longer-established clients.

48. The officers, employees, and directors of Noble were either aware or should have been aware of the magnitude of the losses suffered by Noble's clients and the efforts to conceal those losses. Those directors and officers who did not directly act to conceal the losses nonetheless failed to take appropriate actions or make appropriate inquiry into the status of Noble's clients' funds invested in Sierra; Lindsey's and Elliott's conduct regarding the Sierra investment; the Sierra losses, and the attempts to hide those losses from Noble's clients.

The Marino Policies

49. In furtherance of his attempt to conceal the Sierra losses from Noble's clients and regulators, Lindsey hatched a scheme in late 2006 or early 2007 to recoup the Sierra losses by fraudulently procuring or investing in high-premium, high-value life insurance policies. Such insurance policies are generally in face amounts ranging from $5 million to $10 million. Because they are generally used for estate planning purposes, such policies typically require that the prospective insured be at least 70 years old and, because the premiums payable under such policies generally total several hundred thousand dollars per year, that the insured have a personal net worth in an amount at least equal to the value of the policy or policies acquired.

50. The commissions that insurance carriers are willing to pay insurance agents and brokers in connection with such policies are also relatively high, approaching and in some cases exceeding the annual premiums payable under the policy.

51. At all times relevant herein, both Lindsey and Balcarres were licensed to submit applications for insurance to a number of different insurance carriers, and therefore were eligible to be paid commissions for policies that they procured.

52. Between October 2006 and October, 2007, Lindsey caused Noble to acquire or procure certain high value life insurance policies, both in order to allow Noble to ultimately realize the economic value of those policies (by either selling them or receiving the death benefit payable thereunder), and also to generate commission revenue that could be used to continue to fund payments to Noble clients and thereby conceal the Sierra losses from them.

53. To facilitate Noble's acquisition of such policies, Lindsey entered into an agreement with Gerald Marino ("Marino"), a Florida real estate broker. Marino was the trustee of a $526 million real estate investment trust called the "450 4th Avenue Revocable Trust" (the "450 4th Trust"). For every client referred by Marino who ultimately became a Noble client and purchased a high value life insurance policy through Balcarres, Balcarres agreed to pay Marino a fee. Each policy ultimately issued would be owned through a trust (a so-called "Irrevocable Life Insurance Trust" or "ILIT") to be established by Noble, with the insured as the settlor and beneficiary and Noble serving as trustee. Each applicant purportedly held a beneficial interest in the 450 4th Trust. Each applicant agreed to transfer to Noble his or her beneficial interest in both any insurance policy that issued, and in the trust to which the policy was issued, all for a prearranged price. To further induce the prospective clients to apply for the policies, Lindsey assured them that Noble or another entity would finance the entire cost of the policy's premiums.

54. Marino forwarded forty-one prospective applicants' names to Noble. Thereafter, Lindsey (working along with other officers and employees, including Coravos and Eve Prachar Lindsey) filled out all of the necessary insurance application forms for each applicant.

55. In addition, Noble's officers and employees prepared other documents for the applicants to sign, including: (1) a letter from the prospective insured requesting that Noble sell the insurance policy because he or she "talked it over with family members and they feel uncomfortable about the cost of the premiums"; (2) a bill of sale from the insured to Noble, conveying the insured's beneficial interest in the insurance policy and in the ILIT holding the insurance policy; and (3) a list of questions that the insurer's investigator or premium finance company might ask of the applicant prior to issuing the policy, along with scripted answers for the applicants to provide in response thereto.

56. The scripted answers on the list of questions provided by Noble included figures for each respective applicant's net worth and annual income, as well a statement that the applicant had no intention of selling or transferring the life insurance policy within the next five years. One or more Noble officers and employees instructed the applicants to make the latter representation even while simultaneously preparing and forwarding to the applicants the very legal instruments that would accomplish just such a transfer.

57. On information and belief, the forty-one separate prospective insureds were also each furnished a form letter by or on behalf of Marino, which purported to state that the applicant owned an approximately 4% beneficial interest in 450 4th Trust—even though, in the aggregate, the sum of those separate percentage interests totaled an impossible 164%. In addition, the value of the prospective applicants' purported interests in the 450 4th Trust was materially overstated in the form letters themselves. Rather than calculating the value of the beneficiary's interest in the

Trust based on the equity in the property owned by the Trust (shown as $254,130,634.15 on the Trust's December 31, 2006 balance sheet, which was also provided to Noble), the values contained in the form letters were apparently calculated as a percentage of the gross value of *all* assets owned by Trust (shown as $526,645,178.35 on the same balance sheet), without any regard for the Trust's liabilities, such as mortgage indebtedness against its properties. Assuming that the Trust's balance sheet was accurate, the result of this miscalculation was that the form letters misrepresented the value of the applicants' respective beneficial interests in the 450 4th Trust—assuming that they held any beneficial interests at all—as being approximately double the appropriate amount.

58. Noble's officers and directors either knew or should have known that that the value of the prospective insureds' alleged interests in the 450 4th Trust was materially overstated, if not altogether non-existent. At least one Noble officer besides Lindsey was aware of these misstatements. Coravos sent Lindsey a list identifying thirty-eight separate individuals, each of whom Marino represented held beneficial interests in the 450 4th Trust, with their percentage interests ranging from a low of 3.77% to a high of 6.14%. The percentage of the beneficial interests purportedly held by those thirty-eight individuals on the list totaled 162.69%.

59. Despite Marino's obvious misrepresentations, neither Lindsey nor Coravos made any further inquiry into the truthfulness of the representations made by Marino or the individual proposed insureds with respect to their purported interests in the 450 4th Trust. Instead, Coravos continued to arrange for premium financing on at least two of the fraudulent policies, which were ultimately issued to a Mr. Truesdale and a Mr. Marshall. For his part, Lindsey acknowledged to Marino that he knew that the 450 4th Trust percentage beneficial interests were falsely

represented in the form letters, but nonetheless continued to work with Marino to procure fraudulent insurance policies on the lives of Marino's referrals.

60. Once a policy was issued and Balcarres received the commission from the insurer, Lindsey and others at Noble would cause a portion of that commission to be sent to Marino (or other similar finders that the Noble officers and employees used). Of this portion, some was paid to the insureds as compensation for their assignment of their beneficial interests in the policies and the ILITs; and the balance was retained by Marino (or the other finders). The other portion of the commission was either used to pay to Noble clients the 12% interest they had been promised on their investment; kept by Lindsey or Balcarres; or used to finance additional insurance policies.

61. During this twelve-month period ending in October, 2007, fourteen insurance policies were issued to ten insureds referred to Noble by Marino. Each application contained materially false and misleading financial information designed to increase the likelihood that the policies would be issued in the highest face amount possible. Upon the issuance of these policies, Balcarres received approximately $5.6 million in commissions on the first year's premium due under the policies. Of that amount, approximately $2.3 million was paid to Marino; the remaining approximately $3.3 million was used to fund payments to Noble clients (either as periodic interest payments or to redeem their accounts), and to finance high value life insurance policies for other Noble clients.

62. None of Noble's officers, employees, or directors disclosed to Noble's clients the sources or uses of their funds in connection with the fraudulently procured policies.

The Gryphon Fund

63. Lindsey and other officers and employees of Noble attempted to hide the nature of this new investment strategy from Noble's clients and regulators by cloaking it under the guise of a new fund called the "Gryphon Fund." The Gryphon Fund was created on Noble's books and records in September 2007 as a "common trust fund" in which Noble clients would receive shares commensurate with their investment in the Sierra Notes.

64. The initial corpus of the Gryphon Fund was established on September 14, 2007, by the nominal contribution of some of the life insurance policies fraudulently procured through Marino. Lindsey initially valued the contributed policies at $2,290,000—the same amount that was paid to Marino. In exchange for the contribution of these policies to the Gryphon Fund, Balcarres received 2.29 million shares in the Gryphon Fund, each valued at one dollar. The very next day after the policies were contributed to the Gryphon Fund, and with no additional infusion of capital or consideration, Lindsey increased the stated value of the Gryphon Fund to $7,336,300, with each share of the Gryphon Fund valued at slightly more than three dollars.

65. Thereafter, in the two weeks leading up to September 30, 2007, Lindsey caused additional contributions to be made to the Gryphon Fund. Those contributions included Noble client accounts holding worthless Sierra Notes, which contributions Lindsey valued at $9.8 million—the face amount of the Sierra Notes held in those accounts. In exchange for these contributions, the contributed client accounts were credited with overvalued shares in the Gryphon Fund.

66. Lindsey then caused the Gryphon Fund to transfer the Sierra Notes it had received to Balcarres. In exchange, Balcarres transferred to the Gryphon Fund certain notes payable to Balcarres in the face amount of $5 million, representing loans that Balcarres had made to some

of the ILITs for which Noble served as a Trustee. These ILIT loans were also worth less than their face amount, in part because they included loans that financed premiums on fraudulently procured insurance policies.

67. Some Noble clients did make cash investments into the Gryphon Fund in late 2007 and early 2008, for which their account statements reflected that they received Gryphon Fund shares. The proceeds of those cash investments were quickly used by Lindsey and others at Noble to continue making payments to existing Noble clients. In other cases, cash from the Gryphon Fund was used to pay premiums on life insurance policies held in ILITs for the benefit of other Noble clients. In all cases, the account statements that Noble mailed to these clients reflected only an investment in the Gryphon Fund, and did not disclose the funding of life insurance premiums benefitting other Noble clients' trusts.

68. The Gryphon Fund was not the only method by which Noble used other clients' funds to finance insurance policies. Some Noble clients were individuals who did not create or establish trusts with Noble, and for whom Noble served as investment manager. For those individuals, Lindsey caused the funds they entrusted to Noble to be loaned directly to other ILITs in which Noble was a fiduciary, usually for a two-year term at 12% interest—the standard return promised by Noble to its clients. These loans were not evidenced by written promissory notes, but were instead recorded as book entries on Noble's accounting system as a debit to the lending client's account and a credit to the borrowing ILIT's account, with corresponding payable and receivable entries. The two-year, 12% loan terms—which were reflected on the lending client's account statements—were above-market terms for insurance premium finance loans. By promising a higher return for Noble's lending client at the expense of Noble's borrowing ILIT, the conflict of interest inherent in these loan transactions also constituted a breach of Noble's

fiduciary duty to its clients. Moreover, when Noble did disclose the ILIT loans to insurance carriers in connection with a given ILIT's application to obtain insurance, it routinely misrepresented the ILIT loans as being at lower and more standard terms, such as a five year note with interest at LIBOR (the "London Inter-Bank Offered Rate") plus 1% or 2%. On information and belief, had the actual terms of the ILIT loans been disclosed on the insurance applications, the respective insurance carriers would have found those terms to be generally inconsistent with the applications' representation that the proposed insured had no present intent to sell or transfer the policy being applied for, rendering it less likely that the application would be approved under appropriate insurance underwriting standards.

COUNT 1 – NEGLIGENCE AND BREACH OF FIDUCIARY DUTY TO NOBLE CLIENTS (SIERRA NOTES)

69. The preceding paragraphs are incorporated into this Count.

70. At all relevant times, Noble acted as a trustee and/or trust administrator to many of the clients depositing money with Noble. In those cases where Noble served as Trust Administrator, Lindsey usually served as Trustee.

71. Noble's officers and directors, through whom Noble acted, are charged with duties and responsibilities of trustees, including but not limited to those imposed by the common law. *See* RSA 293-A; 384:3; and 564-B.

72. As such, they had duties to, at the very least:

a. Administer, invest, and manage the trust and distribute the trust property in good faith and solely in the interests of the trust beneficiaries. RSA 564-B:8-801 and 8–802;

b. Administer, invest, and manage the trust and distribute the trust property as a prudent person would, exercising reasonable care, skill, and caution, and considering all relevant facts. RSA 564-B:8-804, 9-902;

c. Keep qualified beneficiaries reasonably informed about the administration of the trust and the material facts necessary for the protection of their interests. RSA 564-B:8-813;

d. Keep adequate records and segregate their property and trust property. RSA 564-B:8-810;

e. Take reasonable steps to take control of and protect trust property. RSA 564-B:8-809;

f. Make reasonable efforts to verify all facts relevant to the investment and management of trust assets. RSA 564-B:9-902; and

g. Diversify trust assets. RSA 564-B:9-903.

73. The officers and directors of Noble breached their duties by negligently (1) investing in Sierra without an adequate investigation into the business of Sierra and without adequately analyzing the risks of such an investment; (2) not informing the trust beneficiaries and/or settlors of the nature of the investment and the inherent risks thereof; (3) not investigating and/or discovering any connection or conflict of interest held by Anderson, Lindsey, Carpenter or any other officer or director of Noble; (4) not monitoring or rectifying the deteriorating condition of Sierra and the investment in Sierra; (5) not disclosing to Noble's clients the deteriorating condition of Sierra; (6) excessively concentrating the accounts of Noble clients in the Sierra investment, and (7) not requiring external audits of Noble (despite the Department's

notifications of the need to conduct such audits), which would have revealed the deterioration and ultimate loss of the Sierra investment.

74. Noble's directors also breached their fiduciary duties by failing to adopt and implement policies and practices as needed to adequately oversee the investment decisions of Noble officers to ensure the suitability of the investments, and to detect and avoid conflicts of interest and self-dealing by Noble officers and directors.

75. As a result of these breaches, Noble lost approximately $15 million in funds invested by it in Sierra, and caused additional and consequential harm to Noble, damaging Noble and its clients in an amount within the jurisdictional limits of this Court.

COUNT 2 – BREACH OF FIDUCIARY DUTY TO AEGEAN SCOTIA (SIERRA NOTES)

76. The preceding paragraphs are incorporated into this Count.

77. The officers and directors of Noble owed fiduciary duties to Noble's shareholder Aegean Scotia.

78. They breached that duty by causing Noble to excessively invest client funds in Sierra without adequate investigation and oversight, as previously outlined.

79. As a result, Noble lost most of its clients' money, exposing it to multiple claims for damages eventually resulting in its insolvency.

80. Aegean Scotia was thus damaged in an amount within the jurisdictional limits of this Court.

COUNT 3 – BREACH OF FIDUCIARY DUTY TO AEGEAN SCOTIA AND NOBLE CLIENTS (LINDSEY, ELLIOTT, ANDERSON, CARPENTER – SIERRA COMMISSIONS AND PREFERENTIAL PAY-OUTS)

81. The preceding paragraphs are incorporated into this Count.

82. In addition to the breaches outlined above, Lindsey, Anderson, Bojarski and Carpenter breached their fiduciary duties to Noble's clients and to Noble's shareholder, Aegean Scotia, by charging or receiving commissions for the placement of Noble's clients' funds in Sierra.

83. Lindsey also breached his fiduciary duties to Noble's clients and to Aegean Scotia by investing his own funds with Sierra and receiving a Sierra Note bearing interest at 20%, a higher rate of return than he obtained for Noble's clients.

84. In addition, Elliott and Lindsey breached their fiduciary duties to Noble's clients and to Aegean Scotia by arranging for the preferential pay-off of their investments and the investments of others in Sierra after they became worthless, without offering the same to the rest of Noble's clients who had invested in Sierra Notes.

85. These breaches damaged Aegean Scotia and Noble's clients and, in turn, Noble and Aegean Scotia in an amount within the jurisdictional limits of this Court.

COUNT 4 – NEGLIGENCE AND BREACH OF FIDUCIARY DUTIES TO NOBLE CLIENTS AND AEGEAN SCOTIA (GRYPHON FUND)

86. The preceding paragraphs are incorporated into this Count.

87. Lindsey and the other officers and employees of Noble were grossly negligent and/or breached their fiduciary and trustee duties (as outlined above) to Noble clients by (1) fraudulently or negligently replacing the investment in Sierra investments with nominal shares in the Gryphon Fund using a valuation that had no basis in economic reality; (2) fraudulently or negligently using client funds to finance and purchase insurance policies that had been fraudulently obtained; (3) failing to adequately inform Noble's clients of the manner in which their funds were being invested or managed, and (4) failing to avoid conflicts of interest in

engaging in transactions between ILITs, or between ILITs and individual Noble clients for whom Noble provided investment management services.

88. The directors of Noble also breached their duties to Noble's clients, over whose accounts they acted as fiduciaries, by (1) negligently approving of or acquiescing in management's plan of converting the Sierra investment into shares of the Gryphon Fund using an unrealistic valuation and without analysis of the inherent risks of the investment, (2) negligently failing to discover that the insurance policies in which management was investing client funds had been fraudulently obtained and/or purchased, (3) negligently failing to discover that clients were not told about the nature of the investment, (4) negligently failing to require an external audit, which would have revealed the existence of the fraud and other problems in the life insurance investment scheme, and (5) negligently failing to rectify these problems, once discovered.

89. These breaches by Noble's management and directors also constituted breaches of their duties to Noble's shareholder, Aegean Scotia, by materially impairing the value of the assets held and managed by Noble giving rise to substantial claims against Noble and resulting in its insolvency.

90. Compounding their omissions and misdeeds, neither the board of directors nor the officers of Noble arranged for an external audit of Noble's business and financial affairs for any calendar year after 2005, despite a duty and the Department's admonition to do so

91. As a proximate result of these breaches, Noble's clients and Aegean Scotia were damaged in an amount within the jurisdictional limits of this Court.

COUNT 5 – BREACH OF FIDUCIARY DUTY AND MALPRACTICE (CORAVOS)

92. The preceding paragraphs are incorporated into this Count.

93. Coravos acted as general counsel and attorney to Noble. As such she owed a fiduciary duty to Noble.

94. In addition, because she undertook to advise certain Noble clients concerning formation of ILITs and estate planning, and because she was an officer of Noble, she acted as an attorney for and owed a fiduciary duty to Noble's clients. *See* RSA 384:3, III.

95. She breached those fiduciary duties and committed malpractice by counseling for and facilitating the fraudulent application for life insurance policies, as described above.

96. Furthermore, by simultaneously acting as Noble's attorney and an attorney for the Noble clients she advised concerning ILIT formation and estate planning, she acted under a conflict of interest, thus breaching her fiduciary duties and committing malpractice.

97. These breaches and actions by Coravos resulted in the use of funds of certain Noble clients to finance the premiums for fraudulently obtained policies that, accordingly, had no value.

98. The breaches and actions by Coravos also artificially inflated the book value of the Gryphon Fund and Noble clients' holdings in the Fund.

99. The breaches and actions by Coravos also caused Noble to commit various federal and state statutory violations.

100. Both Noble and Noble's clients were thereby damaged in an amount within the jurisdictional limits of this Court.

COUNT 6 - ACCOUNTING AGAINST PIANDES AND GLOBAL

101. The preceding paragraphs are incorporated into this Count.

102. Upon information and belief, in August or September of 2005, Piandes, who was then a 50% stockholder in Aegean Scotia and a director of Noble, caused Noble to transfer to himself or his nominee, for no apparent or legitimate business purpose, a sum in the approximate amount of $338,000.

103. The transfer was treated on the books of Noble as a loan, although the identity of the borrower was not specified therein.

104. The transfer appears to be referred to in a September 27, 2005 letter from Elliott to Commissioner Hildreth, which recites the exchange of Lindsey's 50% interest in Global for Piandes' 50% interest in Global, and that an intercompany loan of $338,702.70 between Global and Noble would be repaid by November 30, 2005.

105. The minutes of Noble's November 15, 2005 board of directors meeting reflect an agreement that Piandes and Global would execute a promissory note at 8% "as a good will gesture," and that the transaction contemplated by that agreement was approved by Noble's board of directors. According to the minutes, the board members present for the vote were Lindsey, Anderson, Elliott and Eve Prachar Lindsey; board members Owens and Johnson were absent.

106. There is no evidence that the above-mentioned debt to Noble was ever repaid.

107. In addition, on September 7, 2006, Global executed two notes in the amount of $250,000 to Lindsey and to Children's Community Foundation. On September 8, 2006, Lindsey paid $250,000 to "Global Financial." The source of the funds is unknown but is believed to be Noble, one or more Noble clients, or Balcarres.

108. The Liquidator, in order to recover all of the assets of Noble, is entitled to an accounting of all transactions between Lindsey, Noble, Aegean Scotia, and Balcarres, on the one hand, and Global and Piandes and any other entities owned or controlled by Piandes, on the other.

COUNT 7 - ASSUMPSIT AGAINST GLOBAL

109. The preceding paragraphs are incorporated into this Count.

110. As alleged above, Global is indebted to Noble for the sum of $338,702.70, plus interest at 8% from the date that such indebtedness was incurred.

111. Global is in breach of its obligation to repay the debt by November 30, 2005.

112. Noble has thereby been damaged in an amount within the jurisdictional limits of this Court.

COUNT 8 - BREACH OF FIDUCIARY DUTY AGAINST KERRY PIANDES AND THE DIRECTORS OF NOBLE

113. The preceding paragraphs are incorporated into this Count.

114. As an officer and director, Piandes owed fiduciary duties to Noble and its stockholder Aegean Scotia, at the time that the $338,707.70 transfer alleged above was made to Global. Noble's books and records do not reflect that this payment was made for any legitimate business purpose.

115. By causing Noble to transfer the aforementioned $338,702.70 to Global for no legitimate business purpose of Noble, Piandes breached his fiduciary duties to Noble and its stockholder, Aegean Scotia.

116. By failing to recover the funds from Piandes and, indeed, by ratifying the foregoing transaction between Noble and Piandes/Global, the directors of Noble breached their fiduciary duties to Noble and its stockholder, Aegean Scotia.

117. The Liquidator, on behalf of Noble and Aegean Scotia, is entitled to recover the sum of $338,702.70 plus interest at 8% from Piandes and the other directors of Noble.

COUNT 9 –NEGLIGENCE (AGAINST AGTAX AND ANDERSON)

118. The preceding paragraphs are incorporated into this Count.

119. Thomas Anderson and AgTax, Inc. completed the tax returns for the vast majority of Noble's trust clients during the relevant time period.

120. They owed a duty of due care to accurately complete the return and verify the accuracy of the financial information contained in the return.

121. They breached their duty by failing to verify the value of the Sierra or Gryphon Fund investment held by the trusts whose returns they completed.

122. As a proximate result of their breach, the Sierra investment failure and the fraudulent investment scheme involving the Gryphon Fund were not detected, thereby damaging the trusts in an amount within the jurisdictional limits of this Court.

COUNT 10 – BREACH OF FIDUCIARY DUTY, RESCISSION OF NOTE, AND RESTITUTION

123. The preceding paragraphs are incorporated into this Count.

124. On March 20, 2007, Owens loaned Noble $500,000 at 12% interest.

125. The loan was disclosed in financial statements presented to the Noble board of directors, but the loan was never approved by the board of directors as required by RSA 384:16.

126. Pursuant to the terms of the loan, Owens received interest payments on at least several occasions.

127. The Owens loan transaction was a conflict of interest transaction for purposes of RSA 293-A:8.31 and, because of the above-market interest rate, was not fair to Noble.

128. By proceeding with the unfair transaction, Owens breached his fiduciary duties to Noble, thus damaging it in an amount within the jurisdictional limits of the Court.

129. Additionally, the Noble directors breached their fiduciary duties by not inquiring into the terms of the loan and by not rejecting the loan offer or requiring a transaction fairer to Noble.

130. Because the loan was not approved by Noble's board of directors, it is void; any note associated with it must be rescinded, and Owens must make restitution to Noble for any interest or loan payment received from Noble.

COUNT 11 - BREACH OF STATUTORY DUTIES OF CARE

131. The preceding paragraphs are incorporated into this Count.

132. Under RSA 384:3, I, the directors of Noble had a duty to supervise the affairs of the Noble to ensure Noble's operations were in compliance with federal and state laws and regulations.

133. The directors breached that duty in numerous ways, several of which are outlined below.

134. Under RSA 384:17, directors of trust companies are prohibited from (1) making a statement to the Department as to the condition of the trust company without fully and carefully examining the condition of the company, and (2) making a false statement with the intent to deceive the Department. The Noble directors violated this provision by attesting to various false financial reports filed with the Department as well as a Trust Officer's Questionnaire submitted to the Department on January 7, 2008.

135. In addition, in a January 23, 2008 letter to Commissioner Hildreth, Lindsey made a variety of intentionally false statements with an intent to deceive including, without limitation,

representations that (1) the lost Sierra investment was replaced with "cash"; (2) the transfer of client investments into the Gryphon Fund eliminated all "risk" to the clients; (3) management had no evidence of wrong-doing with respect to the Sierra investment and Ponzi scheme; (4) the Gryphon Fund conferred the same nominal benefits as the Sierra investment, namely fixed principal and stable income; (5) new Noble trust clients in 2007 were given the option of financing life-insurance premiums through the Gryphon Fund or more-established banks; (6) "the loans and policies which make up the Gryphon Fund can be sold in a multi-billion dollar active secondary market"; (7) all premium financing loans made by the Gryphon Fund are secured by collateral assignments with the insurance carrier; (8) the loan-to-value ratio within the Gryphon Fund was below 50%; (9) Noble clients understood the Gryphon Fund and were content with their investment; (10) the IRS performed a complete audit of all of Noble's charitable remainder trusts in 2007 "and found them without issue," and (11) Noble earned in excess of $20 million in 2007 and made a $4 million profit "even after expenses and the one time Sierra write-down."

136. All of the foregoing false statements, as well as the previously alleged intentionally false and misleading statements made to Noble clients that failed to alert them to the decline in the value of the Sierra Notes investment; the previously alleged false valuations; and the previously alleged false and misleading purchase and sales records of the Gryphon Fund, also constitute violations of RSA 384:17.

137. RSA 383:43 requires the board of directors of a trust company to employ a certified public accountant annually to audit the company's records. The Noble directors violated this provision by failing to hire an auditor for Noble's financial records for any calendar year after 2005.

138. Through Reg 9, the United States Comptroller of the Currency regulates the fiduciary activities of national banks. Under RSA 384:3, those regulations are applicable to state-chartered banks and other state regulated financial institutions, including Noble.

139. Among those regulations is 12 CFR § 9.18, which permits and regulates the creation of collective investment funds that banks may use to manage the investments of client funds for which they have investment discretion, similar to the fashion in which a mutual fund invests client funds.

140. Noble, through its officers and directors, created at least two funds, which appeared to be collective investment funds: the Noble Alternative Income Fund, and the Gryphon Fund. In fact, they took no steps to legitimately create a collective investment fund named the "Noble Alternative Income Fund," but simply identified investments made by Noble, as shares or units of the Noble Alternative Income Fund in the clients' account statements.

141. Noble did create a separate fund known as the Gryphon Fund which purported for internal purposes to comply with Reg 9, but which in fact did not comply with Reg 9 in several material respects.

142. Reg 9 limits the accounts that can be permissibly invested in a collective investment fund to those where the bank acts in a capacity "as trustee, executor, administrator, guardian or custodian under a uniform gifts to minor act." 12 CFR § 9.18. Noble invested in violation of this regulation, by investing thirty-one client accounts in the Gryphon Fund, for which Noble did not serve as trustee, constituting approximately 34% of the Fund as of the end of 2007.

143. Reg 9 requires that the fund be established pursuant to a written plan that must be approved by the board of directors of the bank providing details on investment powers and

policies concerning allocation of income, profits and losses, eligible fees and expenses and the like. 12 CFR § 9.18. If Noble, in fact, created such a plan, it was never reviewed or approved by the directors of Noble.

144. Reg 9 requires that the fund assets be valued at market value as of the date periodically set for valuation. 12 CFR 9.18(b)(4)(ii). Noble violated this requirement by overvaluing the assets of the Gryphon Fund and failing to periodically revalue them. Moreover, as alleged above, the insurance policies constituting the principal assets of the Gryphon Fund were secured by fraud, thus providing a legitimate basis for rescinding the policies, rendering them valueless.

145. Reg 9 requires that accounts be admitted or withdrawn from the collective fund only on the basis of a fair market valuation. 12 CFR § 9.18(b)(5). Noble violated this regulation by admitting or withdrawing accounts on the basis of an arbitrary valuation and not fair market value.

146. Reg 9 prohibits a bank administering a collective investment fund from having an interest in that fund other than in its fiduciary capacity. 12 CFR § 9.18(b)(8)(i). Noble's management violated this regulation by investing the assets of Noble and Balcarres in the Gryphon Fund for their own benefit.

147. Reg 9 prohibits a bank subject to the regulation from investing fiduciary funds into assets acquired from affiliates of the bank or any of the officers or directors of the bank. 12 CFR 9.12 (a)(1). Noble violated this regulation by purchasing insurance policy premium loans from Balcarres, an affiliate of Lindsey.

148. Reg 9 prohibits a bank from transferring assets from a fiduciary account to the bank or any of its directors, officers or employees or affiliates of the bank. 12 CFR § 9.12. Noble violated this regulation by purchasing defaulting Sierra Notes from Noble clients.

149. Reg 9 prohibits a bank from making sales between fiduciary accounts unless the transaction is fair to both accounts. 12 CFR § 9.12(d). Noble violated this regulation by transferring shares of the Noble Alternative Fund consisting of defaulted Sierra Notes from one fiduciary account of a Noble client to another fiduciary account at the par value of the Sierra Notes, when the Sierra Notes were in default or otherwise worth less than their par value.

150. Reg 9 prohibits a bank from making loans between its fiduciary accounts unless the transaction is fair to both accounts. 12 CFR § 9.12(c). Noble violated this regulation by causing the Gryphon Fund to lend money to other Noble clients at 12% interest, a rate that was higher than the prevailing market rate for similar transactions, rendering each such transaction unfair as to the Noble clients whose accounts were being charged the above-market interest rate.

JURY TRIAL DEMAND

The Petitioner hereby demands a trial by jury on all issues so triable.

WHEREFORE the Liquidator prays that this Court:

A. Enter Judgment in his behalf for the benefit of Aegean Scotia and Noble's clients and creditors in an amount to be determined at trial, with the proceeds, after expenses, to be distributed pursuant to further order of this Court in the Liquidation Proceeding;

B. Order such other further and ancillary relief as requested in this Petition, including any necessary accountings and constructive trusts; and

C. Grant the Liquidator such other and further relief as is just and appropriate.

Dated: April 24, 2009

Respectfully Submitted,

PETER C. HILDRETH, BANK COMMISSIONER FOR THE STATE OF NEW HAMPSHIRE, AS LIQUIDATOR FOR NOBLE TRUST COMPANY AND AEGEAN SCOTIA HOLDINGS, LLC

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