No.

In the
Supreme Court of the United States

ERIE INDEMNITY COMPANY,
Petitioner,

v.

TROY STEPHENSON, CHRISTINA STEPHENSON, AND STEVEN BARNETT, IN THEIR INDIVIDUAL CAPACITIES AND IN ANY REPRESENTATIVE CAPACITIES THEY MAY HAVE RELATING TO ERIE INSURANCE EXCHANGE
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has emphasized that a previous court's judgment bars any claims between the parties or their privies that "involve a common nucleus of operative facts." *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 590 U.S. 405, 412 (2020) (quotation marks omitted). Respondents filed an action against Petitioner that pleaded the same claim, based on the same legal theory and the same unchanged operative facts, as those pleaded in earlier suits that resulted in multiple adverse final judgments. In an effort to avoid the preclusive effect of those prior judgments, Respondents purported to limit their challenge to Petitioner's identical ongoing, continuing conduct in 2019 and 2020—years that post-dated the earlier suits. Respondents did not allege any material change in fact. The district court that had adjudicated those prior actions held that Respondents' claims here were precluded. But, in conflict with this Court's precedents and multiple other circuits' decisions, the Third Circuit held that Respondents had escaped preclusion simply by alleging that the same previously adjudicated conduct continued into additional years.

The question presented is:

When a plaintiff challenges the same ongoing, continuing conduct that was fully adjudicated in an earlier suit, does the mere passage of time foreclose claim and issue preclusion?

PARTIES TO THE PROCEEDING

Petitioner Erie Indemnity Co. was plaintiff in the district court and appellee before the Third Circuit. The nominal defendant-appellant is Erie Insurance Exchange, an unincorporated association, purportedly represented by Troy Stephenson, Christina Stephenson, and Steven Barnett, as trustees *ad litem*, and alternatively, Troy Stephenson, Christina Stephenson, and Steven Barnett individually.

RULE 29.6 DISCLOSURE STATEMENT

Erie Indemnity Co. is a publicly traded company. It has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

RELATED PROCEEDINGS

This case arises from and is related to the following proceedings:

- *Beltz v. Erie Indemnity Co.*, No. 16-cv-00179 (W.D. Pa.), judgment entered July 17, 2017.
- *Beltz v. Erie Indemnity Co.*, No. 17-cv-2774 (3d. Cir.), judgment entered May 10, 2018.
- *Ritz v. Erie Indemnity Co.*, No. 17-cv-00340 (W.D. Pa.), judgment entered Feb. 4, 2019.
- *Erie Indemnity Co. v. Stephenson,* No. 22-cv-0093 (W.D. Pa.), motion for preliminary injunction filed Sept. 1, 2023.
- *Erie Insurance Exchange v. Erie Indemnity Co.*, No. GD-21-014814 (Pa. Ct. Comm. Pl.), preliminarily enjoined Feb. 28, 2024.
- *Erie Indemnity Co. v. Stephenson*, No. 24-1443 (3d Cir.), judgment entered Oct. 14, 2025, rehearing denied Nov. 12, 2025.

There are no other proceedings in state or federal trial or appellate courts directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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This is the latest in a series of cases in which a handful of the millions of Erie Insurance Exchange policyholders have brought one unsuccessful suit after another against Petitioner Erie Indemnity Company.

The plaintiffs in those suits, like Respondents here, challenged the same unchanged, ongoing, continuing conduct by Petitioner. In the suit that immediately preceded this one, the court ruled that such serial litigation is barred by claim preclusion. Undeterred, Respondents sued yet again to challenge the same conduct, without alleging any change in the material facts, while purporting to limit their challenge to years post-dating the prior suits. The district court concluded that this action is likewise barred by claim preclusion. But the Third Circuit reversed, holding that Respondents avoided claim and issue preclusion because they purported to limit their challenge to years after the prior adjudications.

That ruling has no basis in law or logic. And, until the decision below, the circuits were uniform in their rejection of the Third Circuit's approach. Just last year, the Eighth Circuit held that "[t]he pertinent question is whether the second claim is based on subsequent legal or factual events that produce a different nucleus of operative facts." *Saylor v. Jeffreys,* 131 F.4th 864, 867 (8th Cir. 2025). There, as here, the plaintiff attacked new events that post-dated the prior suit without offering any "concrete factual development." *Id.* But there, unlike here, the Eighth Circuit held that preclusion applied to bar the second suit. Had this case been decided in the Eighth Circuit, preclusion would have barred Respondents' claim.

So, too, in the Second, Seventh, and Tenth Circuits. The Second Circuit has rejected efforts to evade preclusion by alleging "new incidents" that occurred after a prior challenge where those "new incidents" came "within the same queue" as previous complaints. *Monahan v. New York City Dep't of Corr.*, 214 F.3d 275, 289-90 (2d Cir. 2000). The Seventh Circuit also applied preclusion where plaintiffs challenged personnel decisions made after a prior suit when "the second suit raise[d] the same core of factual allegations as the first." *Adams v. City of Indianapolis,* 742 F.3d 720, 736 (7th Cir. 2014). And the Tenth Circuit shut down a similar effort to challenge unchanged, ongoing, continuing conduct by merely limiting the challenge to events occurring after the prior suit. *Denver Homeless Out Loud v. Denver*, 32 F.4th 1259 (10th Cir. 2022). Those rulings cannot be squared with the decision below.

The decision below blows a gaping hole in preclusion doctrine that is inconsistent with this Court's precedents. It squarely conflicts with decisions from four other circuits that have rejected the Third Circuit's rigid rule. It destroys finality by encouraging a broad range of abusive, serial litigation. And it invites pernicious forum shopping. The mere passage of time does not foreclose preclusion when plaintiffs challenge the same ongoing, continuing conduct without alleging any change in the material operative facts.

This Court should grant certiorari and reverse, to restore uniformity on this issue of critical importance.

OPINIONS BELOW

The Third Circuit's opinion is reported at 157 F.4th 265 and reproduced at Pet.App.1-27. The district court's opinion is unreported but available at 2024 WL 844370 and reproduced at Pet.App.28-56.

JURISDICTION

The court of appeals entered judgment on October 14, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The following statutory provisions are reproduced in the appendix: 28 U.S.C. § 1651 and 28 U.S.C. § 2283.

STATEMENT OF THE CASE

A. Legal Background

The preclusion issues in this case arise from a suit under the All Writs Act and Anti-Injunction Act's ("AIA") "relitigation exception." *Smith v. Bayer Corp.*, 564 U.S. 299, 306 (2011). The All Writs Act empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). That includes the "positive authority" to "issue injunctions of state court proceedings." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 134 F.3d 133, 143 (3d Cir. 1998). "The authority the All Writs Act imparts to district courts is limited, however, by the Anti-Injunction Act, which prohibits injunctions 'to stay proceedings in a State court except [1] as expressly authorized by Act of Congress, or [2] where necessary

in aid of [the federal court's] jurisdiction, or [3] to protect or effectuate its judgments.'" *In re Diet Drugs Prods. Liab. Litig.*, 369 F.3d 293, 305 (3d Cir. 2004) (quoting 28 U.S.C. § 2283). The All Writs Act and the AIA thus "act in concert to permit issuance of an injunction" whenever one of the AIA's exceptions are met. *Carlough v. Amchem Prods.*, 10 F.3d 189, 201 n.9 (3d Cir. 1993).

This case implicates the "last of the [AIA]'s three exceptions, known as the relitigation exception." *Bayer Corp.*, 564 U.S. at 306. The relitigation exception "is designed to implement 'well-recognized concepts' of claim and issue preclusion." *Id.* (quoting *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988)). "An injunction under the relitigation exception is appropriate where the state law claims would be precluded by the doctrine of res judicata"—that is, by either claim or issue preclusion. *Burr & Forman v. Blair*, 470 F.3d 1019, 1029-30 (11th Cir. 2006); *accord Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 675 (5th Cir. 2003); *W. Sys., Inc. v. Ulloa*, 958 F.2d 864, 871 (9th Cir. 1992); *see also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 314 F.3d 99, 104 (3d Cir. 2002).

Indeed, "[t]he test for the relitigation exception is the same test used to determine claim preclusion." *Vasquez*, 325 F.3d at 675; *see Prudential*, 314 F.3d at 104. The doctrine thus "bars suit when three elements are present: '(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action.'" *Davis v. Wells Fargo*, 824 F.3d 333, 341 (3d Cir. 2016) (citation omitted). "In evaluating

whether those elements exist," courts "do not proceed mechanically, but focus on the central purpose of the doctrine." *Id.* (quotation marks omitted). That "purpose" is to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *Id.* at 341-42 (citation omitted).

B. Factual Background

Respondents' action is the latest episode in repetitive litigation against Erie Indemnity Company ("Indemnity") brought by a handful of Erie policyholders ("Subscribers") purporting to represent Erie Insurance Exchange ("Exchange").

Indemnity and Exchange are part of the Erie Insurance Group. The foundational document that creates and makes this reciprocal structure function is the Subscriber's Agreement. Pet.App.30. Each Subscriber signs an identical version of that Agreement, through which they agree to insure each other and appoint Indemnity as "attorney-in-fact" to manage Exchange's affairs. Pet.App.4. In return, each Subscriber contractually authorizes Indemnity to "retain up to 25% of all premiums" as its Management Fee, *i.e.*, its "compensation." Pet.App.9.

Seeking to undue that contractual agreement, various handfuls of subscribers have repeatedly alleged the same cause of action against Indemnity. They claim that as a public company, Indemnity has a longstanding structural conflict of interest with the Exchange that causes it to favor the public shareholders' interests when managing Exchange's

affairs. And they allege that this supposed conflict taints Indemnity's taking of the contractually agreed upon Management Fee.

Indeed, even though every Subscriber authorized Indemnity to take that 25% Management Fee, it has nevertheless spawned more than a decade of litigation. Compl. ¶¶ 37-57, *Erie Indemnity Co. v. Stephenson*, No. 22-cv-00093 (W.D. Pa. Mar. 15, 2022), ECF 1 (hereinafter "AIA Compl."). In 2016, several Subscribers sued Indemnity in federal court. *Beltz v. Erie Indemnity Co.*, 279 F. Supp. 3d 569 (W.D. Pa. 2017); *see* Pet.App.11. The *Beltz* complaint alleged, among other things, a breach-of-fiduciary-duty claim purportedly on Exchange's behalf. Pet.App.12. Of relevance here, the Subscribers claimed that Indemnity breached its fiduciary duty because, "[s]ince at least 2007, Indemnity has retained the maximum amount of 25% allowed by the Subscriber's Agreement," Pet.App.171 (*Beltz* Compl. ¶ 84), and they alleged that Indemnity's Board "has continuously favored the interests of Indemnity's shareholders, especially its majority shareholders, over those of Exchange and the Subscribers." Pet.App.167 (*Beltz* Compl. ¶ 66). The District Court dismissed with prejudice. *Beltz*, 279 F. Supp. 3d at 573. The Third Circuit affirmed. *Beltz*, 733 F. App'x at 600.

After the District Court dismissed *Beltz* but before the Third Circuit affirmed the District Court's judgment, another Subscriber filed *Ritz v. Erie Indemnity Co.*, 2019 WL 438086, at *4 (W.D. Pa. Feb. 4, 2019); *see* Pet.App.13. As in *Beltz*, the *Ritz* complaint alleged that Indemnity breached a supposed fiduciary duty to Exchange by allegedly

"abus[ing] its attorney-in-fact position" to "'tak[e] the maximum 25% Management Fee year after year without valid grounds.'" *Ritz*, 2019 WL 438086, at *1, *4 (quoting *Ritz* Compl.). Indeed, the complaint specifically challenged the Management Fee settings in December 2016 (after the *Beltz* complaint) and December 2017 (after the *Beltz* judgment). Pet.App.113-115 (*Ritz* Compl. ¶¶ 56-58). And, like in *Beltz*, the *Ritz* Plaintiff alleged Indemnity and its Board had supposedly operated with "conflicted interests" to "benefit themselves at the expense of Exchange and the Subscribers." Pet.App.90 (*Ritz* Compl. ¶ 6).

The district court dismissed *Ritz* with prejudice, holding that the complaint was precluded by *Beltz*. *Ritz*, 2019 WL 438086, at *1. As the district court there explained, the *Beltz* plaintiffs already "specifically alleged the *exact* conduct complained of [in *Ritz*]—that Indemnity and its Board took excessive management fees under the Subscriber's Agreement." *Id.* at *4 (emphasis added). The plaintiff moved for reconsideration, urging that the transactions were "entirely different" from those in *Beltz* because the complaint challenged "continuing decisions made annually" thereafter. Br. in Support of Mot. Recons. ("Mot. Recons.") at 3, *Ritz v. Erie Indem. Co.*, No. 1:17-cv-00340 (W.D. Pa. Mar. 4, 2019), ECF 112. But the court rejected that effort to evade preclusion. In doing so, it expressly explained that it had already "considered [that] argument" about the differing years and emphatically "rejected it." *Ritz v. Erie Indem. Co.*, 2019 WL 2090511, at *2 (W.D. Pa. May 13, 2019). *Ritz* was not appealed. Pet.App.14.

Despite these adverse final federal judgments, Respondents filed yet another suit attacking Indemnity's supposedly conflicted Management Fee—this time, in state court. Pet.App.14. They alleged a breach-of-fiduciary-duty claim challenging the continued setting of the 25% Fee in December 2019 and 2020, based on the same factual allegations and legal theory that the court held were precluded in *Ritz*. AIA Compl. ¶¶ 77-81. Because Respondents originally styled their case as a class action, Petitioner removed to federal court pursuant to the Class Action Fairness Act ("CAFA"). Pet.App.15. In doing so, Indemnity emphasized that the federal court's "ruling in *Ritz* necessarily requires that this Complaint, too, is barred by claim preclusion." Notice of Removal ¶ 1, *Erie Ins. Exch. v. Erie Indem. Co.*, No. 2:22-cv-00166 (W.D. Pa. Jan. 28, 2022), ECF 1. Respondents did not dispute that, but instead voluntarily dismissed. Pet.App.15.

Then, represented by the same counsel, Respondents filed yet another complaint in state court (the "State Court Action"). Pet.App.65 (*Stephenson* Compl.). The "operative facts" and "legal theory" again were "identical" to their previous complaint. *Stephenson*, 68 F.4th at 817-18. They again alleged that Indemnity breached its fiduciary duties by operating under the same purported "conflicts of interest" to set a 25% Management Fee in December 2019 and 2020. Pet.App.82-85 (*Stephenson* Compl. ¶¶ 76-89). And, although aware that preclusion would be central to Indemnity's defense, Respondents again chose not to plead any additional, operative facts that might distinguish the setting of the Management Fees in 2019 and 2020 from the claims and operative facts that were adjudicated in *Beltz* and *Ritz*.

Instead, they simply dropped the class action label to avoid CAFA's reach and sued purportedly as trustees *ad litem* "on behalf of Exchange"—hoping that this time they could relitigate the prior federal judgments in *state* rather than *federal* court. Pet.App.68 (*Stephenson* Compl. ¶ 16).

C. Procedural History

In response to the State Court Action, Petitioner filed this suit under the All Writs Act and the AIA's relitigation exception to enjoin Respondents from relitigating the judgments in *Ritz* and *Beltz*. Pet.App.16. Under the relitigation exception, an injunction is appropriate "to prevent state litigation of a claim or issue 'that previously was presented to and decided by the federal court.'" *Bayer Corp.*, 564 U.S. at 306 (quoting *Chick Kam Choo,* 486 U.S. at 147). And the relitigation exception "is designed to implement 'well-recognized concepts' of claim and issue preclusion." *Id.* (quoting *Chick Kam Choo,* 486 U.S. at 147).

The District Court (which was the same court that decided *Ritz*) faithfully followed that command to enjoin the State Court Action. Pet.App.28-29. Starting with the merits, the court held "that Indemnity is likely to succeed on its claim preclusion argument." Pet.App.38. The first two preclusion elements were satisfied because *Beltz* and *Ritz* both resulted in "final judgment[s] on the merits" and involved the "same parties and their privies" as the State Court Action. Pet.App.41-42. And the final element was met because the three cases "all involve the same cause of action"—an alleged "breach of fiduciary duty" claim based on Indemnity "favoring

shareholders" to "tak[e] the maximum allowable percentage of 25% under the Subscriber's Agreement." Pet.App.46-53. The District Court also found that the remaining three equitable factors favored an injunction. Pet.App.54-55.

On appeal, Respondents contested only the "same cause of action" element of claim preclusion. And their sole basis for doing so was their allegation that the same conduct previously adjudicated adversely to them continued forward into new years that resulted in new settings of the Management Fee tainted by the same alleged conflicts of interest. Pet.App.23. The Third Circuit accepted Respondents' argument and vacated the injunction solely on this basis. The sum total of its reasoning was that, "[b]ecause the [Respondents'] claims are based on events that occurred after the initial complaints in *Beltz* and *Ritz*, the judgments in those cases do not have claim preclusive effect." Pet.App.24. The decision offered no additional rationale to bolster that conclusion.

The Third Circuit also rejected Indemnity's issue preclusion argument, reasoning that *Ritz* "did not address" Indemnity's setting of the Management Fee in either 2019 or 2020, and so "the issues are not identical." Pet.App.26. In doing so, the Third Circuit glossed over the fact that Respondents never claimed that these later "events" resulted in any material change to the legal theory and common nucleus of operative facts that were previously adjudicated. Indeed, the material operative facts they alleged in *their complaint* were the same. The decision below also conspicuously ignored that *Ritz* had, in fact, "considered" and "rejected" the argument that

Subscribers could avoid claim preclusion simply by attaching new years to precisely the same conduct. 2019 WL 2090511, at *2. The Third Circuit then denied Indemnity's petition for rehearing. Pet.App.59-60.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Creates A Circuit Split.

By distorting this Court's precedents and basic principles of preclusion doctrine, the decision below opens an irreconcilable circuit split. In *Lucky Brand*, this Court relied on its articulation of claim preclusion in *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 600 (2016), and observed that "[c]laim preclusion *generally* does not bar claims that are predicated on events that postdate the filing of the initial complaint." 590 U.S. at 414 (emphasis added; quotation marks omitted). The "reason" for that general rule is that "[e]vents that occur after the plaintiff files suit often give rise to new '[m]aterial operative facts.'" *Id.* at 415 (citation omitted). But where the material operative facts remain the same, it has long been settled that the mere passage of time does not enable plaintiffs to relitigate that ongoing, continuing conduct that was already litigated to final judgment.

Four circuits have recognized that logical principle and rejected the Third Circuit's approach. Those courts hold that preclusion is foreclosed only when a claim is based on new material operative facts. But the Third Circuit departed from this common-sense approach and introduced a rigid, purely mechanical rule. In the Third Circuit, a plaintiff can avoid

preclusion when challenging the exact same continued conduct, on the exact same legal theory, by simply limiting the suit to years that post-date the prior judgments. The decision below thus directly conflicts with the decisions of those four circuits and sows confusion regarding the application of this Court's decision in *Lucky Brand*.

Just last year, in *Saylor v. Jeffreys,* 131 F.4th 864 (8th Cir. 2025), the Eighth Circuit confronted head on the same argument and rejected the Third Circuit's approach. The plaintiff there challenged his conditions of confinement in several lawsuits, with his latest complaint alleging that these conditions "continued and reoccurred" after the previous judgment. *Id.* at 867. Relying on *Whole Woman's Health*—which served as the basis for this Court's reasoning on claim preclusion in *Lucky Brand*—the plaintiff argued that "claim preclusion does not apply to claims based on new facts" that "occurred years after" the prior case. *Id.* at 866-67. But the Eighth Circuit rejected that argument, explaining that "[t]he pertinent question is whether the second claim is based on subsequent legal or factual events that produce a different nucleus of operative facts." *Id.* at 867 (citation omitted). While the court acknowledged that plaintiff's "transfer to the Mental Health Unit was a subsequent event, it did not produce a different nucleus of operative facts," because the "essence of his complaint [was] unchanged." *Id.* "The movement [was] only one 'transaction' in a 'series of connected transactions' alleging discrimination," and the plaintiff offered no "concrete factual development." *Id.* at 867-68 (citations omitted).

The Tenth Circuit in *Denver Homeless Out Loud v. Denver*, 32 F.4th 1259 (10th Cir. 2022), similarly rejected the Third Circuit's approach. There, a group of plaintiffs alleged that the City of Denver acted unconstitutionally by sweeping homeless encampments. *Id.* at 1275. Although they focused on "three specific sweeps" in 2020, the court held that these claims were barred because other plaintiffs challenged Denver's same sweeping practice in 2016. *Id.* at 1265, 1275. The *Denver Homeless* plaintiffs argued that this earlier suit could not be preclusive because they only challenged events "post-dat[ing] the filing" of that suit. *Id.* But the Tenth Circuit called that understanding of preclusion law "mistaken." *Id.* The defendants "continued to enforce the same custom of sweeping homeless encampments" as before, and "[t]he post-[judgment] sweeps did not create new materially operative facts." *Id.* Thus, "the reason behind th[e] general proposition" from *Lucky Brand,* that claim preclusion *often* applies to later events, was "absent." *Id.* at 1275.

The Second Circuit also rejected the Third Circuit's approach. In *Monahan v. New York City Dep't of Corr.*, 214 F.3d 275 (2d Cir. 2000), correction officers brought as-applied constitutional challenges to their department's sick leave policy. *Id.* at 279. And the Second Circuit rebuked their attempt to avoid preclusion by alleging "new incidents" that occurred after a prior challenge. *Id.* at 289. That was "insufficient to bar the application of res judicata," because courts must examine "'whether the same transaction or connected series of transactions is at issue.'" *Id.* (citation omitted). The "new incidents" came "within the same queue" as previous complaints.

Id. at 290. Thus, preclusion applied even to those later actions by the department.

The Seventh Circuit has likewise rejected the Third Circuit's mechanical approach to claim preclusion. In *Adams v. City of Indianapolis,* 742 F.3d 720, 727 (7th Cir. 2014), police officers who were passed over for promotions alleged that the promotion process was racially discriminatory. The Seventh Circuit recognized that the alleged conduct—promotion decisions made "in 2010 and 2011"—postdated events challenged in a 2009 suit. *Id.* at 736. But claim preclusion still applied despite these "different times," because "the second suit raise[d] the same core of factual allegations as the first." *Id.*

Each of these circuits confronted, and rejected, the same claim-preclusion argument that Respondents made—and the Third Circuit endorsed—in this case. Respondents attack Indemnity's continued, allegedly conflicted, taking of a contractually authorized 25% Management Fee—a practice that "began in 2007," long before *Beltz* or *Ritz*. Pet.App.53. That should have put those claims "within the same queue" as *Beltz* and *Ritz*. But the Third Circuit never explained how Indemnity "maintain[ing]" its 25% Management Fee rate in 2019 and 2020, by itself, materially altered the operative facts that were adjudicated in *Beltz* and *Ritz*. Pet.App.53. Instead, like the plaintiffs in *Saylor*, *Denver Homeless*, *Monahan*, and *Adams*, Respondents attacked a common nucleus of material operative facts that had not changed from those earlier decisions.

In the Second, Seventh, Eighth, and Tenth Circuits that would have resulted in Respondents' claims being precluded. And, in the District Court here, it resulted

in an injunction enforcing those basic tenets of preclusion doctrine. Yet, the Third Circuit broke new ground and adopted an ironclad rule that extends *Lucky Brand* in a way that will gut preclusion and finality anytime plaintiffs challenge ongoing, continuing conduct. In the Third Circuit, a plaintiff may relitigate the same conduct, under the same legal theory, over and over again—so long as it purports to challenge new years of that ongoing, continuing conduct—even if the reason behind *Lucky Brand*'s general statement is lacking.

The decision below creates instability and inconsistency in the courts of appeals and the district courts which are on the front line of applying this Court's decision in *Lucky Brand*. And it will inevitably inject a host of problems for courts and individuals faced with serial litigation. *See infra* Section III. Only this Court can resolve that division of authority over the scope of this Court's decision in *Lucky Brand*. This Court should thus grant certiorari and restore uniformity on this important question.

II. The Decision Below Is Wrong.

A. The Third Circuit's Claim Preclusion Ruling Is Wrong.

The decision below adopted a cramped understanding of the "same cause of action" element for claim preclusion. The Third Circuit misapplied this Court's decision in *Lucky Brand* and created a brightline rule that claim preclusion does not apply to ongoing, continued conduct when plaintiffs limit their claims to events after the prior suit—even if the new suit does not allege any material change in fact.

That is inconsistent with bedrock preclusion doctrine. "Suits involve the same claim (or cause of action) when they aris[e] from the same transaction, or involve a common nucleus of operative facts." *Lucky Brand*, 590 U.S. at 412 (quotation marks omitted; alteration in original); *see also Denver Homeless*, 32 F.4th at 1274; *Adams*, 742 F.3d at 736. "Claim preclusion *generally* 'does not bar claims that are predicated on events that postdate the filing of the initial complaint.'" 590 U.S. at 414 (emphasis added) (quoting *Whole Woman's Health*, 579 U.S. at 600). But the "reason" for that general rule is that "[e]vents that occur after the plaintiff files suit often give rise to new '[m]aterial operative facts.'" *Id.* at 415 (citation omitted). Where no new material operative facts exist preclusion applies with full force.

There is no doubt that Respondents did not allege any change in "material operative facts" from those in *Beltz* and *Ritz*. Pet.App.53. Indeed, in the Third Circuit, Respondents did not contest the District Court's finding that they failed to allege any change of circumstances concerning material operative facts. Pet.App.53. And, as in the District Court, they failed to articulate why or how the material operative facts in the years they focus on now are any different than the material operative facts in the prior years which have been litigated to final judgment.

Instead, Respondents seek to relitigate ongoing, continued conduct and the core holdings of those prior federal judgments. Just as in *Beltz* and *Ritz*, Respondents' core allegations here are that:

- Indemnity controls the Erie reciprocal by serving as attorney-in-fact for Exchange's

Subscribers. *Compare* Pet.App.66 (*Stephenson* Compl. ¶¶ 1-7), *with* Pet.App.89-90 (*Ritz* Compl. ¶¶ 3-5), *and* Pet.App.144 (*Beltz* Compl. ¶¶ 2-3).

- Indemnity is a public company, and the same group of shareholders possess a controlling stake in Indemnity and chair its Board. *Compare* Pet.App.72-74 (*Stephenson* Compl. ¶¶ 38-47), *with* Pet.App.90, 102-105 (*Ritz* Compl. ¶¶ 7, 33-38), *and* Pet.App.159-162 (*Beltz* Compl. ¶¶ 46-51).
- Indemnity and its Board therefore have an alleged inherent structural conflict of interest in setting the Management Fee. *Compare* Pet.App.71, 74-76, 83 (*Stephenson* Compl. ¶¶ 36, 48-57, 79-81), *with* Pet.App.90, 107-111 (*Ritz* Compl. ¶¶ 5-6, 45-53), *and* Pet.App.167 (*Beltz* Compl. ¶ 66).
- Indemnity's alleged conflict causes it to breach purported fiduciary duties by "maximizing the Management Fee and its shareholder dividends," which "has resulted in [Indemnity] favoring its own financial interests" over "those of Exchange." *Compare* Pet.App. 74-75, 82-83 (*Stephenson* Compl. ¶¶ 52-54, 78-82), *with* Pet.App.90-91, 111, 135 (*Ritz* Compl. ¶¶ 7, 53, 107), *and* Pet.App.171-172 (*Beltz* Compl. ¶ 84).
- As a result of the foregoing, Indemnity has maintained the 25% Management Fee that has been in place since 2007. *Compare* Pet.App.76-77 (*Stephenson* Compl. ¶¶ 60-62), *with* Pet.App.107, 112-114 (*Ritz* Compl. ¶¶ 44, 54-

56), *and* Pet.App.164, 171-172 (*Beltz* Compl. ¶¶ 59, 84).

- Indemnity's setting of the 25% Management Fee has prevented more money from flowing to Exchange. *Compare* Pet.App.82 (*Stephenson* Compl. ¶ 75), *with* Pet.App.136 (*Ritz* Compl. ¶ 108), *and* Pet.App.145, 168, 170, 180 (*Beltz* Compl. ¶¶ 5, 67, 80, 110).
- Indemnity's Board members have issued dividends to the public shareholders of Indemnity, including special dividends, which has redounded to the benefit of defendants as shareholders. *Compare* Pet.App.78-80, 82 (*Stephenson* Compl. ¶¶ 64-69, 78), *with* Pet.App.126-128 (*Ritz* Compl. ¶¶ 74-76), *and* Pet.App.173-175 (*Beltz* Compl. ¶¶ 86-88).

In short, the State Court Action merely seeks to relitigate the same cause of action in *Beltz* and *Ritz*. The Subscriber's Agreement, which authorizes Indemnity to receive a 25% Management Fee, did not change. The alleged "conflict of interest"—which is baked into the structure of Indemnity and the terms of the Subscriber's Agreement—did not change. Nor did anything else material to this cause of action. Rather, as in *Saylor*, *Denver Homeless*, *Monahan*, and *Adams*, Respondents attacked conduct that was a mere continuation of the same ongoing conduct attacked in the prior suits.

To get around that problem, the decision below converted a general observation from this Court into an inflexible rule that destroys finality and basic principles of preclusion doctrine. In *Lucky Brand*, this

Court said that claim preclusion "*generally* 'does not bar claims that are predicated on events that postdate the filing of the initial complaint.'" 590 U.S. at 414 (emphasis added) (quoting *Whole Woman's Health*, 579 U.S. at 600). But, as this Court went on to explain, the "reason" for that *general* rule is that "[e]vents that occur after the plaintiff files suit *often* give rise to new '[m]aterial operative facts.'" *Id.* at 415 (citation omitted; emphasis added). And, in *Lucky Brand*, that general observation proved true: The two suits "did not share a 'common nucleus of operative facts' because they "were grounded on different conduct, involving different marks, occurring at different times." *Id.* at 413. Indeed, this Court emphasized that this general "principle takes on particular force in the trademark context, where the enforceability of a mark and likelihood of confusion between marks often turns on extrinsic facts that change over time." *Id.* at 415.

Neither Respondents nor the Third Circuit pointed to any "extrinsic facts that change[d] over time" here. Nor could they because Respondents' legal theory and material factual allegations were identical to those in the previously adjudicated matters. Instead, in little more than a couple of facile sentences, the Third Circuit transformed *Lucky Brand*'s general rule into a categorical one. Now, in the Third Circuit a plaintiff may relitigate the same material operative facts, under the same legal theory, so long as the new complaint alleges that the previously adjudicated conduct continued into years after the prior judgment. That is flatly inconsistent with how the Eighth and Tenth Circuits have applied this Court's preclusion doctrine after *Lucky Brand*.

And it cannot be squared with decades of precedents in the Second and Seventh Circuits.

Because the Third Circuit introduced an anomalous view of preclusion that distorts this Court's reasoning in *Lucky Brand* and opens an irreconcilable conflict with four other Circuits, this Court should grant certiorari and reverse.

B. The Third Circuit's Issue Preclusion Ruling Is Also Wrong.

The Third Circuit applied its categorical "different years, no preclusion" rule to *both* claim preclusion *and* issue preclusion. But *Lucky Brand* dealt only with claim preclusion. And the Third Circuit's inflexible extension of its general observation makes even less sense in the issue preclusion context.

Issue preclusion, or collateral estoppel, "has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979). Unlike claim preclusion, issue preclusion does not require a common nucleus of operative facts. Instead, the doctrine applies "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment." *B&B Hardware, Inc. v. Hargis Indus.*, 575 U.S. 138, 148 (2015) (quoting Restatement (Second) of Judgments §27)).

Here, *Ritz* created issue preclusion on the question of whether claim preclusion could apply to suits challenging later settings of the Management Fee.

Respondents built their case on the same claims and same controlling allegations as in *Ritz*. *See supra* Section II.A. Yet, the *Ritz* court held that the plaintiff there was barred by claim preclusion because her breach-of-fiduciary-duty claim was based on the same operative facts as in *Beltz*. And the *Ritz* court reached that conclusion despite the plaintiff in *Ritz* arguing that the transactions were "entirely different" from those in *Beltz* because the complaint challenged "continuing decisions made annually" thereafter. Mot. Recons. at 3, *Ritz v. Erie Indem. Co.*, No. 1:17-cv-00340 (W.D. Pa. Mar. 4, 2019), ECF 112. The *Ritz* court "considered [that] argument" and "rejected it." *Ritz v. Erie Indem. Co.*, 2019 WL 2090511, at *2 (W.D. Pa. May 13, 2019).

Indeed, the match between the issue decided in *Ritz* and the critical issue in this case could not be clearer. As here, the *Ritz* plaintiff stressed that she was "challenging management fee decisions made by Indemnity" within "two years of the filing of the Complaint." Mot. Recons. at 3. As here, she noted that this "include[d] continuing decisions made annually" after *Beltz*. *Id.* As here, she urged that the new decisions were "entirely different" transactions. *Id.* And, as here, she argued that "these decisions could not even have been included in *Beltz* which was filed in 2016 and dismissed by the district court on July 17, 2017." *Id.* But the court "considered Plaintiff's argument and rejected it." *Ritz*, 2019 WL 2090511, at *2. It thus held that preclusion applies even where a new Subscriber lawsuit challenges later settings of the Management Fee. *See id.*

Yet, confoundingly, the Third Circuit held that issue preclusion did not apply to the Respondents' claims. It did so on the patently false ground that *Ritz* "did not address" Management Fee settings after the *Beltz* judgment. Pet.App.26. And, based on that incorrect premise, it simply imported its reasoning from the claim preclusion analysis and concluded that "the issues are not identical" between this case and *Ritz*. Pet.App.26. That is wrong—and provides an independent basis to reverse.

III. This Case Presents An Exceptionally Important Question.

The decision below threatens to destroy finality by creating an escape hatch for plaintiffs in cases challenging ongoing, continuing conduct. Under the Third Circuit's rule, plaintiffs can bring serial litigation challenging the same ongoing conduct, in an endless game of litigation whack-a-mole. But the mere passage of time does not allow plaintiffs to challenge the same common nucleus of operative facts or to relitigate an issue finally resolved in a prior final judgment.

On the contrary, this Court has made clear that "[a] fundamental precept of common-law adjudication . . . is that a 'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies.'" *Montana v. United States*, 440 U.S. 147, 153 (1979) (quoting *Southern Pacific R. Co. v. United States*, 168 U.S. 1, 48-49 (1897)). This concept—embodied by the doctrines of claim and issue preclusion—"is central to the purpose for which civil courts have been

established, the conclusive resolution of disputes within their jurisdictions." *Id.* (internal citations omitted). Without the finality that preclusion doctrines provide, defendants must face an endless string of lawsuits attacking the same conduct, while plaintiffs must win only one of their many suits.

The decision below threatens these fundamental precepts. It purports to find within this Court's precedents a categorical rule that permits, by mere passage of time alone, the perpetual relitigation of disputes previously resolved without any change in the underlying facts of the dispute. Thus, the Third Circuit's decision implicates an exceptionally important question whether claim and issue preclusion actually "protect [parties] from the expense and vexation attending multiple lawsuits, conserve[] judicial resources, and foster[] reliance on judicial action by minimizing the possibility of inconsistent decisions." *Id.* at 153–54.

Preclusion doctrines exist to ensure there is "an end to litigation—a maxim which comports with common sense as well as public policy." *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 402 (1981) (citation omitted). But the Third Circuit's categorical rule offers an end-around for serial litigants. It thus subjects potential defendants to perpetual litigation on challenges which the courts have already entered final judgment. The decision below is especially pernicious in the context of the series of repeated lawsuits that have led to this case. But it will sweep far broader, infecting any suit within the Third Circuit that involves ongoing conduct.

Take, for example, defendants in products liability and mass tort suits. Under the Third Circuit's rule, a pharmaceutical company who secures a successful dismissal of a challenge to a drug it produces would no longer find comfort in the finality of the judgment it received. Instead, the company could face a new lawsuit on the very same claims, against the very same pharmaceutical product, every time it manufactures or sells a pill following the date of the claimant's last complaint—based only on the fact that it continued to produce the drug it had already successfully defended.

And many other defendants will lose the protection of preclusion doctrine. The same is true of companies defending themselves in shareholder derivative suits. Litigious shareholders seeking to bring lawsuits on behalf of a corporation for harms against the corporation must prove that any demand made upon the corporation's board to bring the litigation itself would be futile. *See* Del. Ch. R. 23.1; *see also Aronson v. Lewis*, 473 A.2d 805, 811–12 (Del. 1984), overruled in part on other grounds by *Brehm v. Eisner*, 746 A.2d 244 (Del. 2000). But the Third Circuit's categorical rule would effectively give the same shareholders unlimited attempts to prove demand futility anytime they can point to any event that postdates a previous, final determination that demand would not have been futile. That risks subjecting companies within the Third Circuit to nearly endless litigation from their shareholders. *See, e.g.*, *Pyott v. La. Mun. Police Emps. Retirement Sys.*, 74 A.3d 612 (Del. 2013).

Likewise, the rule adopted below will lead to much mischief in securities fraud litigation, an area of the

law already susceptible to abusive claims. *See, e.g.*, *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 313 (2007) (recognizing that "[p]rivate securities fraud actions" must be "adequately contained" because they "can be employed abusively to impose substantial costs on companies and individuals whose conduct conforms to the law"). Under the Third Circuit's approach, winning dismissal of a claim challenging statements in a company's quarterly report as false or misleading will mean little if the same statements regarding the same conduct are carried forward to the next quarterly report. Under the decision below, plaintiffs could point to that later report as a "new event" and attack the same underlying, ongoing conduct previously adjudicated in an earlier suit.

So, too, for companies who have successfully fended off antitrust challenges from litigious plaintiffs. A company who has successfully proven its practices were not anticompetitive could be forced to defend the same ongoing, continued conduct within the Third Circuit's footprint. Pointing the sale of another good or some other "new event" that does not materially alter the underlying conduct, that plaintiff can again file suit to relitigate the issues resolved in the earlier suit.

Indeed, the circuit split here underscores how the Third Circuit's categorical rule will flood the courts with serial litigation. If the Third Circuit's rule had prevailed in *Saylor*, it would have opened the door for prisoners to repeatedly and vexatiously challenge the ongoing conditions of their confinement merely because the prison chose to "maintain" those conditions. Likewise, *Denver Homeless*, *Monahan*,

and *Adams* demonstrate how the Third Circuit's inflexible view will subject municipalities to endless lawsuits challenging the continued application of ongoing policies—each of which is naturally embodied in a new "event" applying those policies in each passing year. That regime is untenable. But it is what the Third Circuit has unleashed.

Worse yet, the Third Circuit's rule will invite forum shopping in multi-state or nationwide cases. As discussed above, the Third Circuit's categorical reading of *Lucky Brand* creates a circuit split with the Second, Seventh, Eighth, and Tenth Circuits. Thus, enterprising serial litigants will circumnavigate unfavorable judgments in those other circuits by bringing their next suit in the Third Circuit based on supposedly "new events" that do not materially change the underlying ongoing, continued conduct.

This Court has warned that forum shopping is "unacceptable when it comes as the consequence of judge-made rules created to fill supposed 'gaps' in positive federal law." *See Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 415-16 (2010) (plurality op.). But the Third Circuit's rule does precisely that—while inviting the very "expense and vexation attending multiple lawsuits" and the risk of "inconsistent decisions" that preclusion doctrine exists to prevent. *Montana*, 440 U.S. at 153-54. Rather than let it distort the law, this Court should step in now to restore uniformity.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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January 12, 2026

APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED OCTOBER 14, 2025

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1443

ERIE INDEMNITY COMPANY

v.

TROY STEPHENSON; CHRISTINA STEPHENSON, AND STEVEN BARNETT, IN BOTH THEIR INDIVIDUAL CAPACITIES AND IN ANY REPRESENTATIVE CAPACITIES THEY MAY HAVE RELATING TO ERIE INSURANCE EXCHANGE,

Appellants.

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. No. 1:22-cv-00093)
Magistrate Judge: Honorable Cynthia R. Eddy

Argued: October 29, 2024

Before: HARDIMAN, PHIPPS, and FREEMAN,
Circuit Judges

(Filed: October 14, 2025)

Appendix A

OPINION OF THE COURT

PHIPPS, *Circuit Judge.*

The legal doctrines of *res judicata* and collateral estoppel preclude the relitigation of claims and issues, respectively. In this case, the entity managing a reciprocal insurance exchange sought to enjoin insurance policyholders from litigating breach-of-fiduciary-duty claims in state court based on prior federal-court judgments that it argued had both claim and issue preclusive effect. The District Court determined that claim preclusion applied, and then, relying on the All Writs Act and the relitigation exception to the Anti-Injunction Act, it entered a preliminary injunction preventing the policyholders from proceeding with their state-court litigation. In this appeal, the policyholders challenge that order. Because the prior federal-court judgments do not have either claim or issue preclusive effect, we will vacate the preliminary injunction order and remand this case to the District Court.

I. Factual Background & Procedural History

A. Reciprocal Insurance in Pennsylvania

The origin of reciprocal insurance can be traced to a group of six dry goods merchants in New York City, who, in 1881, began insuring one another against the risk of fire.[1] From that arrangement, a key feature of reciprocal

1. *See* Dennis F. Reinmuth, *The Regulation of Reciprocal Insurance Exchanges* 1–2 (1967).

insurance emerged: every insured is an insurer, and every insurer is an insured.[2] To operationalize this arrangement in which insurers do not seek to profit by insuring one another,[3] the insureds, referred to as 'subscribers,'[4]

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2. *See* Robert J. Brennen, *Inter-Insurance—Its Legal Aspects and Business Possibilities*, 58 Cent. L.J. 323, 325 (1904) ("In Lloyds insurance there are underwriters[,] all of whom are insurers, but not necessarily policy-holders, while in inter-insurance all policy-holders are insurers and insured."); *see also Long v. Sakleson*, 328 Pa. 261, 195 A. 416, 418 (Pa. 1937) ("[T]he subscribers to an exchange are not merely underwriters, for they are themselves insured . . . ."); *Underwriters' Exch. v. Indianapolis St. Ry. Co.*, 204 Ind. 676, 185 N.E. 504, 506–07 (Ind. 1933) ("But the fact must not be overlooked that reciprocal or interinsurance contracts are distinguishable from all other forms of insurance, in that every insured is an interinsurer and every insurer is insured."); *cf. also* 3 *Couch on Insurance* § 39.48 (3d ed. June 2025 update) (identifying the material differences between reciprocal insurance and other types of insurance organizations such as Lloyds and mutual insurance).

3. *See* Michael A. Haskel, *The Legal Relationship Among a Reciprocal Insurer's Subscribers, Advisory Committee and Attorney-In-Fact*, 6 CUNY L. Rev. 35, 40 (2003) ("The dual status of subscribers as insurers and insureds eliminates the layer of profit that would otherwise inure to the benefit of a separately owned insurer."); Richard Lima Norgaard, *Reciprocals: A Study of the Evolution of an Insurance Institution* 163 (1962) (Ph.D. dissertation, University of Minnesota) (explaining that a reciprocal is "designed to spread the risk of insurable perils at the lowest possible cost").

4. *See* Andrew Verstein, *Enterprise Without Entities*, 116 Mich. L. Rev. 247, 265 (2017) ("Owing to their dual role as both insured and insurer, the customers are usually called 'subscribers.'").

form an 'exchange'[5]—not by mutual agreement among themselves but by individually assigning an identical, limited power of attorney to the same third party.[6] Through subscriber's agreements between the individual subscribers and their common attorney-in-fact,[7] the subscribers authorize the attorney-in-fact to underwrite policies with the subscribers having liability for loss claims under those policies.[8] With that authorization

5. *See Peace Church Risk Retention Grp. v. Johnson Controls Fire Prot. LP*, 49 F.4th 866, 871 (3d Cir. 2022) (explaining that the exchange formed by subscribers "is, in general, a distinct legal entity that can sue or be sued in its own name, but unlike traditional mutual insurance companies, has no corporate existence"); Verstein, *supra*, at 265 ("The term 'exchange' is used to refer to the physical or conceptual space in which subscribers' risks are swapped.").

6. *See Peace Church Risk Retention Grp. v. Johnson Controls Fire Prot. LP*, 49 F.4th 866, 871 (3d Cir. 2022) (explaining that the exchange formed by subscribers "is, in general, a distinct legal entity that can sue or be sued in its own name, but unlike traditional mutual insurance companies, has no corporate existence"); Verstein, *supra*, at 265 ("The term 'exchange' is used to refer to the physical or conceptual space in which subscribers' risks are swapped.").

7. *See* Reinmuth, *supra*, at 16 ("Procedurally, the management of a reciprocal, that is, the attorney-in-fact, is appointed by each policyholder through the medium of the subscriber's agreement or power of attorney.").

8. Typically, the subscribers limit their liability to separate and several liability—not joint liability—for loss claims under those policies. *See Long*, 195 A. at 418 (explaining that reciprocal insurance was "[o]riginally designed as a means of enabling

from every subscriber, the common attorney-in-fact then issues policies to subscribers on behalf of the exchange and performs other functions related to the insurance business such as collecting premiums and settling claims.[9] The attorney-in-fact receives compensation for performing those services by individual consent of each subscriber,

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members of close-knit groups to insure each other without joint liability"); 3 *Couch on Insurance* § 39:56 (3d ed. June 2025 update) ("The liability of the subscribers is several . . . ."); *cf. Wysong v. Auto. Underwriters*, 204 Ind. 493, 184 N.E. 783, 786 (Ind. 1933) ("The subscribers have the right to . . . fix the limit of their liability unless there is some law preventing it."); Verstein, *supra*, at 266 ("By the 1960s, reciprocals ordinarily limited liability to one additional premium deposit or less."). *But cf. Commonwealth ex rel. Schnader v. Keystone Indem. Exch.*, 338 Pa. 405, 11 A.2d 887, 891 (Pa. 1940) (allowing subscribers to be assessed up to the full amount of one additional annual premium to cover losses associated with liquidation).

9. *See Long*, 195 A. at 418 ("Each member who is a subscriber, by power of attorney, authorizes the attorney in fact to represent him individually in exchanging insurance with others, and to do every act that he could do in relation to suits or other proceedings."); *William Penn Motor Indem. Exch. v. Haddad*, 86 Pa. Super. 307, 308–09 (1925) (explaining under the Act of June 27, 1913, No. 372, 1913 Pa. Laws 634, "[a]s it would be obviously impracticable for each member of the large group of subscribers personally to attend to the details essential to the performance of what was authorized by the statute, it provided that the reciprocal or inter-insurance contract with each other might be executed for the subscriber, and that other things might be done on his behalf, by an attorney, agent, or other representative, who was designated attorney"); Reinmuth, *supra*, at 12 ("In effect the attorney-in-fact is the management of the reciprocal.").

provided by his or her subscriber's agreement.[10] In practice, the compensation for the attorney-in-fact is a percentage of the premiums from policies issued by the exchange, not a pledge of the surplus from the insurance business—any surplus is shared among the subscribers.[11] By way of simplified example:

> [If A, B, and C, are all subscribers, then] A and B separately and severally undertake to indemnify C; B and C separately and severally undertake to indemnify A[;] and A and C separately and severally undertake to indemnify B. They proceed by appointing D their attorney in fact for that particular purpose and business, and he takes the place of an insurance company in every particular. The power of attorney . . . limits D's rights and powers, and prescribes his duties and provides for his compensation.

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10. *See* 3 *Couch on Insurance* § 39:55 (3d ed. June 2025 update) ("The subscribers contribute premiums or membership fees that are deposited by the attorney-in-fact for the association to meet expenses and obligations including the compensation of the attorney-in-fact."); *see also* Reinmuth, *supra*, at 12 ("Perhaps the most important aspects regarding the attorney-in-fact involve its structure and compensation.").

11. *See* 43 Am. Jur. 2d *Insurance* § 74 (May 2025 update) ("Generally speaking, the subscribers to a reciprocal or interinsurance association pay a premium or membership fee to the exchange, and from the premiums, a fixed percentage is deducted as the fee of the attorney-in-fact."). *But cf.* Norgaard, *supra*, at 30 ("In the reciprocal, the surplus is owned by those who have contributed it . . . .").

Robert J. Brennen, *Inter-Insurance—Its Legal Aspects and Business Possibilities*, 58 Cent. L.J. 323, 323 (1904).[12]

In 1913, based on model legislation proposed by the National Convention of Insurance Commissioners, Pennsylvania became the first state to provide an express statutory authorization for reciprocal insurance for all forms of insurance except life insurance.[13] Pennsylvania's subsequent Insurance Company Law of 1921[14] repealed

12. *See generally* Haskel, *supra*, at 35–37 (providing a description of reciprocal insurance); Norgaard, *supra*, at 25–39, 190 (identifying the five attributes of reciprocal insurance as individual subscribers, the exchange, the attorney-in-fact, the division of surplus, and separate-and-several liability).

13. *Compare* Act of June 27, 1913, No. 372, 1913 Pa. Laws 634, *with* Reinmuth, *supra*, at App. A. *See also* Reinmuth, *supra*, at 50–52 (describing the circumstances leading up to the promulgation of the model law); Verstein, *supra*, at 267 & n.108 (explaining that the first statute that "specifically addressed reciprocals" was enacted in 1913 in Pennsylvania); *Long*, 195 A. at 418–19 (recounting that Pennsylvania first provided for the operation of reciprocal insurance by legislation in 1913); *cf. Haddad*, 86 Pa. Super. at 308–09 (explaining that the 1913 Act "provided that the reciprocal or inter-insurance contract with each other might be executed for the subscriber, and that other things might be done on his behalf, by an attorney, agent, or other representative, who was designated attorney"); *In re Minnesota Ins. Underwriters*, 36 F.2d 371, 372 (D. Minn. 1929) ("It is a well-known fact that reciprocal or interinsurance exchanges existed in this country prior to enactment of laws authorizing them.").

14. Insurance Company Law of 1921, Pub. L. No. 682, art. X, § 1001 (1921) (currently codified at 40 Pa. Stat. § 961).

that legislation,[15] but it substantially reenacted the authorization for reciprocal insurance.[16]

B. The Founding, Structure, and Operation of Erie Insurance Group

In 1925, H.O. Hirt founded the Erie Insurance Group, a Pennsylvania insurance holding company, to provide reciprocal insurance. Erie Insurance Group consists of an unincorporated association of subscribers, Erie Insurance Exchange, and their attorney-in-fact, Erie Indemnity Company, which is a publicly traded Pennsylvania corporation with a principal place of business in Erie, Pennsylvania. Each subscriber in the Exchange has individually appointed Indemnity as his or her attorney-in-fact through a substantively identical subscriber's agreement. In addition to conferring specific

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15. *See Long*, 195 A. at 419.

16. In later providing statutory authorizations for reciprocal insurance, some other states have required a subscribers' committee to represent the exchange, and potentially to have the authority to regulate the compensation of the attorney-in-fact. *See, e.g.*, N.Y. Ins. Law §§ 6101–06 (requiring a subscribers' committee elected annually by subscribers with the power to manage the reciprocal insurer); Cal. Ins. Code § 1308 (requiring a subscribers' committee but not conferring power to set the compensation for the attorney-in-fact); *cf.* Reinmuth, *supra*, at 16 ("In many instances the subscribers' committee can be described merely as 'window dressing.' Few states require[d] by statute a subscribers' committee and, of those that d[id], most d[id] not stipulate that it be elected by the subscribers."). Pennsylvania does not statutorily require a subscribers' committee for reciprocal insurance.

powers to Indemnity related to managing the business and affairs of the Exchange, the Subscriber's Agreement allows Indemnity to "retain up to 25% of all premiums" as compensation, referred to as the 'management fee.' Subscriber's Agreement ¶ 3 (JA183).

Although Indemnity may set its own compensation, subject to the 25%-of-premiums cap for the management fee, the amount that it set for itself was not historically a point of conflict. During Hirt's tenure as Chief Executive Officer and President of Indemnity until 1976 and as one of its Directors until 1980, there appears to have been no litigation over the amount of the management fee. Likewise, in the years immediately following Hirt's departure and his later passing in 1982, which led to the transfer of voting control of Indemnity to his descendants, it does not appear that any subscriber sued Indemnity over the percentage of the management fee that Indemnity charged.

Beginning in 1991, Indemnity's Board of Directors voted for the first time to retain the maximum 25% of premiums for its compensation. *See* Erie Indemnity Co., Annual Report 18 (Form 10-K) (Mar. 26, 1998); *cf. Vanderklok v. United States*, 868 F.3d 189, 205 n.16 (3d Cir. 2017) (explaining that a court may take judicial notice of "information [that] is publicly available on government websites"). Over the course of the next two decades, the Board voted at its annual December meeting to retain no less than 23.5% of the premiums, and since 2006, the Board has voted annually to retain 25% of the premiums as compensation for Indemnity's services.

Around the same time, there was a change in practice with respect to other subscribers' fees. One of those fees related to installment plans. *See Beltz v. Erie Indem. Co.*, 733 F. App'x 595, 597 (3d Cir. 2018). For a fee, subscribers could pay their premiums in installments, and before 1997, those fees were treated as ordinary revenue of the Exchange for the benefit of subscribers. *Id.* But in 1997, Indemnity started retaining a portion of those fees. *Id.* And, within two years, Indemnity began keeping all installment-plan fees for itself. *Id.* at 598.

In 2008, Indemnity started charging subscribers additional fees for late premium payments, cancellation notices, and reinstatement costs. *See id.* As with the installment-plan fees, Indemnity retained those fees, collectively referred to herein as 'late fees,' instead of treating them as revenue for the benefit of the subscribers. *See id.*

C. Suits by Subscribers Against Indemnity Based on Fee Retention

Indemnity's changes to its fee practices prompted lawsuits by subscribers. Three of those are relevant here: the *Beltz* litigation, the *Ritz* case, and the *Stephenson* cases.[17]

17. There have been several other challenges by subscribers to Indemnity's retention of fees. *See, e.g., Erie Ins. Exch. v. Erie Indem. Co.*, No. GD-12-1712 (Pa. Ct. C.P. Fayette); *Erie Ins. Exch. v. Erie Indem. Co.*, No. MS14-03-003 (Pa. Ins. Comm'r Apr. 29, 2015); *Erie Ins. Exch. ex rel. Sullivan v. Erie Indem. Co.*, 2012 U.S. Dist. LEXIS 144536, 2012 WL 4762203 (W.D. Pa. Oct. 5, 2012),

Appendix A

1. The *Beltz* Litigation

In the *Beltz* case that commenced in July 2016,[18] subscribers sued Indemnity in the United States District Court for the Western District of Pennsylvania for retaining installment-plan fees from 1997 to 2016 and late fees from 2008 to 2016. *See Beltz v. Erie Indem. Co.*, 279 F. Supp. 3d 569 (W.D. Pa. 2017), *aff'd*, 733 F. App'x 595 (3d Cir. 2018). Based on those allegations, the subscribers brought five claims under Pennsylvania law:

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aff'd sub nom. Erie Ins. Exch. v. Erie Indem. Co., 722 F.3d 154 (3d Cir. 2013); *Erie Ins. Exch. v. Stover*, 2014 U.S. Dist. LEXIS 16102, 2014 WL 546707 (W.D. Pa. Feb. 10, 2014), *appeal dismissed sub nom., Erie Ins. Exch. ex rel. Beltz v. Stover*, 619 F. App'x 118 (3d Cir. 2015); *Erie Ins. Exch. ex rel. Sullivan v. Pa. Ins. Dep't*, 133 A.3d 102 (Pa. Commw. Ct. 2016).

18. The *Beltz* plaintiffs previously sued Indemnity in 2012 in Pennsylvania state court for breach of contract and breach of fiduciary duty. *Beltz*, 279 F. Supp. 3d at 577 (citing *Erie Ins. Exch.*, No. GD-12-1712 (Pa. Ct. C.P. Fayette)). Indemnity removed the action to district court, citing the diversity provisions of CAFA, *see* 28 U.S.C. § 1332(d), but, on the *Beltz* plaintiffs' motion, the district court determined that it lacked subject-matter jurisdiction and remanded the case to state court. *Sullivan*, 2012 U.S. Dist. LEXIS 144536, 2012 WL 4762203, at *1, *4. This Court affirmed that ruling on the basis that plaintiffs had not pleaded a class action. *Erie Ins. Exch. v. Erie Indem. Co.*, 722 F.3d at 163. In state court, Indemnity lodged preliminary objections, one of which sought to refer the matter to the Pennsylvania Insurance Department based on primary jurisdiction and that objection was sustained. *Beltz*, 279 F. Supp. 3d at 577. The Department ruled in favor of Indemnity, but on appeal the Commonwealth Court vacated that ruling. *Sullivan*, 133 A.3d at 107, 112–13.

two for breach of fiduciary duty and one count each for breach of contract, unjust enrichment, and conversion. To invoke the limited subject-matter jurisdiction of the district court, the subscribers sued primarily as putative class members and relied on the diversity provisions of the Class Action Fairness Act, commonly abbreviated as 'CAFA.' *See* 28 U.S.C. § 1332(d). But they also brought suit as individuals and derivatively on behalf of the Exchange, and to proceed with their claims in those capacities, they relied on supplemental jurisdiction. *See id.* § 1367(a).

Indemnity successfully moved to dismiss all of those claims. *Beltz*, 279 F. Supp. 3d at 585. In particular, the district court dismissed the breach-of-fiduciary-duty claims as untimely under the applicable two-year statute of limitations. *Id.* at 581–83 (citing 42 Pa. Cons. Stat. § 5524(7)). The district court reasoned that although Indemnity had been continuously retaining the installment plan fees since 1997 and the late fees since 2008, the claims for breaches of fiduciary duty related to Indemnity's decisions in 1997 and 2008 to retain those fees, and thus claims filed in 2016 to challenge those decisions were untimely and not subject to a continuing-violation exception or to equitable tolling. *Id.*

On appeal, the subscribers unsuccessfully sought to resuscitate those claims. *Beltz*, 733 F. App'x at 598. In their appellate briefing, the subscribers advanced a failure-to-act theory based on inadequate oversight in an attempt to overcome the statute of limitations. But that argument was not presented in district court, and this Court relied on forfeiture principles to affirm the judgment of the district court. *Id.* at 599.

2. The *Ritz* Litigation

In December 2017, after the district court's dismissal of the *Beltz* suit but before resolution of the *Beltz* appeal, another subscriber, who was not a named party to the *Beltz* case, initiated the *Ritz* suit in the Western District of Pennsylvania against Indemnity. *Ritz v. Erie Indem. Co.*, 2019 U.S. Dist. LEXIS 17589, 2019 WL 438086, at *1 (W.D. Pa. Feb. 4, 2019). That plaintiff sued Indemnity for two counts of breach of fiduciary duty, one count of breach of contract, and one count of unjust enrichment. That subscriber premised her claims not on the installment plan fees or the late fees, as the *Beltz* plaintiffs had done, but instead on the 25% management fee for the upcoming year that Indemnity set every December between 2006 to 2016. The plaintiff in *Ritz* followed the same approach to jurisdiction as the *Beltz* plaintiffs: she sued as a putative class member, relying on CAFA diversity jurisdiction, *see* 28 U.S.C. § 1332(d), and she also sued individually and derivatively on the Exchange's behalf, relying on supplemental jurisdiction, *see id.* § 1367(a).

After the parties in *Ritz* consented to the jurisdiction of a magistrate judge, *see id.* § 636(c)(1), Indemnity moved to dismiss the claims on claim-preclusion grounds. *Ritz*, 2019 U.S. Dist. LEXIS 17589, 2019 WL 438086, at *1. The magistrate judge granted that motion and dismissed the case with prejudice. 2019 U.S. Dist. LEXIS 17589, [WL] at *6. The memorandum opinion in support of that ruling identified the three elements of federal claim preclusion—a final judgment; a subsequent suit based on the same cause of action; and the involvement of the same

parties or their privies in both suits—and determined that they were satisfied. 2019 U.S. Dist. LEXIS 17589, [WL] at *3–6. *See generally In re Mullarkey*, 536 F.3d 215, 225 (3d Cir. 2008). In particular, with respect to the requirement for the same cause of action, the magistrate judge concluded that the *Ritz* plaintiff was pursuing the same cause of action as the *Beltz* plaintiffs because her claims for charging the 25% management fee were part of the same transaction or occurrence as the *Beltz* action and could have been brought in that suit. *Ritz*, 2019 U.S. Dist. LEXIS 17589, 2019 WL 438086, at *4–5; 2019 U.S. Dist. LEXIS 17589, [WL] at *4 ("Both cases allege that this scheme began at the same time, that it breaches the same provision of an identical Subscriber's Agreement and allegedly caused damages to the same putative class."). And finally, the memorandum opinion concluded that although the *Ritz* plaintiff was not a party to the *Beltz* suit, she was in privity with the *Beltz* plaintiffs because they had entered into identical subscriber's agreements with Indemnity as "cosigners." 2019 U.S. Dist. LEXIS 17589, [WL] at *6.

Despite that adverse ruling and the privity holding based on the finding that subscribers were co-signers, the *Ritz* plaintiff did not appeal.

3. The *Stephenson* Cases – Including This Suit

In August 2021, a separate group of subscribers sued Indemnity in the Court of Common Pleas, Allegheny County. As the plaintiff had done in *Ritz*, these subscribers,

the *Stephenson* plaintiffs, claimed that Indemnity breached its fiduciary duty by setting the management fee at the 25% maximum. But the *Stephenson* plaintiffs' claims differed from the claim in *Ritz* in two respects: they were limited to the management fees set in 2019 and 2020, and they included a failure-to-act theory, specifically the contention that Indemnity should have, but failed to, establish procedures to resolve conflicts of interest between subscribers and Indemnity's controlling shareholders in 2019 and 2020. Also, as the *Beltz* and *Ritz* plaintiffs had done, the *Stephenson* plaintiffs sued as putative class members and individually, but unlike those prior cases, the *Stephenson* plaintiffs did not sue derivatively on behalf of the Exchange.

With the *Stephenson* plaintiffs attempting to bring a class action in state court, Indemnity invoked CAFA to remove the case to the United States District Court for the Western District of Pennsylvania. *See* 28 U.S.C. § 1453 (establishing removal jurisdiction over CAFA claims to be coextensive with the original CAFA diversity jurisdiction provision of 28 U.S.C. § 1332(d)). Before Indemnity filed an answer, the *Stephenson* plaintiffs voluntarily dismissed that case, referred to as *Stephenson I*, without prejudice. *See* Fed. R. Civ. P. 41(a)(1)(A)(i).

One month later, in December 2021, three of the *Stephenson I* plaintiffs, who were all citizens of Pennsylvania, sued Indemnity again in the Court of Common Pleas, Allegheny County. Substantively, their claim was the same as the one in *Stephenson I*: they alleged that Indemnity breached its fiduciary duty by

setting a 25% management fee in 2019 and 2020 and that Indemnity failed during that same period to establish procedures to resolve conflicts of interest between the subscribers and Indemnity's controlling shareholders. But unlike in *Stephenson I*, the plaintiffs in the new suit, *Stephenson II*, did not attempt to proceed as a putative class action but rather sued as trustees *ad litem* for the Exchange, *see* Pa. R. Civ. P. 2152, or, alternatively, derivatively on behalf of the Exchange, *see id.* 2177.

Although the *Stephenson II* plaintiffs were not suing as putative class members, Indemnity—as it had done in *Stephenson I* – invoked CAFA to remove the case to the United States District Court for the Western District of Pennsylvania. *Erie Ins. Exch. ex rel. Stephenson v. Erie Indem. Co.*, 2022 U.S. Dist. LEXIS 175644, 2022 WL 4534746, at *1 (W.D. Pa. Sep. 28, 2022), *aff'd*, 68 F.4th 815 (3d Cir. 2023). After the parties consented to the jurisdiction of a magistrate judge, the *Stephenson II* plaintiffs moved to remand the case to state court on the ground that the case was not a class action subject to CAFA. 2022 U.S. Dist. LEXIS 175644, [WL] at *2. In that motion, the *Stephenson II* plaintiffs indicated that they were prepared to contest the preclusive effect of the previous judgments in Indemnity's favor.

With that indication from the *Stephenson II* plaintiffs, Indemnity initiated this suit, *Stephenson III*, against the *Stephenson II* plaintiffs to enjoin them from proceeding with the *Stephenson II* case in state court. Although *Stephenson II* had been removed to federal court and the briefing on that motion to remand was pending,

Indemnity alleged that injunctive relief was needed to effectuate the judgments in *Beltz* and *Ritz* because the claims in *Stephenson II* were barred by claim preclusion and fatally undermined by issue preclusion. Rather than wait for resolution of the *Stephenson II* plaintiffs' motion to remand—and address those affirmative defenses in the state-court proceedings if the motion were granted or in federal court if it were denied—Indemnity invoked the All Writs Act, *see* 28 U.S.C. § 1651, to effectuate the preclusive effects of the prior federal-court judgments in *Beltz* and *Ritz* in the state court. Relying on the same federal statute, Indemnity also sought to permanently enjoin the *Stephenson II* plaintiffs or their privies from challenging "Indemnity's compensation practices pursuant to the Subscriber's Agreement that were the subject of the prior judgments." *Stephenson III* Compl. ¶ 109 (JA65). All parties to *Stephenson III* consented to the jurisdiction of the same magistrate judge who was presiding over *Stephenson II*. *See* 28 U.S.C. § 636(c)(1). Because Indemnity's suit sought to have the federal court that issued the judgments in *Beltz* and *Ritz* determine their preclusive effect, it was within the District Court's ancillary enforcement jurisdiction. *See Johnson v. Mazie*, 144 F.4th 146, 151 (3d Cir. 2025) ("Ancillary enforcement jurisdiction is 'a creature of necessity' that gives 'federal courts the power to enforce their judgments and' ensure 'that they are not dependent on state courts to enforce their decrees.'" (quoting *Nat'l City Mortg. Co. v. Stephen*, 647 F.3d 78, 85 (3d Cir. 2011), *as amended* (Sept. 29, 2011))); *Butt v. United Bhd. of Carpenters & Joiners of Am.*, 999 F.3d 882, 887 (3d Cir. 2021) ("[A]ncillary enforcement jurisdiction exists 'to

enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees.'" (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994))); *United States v. Apple MacPro Comput.*, 851 F.3d 238, 244 (3d Cir. 2017) ("[A] court has subject matter jurisdiction over an application for an All Writs Act order only when it has subject matter jurisdiction over the underlying order that the All Writs Act order is intended to effectuate.").

Before any adjudication of Indemnity's requests for injunctive relief in *Stephenson III* could take place, the magistrate judge granted the plaintiffs' motion to remand in *Stephenson II*. *Stephenson*, 2022 U.S. Dist. LEXIS 175644, 2022 WL 4534746, at *1. Indemnity filed a timely notice of appeal of that decision, and that prompted a series of stays, including stays of the remand order in *Stephenson II* and the proceedings in *Stephenson III*. *Stephenson*, 68 F.4th at 818.

On May 22, 2023, this Court affirmed the remand order in *Stephenson II*. *Id.* at 817. Indemnity challenged that decision through a petition to the Supreme Court for a writ of certiorari. *See* Petition for Writ of Certiorari, *Erie Indem. Co. v. Erie Ins. Exch. ex rel. Stephenson*, 144 S. Ct. 1007, 218 L. Ed. 2d 173 (2024) (No. 23-434). The magistrate judge then extended the stay in *Stephenson II* pending resolution of Indemnity's petition for certiorari. And in *Stephenson III*, the District Court set a briefing schedule for Indemnity to move for a preliminary injunction to

enjoin the *Stephenson II* plaintiffs from proceeding with their case in state court.

In seeking a preliminary injunction, Indemnity argued that the judgments in *Beltz* and *Ritz* had claim preclusive effect, and if nothing else, the judgment in *Ritz* on the claim preclusive effect of *Beltz* had issue preclusive effect. The District Court agreed with Indemnity on the claim preclusive effect of *Beltz* and *Ritz*. *Erie Indem. Co. v. Stephenson*, 2024 U.S. Dist. LEXIS 34546, 2024 WL 844370, at *5–9 (W.D. Pa. Feb. 28, 2024). Without the need to address the issue-preclusion argument, the District Court then determined that the other relevant considerations—irreparable harm, the balance of harms, and the public interest—favored a preliminary injunction. 2024 U.S. Dist. LEXIS 34546, [WL] at *5, *9–10. The District Court entered an order preliminarily enjoining the *Stephenson II* litigation. 2024 U.S. Dist. LEXIS 34546, [WL] at *1. Through a timely notice of appeal of the order granting the preliminary injunction, the subscribers invoked this Court's appellate jurisdiction. *See* 28 U.S.C. § 1292(a)(1); Fed. R. App. P. 4(a)(1)(A).

II. Discussion

A. Legal Standards for Preliminary Injunctions

A preliminary injunction grants injunctive relief during the pendency of a lawsuit, and it is "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008).

Rather, the appropriateness of such relief depends on four considerations:

1. A reasonable probability of success on the merits of the claim for which injunctive relief is sought;

2. An irreparable harm in the absence of preliminary injunctive relief;

3. A balancing of the equities associated with the possibilities of harms to other interested persons resulting from the grant or denial of injunctive relief; and

4. An assessment of the public interest.

Transcon. Gas Pipe Line Co. v. Pa. Env't Hearing Bd., 108 F.4th 144, 150 (3d Cir. 2024).

A party seeking a preliminary injunction bears the burden of proof, *see Winter*, 555 U.S. at 20, and a failure by that party to establish either of the first two considerations—probability of success on the merits and irreparable harm—forecloses such relief, *see Transcon.*, 108 F.4th at 150 (explaining that the first two factors "operate both as essential elements and as factors that guide the exercise of equitable discretion"); *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017) (describing the first two factors as "gateway factors" that must be met before the remaining factors may be weighed). If the moving party makes sufficient showings for those

first two considerations, then a court evaluates the relative weights of all four considerations to determine whether preliminary injunctive relief is appropriate. *See Amalgamated Transit Union Loc. 85 v. Port Auth.*, 39 F.4th 95, 103 (3d Cir. 2022).

Because a motion for a preliminary injunction seeks discretionary relief, the grant or denial of such a motion is reviewed for an abuse of discretion. *See Reilly*, 858 F.3d at 176. However, when one of the four preliminary-injunction considerations implicates a question of law, that question is reviewed *de novo*. *See Amalgamated Transit*, 39 F.4th at 102. And when one of the four considerations involves a factual finding, that finding is reviewed for clear error. *See id.*

In addition to these general principles, the remedial powers of federal courts with respect to enjoining state-court proceedings are limited by federal statutes, including the Anti-Injunction Act. *See* 28 U.S.C. § 2283. That statute generally prohibits a federal court from granting "an injunction to stay proceedings in a State court," but it also contains a relitigation exception that allows a federal court to issue such an injunction "to protect or effectuate its judgments." *Id. See generally* Martin H. Redish, *The Anti-Injunction Statute Reconsidered*, 44 U. Chi. L. Rev. 717, 718 (1977) (explaining that after *Toucey v. New York Life Insurance Co.*, 314 U.S. 118, 62 S. Ct. 139, 86 L. Ed. 100 (1941), in which the Supreme Court held that the Anti-Injunction Act did not contain a relitigation exception, Congress amended the statute to include such an exception).

B. Likelihood of Success on the Merits

In briefing the likelihood of success on the merits of claim preclusion and issue preclusion, the parties relied on the federal standards for both doctrines. Because the *Beltz* and *Ritz* judgments were premised on the exercise of diversity and supplemental jurisdiction, it was more appropriate to apply Pennsylvania preclusion law.[19] But with neither party advancing such a contention, they have both forfeited any argument that Pennsylvania standards should apply. *See Schaffner v. Monsanto Corp.*, 113 F.4th 364, 377 n.6 (3d Cir. 2024) (declining to apply state-preclusion law where all parties briefed federal law). Consequently, Indemnity's claim-preclusion and issue-preclusion arguments, which present pure questions of law, are subject to *de novo* review based on federal preclusion standards. *See Chavez v. Dole Food Co.*, 836

19. Federal common law "governs the claim-preclusive effect of a dismissal by a federal court sitting in diversity," meaning that the Supreme Court is ultimately responsible for "prescrib[ing]" the proper scope federal judgments. *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507–08, 121 S. Ct. 1021, 149 L. Ed. 2d 32 (2001). And in exercising that prescriptive discretion, the Supreme Court has instructed that the federal court tasked with enforcing a judgment from another federal court sitting in diversity must apply "the [preclusion] law that would be applied by state courts in the State in which the federal diversity court sits," unless "the state law is incompatible with federal interests." *Id.* at 508–09; *see also Chavez v. Dole Food Co.*, 836 F.3d 205, 225 (3d Cir. 2016) (en banc) (recognizing that "*Semtek* thus directs [this Court] to evaluate the res judicata effects of the [rendering] District Court's timeliness dismissals by looking to [that forum state's] law of claim preclusion").

F.3d 205, 225 (3d Cir. 2016) (en banc) ("[R]es judicata . . . is, at bottom, a pure question of law."); *Elkadrawy v. Vanguard Grp., Inc.*, 584 F.3d 169, 172 (3d Cir. 2009) ("Our review of an application of res judicata is plenary."); *cf. also Jean Alexander Cosms., Inc. v. L'Oreal USA, Inc.*, 458 F.3d 244, 248 (3d Cir. 2006) (clarifying that the application of collateral estoppel is reviewed *de novo* unless it is "offensive" and "non-mutual").

1. Claim Preclusion

As articulated by this Court, the federal standard for claim preclusion consists of three elements:

1. A final judgment on the merits in a prior suit;

2. A subsequent suit based on the same cause of action; and

3. Involvement of the same parties or their privies in both suits.

Ndungu v. AG United States, 126 F.4th 150, 165 (3d Cir. 2025).

The parties here dispute only the second element, the requirement that a subsequent case be based on the same cause of action. That element encompasses not only claims that were actually resolved in the prior suit but also claims that could have been brought in the prior suit. *See Cromwell v. County of Sac*, 94 U.S. 351, 358, 24 L. Ed. 195

(1876) ("[*Res judicata*] applies . . . not only to the points upon which the court was required by the parties to form an opinion, and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time." (quoting *Henderson v. Henderson*, (1843) 67 Eng. Rep. 313, 319; 3 Hare 100, 115 (Ch.))). Even so, the Supreme Court has explained that "[c]laim preclusion generally 'does not bar claims that are predicated on events that postdate the filing of the initial complaint.'" *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 590 U.S. 405, 414, 140 S. Ct. 1589, 206 L. Ed. 2d 893 (2020) (quoting *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 600, 136 S. Ct. 2292, 195 L. Ed. 2d 665 (2016)); *see also Morgan v. Covington Township*, 648 F.3d 172, 178 (3d Cir. 2011) (holding that "*res judicata* does not bar claims that are predicated on events that postdate the filing of the initial complaint"). Yet, here Indemnity argues for claim preclusion on precisely that basis. It contends that although the *Beltz* and *Ritz* cases were filed in July 2016 and December 2017 respectively, the judgments in those cases preclude the *Stephenson II* plaintiffs' claims based on Indemnity's actions in December 2019 and December 2020 – setting the management fees at 25% and having conflicted oversight. Because the *Stephenson II* plaintiff's claims are based on events that occurred after the initial complaints in *Beltz* and *Ritz*, the judgments in those cases do not have claim preclusive effect over the challenges now presented by the *Stephenson II* plaintiffs. Thus, the District Court erred in concluding that Indemnity had a likelihood of success on claim-preclusion grounds, and there is no need to

separately assess whether the relitigation exception to the Anti-Injunction Act would permit Indemnity's requested injunction.[20]

2. Issue Preclusion

Indemnity also defends the District Court's grant of a preliminary injunction based on collateral estoppel. Specifically, it advances a preclusion-on-preclusion theory: the decision in *Ritz* on the claim preclusive effect of *Beltz* has issue preclusive effect for the *Stephenson II* plaintiffs.

For a prior judgment to have issue preclusive effect, an issue of fact or law must have been "actually litigated and resolved in a valid court determination essential to the prior judgment." *New Hampshire v. Maine*, 532 U.S. 742, 748–49, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001). To meet that requirement, there must be an "identity of issues" between those decided in the prior case and those for which preclusion is sought. *Raytech Corp. v. White*, 54 F.3d 187, 191 (3d Cir. 1995); *cf. Smith v. Bayer Corp.*, 564 U.S. 299, 307, 131 S. Ct. 2368, 180 L. Ed. 2d 341 (2011). Here, the two issues for comparison are the claim preclusive effect of *Beltz* on the claims brought in *Ritz* and the claim preclusive effect of *Beltz* on the claims brought by the *Stephenson II* plaintiffs.

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20. *Cf. generally Smith v. Bayer Corp.*, 564 U.S. 299, 306–08, 131 S. Ct. 2368, 180 L. Ed. 2d 341 (2011) (providing guiding principles regarding the application of the relitigation exception); *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 148, 108 S. Ct. 1684, 100 L. Ed. 2d 127 (1988) (same).

The first issue was decided in *Ritz*. That decision determined that the holding in *Beltz* – that the breach-of-fiduciary duty claims based on the management fees Indemnity charged from 1997 to 2016 and the late fees Indemnity charged from 2008 to 2016 fell outside of the two-year statute of limitations, *Beltz*, 279 F. Supp. 3d at 581–83; *Beltz*, 733 F. App'x at 599 – had claim preclusive effect on the breach-of-fiduciary duty claims in *Ritz*, which were based on the management fees set in December 2006 to 2016 for the next year. The lynchpin of that holding was that the breach-of-fiduciary-duty claims in *Ritz* could have been brought in *Beltz*. *Ritz*, 2019 U.S. Dist. LEXIS 17589, 2019 WL 438086, at *4. Indeed, the *Ritz* decision made clear that "Ritz's complaint does not include any new material facts that occurred after the filing of the [*Beltz*] complaint." *Id.*

The issue presented here seeks to extend the claim preclusive effect of *Beltz* to the *Stephenson II* plaintiffs' claims based on new material facts: Indemnity's setting of management fees in 2019 and 2020 as well as its oversight in those years. The *Ritz* decision on claim preclusion did not address that issue, and hence the issues are not identical. *See Raytech*, 54 F.3d at 191 (focusing the "precise question or questions at issue" in the two cases). Without an identity of issues, Indemnity has not demonstrated a likelihood of success on issue preclusion, making it unnecessary to address whether Indemnity's requested injunction fits within the relitigation exception to the Anti-Injunction Act.[21]

21. *See generally Smith*, 564 U.S. at 307–08 (setting forth the requirements for relying on the relitigation exception to enjoin a state-court proceeding based on issue preclusion).

III. Conclusion

Because Indemnity did not demonstrate a likelihood of success on the merits on either claim or issue preclusion, the District Court abused its discretion in granting Indemnity's motion for a preliminary injunction, and it is not necessary to address the remaining three considerations for preliminary injunctions. *See Transcon.*, 108 F.4th at 151 ("[I]f there is an 'insuperable' barrier to the plaintiff's ability to succeed on the merits . . . , then an analysis of the remaining considerations is unnecessary." (quoting *Munaf v. Geren*, 553 U.S. 674, 691, 128 S. Ct. 2207, 171 L. Ed. 2d 1 (2008))). We will therefore vacate the order of the District Court granting such relief.

APPENDIX B — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA, ERIE, FILED FEBRUARY 28, 2024

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE

1:22-CV-00093-CRE

ERIE INDEMNITY COMPANY,

Plaintiff,

vs.

TROY STEPHENSON, CHRISTINA STEPHENSON, AND; AND STEVEN BARNETT, IN BOTH THEIR INDIVIDUAL CAPACITIES AND IN ANY REPRESENTATIVE CAPACITIES THEY MAY HAVE RELATING TO ERIE INSURANCE EXCHANGE;

Defendants.

Filed February 28, 2024

MEMORANDUM OPINION[1]

CYNTHIA REED EDDY, United States Magistrate Judge.

1. All parties have consented to jurisdiction before a United States Magistrate Judge; therefore the Court has the authority to decide dispositive motions, and to eventually enter final judgment. *See* 28 U.S.C. § 636, *et seq.*

Appendix B

I. INTRODUCTION

Presently pending before the Court is Plaintiff Erie Indemnity's ("Indemnity") Motion for Preliminary Injunction. (ECF No. 56). Indemnity is seeking a preliminary injunction under the All Writs Act, 28 U.S.C. § 1651 and the Anti-Injunction Act, 28 U.S.C. § 2283 ("AIA") to enjoin Defendants Troy Stephenson, Christina Stephenson, Steven Barnett and all those in privity with them from pursuing the case *Erie Insurance Exchange v. Erie Indemnity Co.*, No. GD-21-014814 (Pa. Comm. Pl. Allegheny Cnty.) or any similar action and enjoin the Court of Common Pleas of Allegheny County from conducting any further proceedings in that case. The motion is fully briefed and ripe for consideration. (ECF Nos. 57, 58, 60, 69). This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. For the reasons that follow, the motion for preliminary injunction is granted.

II. FINDINGS OF FACT[2]

The Erie Insurance Group ("Erie") is a Pennsylvania reciprocal insurance business founded in 1925 by H.O. Hirt. Reciprocal insurance is where each policyholder, or in Erie's case, each "Subscriber," exchanges reciprocal or inter-insurance contracts with each other providing indemnity among themselves. Erie is comprised of two key entities: "Exchange" and "Indemnity." Exchange

2. The Court makes the following findings of fact and conclusions of law. Fed. R. Civ. P. 52(a). Unless otherwise noted, the facts are undisputed.

is an unincorporated subscriber-owned reciprocal and acts as the insurer for policyholders, or Subscribers, who exchange insurance policies with each other. Exchange has no bylaws, constitution, employees, officers or directors. Indemnity is a Pennsylvania public corporation that manages the insurance functions and affairs for Erie's Subscribers.

The document that establishes and governs this framework between Exchange and Indemnity is the Subscriber's Agreement. Each Subscriber signs an identical version of the Agreement through which they appoint Indemnity as "attorney-in-fact" to manage Erie's affairs and in exchange for those services, each Subscriber authorizes Indemnity to retain up to 25% of all insurance premiums as "compensation." This is referred to as a "Management Fee" and has been set at the maximum rate of 25% from 2007 through the present litigation.

Individual Subscribers, through Exchange, have on several occasions attempted to raise breach of fiduciary duty claims challenging Indemnity's decision to set the Management Fee rate at the full 25% allowed under the Subscriber's Agreement alleging that Indemnity has a conflict of interest in setting the Management Fee and that Indemnity maximizes the Management Fee and its shareholding dividends resulting in Indemnity favoring its own financial interests over Exchange. Because the instant motion turns on the history of those cases challenging the 25% Management Fee rate, a full description of all pertinent cases follow.

Appendix B

a. *Beltz v. Erie Indem. Co.*, No. 1:16-cv-179 (W.D.Pa. 2016); No. 17-2774 (3d Cir. 2017) ("*Beltz II*").

On July 8, 2016, a group of Subscribers brought a putative class and derivative action in the United States District Court for the Western District of Pennsylvania, *Beltz v. Erie Indem. Co.*, No. 1:16-cv-179 (W.D.Pa. 2017). The *Beltz II* Subscribers brought, among other claims, a direct breach of fiduciary duty claim and a breach of fiduciary duty claim purportedly on behalf of Exchange against Indemnity. The *Beltz II* Subscribers alleged, *inter alia*, that Indemnity breached its fiduciary duties for misappropriating service charges and additional fees under the Subscriber's Agreement provision that Indemnity could only withhold 25% of the premiums for its Management Fee. *Beltz v. Erie Indem. Co.*, 279 F. Supp. 3d 569, 575–78 (W.D. Pa. 2017). Specifically, service charges were levied on Subscribers who chose to pay their premiums in installments rather than in a lump sum, and the *Beltz II* Subscribers alleged that beginning in 1999, Indemnity's Board approved taking all the service charges revenue instead of keeping the charges in the Exchange. *Ibid.* The *Beltz II* Subscribers alleged that this breached the Subscriber's Agreement's 25% compensation cap. *Ibid.* Additionally, the *Beltz II* Subscribers alleged that beginning in 2008, Indemnity and its Board transferred all revenue from "additional fees" which were collected from Subscribers for checks or other payments returned unpaid, cancellation notices and charges for reinstatement of a policy following a lapse in coverage due to non-payment, to Indemnity. *Ibid.*

The district court dismissed the breach of fiduciary duty claims holding that such claims were barred by the applicable statute of limitations because the decision to keep the service charges and additional fees occurred in 1997, 1998 and/or 2008. *Id.* at 581–583. In so holding, the district court rejected the *Beltz II* Subscriber's argument that the statute of limitations did not expire under the "continuing violations" doctrine because "Plaintiffs by their own allegations, knew of the wrongfulness of the decision to retain Service Charges at the time those decisions were made. Plaintiffs should have brought those claims within the applicable statute of limitations, and cannot now rely on the continuing violations doctrine as a 'means for relieving [them] from their duty to exercise reasonable diligence in pursuing their claims.'" *Id.* at 583 (quoting *Cowell v. Palmer Twp.*, 263 F.3d 286, 292 (3d Cir. 2001)) (alteration in original).

On appeal, the United States Court of Appeals for the Third Circuit affirmed the district court's decision holding they "forfeited their fiduciary duty claims by advancing a different argument on appeal than they did in the District Court." *Beltz v. Erie Indem. Co.*, 733 F. App'x 595, 598 (3d Cir. 2018).

b. *Ritz v. Erie Indem. Co.*, No. 1:17-CV-340, 2019 U.S. Dist. LEXIS 17589 (W.D.Pa. 2019) ("*Ritz*")

On December 28, 2017, a Subscriber brought a putative class and derivative action in the United States District Court for the Western District of Pennsylvania in *Ritz v. Erie Indem. Co.*, No. 1:17-CV-340 (W.D.Pa.

2019) ("*Ritz*"). The *Ritz* Subscriber brought, among other claims, a putative class claim for a breach of fiduciary duty and a derivative breach of fiduciary duty claim on behalf of Exchange. Specifically, the *Ritz* Subscriber alleged that Indemnity breached its fiduciary duties to Exchange and the Subscribers "for taking excessive management fees" under the Subscriber Agreement's 25% Management Fee provision. *Ritz v. Erie Indem. Co.*, No. 1:17-CV-00340-CRE, 2019 U.S. Dist. LEXIS 17589, 2019 WL 438086, at *1 (W.D. Pa. Feb. 4, 2019). It was "undisputed that Indemnity never withheld any amount exceeding 25%, but rather, Ritz argue[d] that the breach of fiduciary duty [was] based upon Indemnity 'taking the maximum 25% Management Fee year after year without valid grounds' since 2007 to present." *Id.* (quoting *Ritz* Compl. No. 1:17-cv-340-CRE (W.D.Pa. 2017) (ECF No. 1) at ¶¶ 53, 54).

The district court dismissed the *Ritz* Subscriber's breach of fiduciary duty claim based on claim preclusion finding that the breach of fiduciary duty claims could have been brought in the *Beltz II* action because it was based upon the exact conduct: that Indemnity took excessive management fees under the Subscriber's Agreement. 2019 U.S. Dist. LEXIS 17589, [WL] at *4. The Court explained:

> [B]oth cases detail an alleged scheme by Indemnity and its Board to favor shareholders over the subscribers by allegedly violating the 25% compensation cap mandated by the Subscriber's Agreement. The *Beltz II* plaintiffs narrowly tailored their causes of action by focusing on whether it was a breach

for Indemnity and its Board to keep extra-contractual payments which exceeded the 25%, while Ritz broadly alleges that Indemnity and the Board exceeded the 25% compensation cap by unreasonably taking the maximum allowable percentage. Both cases allege that this scheme began at the same time, that it breaches the same provision of an identical Subscriber's Agreement and allegedly caused damages to the same putative class. Both Ritz and the *Beltz II* plaintiffs allege that Indemnity abused its attorney-in-fact position and the Board members abused their positions of power to misappropriate management fees to favor Indemnity's shareholders by deliberately breaching the same contractual provision – the compensation cap in the Subscriber's Agreement – and seek that those funds be returned to the Exchange as damages for the alleged breach. Ritz simply propounds a broader theory of recovery than that sought by the *Beltz II* plaintiffs. Ritz's complaint does not include any new material facts that occurred after the filing of the *Beltz II* complaint such that the *Beltz II* plaintiffs could not have known about the theory of recovery touted by Ritz here. Because proposing a different theory of recovery based upon the same liability causing conduct does not entitle a plaintiff to another proverbial bite at the apple, Ritz's complaint is claim precluded.

2019 U.S. Dist. LEXIS 17589, [WL] at *4. Moreover, the Court found that the *Ritz* Subscriber's claims were further claim precluded because the conduct specifically complained of in the *Ritz* complaint was actually included in the *Beltz II* complaint,[3] and because the *Beltz II* plaintiffs were capable of including *Ritz*'s cause of action for the excessive retention of Management Fees, these were the "same causes of action" for claim preclusion purposes. The Court therefore dismissed the *Ritz* Subscriber's fiduciary duty claims with prejudice on February 4, 2019. 2019 U.S. Dist. LEXIS 17589, [WL] at *6. The *Ritz* judgment was not appealed.

c. *Erie Ins. Exchange v. Erie Indem. Co.*, No. GD-21-014814 (Pa. Comm. Pl. Allegheny Cnty.); No. 2:22-cv-166-CRE (W.D.Pa. 2022) (the "*State Court Action*")

On December 8, 2021, another group of individual Subscribers initiated an action in the Court of Common Pleas of Allegheny County as trustees ad litem for the

3. *See Ritz*, 2019 U.S. Dist. LEXIS 17589, 2019 WL 438086, at *5 comparing *Beltz II* Complaint ("since at least 2007, Indemnity has retained the maximum amount of 25% allowed by the Subscriber's Agreement of all premiums written or assumed by Exchange . . . [and] has repeatedly taken the full amount allowable pursuant to the Subscriber's Agreement") with *Ritz* Complaint (Indemnity "has retained the maximum amount of Management Fees allowed by the Subscriber's Agreement - 25% of all premiums written or assumed by the Exchange . . . and have abused their position of trust by charging and keeping excessive Management Fees.") (emphasis in original omitted).

Exchange alleging two causes of action for breach of fiduciary duty alleging that "since December 10, 2019" Indemnity breached its fiduciary duty to the Exchange "by charging Exchange an annual 'Management Fee' which is used not to cover the costs of serving as the attorney-in-fact and managing agent for Exchange" but is provided to a minority group of shareholders for their personal gain. (ECF No. 57-1 at ¶ 10). The individual Subscribers allege that Indemnity set the Management Fee rate at 25% for both December 2019 and December 2020 and that Indemnity's Board has a conflict of interest in setting the rate, because it maximizes the Management Fee to generate excess profits for the shareholders in detriment to the Exchange. *Id.* at ¶¶ 46–47. Exchange limits the time frame for this conduct and only includes allegations that Indemnity set the Management Fee rate at 25% in December 2019 and December 2020 and does not include any information regarding Indemnity's decision to set the Management Fee at 25% prior to December 2019.

Indemnity removed the case to this Court, which Plaintiffs moved for remand. This Court granted Plaintiff's motion to remand, which was affirmed by the United States Court of Appeals for the Third Circuit and the United States Supreme Court denied certiorari. *Erie Ins. Exch. by Stephenson v. Erie Indem. Co.*, 68 F.4th 815, 817 (3d Cir. 2023), *cert. denied sub nom. Erie Indem. Co. v. Erie Ins. Exch.*, No. 23-434, 144 S. Ct. 1007, 218 L. Ed. 2d 173, 2024 U.S. LEXIS 1019, 2024 WL 759808 (U.S. Feb. 26, 2024). After the expiration of all federal appeals, the Court remanded this case to the Court of Common Pleas of Allegheny County, Pennsylvania on February 28, 2024.

See Erie Ins. Exch. v. Erie Indem. Co., No. 2:22-cv-166-CRE, 2022 U.S. Dist. LEXIS 175644 Order of Feb. 28, 2024 (ECF No. 64).

d. *Erie Indem. Co., v. Troy Stephenson*, No. 1:22-CV-93 (W.D.Pa. 2022) (the "*AIA Action*")

On March 15, 2022, Indemnity filed the instant action against the State Court Action Plaintiffs, Troy Stephenson, Christina Stephenson and Steven Barnett in their individual capacities and in any representative capacities they may have relating to Exchange, seeking injunctive relief pursuant to the All-Writs Act and the AIA. The present AIA action seeks to enjoin the State Court Action filed in December 2021 by those individuals, who have purported to act on behalf of Exchange. Presently pending before the Court is a motion for preliminary injunction by Indemnity.

III. STANDARD OF REVIEW

a. Preliminary Injunction

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008) (citations omitted). In determining whether a preliminary injunction should be granted, a district court must consider:

> (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether

> the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.

Iles v. de Jongh, 638 F.3d 169, 172, 55 V.I. 1251 (3d Cir. 2011) (citations omitted).

In determining "success on the merits," it is enough for the movant to show that it is likely to succeed on at least one claim to issue injunctive relief. *Trefelner ex rel. Trefelner v. Burrell Sch. Dist.*, 655 F. Supp. 2d 581, 590 (W.D. Pa. 2009). In determining "irreparable harm," the movant must show a clear showing of immediate irreparable injury that is so unusual that money cannot compensate for the harm, as "[t]he availability of adequate monetary damages belies a claim of irreparable injury." *Frank's GMC Truck Ctr., Inc. v. Gen. Motors Corp.*, 847 F.2d 100, 102 (3d Cir. 1988).

A plaintiff must produce evidence sufficient to prove all four factors for a court to issue preliminary injunctive relief. *The Pitt News v. Fisher*, 215 F.3d 354, 366 (3d Cir. 2000); *New Jersey Hosp. Ass'n v. Waldman*, 73 F.3d 509, 512 (3d Cir. 1995) (citation omitted). "A plaintiff's failure to establish any element in its favor renders a preliminary injunction inappropriate." *NutraSweet Co. v. Vit-Mar Enterprises, Inc.*, 176 F.3d 151, 153 (3d Cir. 1999).

b. Anti-Injunction Act, 22 U.S.C. § 2283 and All-Writs Act, 28 U.S.C. § 1651(a)

Indemnity brings this action under the "relitigation exception" of the Anti-Injunction Act, 22 U.S.C. § 2283 ("AIA"). The AIA provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283. The AIA "is an absolute prohibition against [federal courts] enjoining state court proceedings, unless the injunction falls within one of three specifically defined exceptions." *Atl. Coast Line R. Co. v. Bhd. of Locomotive Engineers*, 398 U.S. 281, 286, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970). The AIA "exceptions are narrow and are not to be enlarged by loose statutory construction." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146, 108 S. Ct. 1684, 100 L. Ed. 2d 127 (1988) (citations, quotation marks and brackets omitted).

Where, as here, the injunction sought is not "expressly authorized by Act of Congress," the state court proceedings can only be enjoined if it is necessary "in aid of [the federal court's] jurisdiction" or "to protect or effectuate [a federal court's] judgments." 28 U.S.C. § 2283; *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 261 F.3d 355, 364 (3d Cir. 2001). The provision for "allowing injunctions that are

necessary 'to protect or effectuate [a court's] judgments' is also known as the 'relitigation exception' to the Anti Injunction Act." *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 261 F.3d at 364 (citation omitted). "The relitigation exception was designed to permit a federal court to prevent state litigation of an issue that previously was presented to, and decided by, the federal court." *Chick Kam Choo*, 486 U.S. at 147. The relitigation exception "is founded in the well-recognized concepts of res judicata and collateral estoppel." *Id.* The "essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings [must] actually have been decided by the federal court." *Id.* at 148.

"The Supreme Court has therefore urged that courts proceed with caution when considering issuing an injunction under the Anti-Injunction Act. 'A federal court does not have inherent power to ignore to limitations of §2283 and to enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area preempted by federal law, even when the interference is unmistakably clear.'" *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 261 F.3d 355, 364 (3d Cir. 2001) (quoting *Atlantic Coast Line R.R. Co.*, 398 U.S. at 294). While the "to protect or effectuate its judgments" language is "admittedly broad," it implies "that some federal injuncti[ve] relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Atlantic Coast Line R.R. Co.*, 398 U.S.

at 295. Additionally, "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy." *Id.* at 297.

Should a federal court determine that injunctive relief is necessary, the All-Writs Act, 28 U.S.C. § 1651(a) acts in tandem with the AIA and permits the issuance of "all writs necessary or appropriate in aid of [a federal court's] jurisdiction and agreeable to the usages and principals of law[,]" including injunctive relief. 28 U.S.C. § 1651(a); *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 261 F.3d 355, 365 (3d Cir. 2001).

IV. CONCLUSIONS OF LAW

a. Success on the Merits

i. Claim Preclusion

Indemnity argues that the State Court Action is barred by claim preclusion from the *Beltz II* and *Ritz* litigation. Because the Court agrees that Indemnity is likely to succeed on its claim preclusion argument, only that claim will be addressed.[4] *See supra Trefelner ex rel. Trefelner*, 655 F. Supp. 2d at 590.

Claim preclusion – also referred to as *res judicata* – "gives dispositive effect to a prior judgment if a particular

4. Indemnity likewise asserts issue preclusion principals in support of its action.

issue, although not litigated, could have been raised in the earlier proceeding." *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 276 (3d Cir. 2014). "If a later suit advances the same claim as an earlier suit between the same parties, the earlier suit's judgment prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding." *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 590 U.S. ___, ___, 140 S. Ct. 1589, 1594–95, 206 L. Ed. 2d 893 (2020) (cleaned up). "Suits involve the same claim (or 'cause of action') when they arise from the same transaction, or involve a common nucleus of operative facts." *Id.* at 1595 (internal quotation marks and citations and alterations omitted). Generally, claim preclusion "does not bar claims that are predicated on events that postdate the filing of the initial complaint[]" that "give rise to new material operative facts that in themselves, or taken in conjunction with the antecedent facts create a new claim to relief." *Lucky Brand Dungarees, Inc.*, 140 S. Ct. at 1596 (cleaned up).

Claim preclusion applies where there has been (1) a final judgment on the merits in an earlier proceeding that involved (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action. *Bd. of Trustees of Trucking Emps. of N. Jersey Welfare Fund, Inc. – Pension Fund v. Centra*, 983 F.2d 495, 504 (3d Cir. 1992). In determining whether these elements have been met, a court should "not apply this conceptual test mechanically," but rather should focus "on the central purpose of the doctrine, [which is] to require a plaintiff

to present all claims arising out [of] the same occurrence in a single suit." *Sheridan v. NGK Metals Corp.*, 609 F.3d 239, 260 (3d Cir. 2010) (internal quotations and citations omitted). In so doing, "piecemeal litigation" is avoided and the court conserves scare "judicial resources." *Id.* The underlying purpose of claim preclusion is to "relieve the parties of the cost and vexation of multiple lawsuits, . . . prevent[] inconsistent decisions, [and] encourage reliance on adjudication." *Marmon Coal Co. v. Dir., Off. of Workers' Comp. Programs*, 726 F.3d 387, 394 (3d Cir. 2013) (citations omitted). Importantly here, claim preclusion "bars not only claims that were brought in the previous action, but also claims that could have been brought." *Blunt*, 767 F.3d at 276. "This analysis does not depend on the specific legal theory invoked, but rather [on] the essential similarity of the underlying events giving rise to the various legal claims." *Elkadrawy v. Vanguard Grp., Inc.*, 584 F.3d 169, 173 (3d Cir. 2009) (internal citations and quotations omitted). A "prior judgment's preclusive effect then extends not only to the claims that the plaintiff brought in the first action, but also to any claims the plaintiff could have asserted in the previous lawsuit Claim preclusion similar reaches theories of recovery: a plaintiff who asserts a different theory of recovery in a separate lawsuit cannot avoid claim preclusion when the events underlying the two suits are essentially the same." *Beasley v. Howard*, 14 F.4th 226, 231–32 (3d Cir. 2021) (citations omitted). In other words, claim preclusion is based upon "the essential similarity of the underlying events giving rise to the various legal claims" rather than the "specific legal theory invoked[.]" *United States v. Athlone Indus., Inc.*, 746 F.2d 977, 983–84 (3d Cir. 1984); *see accord. Sheridan v. NGK Metals Corp.*, 609 F.3d 239, 261 (3d Cir. 2010).

Appendix B

1. Final Judgment on the Merits

Both *Beltz II* and *Ritz* resulted in a final judgment on the merits. *Beltz II* was dismissed for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) and for claim preclusion purposes constitutes a final "judgment on the merits." *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 399 n. 3, 101 S. Ct. 2424, 69 L. Ed. 2d 103 (1981). Additionally, the *Beltz II* fiduciary duty claim was dismissed as untimely, which is considered a final judgment on the merits. *McHale v. Kelly*, 527 F. App'x 149, 152 (3d Cir. 2013) (unpublished) (dismissal with prejudice on statute of limitations grounds is a judgment on the merits for claim preclusion purposes) (citing *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 506, 121 S. Ct. 1021, 149 L. Ed. 2d 32 (2001)). *See also Elkadrawy*, 584 F.3d at 173 ("The rules of finality . . . treat a dismissal on statute-of-limitations ground . . . as a judgment on the merits.") (citation omitted). Likewise, *Ritz* was dismissed with prejudice after having found it was barred by claim preclusion and constitutes a final judgment on the merits for claim preclusion purposes. *See Fairbank's Cap. Corp. v. Milligan*, 234 F. App'x 21, 23 (3d Cir. 2007) (unpublished) ("A dismissal 'with prejudice' is treated as an adjudication of the merits and thus has preclusive effect.") (citing *Gambocz v. Yelencsics*, 468 F.2d 837, 840 (3d Cir. 1972)). Therefore, Indemnity has established the "final judgment on the merits" element for claim preclusion.

2. Same Parties or Their Privies

The parties in the State Court Action involve the same parties and their privies as the parties in *Beltz II*

and *Ritz*. Indemnity and Exchange were parties in *Beltz II* and *Ritz* and are also parties in the State Court Action. Further, the individual subscribers who litigated the prior action in *Beltz II* and *Ritz* are in privity with the individual subscribers in the State Court Action.

While Exchange argues that the individual subscribers change from year to year, and therefore this litigation involves different parties than those who litigated in *Beltz II* and *Ritz*, this argument entirely ignores that claim preclusion can be based upon privity. (ECF No. 58 at 14). Privity has "traditionally been understood as referring to the existence of a substantive legal relationship, such as by contract, from which it was deemed appropriate to bind one of the contracting parties to the results of the other party's participation in litigation." *Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc.*, 571 F.3d 299, 311 (3d Cir. 2009). A "substantive legal relationship" essentially "refers to one in which 'the parties to the first suit are someone accountable to nonparties who file a subsequent suit raising identical issues.'" *McLaughlin v. Bd. of Trustees of Nat'l Elevator Indus. Health Benefit Plan*, 686 F. App'x 118, 122 (3d Cir. 2017) (unpublished) (citing *Pelt v. Utah*, 539 F.3d 1271, 1290 (10th Cir. 2008)). *See also Taylor v. Sturgell*, 553 U.S. 880, 893–95, 128 S. Ct. 2161, 171 L. Ed. 2d 155 (2008) (outlining traditional nonparty preclusion categories). Privity may be found in "a variety of fiduciary, contractual or property relationship[s] between current and prior litigants." *McLaughlin*, 686 F. App'x at 122 (quoting *Pelt*, 539 F.3d at 1290). While the individual Plaintiffs in each of the cases are not identical, their substantive legal relationship through the

Subscriber's Agreement – that all individual Plaintiffs sign and are co-beneficiaries of – result in common interests in the outcome of litigation. *See Ritz*, 2019 U.S. Dist. LEXIS 17589, 2019 WL 438086, at *6 (finding that all Subscribers are in privity for claim preclusion purposes because they "are all cosigners to the same Subscriber's Agreement" making them "co-beneficiaries of and cosignatories to the same contract that obligates Indemnity to provide the management services for the Exchange."). Accordingly, Indemnity has established the "same parties or their privies" element of claim preclusion.

3. Same Cause of Action

The "same cause of action" element is met where, regardless of the legal theory invoked, "the acts complained of were the same, . . . the material facts alleged in each suit were the same and . . . the witnesses and documentation required to prove such allegations were the same." *Athlone Industries, Inc.*, 746 F.2d at 984.

Indemnity argues that because the Court has already concluded that *Beltz II* and *Ritz* involved the same cause of action, and because the State Court Action is predicated upon the exact conduct complained of in *Beltz II* and *Ritz*, that the "same cause of action" element is met.

Indemnity is correct that *Beltz II, Ritz* and the State Court Action all involve the same cause of action: Plaintiffs in all three cases argue that Indemnity breached a fiduciary duty to the Subscribers and Exchange by unreasonably taking the maximum allowable percentage of 25% under

the Subscriber's Agreement and favoring shareholders over the Subscribers.[5] Exchange argues that the claims

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5. Exchange specifically describes its cause of action in the State Court Action as follows:

> In setting the Management Fee rate at the maximum rate of 25% in December 2019 and 2020 and allowing such amounts to be taken from Exchange over the course of the last two years - in large part to fund dividend payments to [Indemnity's] shareholders - [Indemnity] breached its fiduciary duties owed to Exchange.

State Court Action Compl. (ECF No. 57-1 ¶¶ 78, 85).

Exchange specifically describes its cause of action in *Ritz* as follows:

> Since at least 2007, Indemnity has retained the maximum amount of Management Fees allowed by the Subscriber's Agreement – 25% of all premiums written or assumed by Exchange – as compensation for services performed pursuant to the Subscriber's Agreement. As described further below, Indemnity and the Board have breached their fiduciary obligations to Exchange and the Subscribers and have abused their position of trust by charging and keeping excessive Management Fees. . . . Indemnity and the Board have breached their fiduciary duties to Exchange and the Class by unlawfully diverting to Indemnity hundreds of millions of dollars of revenue that belongs to Exchange and the Class . . . by taking the maximum 25% Management Fee year after year without valid grounds. To be sure, the conflicted and self-interested members of the Board have charged and taken grossly excessive Management Fees from the Exchange and the Subscribers and funneled the money to themselves

> and other Indemnity stockholders through substantial dividend payments.
>
> . . .
>
> Since at least 2007, Indemnity and the Directors have sought to profit at the direct expense of Plaintiff and the Class and, among other things, have authorized, taken and retained excessive Management Fees from Exchange and the Class in order to, *inter alia*, pay ever increasing dividends to the shareholder of Indemnity and thereby improve their own financial positions. The funds used to pay the grossly excessive Management Fees taken by Indemnity and the Directors would have been used for the benefit of the Plaintiff and the Class had they not been taken by Indemnity. Instead, Indemnity and its stockholders directly benefitted from the funds. Indemnity and the Directors breached their fiduciary duties to Plaintiff and the Class by authorizing, enabling and/or otherwise permitting Indemnity to retain excessive Management Fees from Exchange. As a result of Indemnity and the Director's breach of their respective fiduciary duties to Plaintiff and the Class by authorizing, enabling, and/or otherwise permitting Indemnity to retain excessive Management Fees from Exchange.

Ritz Compl. (ECF No. 57-2 ¶¶ 44, 53; 107–109).

Exchange specifically describes its cause of action in *Beltz II* as follows:

> [S]ince at least 2007, Indemnity has retained the maximum amount of 25% allowed by the Subscriber's Agreement of all premiums written or assumed by Exchange. Indemnity has not disclosed any rationale or justification that it is entitled to the entire 25%, rather, Indemnity has repeatedly taken the full

in the State Court Action could not have been brought in the previous actions because the breach of fiduciary duty

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> amount allowable pursuant to the Subscriber's Agreement. The value for the services rendered by Indemnity, as attorney-in-fact, must be reasonable, and any amount taken in excess of that is a breach of fiduciary duty.
>
> . . .
>
> Beginning in or around 1997 and continuing to the present, Indemnity and the Directors deviated from 70 years of prior conduct, and authorized, enabled and/or otherwise permitted Indemnity to retain Service Charges and/or Additional Fees as compensation in addition to a percentage of all premiums written or assumed by Exchange. The Service Charges and Additional Fees would have been used for the benefit of Plaintiffs and the Class had they not been retained by Indemnity. Instead, Indemnity and its shareholders directly benefitted from the taking of this additional compensation. Indemnity and the Directors breached their fiduciary duties to Plaintiffs and the Class by authorizing, enabling and/or otherwise permitting Indemnity to retain the Service Charges and Additional Fees in addition to a percentage of premiums as prescribed in the Subscriber's Agreements. As a result of [Indemnity's] breach of [its] . . . fiduciary duties, Plaintiffs and the Class have suffered substantial damages, including, but not limited to, monetary losses stemming from Indemnity's unlawful retention of the revenue generated by the Service Charges and Additional Fees.

Beltz II Compl. (ECF No. 57-3 ¶¶ 84; 127–130).

cause of action is limited to Indemnity's allegedly illegal conduct between 2019 and 2020 and therefore post-dated the prior two complaints, could not have been brought in the previous action and does not qualify as the same cause of action for claim preclusion purposes. However, Exchange's attempt to limit the claims in the State Court Action to only conduct occurring between 2019 and 2020 does not defeat claim preclusion principals. "A claim extinguished by [claim preclusion] 'includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction or series of connected transactions, out of which the action arose.'" *Elkadrawy*, 584 F.3d at 174 (quoting Restatement (Second) of Judgments § 24(1) (1982) (emphasis in original)). A case decided by the United States Court of Appeals for the Third Circuit emphasizes this point: *Huck on Behalf of Sea Air Shuttle Corp. v. Dawson*, 106 F.3d 45, 35 V.I. 560 (3d Cir. 1997).

In *Huck*, the plaintiff who owned or operated seaplanes brought suit against the Virgin Islands Port Authority ("VIPA") after VIPA's refusal to allow plaintiff to use VIPA seaplane ramps. 106 F.3d at 47. The district court entered summary judgment in favor of VIPA and plaintiff did not appeal that order. *Id.* Instead, plaintiff filed a second action against VIPA and various Virgin Island government and VIPA officials based on the same conduct alleged in the original complaint and contended he could file the second suit because VIPA's continued refusal to allow access to the seaplane ramps drove his company into bankruptcy. *Id.* The district court held that plaintiff's claims were barred by claim preclusion, finding

that plaintiff's claims "arose out of the same transaction and events that gave rise to the earlier lawsuit, and that the same had been earlier adjudicated." *Id.* The district court further held that plaintiff "could not avoid the effects of [claim preclusion] simply because he was now asserting a different degree or extent of damage than earlier alleged [and t]he fact that he continued to suffer from the effects of the earlier judgment did not render the claims to be not fully litigated." *Id.* The Court of Appeals affirmed the district court. *Id.* at 52. It rejected plaintiff's argument that his continued denial of access to the seaplane ramps created a new cause of action as "absurd" because it challenged the exact conduct the court determined was not illegal in the previous suit. *Id.* at 49. It further rejected plaintiff's argument that claim preclusion did not apply because he was alleging a cause of action for harm that occurred after the first judgment, he may prove different facts to support that cause of action. *Id.* at 50. The Court of Appeals found that argument "an incorrect statement of the law," and that it had "no merits to [plaintiff's] claim that he suffered a separate injury as the result of the continued losses from denial of access to the sea ramps." *Id.* at 50 (citing Restatement (Second) of Judgments § 25 cmt. b.).

In the instant matter, Exchange is complaining of the exact conduct that was previously included in *Beltz II* and *Ritz* – that Indemnity took excessive Management Fees under the Subscriber's Agreements by setting the rate at the full 25% allowable under the Agreements, it was detrimental to Exchange and the Subscribers by keeping funds from staying in the Exchange and by doing so,

Appendix B

Indemnity breached its fiduciary duty to Exchange and the Subscribers. That Exchange now limits the time frame to 2019 and 2020 in the State Court Action does not defeat claim preclusion, as the material facts alleged in *Beltz II, Ritz* and the State Court Action are identical. Exchange and the Subscribers allege in each action that:

- Indemnity's Board is controlled by the Hirt Family and Indemnity and the Board have enriched shareholders by taking excessive Management Fees (State Court Action Compl. (ECF No. 57-1) at ¶¶ 37–47; 40–42; *Ritz* Compl. (ECF No. 57-2) at ¶¶ 33–38; 52, 74–77; *Beltz II* Compl. (ECF No. 57-3) at ¶¶ 48–51; 59, 84),

- Indemnity prevented money from remaining in the Exchange by setting the Management Fee at the maximum rate of 25% (State Court Action Compl. (ECF No. 57-1) at ¶ 75; *Ritz* Compl. (ECF No. 57-2) at ¶ 108; *Beltz II* Compl. (ECF No. 57-3) at ¶ 66),

- Indemnity and its Board have a conflict of interest in setting the Management Fee and acted for their own benefit over Exchange and its Subscribers (State Court Action Compl. (ECF No. 57-1) at ¶¶ 36, 48–57, 79–81; *Ritz* Compl. (ECF No. 57-2) at ¶¶ 5–6, 45–51; *Beltz II* Compl. (ECF No. 57-3) at ¶ 66), and

- This conflict serves as the basis for Indemnity's breach of fiduciary duty to Exchange and the Subscribers. (State Court Action Compl. (ECF

No. 57-1) at ¶¶ 54, 76–90; *Ritz* Compl. (ECF No. 57-2) at ¶¶ 52–54, 103–11; *Beltz II* Compl. (ECF No. 57-3) at ¶¶ 66, 84, 122–31, 136–40).

Like in *Huck*, the gravamen of Exchange's State Court Action is the same as the earlier dismissed actions. That Exchange may have suffered additional damages in 2019 and 2020 following the *Beltz II* and *Ritz* decisions does not equate to a new cause of action where there are no "change of circumstances concerning material operative facts." *Huck on Behalf of Sea Air Shuttle Corp.*, 106 F.3d at 49. It remains that Indemnity's decision to set the Management Fee at 25% began in 2007 and that conduct was challenged in *Beltz II* and *Ritz*. Exchange's current challenge in the State Court Action relates to "maintaining" that rate at 25% in 2019 and 2020. State Court Action Compl. (ECF No. 57-1) at ¶¶ 60, 64 (alleging that Indemnity "agreed to **maintain** the current management fee rate paid to Erie Indemnity Company by Erie Insurance Exchange at 25 percent" in December 2019 and December 2020) (emphasis added). Therefore, Indemnity's decision to set the Management Fee at 25% in 2019 and 2020 is part of a series of connected transactions beginning with Indemnity's original decision to set the Management Fee at 25% and is based on the same cause of action as *Beltz II* and *Ritz*. Accordingly, Indemnity has established the "same cause of action" element of claim preclusion, and it is likely that Indemnity will succeed on the merits of its claim for preliminary injunction purposes.

b. Irreparable Harm

Although the Court of Appeals for the Third Circuit has not specifically held, several courts have found that a party suffers irreparable harm if it is required to relitigate issues in state court that have been already decided in federal court. *Se. Pennsylvania Transp. Auth. v. Pennsylvania Pub. Util. Comm'n*, 210 F. Supp. 2d 689, 726 (E.D. Pa. 2002), *aff'd sub nom. Nat'l R.R. Passenger Corp. v. Pa. Pub. Util. Comm'n*, 342 F.3d 242 (3d Cir. 2003); *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 667 (5th Cir. 2003); *In re Dublin Sec., Inc.*, 133 F.3d 377, 381 (6th Cir. 1997); *In re SDDS, Inc.*, 97 F.3d 1030, 1041 (8th Cir. 1996); *Daewoo Elecs. Corp. of Am. v. W. Auto Supply Co.*, 975 F.2d 474, 478 (8th Cir. 1992); *Ballenger v. Mobil Oil Corp.*, 138 F. App'x 615, 622 (5th Cir. 2005) (unpublished). In this case, Indemnity will suffer irreparable harm by being forced to defend itself in state court on issues already decided in federal court and potentially being "denied the benefits of the judgments in its favor from this Court[,]" especially considering that "even a single state court might decline to accord preclusive effect" to the Court's prior judgments in *Beltz II* and *Ritz. Dow Agrosciences, LLC v. Bates*, No. CIV.A. 5:01-CV-331-C, 2003 U.S. Dist. LEXIS 20389, 2003 WL 22660741 at *18; *21 (N.D. Tex. Oct. 14, 2003). Accordingly, Indemnity has established it will suffer irreparable harm if it is not granted an injunction.

c. Harm to Non-moving Party

"While issuing an injunction in this case will foreclose the opportunity for [Exchange] to relitigate issues in the

state court," this is not a "legitimate harm" that must be balanced in determining whether to issue an injunction. *In re SDDS, Inc.*, 97 F.3d at 1041. Foreclosing Exchange from litigating in state court is not a legitimate harm where Exchange and the Subscribers have had several full and fair opportunities to litigate their claims in federal court. "[T]he rules of equity do not require that they be given a second bite at the apple in the state forum in order to obtain a more favorable result." *In re SDDS, Inc.*, 97 F.3d at 1041 (citing *Hart Steel Co. v. R.R. Supply Co.*, 244 U.S. 294, 299, 37 S. Ct. 506, 61 L. Ed. 1148, 1917 Dec. Comm'r Pat. 417 (1917)). Accordingly, Indemnity has established that this factor weighs in favor of granting an injunction.

d. Public Interest

Lastly, the public interest is served by granting an injunction here. The public interest is served by precluding "parties from contesting matters that they have had a full and fair opportunity to litigate[,] protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Montana v. United States*, 440 U.S. 147, 153–54, 99 S. Ct. 970, 59 L. Ed. 2d 210 (1979). Accordingly, Indemnity has established that the public interest is served by granting its request for a preliminary injunction.

V. CONCLUSION

Based on the foregoing, Indemnity has demonstrated it is entitled to a preliminary injunction pursuant to the All Writs Act and its motion for preliminary injunction is GRANTED. An appropriate Order follows.

DATED this 28th day of February, 2023.

BY THE COURT:

/s/ Cynthia Reed Eddy
United States Magistrate Judge

cc: All counel of record via CM/ECF electronic filing

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA, ERIE, FILED FEBRUARY 28, 2024

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE

1:22-CV-00093-CRE

ERIE INDEMNITY COMPANY,

Plaintiff,

vs.

TROY STEPHENSON, CHRISTINA STEPHENSON, AND; AND STEVEN BARNETT, IN BOTH THEIR INDIVIDUAL CAPACITIES AND IN ANY REPRESENTATIVE CAPACITIES THEY MAY HAVE RELATING TO ERIE INSURANCE EXCHANGE;

Defendants.

Filed February 28, 2024

ORDER

AND NOW, this 28th day of February 2024, upon consideration of Erie Indemnity Company's Motion for a Preliminary Injunction (ECF No. 56), it is hereby ORDERED that the Motion is GRANTED.

IT IS FURTHER ORDERED that Troy Stephenson, Christina Stephenson, and Steven Barnett, and all those who may now be acting or who will act in concert with them, are preliminarily enjoined from pursuing *Erie Insurance Exchange v. Erie Indemnity Co.*, No. GD-21-014814 (Pa. Comm. Pl. Allegheny Cnty.), or any similar action; and the Court of Common Pleas of Allegheny County, Pennsylvania is preliminarily enjoined from conducting any further proceedings in *Erie Insurance Exchange v. Erie Indemnity Co.*, No. GD-21-014814 (Pa. Comm. Pl. Allegheny Cnty.).

IT IS FURTHER ORDERED that Indemnity shall file a motion to convert this preliminary injunction into a permanent injunction and entry of final judgment by **March 15, 2024**. Exchange may respond by **March 29, 2024**.

IT IS FURTHER ORDERED that Indemnity shall serve a copy of this Memorandum Opinion and Order upon the Court of Common Pleas of Allegheny County, Pennsylvania, and shall file it on the docket of *Erie Insurance Exchange v. Erie Indemnity Co.*, No. GD-21-014814 (Pa. Comm. Pl. Allegheny Cnty.).

BY THE COURT:

/s/ Cynthia Reed Eddy
United States Magistrate Judge

cc: All counsel of record via CM/ECF electronic filing

APPENDIX D — SUR PETITION FOR REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED NOVEMBER 12, 2025

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1443
(W.D. Pa. No. 1:22-cv-00093)

ERIE INDEMNITY COMPANY,

v.

TROY STEPHENSON; CHRISTINA STEPHENSON, AND STEVEN BARNETT, IN BOTH THEIR INDIVIDUAL CAPACITIES AND IN ANY REPRESENTATIVE CAPACITIES THEY MAY HAVE RELATING TO ERIE INSURANCE EXCHANGE,

Appellants.

Filed November 12, 2025

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, HARDIMAN, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, and BOVE, *Circuit Judges.*

Appendix D

The petition for rehearing filed by **Appellee** in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

/s/ Peter J. Phipps
Circuit Judge

Dated: November 12, 2025
Amr/cc: All counsel of record

APPENDIX E — COMPLAINT OF THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA, DATED DECEMBER 8, 2021

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION
No.

ERIE INSURANCE EXCHANGE, AN UNINCORPORATED ASSOCIATION, BY TROY STEPHENSON, CHRISTINA STEPHENSON, AND STEVEN BARNETT, TRUSTEES *ad litem*, AND ALTERNATIVELY, ERIE INSURANCE EXCHANGE, BY TROY STEPHENSON, CHRISTINA STEPHENSON, AND STEVEN BARNETT,

Plaintiff,

v.

ERIE INDEMNITY COMPANY,

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

Appendix E

Filed on behalf of Plaintiff:

Erie Insurance Exchange, an unincorporated association, by Troy Stephenson, Christina Stephenson and Steven Barnett, trustees ad litem, and alternatively, Erie Insurance Exchange, by Troy Stephenson, Christina Stephenson, and Steven Barnett.

Counsel of record for Plaintiff:

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Appendix E

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION
No.

ERIE INSURANCE EXCHANGE, AN UNINCORPORATED ASSOCIATION, BY TROY STEPHENSON, CHRISTINA STEPHENSON, AND STEVEN BARNETT, TRUSTEES *ad litem*, AND ALTERNATIVELY, ERIE INSURANCE EXCHANGE, BY TROY STEPHENSON, CHRISTINA STEPHENSON, AND STEVEN BARNETT,

Plaintiff,

v.

ERIE INDEMNITY COMPANY,

Defendant.

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within **TWENTY (20)** days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to

the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE
Allegheny County Bar Association
11th Floor Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 261-5555

Appendix E

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION
No.

ERIE INSURANCE EXCHANGE,
AN UNINCORPORATED ASSOCIATION, BY TROY
STEPHENSON, CHRISTINA STEPHENSON,
AND STEVEN BARNETT, TRUSTEES *ad litem*,
AND ALTERNATIVELY, ERIE INSURANCE
EXCHANGE, BY TROY STEPHENSON,
CHRISTINA STEPHENSON, AND
STEVEN BARNETT,

Plaintiff,

v.

ERIE INDEMNITY COMPANY,

Defendant.

COMPLAINT – CIVIL ACTION

Plaintiff, Erie Insurance Exchange ("Exchange"), an unincorporated association, by Troy Stephenson, Christina Stephenson, and Steven Barnett, trustees *ad litem*, and alternatively, Erie Insurance Exchange, by Troy Stephenson, Christina Stephenson, and Steven Barnett, allege the following:

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INTRODUCTION

1. Exchange is a Pennsylvania unincorporated association which operates as a reciprocal insurer.

2. Exchange is owned by, and consists of, its policyholders who are all members of the unincorporated association.

3. Exchange has no employees, officers, or board of directors.

4. Exchange has no bylaws or constitution.

5. To enable the unincorporated association to operate as a reciprocal insurer, the members of Exchange all appointed Defendant Erie Indemnity Company ("Defendant") to serve as the managing agent and attorney-in-fact for Exchange.

6. Given its position as managing agent and attorney-in-fact for Exchange, Defendant is trusted and relied upon by the members of Exchange to act on their behalf.

7. Defendant exercises control and authority over all aspects of Exchange. In light of the nature of the relationship, and the trust and confidence placed in Defendant by the members of Exchange, Defendant owes fiduciary duties to Exchange.

8. This litigation concerns Defendant's significant breaches of its fiduciary duties over the last two years.

9. Defendant has abused its position of authority, and among other wrongs, violated its duties of care and loyalty and has acted to enrich itself and its controlling shareholders at the direct expense of Exchange.

10. In particular, since December 10, 2019, Defendant has breached its fiduciary duties by charging Exchange an annual "Management Fee" which is used not to cover the costs of serving as the attorney-in-fact and managing agent for Exchange, but rather to allow tens of millions of dollars or more in each of the last two years to be funneled to Defendant's shareholders—specifically including a small group of controlling shareholders who dominate Defendant's Board of Directors and who determine the Management Fee—in the form of shareholder dividends and "special dividends" payments.

11. Defendant's breaches of its common law fiduciary duties have caused substantial monetary harm to Exchange.

12. Pursuant to Pennsylvania Rules of Civil Procedure 2152 and/or 2177, and the long-established common law of Pennsylvania, Troy Stephenson, Christina Stephenson, and Steven Barnett, as trustees *ad litem* and/or members of Exchange (trustees/members), bring this action on behalf of and in the name of the unincorporated association.

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PARTIES

13. Troy Stephenson is an individual residing in White Oak, Pennsylvania, which is located in Allegheny County.

14. Christina Stephenson is an individual residing in White Oak, Pennsylvania, which is located in Allegheny County.

15. Steven Barnett is an individual residing in Lemont Furnace, Pennsylvania, which is located in Fayette County.

16. At all times relevant hereto, the above-named individuals were members/policyholders of Exchange. These individuals are willing to serve as trustees *ad litem* on behalf of Exchange and bring this case to benefit all members of Exchange.

17. Defendant is a Pennsylvania corporation with its headquarters and principal place of business located in Erie, Pennsylvania.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction under 42 Pa.C.S. § 931.

19. This Court has personal jurisdiction over Defendant under 42 Pa.C.S. § 5301 because Defendant is a domestic corporation with its principal place of business

in Pennsylvania and conducts business throughout Pennsylvania.

20. Venue is proper in this Court under Pennsylvania Rule of Civil Procedure 2179 because Defendant regularly conducts business in Allegheny County and one or more of the individuals bringing this action as trustees/members of Exchange reside in Allegheny County.

FACTUAL ALLEGATIONS

A. Defendant's Fiduciary Relationship with Exchange

21. Exchange, which is owned by its members, is a Pennsylvania-domiciled unincorporated association that writes property and casualty insurance.

22. In order to be a member of Exchange, each member must execute a materially identical Subscriber's Agreement. A true and correct exemplar of the Subscriber's Agreement is attached hereto as Exhibit A.

23. Upon executing a Subscriber's Agreement, the members designate Defendant to be their agent and attorney-in-fact to manage the business of Exchange on their behalf.

24. Defendant derives nearly all its revenue from the annual Management Fee that Defendant charges Exchange for serving as Exchange's attorney-in-fact and managing agent.

25. Exchange is Defendant's only client.

26. As the attorney-in-fact and managing agent for the unincorporated association, Defendant owes common law fiduciary duties to Exchange, including the duties of care, loyalty, good faith, honesty, candor, undivided loyalty, and full disclosure.

B. Annual Management Fee

27. In return for serving as managing agent and attorney-in-fact, Defendant takes a percentage of the annual premiums paid by the members to Exchange. This is referred to as the Management Fee.

28. The Subscriber's Agreement prohibits Defendant from charging a Management Fee rate any higher than 25% of the annual premiums paid by the members of the unincorporated association. Besides that limitation, however, Defendant is trusted by the members of Exchange to exercise discretion in conformance with its fiduciary duties to determine whether the rate will be 15%, 20%, or any other level up to 25% of the premiums written or assumed by Exchange.

29. On December 10, 2019, and December 8, 2020, Defendant set the Management Fee rate for 2020 and 2021, respectively.

30. Though Defendant sets the Management Fee rate in December for the following calendar year, Defendant can adjust the Management Fee rate at any time over the

course of the year. This means Defendant could reduce the rate during the year if, for example, actual expenses were less than projected, or, conversely, assuming Defendant was not already taking the maximum of 25%, Defendant could increase the rate during the year if circumstances changed and warranted an upward adjustment.

31. The members of Exchange have no ability to dispute the Management Fee rate when it is set. Defendant sets the fee and Defendant takes the fee. This is why it is essential that Defendant act in good faith as a trusted fiduciary when setting and charging the Management Fee.

32. The lower the Management Fee, the more funds that remain for the use and benefit of all the members of Exchange.

33. Thus, Defendant's annual decision as to what the Management Fee rate will be for the next year significantly impacts the members of Exchange.

34. Defendant did not direct any disclosure specifically to the members of Exchange to advise them of the Management Fee rate when it was set in December of 2019 and 2020.

35. Defendant did not solicit input from the members of Exchange prior to setting the Management Fee rate at the maximum 25% in December of 2019 and 2020.

36. Defendant operated with substantial conflicts of interest and did not uphold its common law fiduciary

duties to Exchange when setting the Management Fee rate in December of 2019 and 2020 and in taking such monies from Exchange.

C. Control and Management of Defendant and Exchange

37. Exchange and Defendant were founded in or around 1925 by H.O. Hirt. Defendant has served as the managing agent and attorney-in-fact for Exchange since its inception.

38. Since approximately 1995, Defendant has been publicly traded on NASDAQ and currently has a market capitalization of approximately $12 billion.

39. Defendant has two classes of common stock: Class A and Class B.

40. Descendants and family members of H.O. Hirt, directly or through trusts, own more than 20 million Class A shares, which is nearly 50% of the total Class A shares outstanding. *See e.g.*, Erie Indemnity Company, 2021 Information Statement ("2021 Schedule 14C Information") (March 19, 2021), p. 3 (listing Defendant's Board Chair, Thomas B. Hagen, as owner of 16,762,189 Class A shares (36.32% of all shares outstanding) and Board member Elizabeth Hirt Vorsheck as owner of 3,960,946 shares (8.6% of all shares outstanding)).

41. In addition, primarily through the H.O. Hirt Trusts, three descendants of H.O. Hirt, Thomas B. Hagen,

Elizabeth Hirt Vorsheck, and Jonathan Hirt Hagen (the "Hirt Heirs"), not only own significant percentages of Class A shares, but also own and/or control approximately 98% of the Class B voting shares of Defendant. *See id.* at 1, 3 (explaining that the H.O. Hirt Trusts, of which Elizabeth Hirt Vorsheck and Jonathan Hirt Hagen are trustees, along with a bank trustee, own 92.05% of Class B shares, while Thomas B. Hagen owns an additional 6.65% of Class B shares).

42. The Hirt Heirs' ownership of Class B shares is "sufficient to determine the outcome of any matter submitted to a vote of the holders of [] Class B common stock." *Id.* at 1.

43. At all times relevant hereto, the Hirt Heirs have served and continue to serve on the Board of Defendant.

44. Given the Hirt Heirs' near total ownership and control of the Class B voting shares, they are able to control the composition of Defendant's Board and the outcome of any matter presented to Defendant's Board for a vote. In short, they wholly control Defendant.

45. Because the Hirt Heirs dominate and control Defendant's Board, they are uniquely empowered to determine the Management Fee rate set by Defendant's Board.

46. The Hirt Heirs' power, control, authority, and ownership of Defendant present a substantial conflict of interest when Defendant's Board sets the Management Fee rate.

47. Without regard to its fiduciary duties owed to Exchange, Defendant has maximized the Management Fee over the last two years simply to generate excess profits which it has funneled to the Hirt Heirs and its other shareholders in the form of shareholder dividends and special dividends—all to the detriment of the members of Exchange.

D. Defendant's Conflict of Interest

48. Defendant's earnings are directly tied to the Management Fee it charges. In fact, nearly 100% of Defendant's annual revenue comes from the Management Fee.

49. Defendant recognizes and admits that, "any reduction in . . . the management fee rate would have a negative effect on [Defendant's] revenues and net income." Erie Indemnity Company, 2020 Annual Report (Form 10-K) (Feb. 25, 2021), Item 1A, p. 6; *see also id.* at 29.

50. Thus, Defendant serves its own interests by maximizing the Management Fee.

51. Further, the greater the revenue to Defendant, the greater the dividends that get paid to the Hirt Heirs and the other shareholders of Defendant.

52. As a fiduciary to Exchange, Defendant has a duty to avoid conflicts of interest and to act with care and loyalty, good faith, and candor in setting and maintaining the annual Management Fee rate.

53. Defendant's own interest in maximizing the Management Fee and its shareholder dividends, as declared by Defendant's Board in December of 2019 and 2020, directly conflicts with its fiduciary obligations to Exchange.

54. Defendant's conflict of interest has resulted in Defendant favoring its own financial interests, and those of the Hirt Heirs, over those of Exchange.

55. Defendant is not taking steps to ameliorate its conflict of interest.

56. Although Defendant's Board technically has an "Exchange Relationship Committee"—which presumably is intended to protect the interests of Exchange—Defendant admits that the committee has not met in years and, in fact, does not even have a chairperson. *See* 2021 Schedule 14C Information, p. 7 (stating that the "exchange relationship committee has not met in several years" and that Defendant's Board "deferred consideration on the appointment of a new committee chair until such time as it becomes necessary or advisable for the committee to meet again.")

57. With no one protecting the interests of Exchange over the course of the last two years, Defendant has abused its position of trust and set the Management Fee at the maximum 25% rate in order to generate hundreds of millions of dollars in excess profits which it then paid out as shareholder dividends.

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58. The Hirt Heirs who sit on the Board of Defendant profit enormously from the shareholder dividends declared by Defendant's Board and funded by the Management Fee.

59. Defendant's actions on December 10, 2019, as described in the December 13, 2019 press release set forth below in paragraph 60, are emblematic of its utter disregard of its fiduciary duties to Exchange.

60. Defendant maximizes the Management Fee charged to Exchange only to simultaneously increase the dividends paid to Defendant's shareholders:

> Erie Indemnity Approves
> Management Fee Rate and
> Dividend Increase. Declares
> Quarterly Dividend
>
> **ERIE, Pa. (Dec. 13, 2019)** - At its regular meeting held Dec. 10. 2019. the Board of Directors of Erie Indemnity Company (NASDAQ: ERIE) set the management fee rate charged to Erie Insurance Exchange. approved an increase in shareholder dividends and declared the quarterly dividend.
>
> The Board agreed to maintain the current management fee rate paid to Erie Indemnity Company by Erie Insurance Exchange at 25 percent. effective Jan. 1. 2020. The management fee rate was 25 percent for the period Jan. 1 through Dec. 31. 2019. The Board

> has the authority under the agreement with the subscribers (policyholders) at Erie Insurance Exchange to set the management fee rate at its discretion: however, the maximum fee rate permissible by the agreement is 25 percent. This action was taken based on the Board's consideration and review of the relative financial positions of Erie Insurance Exchange and Erie Indemnity Company.
>
> The Board also agreed to increase the regular quarterly cash dividend from $0.90 to $0.965 on each Class A share and from $135.00 to $144.75 on each Class B share. This represents a 7.2 percent increase in the payout per share over the current dividend rate. The next quarterly dividend is payable Jan. 22. 2020. to shareholders of record as of Jan. 7, 2020. with a dividend ex-date of Jan. 6. 2020. Erie Indemnity Company has paid regular shareholder dividends since 1933.

61. Pursuant to Defendant's decision to set the Management Fee rate at 25% for 2020, the Management Fee received by Defendant in 2020 was $1.9 billion.

62. Defendant took the 25% Management Fee in 2020 in order to increase the annual dividends paid to Defendant's shareholders by another 7.2%.

63. In December 2020, Defendant's abuse of its power not only continued, it worsened. Defendant's Board

again set the Management Fee rate for the coming year at the maximum rate of 25%, and not because it was needed to pay for Defendant's management and operating costs, but so that Defendant could again increase the annual dividends paid to the shareholders of Defendant by an additional 7.3%.

64. Further, because Defendant had taken in so much excess profit in 2020 from the 25% Management Fee rate, Defendant's Board also declared and paid an additional special dividend at the end of December 2020 of $2/share for each Class A share and $300/share for each Class B share:

> **ERIE, PA., DEC. 8, 2020 /PRNEWSWIRE/ -- AT ITS REGULAR MEETING HELD DEC. 8, 2020, THE BOARD OF DIRECTORS OF ERIE INDEMNITY COMPANY (NASDAQ: ERIE) SET THE MANAGEMENT FEE RATE CHARGED TO ERIE INSURANCE EXCHANGE, APPROVED AN INCREASE IN SHAREHOLDER DIVIDENDS AND DECLARED THE QUARTERLY DIVIDEND AND**
>
> ERIE. Pa.. Dec. 8. 2020 /PRNewswire/ -- At its regular meeting held Dec. 8. 2020. the Board of Directors of Erie Indemnity Company (NASDAQ: ERIE) set the management fee rate charged to Erie Insurance Exchange. approved an increase in shareholder dividends and declared the quarterly dividend and a special

cash dividend. Erie Indemnity Company has paid regular shareholder dividends since 1933.

[LOGO] **Erie Insurance**

The Board agreed to maintain the current management fee rate paid to Erie Indemnity Company by Erie Insurance Exchange at 25 percent, effective Jan. 1, 2021. The management fee rate was 25 percent for the period Jan. 1 through Dec. 31, 2020. The Board has the authority under the agreement with the subscribers (policyholders) at Erie Insurance Exchange to set the management fee rate at its discretion: however, the maximum fee rate permissible by the agreement is 25 percent. This action was taken based on the Board's consideration and review of the relative financial positions of Erie Insurance Exchange and Erie Indemnity Company. The Board also agreed to increase the regular quarterly cash dividend from $0.965 to $1.035 on each Class A share and from $144.75 to $155.25 on each Class B share. This represents a 7.3 percent increase in the payout per share over the current dividend rate. The next regular quarterly dividend payable Jan. 20, 2021, to shareholders of record as of Jan. 5, 2021, with a dividend ex-date of Jan. 4, 2021.

> The Board also declared a special one-time cash dividend of $2.00 on each Class A share and $300.00 on each Class B share. This special cash dividend is payable Dec. 29, 2020, to shareholders of record as of Dec. 21, 2020, with a dividend ex-date of Dec. 18, 2020.

65. The special dividends alone, paid on December 29, 2020, to Defendant's shareholders, amounted to over $93 million. Accordingly, the total dividends paid to Defendant's shareholders in 2020 approached $300 million.

66. The dividends paid to Defendant's shareholders are funded directly from the Management Fee that Defendant charges and takes from Exchange.

67. Pursuant to Defendant's Board's decision on December 8, 2020, the annual dividends paid to Defendant's shareholders in 2021 are approximately $200 million. Approximately $80-$100 million of these dividends in 2021 have gone to the Hirt Heirs.

68. In 2020 and 2021 alone, the Hirt Heirs will receive upwards of $200 million or more in dividend payments funded directly from Exchange.

69. Every dollar paid as a dividend to Defendant's shareholders is a dollar that could have benefited Exchange.

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70. Even apart from the special dividend paid in December 2020, Defendant's annual shareholder dividend has increased by nearly 25% in just the last few years.

71. In contrast to the hundreds of millions of dollars of profit paid annually to the Defendant's shareholders funded by the Management Fee paid by Exchange, as a matter of course, the Members of Exchange, to whom Defendant serves as a fiduciary, have received nothing or only *de minimis* dividends[1] in recent years.

72. In years past, the Members of Exchange received regular, substantial, annual dividends, as is customary with reciprocal insurers. Indeed, it is a founding principle of Exchange, as with all reciprocal insurers, that the interests of the members should come first.

73. As shown by its actions in December of 2019 and 2020, Defendant is enriching itself and its shareholders at the expense of Exchange.

74. Unlike Defendant, the managing agents and attorneys-in-fact for other reciprocal insurers have protocols and processes to avoid or address conflicts of interest.

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1. Like many insured Americans, certain automobile policyholders of Exchange received a partial premium credit, not an annual dividend, in 2020 due to decreased insurance claims during the Covid-19 pandemic. Moreover, workers' compensation policies may provide certain dividends to insureds.

75. By taking excessive Management Fees to benefit itself and its shareholders, Defendant is preventing the same funds from being available for the use and benefit of Exchange, including paying policyholder dividends to all of the members.

COUNT I

Erie Insurance Exchange, an unincorporated association, by Troy Stephenson, Christina Stephenson, and Steven Barnett, trustees *ad litem*, bring this count pursuant to Rule 2152 of the Pennsylvania Rules of Civil Procedure

BREACH OF FIDUCIARY DUTY

76. Exchange realleges and incorporates by reference, as if fully set forth herein, the allegations in all the paragraphs above.

77. As a fiduciary of Exchange, Defendant was obligated at all times to act with the utmost degree of good faith, honesty, candor, undivided loyalty, and full disclosure, and to exercise the high degree of care required of a fiduciary serving as the managing agent and attorney-in-fact for Exchange.

78. In setting the Management Fee rate at the maximum rate of 25% in December of 2019 and 2020 and allowing such amounts to be taken from Exchange over the course of the last two years—in large part to fund dividend payments to Defendant's shareholders—Defendant breached its fiduciary duties owed to Exchange.

79. Defendant has also breached its fiduciary duties by failing to implement or utilize processes to ameliorate its conflicts of interest when self-dealing and when making decisions in which the rights and interests of Exchange are at odds with the rights and interests of Defendant and its controlling shareholders.

80. Instead of acting in the best interests of Exchange, Defendant has been acting in its own best interests and abusing its power and position of trust.

81. Defendant is taking excessive profit from the Management Fees it receives from Exchange to enrich its own shareholders specifically including its conflicted controlling shareholders who serve on Defendant's Board.

82. As a result of Defendant's breaches, Exchange has suffered significant losses by having excessive funds diverted to Defendant and improperly utilized for Defendant's gain and self-interests instead of remaining with Exchange.

WHEREFORE, Exchange asks that the Court enter judgment in its favor as follows:

(1) Finding that Defendant has breached its fiduciary duties;

(2) Awarding damages and/or restitution in an amount to be determined at trial; and

(3) Awarding such other relief, including disgorgement of profits or other injunctive relief, that this Court deems just and proper.

Appendix E

ALTERNATIVE COUNT I

Erie Insurance Exchange, by Troy Stephenson, Christina Stephenson, and Steven Barnett, bring this count pursuant to Rule 2177 of the Pennsylvania Rules of Civil Procedure and/or the common law of the Commonwealth of Pennsylvania

BREACH OF FIDUCIARY DUTY

83. Exchange realleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-75 above.

84. As a fiduciary of Exchange, Defendant was obligated at all times to act with the utmost degree of good faith, honesty, candor, undivided loyalty, and full disclosure, and to exercise the high degree of care required of a fiduciary serving as the managing agent and attorney-in-fact for Exchange.

85. In setting the Management Fee rate at the maximum rate of 25% in December of 2019 and 2020 and allowing such amounts to be taken from Exchange over the course of the last two years—in large part to fund dividend payments to Defendant's shareholders—Defendant breached its fiduciary duties owed to Exchange.

86. Defendant has also breached its fiduciary duties by failing to implement or utilize processes to ameliorate its conflicts of interest when self-dealing and when making decisions in which the rights and interests of Exchange are

at odds with the rights and interests of Defendant and its controlling shareholders.

87. Instead of acting in the best interests of Exchange, Defendant has been acting in its own best interests and abusing its power and position of trust.

88. Defendant is taking excessive profit from the Management Fees it receives from Exchange to enrich its own shareholders specifically including its conflicted controlling shareholders who serve on Defendant's Board.

89. Defendant has breached its fiduciary duties owed to Exchange. As a result of Defendant's breaches, Exchange has suffered significant losses by having excessive funds diverted to Defendant and improperly utilized for Defendant's gain and self-interests instead of remaining with Exchange.

90. WHEREFORE, Exchange asks that the Court enter judgment in its favor as follows:

(1) Finding that Defendant has breached its fiduciary duties;

(2) Awarding damages and/or restitution in an amount to be determined at trial; and

(3) Awarding such other relief, including disgorgement of profits or other injunctive relief, that this Court deems just and proper.

Appendix E

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury of any and all issues in this action so triable.

Dated: December 8, 2021

Respectfully submitted,

/s/ Edwin J. Kilpela, Jr.
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APPENDIX F — COMPLAINT OF THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF PENNSYLVANIA, FILED DECEMBER 28, 2017

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

LYNDA RITZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, AND DERIVATIVELY ON BEHALF OF NOMINAL DEFENDANT ERIE INSURANCE EXCHANGE,

Plaintiff,

v.

ERIE INDEMNITY COMPANY, J. RALPH BORNEMAN, JR., TERRENCE W. CAVANAUGH, EUGENE C. CONNELL, LUANN DATESH, JONATHAN HIRT HAGEN, THOMAS B. HAGEN, C. SCOTT HARTZ, BRIAN A. HUDSON, SR., CLAUDE C. LILLY, III, GEORGE R. LUCORE, THOMAS W. PALMER, MARTIN P. SHEFFIELD, RICHARD L. STOVER, ELIZABETH A. HIRT VORSHECK, AND ROBERT C. WILBURN,

Defendants,

and

ERIE INSURANCE EXCHANGE,

Nominal Defendant.

Appendix F

Case No. 1:17-cv-340

VERIFIED CLASS ACTION AND DERIVATIVE COMPLAINT

Jury Trial Demanded

Plaintiff Lynda Ritz ("Plaintiff"), by and through her attorneys, on behalf of herself and all others similarly situated and derivatively on behalf of Erie Insurance Exchange ("Exchange" or the "Exchange"), based upon personal knowledge with respect to her own circumstances and based upon information and belief or the investigation of her counsel as to all other allegations, alleges the following:

INTRODUCTION

1. As set forth herein, Plaintiff seeks to recover for herself and the Class for harm suffered as a result of the Defendants' utter disregard of their fiduciary duties while serving as the attorney-in-fact for the Class as well as for breaching the Subscriber's Agreement by charging unwarranted and excessive Management Fees in violation of the implied covenant of good faith and fair dealing. Plaintiff also brings derivative claims on behalf of nominal defendant Exchange to remedy Defendants' breaches of fiduciary duties and to recover the losses that Exchange has suffered as a result of Defendants' self-interested misconduct.

2. In 1925, H.O. Hirt founded Exchange and Erie Indemnity Company ("Indemnity") with the express intent that the Exchange is "organized and exists primarily *for the benefit of its subscribers* or policyholders and that therefore the interests of the people who put their trust in the Exchange for the protection of their personal business affairs must come first."[1] Unfortunately, over time, the interests of the subscribers of Exchange have become subservient to those of a conflicted and self-interested board of directors of Indemnity (the "Board") and its controlling stockholders.

3. The Exchange is not structured as a traditional insurance company. Instead, Exchange is a subscriber-owned reciprocal insurer wherein every policyholder (each, a "Subscriber" and, together, "Subscribers") agrees to pool risk by acknowledging a reciprocal agreement of indemnity. This type of organizational structure is "of interest to individuals wanting to participate in a not-for-profit insurance environment focused on the policyholder."[2] As a reciprocal insurer, the Exchange is an unincorporated association with no board of directors or employees of its own. Accordingly, every Subscriber executes a "Subscriber's Agreement" appointing Indemnity as their attorney-in-fact to manage and conduct the business and

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1. *See In re Trust of Hirt*, 832 A.2d 438, 441 (Pa. Super. 2003) (citing to Subparagraph 4.03(B) of the Hirt Trust Agreement, discussed *infra*.) (emphasis added).

2. *See* Alex Burke, *What Is a Reciprocal Insurance Company?,* ZACKS, http://finance.zacks.com/reciprocal-insurance-company-7135.html (last visited Dec. 26, 2017).

affairs of the Exchange. *See* a true and correct copy of the Subscriber's Agreement, attached hereto as Exhibit A.

4. The Subscriber's Agreement provides that Indemnity may retain up to 25% of all premiums written or assumed by Exchange as compensation for serving as attorney-in-fact and managing and conducting the business and affairs of Exchange, including the payment of general administrative expenses (the "Management Fee"). *See* Exhibit A.

5. As the attorney-in-fact, Indemnity, through the Board, serves as a fiduciary to Exchange and the Subscribers and is obligated to act with the utmost loyalty, honesty and integrity and at all times in the best interests of Exchange and the Subscribers.

6. Instead of acting with undivided loyalty and integrity, the Defendants-both Indemnity and the Board-have operated with hopelessly conflicted interests and abused their position of absolute power so as to benefit themselves at the expense of Exchange and the Subscribers.

7. In particular, subsequent to Indemnity becoming a publicly traded company on NASDAQ in or around 1995, the interests of the stockholders of Indemnity, and specifically the majority stockholders who dominate the Board, have taken priority over the interests of the Exchange and the Subscribers. Since that time, Indemnity's controlling stockholders, who are among the Defendants, have reaped *hundreds of millions of*

dollars in dividends from Indemnity stock, based in large part on grossly excessive Management Fees wrongfully taken from Plaintiff, Exchange and all similarly situated Subscribers who are members of the proposed class defined below (the "Class") which amounts were then used to pay enormous dividends to the members of the Hirt family who control Indemnity.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) because one or more members of the Class are citizens of states different from the states of which some Defendants are citizens, there are well in excess of one hundred (100) Class members and the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs. This Court also has supplemental subject matter jurisdiction over the claims of Plaintiff and the proposed Class pursuant to 28 U.S.C. § 1367(a).

9. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this district, and Plaintiff resides within this district.

PARTIES

10. Plaintiff Lynda Ritz has been a Subscriber of Exchange since 2000 and is a citizen of Pennsylvania.

11. The nominal defendant Exchange is a reciprocal insurance exchange-an unincorporated association through which individuals, or "Subscribers," may exchange contracts to indemnify each other for losses-organized under the laws of the Commonwealth of Pennsylvania.[3] Exchange functions as a type of insurance company and, in that capacity, issues policies of insurance to Subscribers located in Pennsylvania and at least eleven (11) other states, as well as the District of Columbia. Because Exchange is a reciprocal insurance exchange with no employees, officers, board of directors, bylaws or organizing documents, the Exchange is operated and managed by Indemnity, Exchange's attorney-in-fact.

12. Defendant Indemnity is a publicly traded corporation organized under the laws of the Commonwealth of Pennsylvania and doing business throughout the United States. Both Exchange and Indemnity and their subsidiaries and affiliates operate, collectively, under the name "Erie Insurance Group."

13. Defendant J. Ralph Borneman, Jr. ("Borneman") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 1992. He has served on several of Indemnity's committees, including the Executive Compensation Committee from 1997 through 2001, the Executive Compensation and Development Committee from 2002 to 2003, the Nominating Committee

3. *See* 40 Pa. Stat. § 961 (authorizing the exchange of reciprocal or inter-insurance contracts amongst individuals, partnerships, and corporations of the Commonwealth of Pennsylvania).

from 1997 through 2004, the Charitable Giving Committee from 2005 through 2017, the Technology Committee from 2005 through 2008 and again from 2010 through 2017, the Strategy Committee from 2005 through 2008, the Strategy and Technology Committee in 2009, the Executive Committee in 2009 and 2015, and the Exchange Relationship Committee from 2009 through 2017. According to Indemnity's Proxy Statement, filed with the Securities and Exchange Commission ("SEC") on March 24, 2017, Borneman owns 50,000 shares of Class A common stock and another 13,862 vested Class A share credits under the Deferred Stock Plan for Outside Directors. Borneman is a citizen of Florida.

14. Defendant Terrence W. Cavanaugh ("Cavanaugh") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 2008 through July 31, 2016. He has served on the Charitable Giving Committee and the Investment Committee from 2009 through 2016, the Strategy and Technology Committee in 2009, and the Strategy Committee from 2010 through 2016. Cavanaugh served as the President of Indemnity from July 2008 through December 31, 2016 and the Chief Executive Officer from July 2008 until July 31, 2016. According to Indemnity's Proxy Statement filed with the SEC on March 24, 2017, Cavanaugh owns 59,439 shares of Class A common stock. Cavanaugh is a citizen of Pennsylvania.

15. Defendant Eugene C. Connell ("Connell") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2017. According to Indemnity's Proxy Statement filed with the SEC on March 24, 2017,

Connell owns 17,002 shares of Class A common stock. Connell is a citizen of Pennsylvania.

16. Defendant LuAnn Datesh ("Datesh") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2016. According to Indemnity's Proxy Statement filed with the SEC on March 24, 2017, Datesh owns 495 vested Class A share credits under the Deferred Stock Plan for Outside Directors. She serves on the Audit Committee. Datesh is a citizen of Pennsylvania.

17. Defendant Jonathan Hirt Hagen ("J. Hagen") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2005 and as Vice-Chair of the Board since 2013. During such time, he served on several of Indemnity's committees, including the Strategy Committee from 2006 through 2008 and again from 2010 through 2017, the Audit Committee from 2010 through 2016, the Executive Compensation and Development Committee from 2007 through 2009, the Compensation Committee from 2010 through 2017, the Nominating Committee from 2007 through 2017, the Strategy and Technology Committee in 2009, the Exchange Relationship Committee from 2009 through 2017 and the Executive Committee in 2010, 2016 and 2017. In addition to the foregoing, J. Hagen has served as one of the three trustees for the three H.O. Hirt Trusts (the "H.O. Trusts") since 2015. J. Hagen is also a beneficiary of the H.O. Trusts which control a majority of the voting stock of Indemnity. According to Indemnity's Proxy Statement filed with the SEC on March 24, 2017, J. Hagen owns 223,130 shares of Class A common stock and another 11,045 vested Class A

share credits under the Deferred Stock Plan for Outside Directors. J. Hagen is the grandson of H.O. Hirt, the late co-founder of Indemnity, and son of the late Susan Hirt Hagen, a former director of Indemnity, and defendant Thomas B. Hagen, the Chairman of the Board. J. Hagen is a citizen of Pennsylvania.

18. Defendant Thomas B. Hagen ("T. Hagen") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 1979 until 1998 and since 2007. He has served as the Chairman of the Board of Indemnity since 2007. T. Hagen has served on several of Indemnity's committees, including the Charitable Giving Committee in 1997 and the Executive Committee from 2008 through 2017. Since 2008, T. Hagen has served as an *ex-officio* member of all of the committees of Indemnity. He served as an employee of Indemnity from 1953 to 1995, and during such time, he served as President of Indemnity from 1982 to 1990 and as the Chairman and Chief Executive Officer of Indemnity from 1990 to 1993. T. Hagen is a beneficiary of the H.O. Trusts. He served as the general partner of the Hagen Family Limited Partnership since 1989. As general partner, T. Hagen has sole voting power and investment power over the shares of Class B common stock held by the Hagen Family Limited Partnership. According to Indemnity's Proxy Statement, filed with the SEC on March 24, 2017, T. Hagen also owns 5,100 shares of Class A common stock directly, 16,762,189 shares of Class A common stock indirectly and another 8,963 vested Class A share credits under the Deferred Stock Plan for Outside Directors which amounts to approximately 36.31% of the outstanding Class A shares. T. Hagen is the father

of defendant J. Hagen. According to Indemnity's public filings, T. Hagen is the son-in-law and close associate of the late founder and longtime leader of Indemnity H.O. Hirt. T. Hagen is a citizen of New York.

19. Defendant C. Scott Hartz ("Hartz") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2003. Hartz has served on several of Indemnity's committees, including the Audit Committee from 2004 through 2009, the Investment Committee from 2004 through 2017, the Technology Committee from 2005 through 2008, the Executive Committee from 2005 through 2008 and in 2010 and the Strategy and Technology Committee in 2009, and the Strategy Committee from 2010 through 2017. According to Indemnity's Proxy Statement filed with the SEC on March 24, 2017, Hartz owns 2,097 shares of Class A common stock and another 12,949 vested Class A share credits under the Deferred Stock Plan for Outside Directors. Hartz is a citizen of Pennsylvania.

20. Defendant Brian A. Hudson, Sr. ("Hudson") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2017. Hudson is a citizen of Pennsylvania.

21. Defendant Claude C. Lilly, III ("Lilly") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2000. Lilly has served on several of Indemnity's committees, including the Audit Committee from 2001 through 2017, the Investment Committee from 2004 through 2017, the Strategy

Committee from 2005 through 2008 and again from 2010 through 2017, the Executive Committee in 2008 and 2011, the Strategy and Technology Committee in 2009 and the Exchange Relationship Committee from 2009 through 2017. According to Indemnity's Proxy Statement filed with the SEC on March 24, 2017, Lilly owns 678 shares of Class A common stock and another 13,862 vested Class A share credits under the Deferred Stock Plan for Outside Directors. Lilly is a citizen of South Carolina.

22. Defendant George R. Lucore ("Lucore") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2016. He serves on the Charitable Giving Committee and the Strategy Committee. According to Indemnity's Proxy Statement filed with the SEC on March 24, 2017, Lucore owns 1,725 shares of Class A common stock and another 495 vested Class A share credits under the Deferred Stock Plan for Outside Directors. Lucore is a citizen of Florida.

23. Defendant Thomas W. Palmer ("Palmer") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2006. Palmer has served on several of Indemnity's committees, including the Audit Committee from 2009 through 2015, the Nominating Committee from 2007 through 2017, the Strategy Committee in 2007 and 2008 and again from 2010 through 2017, the Executive Compensation and Development Committee in 2009, the Compensation Committee from 2010 through 2017, and the Strategy and Technology Committee in 2009. According to Indemnity's Proxy Statement filed with the SEC on March 24, 2017, Palmer

owns 770 shares of Class A common stock and another 9,995 vested Class A share credits under the Deferred Stock Plan for Outside Directors. Palmer is a citizen of Ohio.

24. Defendant Martin P. Sheffield ("Sheffield") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2010. During such time, he has served on several of Indemnity's committees, including the Audit Committee from 2011 through 2017, the Strategy and Technology Committee from 2011 through 2017, the Exchange Relationship Committee from 2012 through 2017 and the Executive Committee from 2013 through 2017. According to Indemnity's Proxy Statement filed with the SEC on March 24, 2017, Sheffield owns 800 shares of Class A common stock and another 5,271 vested Class A share credits under the Deferred Stock Plan for Outside Directors. Sheffield is a citizen of Pennsylvania.

25. Defendant Richard L. Stover ("Stover") has served as a director of Indemnity, and as fiduciary for the Class and Exchange, since 2010. He has served on several of Indemnity's committees, including the Audit Committee from 2011 through 2017, the Investment Committee from 2011 through 2017 and the Executive Committee from 2012 through 2013. According to Indemnity's Proxy Statement filed with the SEC on March 24, 2017, Stover owns 1,072 shares of Class A common stock and another 5,271 vested Class A share credits under the Deferred Stock Plan for Outside Directors. Stover is a citizen of Florida.

26. Defendant Elizabeth A. Hirt Vorsheck ("Vorsheck") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2007. She has served on several of Indemnity's committees, including the Executive Committee from 2008 through 2017, the Charitable Giving Committee from 2008 through 2017, the Strategy Committee in 2008 and again from 2010 through 2017, the Strategy and Technology Committee in 2009, the Exchange Relationship Committee from 2009 through 2017 and the Nominating Committee from 2010 through 2017. Vorsheck has served as one of the three trustees of the H.O. Trusts since 2007. She also is a beneficiary of the H.O. Trusts which control a majority of the voting stock of Indemnity. According to Indemnity's Proxy Statement, filed with the SEC on March 24, 2017, Vorsheck owns 69,516 shares of Class A common stock directly and 4,428,914 shares of Class A common stock indirectly through several trusts which amounts to approximately 9.61% of the outstanding Class A shares. Vorsheck is the first cousin of J. Hagen. Vorsheck is a citizen of Pennsylvania.

27. Defendant Robert C. Wilburn ("Wilburn") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 1999 until April 25, 2017. He served on several of Indemnity's committees, including the Audit Committee from 2001 through 2010, the Executive Compensation Committee from 2000 to 2001, the Executive Compensation and Development Committee from 2002 through 2009, the Compensation Committee from 2010 through 2017, the Nominating Committee from 2001 through 2003, the Investment Committee in 2003

and from 2009 through 2017, the Executive Committee from 2004 through 2008 and in 2014, and the Charitable Giving Committee from 2011 through 2017. According to Indemnity's Proxy Statement filed with the SEC on March 24, 2017, Wilburn owns 2,700 shares of Class A common stock and another 13,862 vested Class A share credits under the Deferred Stock Plan for Outside Directors. Wilburn is a citizen of Virginia.

28. The individual defendants are collectively hereinafter referred to as the "Directors" and with Indemnity are collectively referred to as "Defendants."

FACTUAL ALLEGATIONS

History of Exchange

29. When founding the Exchange in 1925, H.O. Hirt did not structure it as a traditional stock insurance company. He wanted Exchange to be different, and he wanted its operation to be based on "simple common sense, mixed with just plain decency."[4]

30. The "founding purpose" of the Exchange was to provide the "[p]olicyholders with as near perfect protection, as near perfect service, as is humanly possible, and to do so *at the lowest possible cost*."[5] H.O. Hirt was

4. *Above All Together: Erie Insurance Group Historic Timeline 1925-2015* at 8, Erie Insurance, https://www.erieinsurance.com/-/media/files/timeline.pdf.

5. *Our History,* Erie Insurance, https://www.erieinsurance.com/our-history (last visited Dec. 26, 2017).

President and Chief Executive Officer of Indemnity until 1976 and remained on the Board until 1980. Through the years, he never forgot the guiding principles, and when he created the H.O. Trusts, prior to his passing in 1982, as a means of transferring his controlling interest in Indemnity to his children-F. William Hirt ("F.W. Hirt") and Susan Hirt Hagen-he specifically reminded them that Exchange "was organized and exists primarily *for the benefit of its subscribers* or policyholders and that therefore the interests of the people who put their trust in the Exchange for the protection of their personal business affairs must come first."[6]

31. Indemnity was structured with two classes of common stock-Class A and Class B. Upon the death of H.O. Hirt in 1982, 50% of all Class A shares and 76.22% of the Class B shares, which are the only voting shares, were passed to F.W. Hirt and Susan Hirt Hagen by way of two trusts, each holding equal halves of the shares for their respective benefit. At that time, Indemnity stock was not publicly traded.

32. In May 1994, for the first time, shares of Indemnity Class A stock were made available for sale to the public through the filing of a Form 10 with the SEC. The following year, it became listed on NASDAQ.[7] Since then,

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6. *See In re Trust of Hirt*, 832 A.2d at 441 (citing to Subparagraph 4.03(B) of the Hirt Trust Agreement) (emphasis added).

7. *See Above All Together: Erie Insurance Group Historic Timeline 1925-2015* at 14, Erie Insurance, https://www.erieinsurance.

as described below, the financial interests of Indemnity's stockholders, particularly those of Indemnity's controlling stockholders, have dominated those of Exchange and the Subscribers-to the point where Indemnity and the Directors are wholly disregarding their fiduciary duties to Exchange and the Class.

The Hirt Descendants Control the Board and Pay Themselves Huge Amounts in Dividends

33. At all relevant times, Board members have served at the pleasure of the Class B stockholders. Since 2006, J. Hagen has been a member of the Board's Nominating Committee - the Board committee responsible for determining and nominating the candidates for the office of director to be elected by the holders of Class B common stock, and has served as the Chair of the Nominating Committee since 2008.

34. Since 2010, defendant Vorsheck has also been a member of the Nominating Committee as well as Susan Hirt Hagen until her death in 2015. Further, T. Hagen is an *ex officio* member of the Nominating Committee. Thus, with the Nominating Committee comprised of a majority of insiders and/or directors hand-picked by them, there is no "independent" body to select board nominees.

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com/-/media/files/timeline.pdf. As reported in Indemnity's current Proxy Statement filed with the SEC on March 24, 2017, Indemnity has two classes of common stock. Class A stock is non-voting and publicly traded on the NASDAQ and has approximately 46,189,068 million shares outstanding. Class B stock has exclusive voting rights and there are approximately 2,542 shares outstanding.

Indeed, the Board has long been comprised of multiple Hirt family members.[8] The other members of the Board were nominated (and appointed) by the H.O. Trusts' beneficiaries and many of them have had long-standing personal relationships with the beneficiaries.[9]

35. The Class B shares passed down from H.O. Hirt are now held in three trusts, the H.O. Trusts. Presently, the three trustees are defendant J. Hagen,

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8. For example, F.W. Hirt, who was H.O Hirt's son, was an executive of several Indemnity subsidiaries and served as a member of the Board from 1965 until his death in 2007, with the exception of a three-year period between 1990 and 1993, having served as Chairman of the Board since at least 1995. H.O. Hirt's daughter, Susan Hirt Hagen, was a member of the Board from 1980 until her death in 2015. Defendant J. Hagen, the son of Susan Hirt Hagen and defendant T. Hagen, has served on the Board since 2005 and as Vice-Chairman of the Board since 2013. T. Hagen, the husband of the late Susan Hirt Hagen and father of defendant J. Hagen, has been a director since 2007, having previously served as a director from 1979 through 2007, and has been Chairman of the Board since 2007. Defendant Vorsheck is F.W. Hirt's daughter.

9. For example, as part of a legal proceeding initiated in 1998 by Susan Hirt Hagen to remove Mellon Bank, N.A. ("Mellon Bank") as a trustee of the H.O. Trusts, it was revealed that her brother, F. W. Hirt (then Chairman of the Board), had made a series of gifts of Class A common stock between 1994 and 1997, aggregating $10.3 million (market value at time of gift), to certain Indemnity personnel and/or directors. F. W. Hirt also gave $340,097 of Class A stock to Stephen A. Milne, Indemnity's then President, Chief Executive Officer and a director, and $169,438 of Class A stock to John M. Petersen ("Petersen"), Indemnity's then-former Chief Executive Officer, consultant and a director.

defendant Vorsheck and Sentinel Trust Company, L.B.A. ("Sentinel")-the corporate trustee since 2006.[10] As reported in Indemnity's Proxy Statement filed with the SEC on March 24, 2017, the H.O. Trusts collectively own 2,340 shares of Class B common stock, which represents 92.05% of the outstanding shares of Class B common stock. In addition, T. Hagen has sole voting power over 153 shares of Class B common stock held by the Hagen Family Limited Partnership, which represents 6.02% of the outstanding shares of Class B common stock. Thus, defendants J. Hagen, T. Hagen and Vorsheck are able to determine the outcome of any matter submitted to a vote of the holders of Class B common stock as they collectively control over 98% of Class B common stock.

36. The descendants of H.O. Hirt, in addition to controlling the Class B shares, also own approximately 45.92% (around 22 million shares)[11] of Indemnity's Class A shares and benefit substantially from the Indemnity dividends which are distributed to them as income. In addition, each of the Directors own Class A common stock. Therefore, defendants T. Hagen, J. Hagen and Vorsheck, and certain other Hirt family members who have served on the Board, as well as all the Directors directly benefit from Indemnity's dividends which are set at the sole discretion of the Hirt-dominated Board.

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10. Sentinel was named as the corporate trustee after years of legal proceedings initiated by Susan Hirt Hagen who sought to replace Mellon Bank, the former trustee.

11. Schedule 14C filed March 24, 2017 at 9.

37. Prior to Indemnity becoming a publicly traded company, and consistent with the ideals of a reciprocal insurance exchange, Exchange paid dividends to Subscribers even though its total net premiums were just a fraction of what they are today. For example, in 1975, when Exchange wrote $108 million in premiums, the Subscribers received $10 million in dividends.[12] In contrast, despite the fact that Exchange's direct and assumed premiums have continually grown over the years, and were $6.3 billion in 2016, the Subscribers have not received any dividends in over 25 years.[13]

38. Since 1997, the Board has consistently and significantly increased the annual dividend amount, to the direct benefit of the Board members who are beneficiaries of the H.O. Trusts, as well as the Directors and other stockholders of Indemnity, and at the expense of and to the detriment of Exchange and the Subscribers. Indeed, since 1997, *almost $1.75 billion* has been funneled from Exchange in the form of dividends to Indemnity's Class A and Class B stockholders. Most recently, on December 5, 2017, Indemnity announced that it was yet again increasing the quarterly cash dividend to Class A and Class B shareholders by 7.3 percent while also yet again setting the Management Fee for the coming year at the maximum rate of 25 percent.

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12. *Above all Together: Erie Insurance Group Historic Timeline 1925-2015* at 11, Erie Insurance, https://www.erieinsurance.com/-/media/files/timeline.pdf.

13. *Erie Ins. Exch. v. Erie Indem. Co.,* No. MS14-03-003, Declaratory Opinion and Order 1 43 (Ins. Comm'r of Pa. Apr. 29, 2015).

Appendix F

The Subscriber's Agreement Governs Indemnity's Relationship with Exchange and the Subscribers

39. Policyholders of the Exchange are known as Subscribers. Since 1925, each Subscriber, including Plaintiff, has been required to execute a non-negotiable Subscriber's Agreement drafted by Indemnity. Every Subscriber of Exchange signs an identical Subscriber's Agreement. The material language in the Subscriber's Agreement has remained unchanged since 1975. *See* Exhibit A.

40. Pursuant to the terms of the Subscriber's Agreement, Indemnity is appointed the attorney-in-fact for the Subscribers and Exchange. *See id.* This obligates Indemnity to act with utmost trust and honesty in all dealings concerning the Subscribers and Exchange.

41. Among other things, the Subscriber's Agreement provides Indemnity with "the power to . . . issue, change, nonrenew or cancel policies . . . collect premiums . . . [and] manage and conduct the business and affairs of [Exchange], its affiliates and subsidiaries." *Id.*

42. The activities performed by Indemnity as attorney-in-fact for the Exchange include insurance underwriting, policy issuance, policy exchange and cancellation, processing of invoices for premiums, the establishing and monitoring of loss reserves, oversight of reinsurance transactions, investment management, payment of insurance commissions to insurance agents, compliance with rules and regulations of supervisory

authorities and monitoring of legal affairs.[14] Indemnity is obligated to conduct these activities at its own expense.[15] At no time since 1997 has Indemnity disclosed that it performed any services for Exchange other than those authorized by the Subscriber's Agreement.

43. Pursuant to the Subscriber's Agreement, as compensation for all services performed as attorney-in-fact and for managing and conducting the business of Exchange and paying general administrative expenses, Indemnity is permitted to retain up to 25% of all premiums written or assumed by Exchange, i.e., the Management Fee. *See id.*

44. Since at least 2007, Indemnity has retained the maximum amount of Management Fees allowed by the Subscriber's Agreement-25% of all premiums written or assumed by Exchange-as compensation for services performed pursuant to the Subscriber's Agreement. As described further below, Indemnity and the Board have breached their fiduciary obligations to Exchange and the Subscribers and have abused their position of trust by charging and keeping excessive Management Fees.

Indemnity and the Board Owe Fiduciary Duties to Exchange and the Subscribers

45. As attorney-in-fact, Indemnity and the Board which "oversees and guides [Indemnity's] management

14. Annual Report on Form 10- K filed March 26, 1998.

15. *Id.*

and its business"[16] owe fiduciary duties to Exchange and the Subscribers. Indeed, "[t]he position of the attorney-in-fact of a reciprocal insurance exchange, who manages the business of the exchange under powers of attorney of the subscribers, who provide the means for the reciprocal insurance enterprise, is fiduciary in character to the same extent as that of the management of an incorporated mutual insurance company. . . ."[17]

46. The fiduciary obligations of Indemnity and the Board to Exchange and the Subscribers have long been memorialized in various corporate documents of Indemnity as well as in Indemnity's filings with the SEC.

47. For example, until at least 2006, each of the Directors executed an "Acceptance of Trust" upon being appointed to the Board which explicitly acknowledged that as attorney-in-fact for the Subscribers, he/she "shall be deemed to stand in a fiduciary relationship." *See* a true and correct copy of an Acceptance of Trust, attached hereto as Exhibit B.

48. Thereafter, in 2007, Indemnity adopted Corporate Governance Guidelines, which are in effect to the present,

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16. *Erie Indemnity Company Corporate Governance Guidelines* (Feb. 22, 2007), Erie Insurance, https://www.erieinsurance.com/about-us/investor/governance.

17. *Indus. Indem. Co. v. Golden State Co.*, 256 P.2d 677, 686 (Cal. Ct. App. 1953) (finding doctrine of corporate opportunity was equally applicable to attorney-in-fact of reciprocal insurance exchange).

"to set forth a common set of expectations as to how the Board should perform its functions." In the first section entitled "Role of the Board," the Corporate Governance Guidelines specifically set forth the fiduciary duties of Indemnity and its Directors to Exchange and its Subscribers as it states:

> In discharging their duties, the Directors must also be mindful of the fact that [Indemnity] is appointed to act as the Attorney-in-Fact to [Exchange] . . . by the policyholders of the Exchange under the terms of the Subscriber's Agreement between each policyholder and [Indemnity] that provides generally for the relationship between policyholders and [Indemnity] . . . Directors should treat this responsibility of [Indemnity] as one that is fiduciary in nature and consistent with each Director's Acceptance of Trust, which recognizes the Director's 'fiduciary relationship to [Indemnity] in its own right and as Attorney-in-Fact for the Subscribers of [Exchange].'

See Erie Indemnity Company Corporate Governance Guidelines at 2.

49. The Corporate Governance Guidelines further state that, in discharging their duties to Exchange and the Subscribers, the Directors must do so with the express understanding that "the Company's relationship with the Exchange and its policyholders is the Company's most valuable asset."

50. Indemnity's filings with the SEC also confirm the fiduciary duties owed to Exchange and the Subscribers by Indemnity and its Board. For example, Indemnity has stated that "[t]he Company's Board of Directors [] acts in a fiduciary capacity with respect to the operation of the Exchange,"[18] and that "the Board has a fiduciary duty to protect the interests of the policyholders of Exchange."[19] Further, Indemnity admits that its "primary purpose is to manage the affairs at the Exchange for the benefit of the policyholders,"[20] its "results of operations are tied to the growth and financial condition of the Exchange, and that "Exchange is [its] sole customer and [its] earnings are largely generated from management fees based on the direct and assumed premiums written by the Exchange."[21] Indeed, as disclosed in Indemnity's 10-Q filed with the SEC on October 29, 2015, "Indemnity has the power to direct the activities of the Exchange that most significantly impact the Exchange's economic performance by acting as the common attorney-in-fact and decision maker for the subscribers (policyholders) at the Exchange."

51. The Board's dual fiduciary duties to Exchange and the Subscribers, on one hand, and Indemnity's stockholders, on the other, creates conflicts of interest, including when the Board: (1) sets the Management Fee

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18. Annual Reports on Form 10-K filed March 12, 2002 and Form 10-K/A filed January 27, 2003.

19. Annual Reports on Form 10-K filed March 8, 2004 and February 24, 2005.

20. Annual Report on Form 10-K filed February 25, 2016.

21. Annual Report on Form 10-K filed February 25, 2016.

paid by the Exchange to Indemnity and (2) approves the annual dividend to Indemnity's stockholders.[22] As reflected by the actions of the Board, this conflict has resulted in the Board continually favoring the interests of Indemnity's stockholders, especially its majority stockholders, over those of Exchange and the Subscribers.

52. Indeed, Indemnity has admitted in its filings with the SEC that the Hirt family members have favored maintaining the Management Fee rate at its 25% maximum in order to benefit themselves. As disclosed in a report filed by Indemnity in 1999, then Chief Executive Officer Petersen wanted to reduce the Management Fee rate due to Indemnity's strong earnings. According to the report, the Hagens dissented as they favored "keeping the rate at or near the maximum 25 percent allowed. . . ."[23]

53. As set forth below, Indemnity and the Board have breached their fiduciary duties to Exchange and the Class by unlawfully diverting to Indemnity hundreds of millions of dollars of revenue that belongs to Exchange and the Class and have breached the Subscriber's Agreement by taking the maximum 25% Management Fee year after year without valid grounds. To be sure, the conflicted and self-interested members of the Board have charged and taken grossly excessive Management Fees from the Exchange and the Subscribers and funneled the money to themselves and other Indemnity stockholders through substantial dividend payments.

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22. Annual Report on Form 10-K filed February 24, 2005.

23. Annual Report on Form 10-K filed March 30, 1999.

Appendix F

Indemnity and the Board Charge and Take Excessive Management Fees from Plaintiff, Exchange and the Class

54. Since 2007, Indemnity has charged and taken the maximum 25% in Management Fees allowed by the Subscriber's Agreement. As shown below, the amount of Management Fees taken by Indemnity from Plaintiff, Exchange and the Class from 2007 through the third quarter of 2017 totals almost $14 billion:

Year	Management Fee Rate	Management Fee Revenue[24]
2007	25%	$947,023,000
2008	25%	$949,775,000
2009	25%	$965,110,000
2010	25%	$1,009,000,000
2011	25%	$1,067,000,000
2012	25%	$1,157,000,000
2013	25%	$1,266,401,000
2014	25%	$1,376,190,000
2015	25%	$1,475,511,000
2016	25%	$1,567,431,000
1st, 2nd and 3rd Quarters of 2017	25%	$1,268,591,000
TOTAL		$13,049,032,000

24. Figures derived from Indemnity's Annual Reports on Form 10-K (for 2007-2016) and Quarterly Reports on Form 10-Q (for 2017).

55. Management Fee revenue is directly correlated with Indemnity's financial success. In its filings with the SEC Indemnity admits that it is "dependent upon management fees paid by the Exchange,"[25] and that its "earnings are primarily driven by the management fee revenue . . . ."[26] Indeed, as acknowledged by Indemnity, "[m]anagement fees accounted for 95.9%, 95.9%, and 96.5%, respectively, of [its] revenues for the three years ended December 31, 2014, 2015 and 2016."[27]

56. The Board sets the rate of the Management Fee in December for the following year. For 2015-2018, the Board set the Management Fee rate at 25% at Board meetings held on December 2, 2014 (for 2015),[28] December 1, 2015 (for 2016),[29] December 6, 2016 (for 2017)[30] and December 5, 2017 (for 2018)[31]. Defendants Borneman, Cavanaugh, J. Hagen, T. Hagen, Hartz, Lilly, Palmer, Sheffield, Stover, Vorsheck and Wilburn were the members of the Board who made the decision to set the Management Fee rate at 25% at the Board meetings on December 2, 2014 and December 1, 2015. Defendants Borneman, Datesh, J. Hagen, T. Hagen, Hartz, Lilly, Lucore, Palmer, Sheffield,

25. Annual Report on Form 10-K filed February 25, 2016.

26. Annual Report on Form 10-K filed February 23, 2017.

27. Schedule 14C filed March 24, 2017.

28. Current Report on Form 8-K filed December 3, 2014.

29. Current Report on Form 8-K filed December 2, 2015.

30. Current Report on Form 8-K filed December 7, 2016.

31. Current Report on Form 8-K filed December 5, 2017.

Stover, Vorsheck and Wilburn were the members of the Board who made the decision to set the Management Fee rate at 25% at the Board meeting held on December 6, 2016. Defendants Borneman, Connell, Datesh, J. Hagen, T. Hagen, Hartz, Hudson, Lilly, Lucore, Palmer, Sheffield, Stover and Vorsheck were the members of the Board who made the decision to set the Management Fee rate at 25% at the Board meeting held on December 5, 2017.

57. These Defendants have charged and taken grossly excessive Management Fees from Exchange and the Class for years. For example, defendants Borneman, J. Hagen, T. Hagen, Hartz, Lilly, Palmer and Vorsheck, have served on the Board since 2007 and made the decision to set the Management Fee rate at 25% for each of these years. Defendant Cavanaugh, defendants Sheffield and Stover and defendant Wilburn served on the Board from 2008-2016, 2010-2017, and 2007-2017, respectively, and also participated in the Board's decision to set the Management Fee rate at 25% for each of the years on which they served on the Board.[32]

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32. For 2007-2014, the Board set the Management Fee rate at 25% at Board meetings held on December 12, 2006 (for 2007), December 12, 2007 (for 2008), December 9, 2008 (for 2009), December 8, 2009 (for 2010), December 7, 2010 (for 2011), December 6, 2011 (for 2012), December 4, 2012 (for 2013), and December 3, 2013 (for 2014). *See* Current Report on Form 8-K filed December 13, 2006; Current Report on Form 8-K filed December 12, 2007; Current Report on Form 8-K filed December 11, 2008; Current Report on Form 8-K filed December 10, 2009; Current Report on Form 8-K filed December 7, 2010; Current Report on Form 8-K filed December 8, 2011; Current Report on Form 8-K filed December 5, 2012; Current Report on Form 8-K filed December 4, 2013.

58. Indeed, a majority of the current thirteen-member Board (i.e., defendants Borneman, J. Hagen, T. Hagen, Hartz, Lilly, Palmer and Vorsheck) made the decision to take and charge excessive Management Fees by taking the maximum 25% *every year* since 2007.

59. The Board was obligated to act with the utmost loyalty, honesty and integrity and at all times in the best interests of Exchange and the Subscribers in setting the Management Fee rate. Rather than complying with their fiduciary obligations to Exchange and the Subscribers, however, Indemnity and the Board have subordinated the interests of Exchange and the Subscribers to those of Indemnity and its stockholders by charging grossly excessive Management Fees.

60. As set forth below, several metrics and statistical analysis demonstrate that the Management Fees charged and taken by Indemnity over the years has been grossly excessive.

61. For example, based upon a review of industry-wide profitability reports issued by the National Association of Insurance Commissioners ("NAIC")[33] and

33. According to its website, the NAIC "is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. NAIC members,

Indemnity's financial statements filed with the SEC and the Pennsylvania Department of Insurance, the excessive Management Fees charged by Indemnity and the Board have allowed Indemnity to achieve huge profitability levels that are many multiples higher than those of its peers in the U.S. property and casualty insurance industry as well as that of Exchange.

62. In January 2017, the NAIC issued its Report on Profitability By Line By State in 2015 (the "2015 Profitability Report") "to estimate and allocate profitability in property/casualty (P/C) insurance by state and line of insurance." The 2015 Profitability Report is compiled based upon annual financial statements and exhibits filed with the NAIC by 2,924 property and casualty insurers and the NAIC estimates that well in excess of 95% of the premiums written in the U.S. are represented in the report.

63. According to the 2015 Profitability Report, for 2006 through 2015, the average return on net worth (or return on equity) for property and casualty insurers in the U.S., like Indemnity, was 6.6%. The average return on net worth for property and casualty insurers in the U.S. for these years ranged from a low of 2.2% (in 2008) to a high of 12.2% (in 2006). In stark contrast, Indemnity, achieved an average return on net worth for 2006 through 2015 that was nearly ***three times as high*** **as** that for both

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together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S." Nat'l Ass'n of Ins. Comm'rs, *About the NAIC*, http://www.naic.org/index_about.htm (last visited Dec. 26, 2017).

the average return on net worth achieved by Indemnity's peers in the property and casualty industry as well as achieved by Exchange for whom Indemnity and the Board serve as fiduciaries as demonstrated in the chart below:[34]

34. While the accounting systems from the three sets of reports from which these values were obtained differ somewhat, such differences do not materially affect the results. Specifically, the NAIC profit values were calculated by the NAIC using an approximate Generally Accepted Accounting Principles ("GAAP") method, wherein the NAIC made a conversion from Statutory Accounting Principles ("SAP") to GAAP; Indemnity used GAAP in preparing its Annual Reports; and Exchange used SAP in preparing its Statutory Annual Statements. As explained in the 2015 Profitability Report, during 2015, the profit percentage for the property and casualty insurance industry on a SAP basis was 7.2% compared to the approximate GAAP value of 6.6%. That is a difference of less than 1%. *Report on Profitability By Line By State in 2015*, Nat'l Ass'n of Ins. Comm'rs (Jan. 2017) at 35, 37, www.naic.org/prod_serv/PBL-PB-16.pdf. The average annual difference between SAP and the NAIC approximate GAAP values from 2006 to 2015 was 0.8%, with the SAP values being higher. Thus, the slight difference in accounting systems does not explain the huge excess of Indemnity's profits over that for Exchange or the property and casualty insurance industry as a whole.

Appendix F

Year	Average Return on Net Worth for U.S. Property and Casualty Industry[35]	Return on Net Worth for Indemnity[36]	Return on Net Worth for Exchange[37]
2006	12.2%	16.7%	14.9%
2007	9.7%	19.2%	15.2%
2008	2.2%	7.5%	(7.6%)
2009	5.7%	12.8%	(1.4%)
2010	6.0%	17.9%	11.8%
2011	3.4%	20.0%	3.6%
2012	5.2%	22.5%	6.0%
2013	8.0%	23.6%	8.5%
2014	6.6%	23.3%	5.5%
2015	6.6%	23.7%	6.8%
Average for 2006 through 2015	6.6%	18.2%	6.4%

35. *See* 2015 Profitability Report at 148.

36. Return on Net Worth for Indemnity was calculated using the data contained in Indemnity's Annual Reports filed with the SEC for each of the years listed above as follows: Net Income / Average Equity During the Year.

37. Return on Net Worth for Exchange was calculated using data contained in Exchange's Statutory Annual Statements for each of the years listed above as follows: Net Income/Beginning

64. While the NAIC has not released its profitability report for 2016, Indemnity experienced a staggering 26.5% return on net worth in 2016-its highest rate of return since before 2006-which is more than four times as high as the average return for the U.S. property and casualty industry in 2015 and more than 3.5 times as high as the return for Exchange in 2016 of 7.1%. Since revenue derived from Management Fees comprises almost the entirety of Indemnity's revenue, Indemnity's astronomical returns are almost wholly attributable to the grossly excessive Management Fees which Indemnity and the Board has charged to Plaintiff, Exchange and the Class. The vast disparity between the rates of return attained by Indemnity and Exchange plainly demonstrates that the Board has subordinated the interests of Exchange and its Subscribers to those of Indemnity and its stockholders.

65. Several other measures demonstrate that Indemnity's profits are significantly higher than its peers and the entire property and casualty industry, such as the target profit values used by insurance regulators and insurance organizations. For example, the California Department of Insurance develops a "Maximum

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Policyholder Surplus. For purposes of this calculation, Beginning of Year Policyholder Surplus was used instead of the Average Surplus During the Year. This tends to yield a slightly higher profit ratio as surplus generally increases during the year and hence dividing by the slightly lower Beginning Policyholder Surplus gives a slightly higher ratio. If the Average Surplus During the Year was used in the calculation instead, the Return on Net Worth for Exchange would be slightly lower, and the disparity with the very high profits for Indemnity would be even larger.

Permitted Rate of Return" that it allows for insurance companies.[38] During 2017, the Maximum Permitted Rate of Return allowed for insurance companies by the California Department of Insurance ranged from 7.65% to 7.79%.[39] During 2016 this Maximum Permitted Rate of Return ranged from 7.09% to 7.48%. This is generally consistent with the profits of the property and casualty insurance industry and Exchange, but again demonstrates Indemnity's egregiously excessive profits it has been able to achieve by charging and taking grossly excessive Management Fees from Exchange and the Subscribers.

66. With regard to insurance organizations, the Pennsylvania Compensation Rating Bureau ("PCRB") / Delaware Compensation Rating Bureau ("DCRB")[40, 41]

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38. The Maximum Permitted Rate of Return is the highest target return on equity (or net worth) allowed for insurance companies which is meant to obtain a "return that fully compensates the insurer for its risk". Net worth and equity generally refer to the same financial measure, but both can vary slightly based upon the accounting system used. The Maximum Permitted Rate of Return is calculated using the formula set forth in the California Insurance Regulation 10 CCR § 2644.16.

39. Maximum Permitted Rate of Return & Yields for Investment Income Calculation - September 2017 (Date Posted: Oct 3, 2017), Cal. Dep't of Ins., https://www.insurance.ca.gov/0250-insurers/0800-rate-filings/0200-prior-approval-factors/.

40. The same organization operates in both Pennsylvania and Delaware (http://pcrb.com (last visited Dec. 27, 2017)).

41. The PCRB describes itself as "a non-profit corporation formed in 1915 in accordance with the insurance laws of Pennsylvania and is not affiliated with state government. The PCRB's enabling statute specified that classification of employers, underwriting

recently made a filing for workers compensation insurance rates in Delaware with a target "Internal Rate of Return (Cost of Capital)" of 8.71%.[42, 43] Again, this is generally consistent with the profits of the property and casualty insurance industry and Exchange, but further exemplifies the hugely inflated profits that Indemnity has been able to achieve by charging grossly excessive Management Fees. In insurance regulatory rate proceedings, for the purpose of determining a fair rate of return, the value derived across a broad spectrum of property casualty insurance is commonly used as being applicable to workers compensation.[44]

67. When evaluating a company's profits and whether they are reasonable, consideration should also be given to the risk of the business as it is well accepted that high risk businesses should have the opportunity for higher than

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rules, policy forms, loss cost values and rating plans for workers compensation shall be proposed by a rating bureau situated within the state. The PCRB is subject to supervision and examination by the Pennsylvania Insurance Commissioner, who must approve its ability to compile loss costs on an equitable and impartial basis. The PCRB membership is comprised of all insurance carriers, including the State Workers' Insurance Fund ("SWIF"), authorized to sell workers compensation insurance in Pennsylvania." PCRB, Organization, http://pcrb.com/shared/p_contents.htm (last visited Dec. 27, 2017).

42. *See* DCRB Filing No. 1701 Residual Market Rate and Voluntary Market Loss Cost Filing Proposed Effective December 1, 2017, Ex. 9 at 2, http://www.pcrb.com/shared/d_contents.htm.

43. Internal Rate of Return (Cost of Capital) is a target return on equity (or net worth) value used by insurance companies.

44. In fact, this is the procedure that was used by the DCRB in its analysis of a reasonable rate of return.

average profits. Therefore, if Indemnity had a higher than average risk, that might be a partial explanation for higher than average profits.[45] However, the exact opposite is true. Indemnity is not a higher than average risk enterprise; rather, it is a lower than average risk business, and hence reasonable profits should be lower than average. Indeed, Indemnity's risk is lower than average when evaluated from either a qualitative or quantitative perspective.

68. On a qualitative basis, insurance business costs can be broken down into two main components: (i) the payment of claims and (ii) expenses of running the insurance business. It is widely acknowledged by insurance experts and those in the industry that the risk involved in the payment of claims is much higher than funding the expenses of running the insurance business. Indeed, the payment of claims is clearly much riskier because there is a significant degree of uncertainty regarding the number of claims that will occur (claim frequency) and the dollar cost of those claims (claim severity). Those issues are of much less concern for expenses than for claims.[46] In the case of Exchange and Indemnity, the former is responsible for funding the payment of claims and the latter is responsible for the payment of expenses. Hence, Exchange keeps the more risky part of the insurance business and bears the vast majority of the risk whereas Indemnity

45. However, given Indemnity's very high return on net worth, the company would need to be much more risky than average, which would be quite unusual, and, as discussed herein, is not the case.

46. Indemnity can reasonably plan for the number of employees it needs, and the compensation of those employees, without there being a significant risk that there will be a material variation from planned to actual.

is responsible for the less risky part, yet Indemnity is reaping very high profits.[47]

69. On a quantitative basis, risk can be measured based on the variability of the results. Two of the most common measures of variability are the coefficient of variation[48] and the Beta[49] of the company. For both of these measures, a higher value indicates a higher risk.

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47. The fact that the expense costs are less risky than the loss costs can be confirmed statistically. The coefficient of variation of underwriting expenses for the property casualty insurance industry from 2007 to 2016 was 0.015 compared to the coefficient of variation for losses (plus loss adjustment expenses) of 0.052. As discussed herein, the coefficient of variation is a measure of risk, with a higher value indicating more risk. Hence, using this accepted measure, the risk associated with expense costs is less than one third the risk associated with loss costs. This is further evidence that Indemnity has low risk.

48. A coefficient of variation (CV) is a statistical measure of the dispersion of data points in a data series around the mean. It is calculated as follows: standard deviation / expected value. The coefficient of variation represents the ratio of the standard deviation to the mean, and it is a useful statistic for comparing the degree of variation from one data series to another, even if the means are drastically different from one another. *See* Investopedia, *Coefficient of Variation – CV*, http://www.investopedia.com/terms/c/coefficientofvariation.asp (last visited Dec. 27, 2017).

49. Beta is a measure of the volatility, or systematic risk, of a security or a portfolio in comparison to the market as a whole. Beta is used in the capital asset pricing model (CAPM), which calculates the expected return of an asset based on its beta and expected market returns. Beta is also known as the beta coefficient. *See* Investopedia, *Beta*, http://www.investopedia.com/terms/b/beta.asp (last visited Dec. 27, 2017).

70. The coefficient of variation for the property and casualty insurance industry, Indemnity and Exchange during the time period of 2006-2015 (using the data forth in table at Paragraph 63) is 0.44, 0.28 and 1.12, respectively. The coefficient of variation for Indemnity is only 64% of the value for the combined property and casualty insurance industry and only 25% of the value for Exchange. Hence, Indemnity is less risky than either the property and casualty insurance industry or Exchange on this accepted measure of risk.[50]

71. With regard to the Beta measure of risk, the average business in the economy has a value of 1.00. A Beta value less than 1.00 is below average risk and higher than 1.00 is above average risk. A recent value for the Beta of Indemnity is 0.48.[51] Hence, Indemnity has less than half

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50. When comparing Indemnity to the property and casualty insurance industry on this measure, it would be more accurate to compare Indemnity to other specific companies instead of all companies combined because the combination of all property and casualty insurance companies together tends to lower the coefficient of variation because the risk for one company tends to partially offset the risk of other companies when combined. Therefore, the combined coefficient of variation of the property and casualty insurance industry is somewhat lower compared to that for a specific company. If an adjustment were made for this, it would increase the coefficient of variation for the property and casualty insurance industry and make the disparity with Indemnity even larger, providing even stronger evidence that Indemnity is less risky.

51. Reuters, *Erie Indemnity Co. (ERIE.OQ)*, https://www.reuters.com/finance/stocks/ overview/ERIE.OQ (last visited Dec. 27, 2017).

the risk of the average business based on this accepted measure of risk. A Beta value is not available for the entire property and casualty insurance industry since Beta values are commonly calculated only for publicly traded companies. However, it is possible to develop estimates of Beta for the property and casualty insurance industry. For example, the PCRB/DCRB included such a calculation in its most recent filing for workers compensation insurance in Delaware, and derived a value of 0.87.[52] Hence, on this accepted measure of risk, Indemnity is only about half the risk of the property and casualty insurance industry.

72. Further, Indemnity's Beta of 0.48 can be compared to certain of its peers identified by Indemnity in its filings with the SEC. Specifically, in its Proxy Statement filed with the SEC on March 24, 2017, Indemnity lists the following publicly-traded companies as its peers: 1) Allstate Insurance Group; 2) Cincinnati Insurance Companies; 3) State Auto Insurance Companies; and 4) Travelers Group.[53] The Beta for each of these companies is 1.11, 0.95, 0.86 and 1.27, respectively.[54] Thus, Indemnity

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52. DCRB Filing No. 1701 Residual Market Rate and Voluntary Market Loss Cost Filing Proposed Effective December 1, 2017, Ex. 9 at 21, http://www.pcrb.com/shared/d_contents.htm.

53. Each peer company is a wholly-owned subsidiary of a publically-traded holding company as follows: 1) Allstate Corp.; 2) Cincinnati Financial Corp.; 3) State Auto Financial Corp.; and 4) Travelers Companies, Inc. The Beta values listed above are those values as reported by each of the publically-traded holding companies.

54. Reuters, *Allstate Corp. (ALL.N)*, https://www.reuters.com/finance/stocks/overview/ALL.N (last visited Dec. 27, 2017);

has only about half the risk of its own hand-picked peers, which is consistent with its significantly lower risk as compared to the entire property and casualty insurance industry discussed above.

73. In sum, Indemnity has had incredibly high profits; about three times as much as the entire property and casualty insurance industry or Exchange during the 10-year period from 2006 to 2015. That discrepancy cannot be explained because of the risk of the business for Indemnity. Rather, since Indemnity is significantly lower in risk, reasonable profits would be lower than, not higher than, that for property and casualty insurance companies or Exchange. Indeed, the foregoing analysis confirms that Indemnity has been charging and taking grossly excessive Management Fees.

Indemnity's Directors and Stockholders, Including the Hirt Family Descendants, Have Profited Immensely from Dividends Derived from the Grossly Excessive Management Fees Taken by Indemnity from Exchange and the Subscribers

74. As demonstrated in the chart above at Paragraph 54, since 2007, Indemnity has taken almost $14 billion

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Reuters, *Cincinnati Financial Corp (CINF.OQ)*, https://www.reuters.com/finance/stocks/overview/CINF.OQ (last visited Dec. 27, 2017); Reuters, *State Auto Financial Corp. (STFC.OQ)*, https://www.reuters.com/finance/ stocks/overview/STFC.OQ (last visited Dec. 27, 2017); Reuters, *Travelers Companies Inc. (TRV.N)*, https://www.reuters.com/finance/stocks/overview/TRV.N (last visited Dec. 27, 2017).

in Management Fees. These enormous sums paid to Indemnity for Management Fees have allowed Indemnity's stockholders, especially the insiders on the Board who are beneficiaries of the H.O. Trusts, to benefit considerably through the dividends paid by Indemnity to its Class A and Class B stockholders. Throughout the relevant period, the insider beneficiaries of Indemnity have owned close to a majority of the outstanding Class A stock or about 22 million shares.

75. The chart below reflects the total amount of dividends paid by Indemnity from 1997-2017 and the per share basis to the Class A and Class B stockholders:

Year	**Total $ (in millions)**	**Class A**	**Class B**
1997	$26.5	$.3925	$58.875
1998	$29.9	$.4425	$66.375
1999	$32.8	$.4950	$74.250
2000	$36.2	$.5575	$83.625
2001	$40.4	$.6275	$94.125
2002	$45.0	$.7000	$105.000
2003	$50.6	$.7850	$117.750
2004	$55.1	$.9700	$145.500
2005	$81.9	$1.335	$200.250
2006	$86.1	$1.480	$222.000
2007	$91.1	$1.640	$246.000
2008	$92.3	$1.770	$265.500
2009	$93.0	$1.830	$274.500

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2010	$98.0	$1.955	$293.250
2011	$102.0	$2.0975	$314.625
2012*	$95.0	$2.000	$300.000
2012	$229.0	$4.250	$637.500
2013	$83.6	$2.4125	$361.875
2014	$118.5	$2.586	$387.900
2015	$126.9	$2.773	$415.950
2016	$136.0	$2.9725	$445.875
First and Second Quarters of 2017	$72.9	$1.5650	$234.750
TOTAL	$1,822.8		

*In 2012, in addition to its regular dividend payment, Indemnity made an additional "special" dividend payment to its stockholders.

76. Since 1997, through the premiums generated by Exchange, Indemnity has paid over $1.82 billion in dividends to its stockholders, with the beneficiaries of the H.O. Trusts reaping ***over $725 million*** from their ownership of the Class A stock alone. In 2012, in addition to the regularly quarterly dividend declared in November, the Board also declared a special one-time cash dividend of $2.00 on each Class A share and $300.00 on each Class B share, totaling $95 million. The Board declared the special dividend "due to the potential significant increases in tax rates on 2013 dividend income" which would have affected those in higher tax brackets such as the Hirt beneficiaries.

77. Indemnity admits in its public filings with the SEC that the Board has conflicting fiduciary duties to the Exchange and Subscribers, on the one hand, and Indemnity's stockholders, on the other hand, when it makes certain decisions, including, specifically, setting the annual Management Fee rate and setting the annual dividend amount. Further, the Board makes these admittedly conflicting decisions at the same Board meeting and does so without the use or input of any advisory committee comprised of Subscribers to ensure that the Board is making decisions in the best interests of Exchange and the Subscribers.[55] Indeed, in each December since 1995, the Board has taken simultaneous action to prospectively (1) set the Management Fee rate charged by Indemnity to Exchange and the Subscribers, and (2) approve an increase in shareholder dividends to Indemnity's stockholders. Based upon the foregoing, it is clear that the Board has continuously put the interests of Indemnity and its stockholders over that of Exchange and the Subscribers.

CLASS ACTION STATEMENT

78. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), (b)(2), and/or (b)(3) on behalf of the following proposed Class:

> All current and former Subscribers of Erie Insurance Exchange during the applicable statute of limitations.

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55. *See* Michael A. Haskel, Esq., The Legal Relationship Among A Reciprocal Insurer's Subscribers, Advisory Committee and Attorney-in-Fact, 6 N.Y. City L. Rev. 35, 41-42 (2003).

79. The Class excludes Defendants and any entity in which Defendants have a controlling interest, and their officers, directors, legal representatives, successors and assigns.

80. The Class is so numerous that joinder of all members is impracticable.

81. The Class can be readily ascertained through the records maintained by Indemnity and Exchange.

82. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

83. Plaintiff's claims are typical of the claims of the Class. As alleged herein, Plaintiff and members of the Class sustained damages arising out of Defendants' common course of unlawful conduct.

84. There are questions of law and fact common to the Class, the answers to which will advance the resolution of the claims of all class members, including but not limited to:

a. Whether the Management Fees charged by Indemnity to the Subscribers and Exchange were excessive and violative of the implied covenant of good faith and fair dealing that runs with the Subscriber's Agreement;

b. Whether Indemnity and the Board breached their fiduciary duties to Exchange and the Subscribers in setting and taking grossly excessive Management Fees;

85. These and other questions of law and/or fact are common to the Class and predominate over any questions affecting only individual class members.

86. The same common issues predominate with respect to all members of the Class, regardless of when they were Subscribers.

87. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has no claims antagonistic to those of the Class. Plaintiff has retained counsel competent and experienced in complex nationwide class actions, including all aspects of litigation. Plaintiff's counsel will fairly, adequately and vigorously protect the interests of the Class.

88. Class action status is warranted under Rule 23(b)(1)(A) because the prosecution of separate actions by or against individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants.

89. Class action status is also warranted under Rule 23(b)(1)(B) because the prosecution of separate actions by or against individual members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter,

be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

90. Class action status is also warranted under Rule 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

91. Class action status is also warranted under Rule 23(b)(3) because questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

DERIVATIVE ALLEGATIONS

92. Plaintiff brings claims derivatively in the right and for the benefit of Exchange to redress the Defendants' breaches of fiduciary duties and other violations of law.

93. Plaintiff is a Subscriber of the Exchange and was a Subscriber of the Exchange at all times relevant hereto.

94. Plaintiff will adequately and fairly represent the interests of Exchange and the Subscribers in enforcing and prosecuting its rights.

95. Pa. R.C.P. 1506 permits "members of a corporation or similar entity" to file a derivative action when "the

corporation or entity refuses or fails to enforce rights which could be asserted by it."

96. Exchange does not have its own board of directors, thus, there is no board upon which to make a demand. Rather, the Directors, as attorneys-in-fact for Exchange, are charged with acting as fiduciaries on behalf of Exchange.

97. As discussed herein, pursuant to the Corporate Governance Guidelines, "the Directors should treat this responsibility of the Company as one that is fiduciary in nature and consistent with each Director's Acceptance of Trust . . . to satisfy the obligations of the Company to the Exchange, the Directors should cause the Company to act in a manner they reasonably believe is in the best interests of the Exchange and its policyholders." There has been a standing subcommittee of the Board which was formed in 2008 entitled the "Exchange Relationship Committee," however, in its public filings, Indemnity has never disclosed the responsibilities of this committee and has never reported that the members of the committee have ever met in the nine years of its existence.

98. By reason of their positions as attorneys-in-fact for Exchange and because of their ability to control and conduct the business and corporate affairs of Exchange, the Directors owe Exchange the fiduciary obligations of good faith, trust and loyalty and were and are required to use their utmost ability to control and manage the Exchange in a fair, just, honest, and equitable manner.

99. The Directors were and are required to act in furtherance of the best interests of Exchange so as to benefit Exchange and the Subscribers and not in furtherance of their personal interest or benefit and were required to refrain from unduly benefiting themselves and Indemnity insiders at the expense of Exchange. Each Director owes to Exchange the fiduciary duty to exercise good faith and diligence in the administration of the business and affairs of Exchange and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

100. The Directors, because of their positions of control and authority as attorneys-in-fact for Exchange, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

101. The Directors have acted in their own best interests and/or in the best interests of Indemnity and its insiders by taking excessive Management Fees from Exchange. The Directors' unlawful misconduct was unjustifiable and constituted a gross breach of their fiduciary duties as fiduciaries to Exchange.

102. The Directors' foregoing misconduct was not, and could not have been, an exercise of good faith business judgment. Rather, their actions were patently unlawful, and as a direct and proximate result of the Directors' foregoing breaches of fiduciary duties, Exchange has sustained significant damages, including, but not limited to, the misappropriation of billions of dollars in excessive Management Fees.

Appendix F

CLAIMS FOR RELIEF

Count I
Breach of Fiduciary Duty
(Plaintiff v. Indemnity and the Directors)

103. Plaintiff repeats and re-alleges the allegations set forth in the foregoing Paragraphs 1-102 of this Complaint as if fully set forth herein.

104. At all relevant times, Indemnity was an agent, attorney-in-fact, and fiduciary for the Plaintiff, Exchange, and the Class.

105. At all relevant times in which they served on the Board, the Directors also agreed to serve as agents, attorneys-in-fact, and fiduciaries for Plaintiff, Exchange and the Class.

106. As fiduciaries, Indemnity and the Directors were obligated to act loyally, with utmost honesty and solely in the best interests of the Plaintiff and the Class.

107. Since at least 2007, Indemnity and the Directors have sought to profit at the direct expense of Plaintiff and the Class and, among other things, have authorized, taken and retained excessive Management Fees from Exchange and the Class in order to, *inter alia*, pay ever increasing dividends to the shareholders of Indemnity and thereby improve their own financial positions.

108. The funds use to pay the grossly excessive Management Fees taken by Indemnity and the Directors would have been used for the benefit of the Plaintiff and the Class had they not been taken by Indemnity. Instead, Indemnity and its stockholders directly benefitted from the funds.

109. Indemnity and the Directors breached their fiduciary duties to Plaintiff and the Class by authorizing, enabling, and/or otherwise permitting Indemnity to retain excessive Management Fees from Exchange.

110. As a result of Indemnity and the Directors' breach of their respective fiduciary duties, Plaintiff and the Class have suffered substantial damages, including, but not limited to, monetary losses stemming from Indemnity's unlawful taking and retention of excessive Management Fees.

111. Because Indemnity and the Directors breached their duties knowingly, willingly, and/or with reckless disregard, Plaintiff and the Class seek punitive damages.

Count II
Breach of Fiduciary Duty
(Plaintiff, derivatively on behalf of Exchange v. Indemnity and Directors)

112. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-111 of this Complaint as if fully set forth herein.

113. The Defendants owed and owe Exchange fiduciary obligations. By reason of their fiduciary relationships, the Defendants owed and owe Exchange the highest obligation of good faith and loyalty.

114. The Directors, and each of them, violated and breached their fiduciary duties of loyalty and good faith by charging and taking grossly excessive Management Fees from Exchange.

115. As a direct and proximate result of the Directors' failure to perform their fiduciary obligations, Exchange has sustained significant damages, as alleged herein.

116. Plaintiff, on behalf of Exchange, has no adequate remedy at law.

Count III
Breach of Contract and Implied Covenant of Good Faith and Fair Dealing
(Plaintiff v. Indemnity)

117. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-116 of this Complaint as if fully set forth herein.

118. Pursuant to the terms of the Subscriber's Agreement, Indemnity is permitted to take up to 25 percent of the premiums written or assumed by Exchange as the agreed to limit of compensation for serving as attorney-in-fact, managing the business and affairs of Exchange and performing other services. However, as the

attorney-in-fact, and pursuant to the implied covenants of good faith and fair dealing that run with the Subscriber's Agreement, the percentage taken by Indemnity must be appropriate and equitable.

119. Indemnity has been taking the maximum Management Fee year after year without abiding by its duty to act in good faith and to deal fairly with Plaintiff and the Class in setting the Management Fee. By taking grossly excessive Management Fees, Indemnity has breached the Subscriber's Agreement.

120. This conduct constitutes a breach of the implied covenant of good faith and fair dealing. Indemnity has precluded Plaintiff and the Class from realizing the full benefits of their bargains under the terms of the Subscriber's Agreement.

121. As a result of the breaches, Plaintiff and Class have suffered substantial damages, including, but not limited to, monetary losses stemming from Indemnity's unlawful taking and retention of grossly excessive Management Fees

122. Indemnity's intentional and unlawful retention of this grossly excessive compensation evidences bad faith, especially in light of Indemnity's role as a fiduciary to the Plaintiff and Class.

123. As a result of Indemnity's breach of the implied covenant of good faith and fair dealing inherent to the Subscriber's Agreement, Plaintiff and Class have

suffered substantial damages, including, but not limited to, significant monetary losses resulting from Indemnity's taking of the grossly excessive Management Fees which should have been used for the benefit of Plaintiff and the Class.

Count IV
Unjust Enrichment
(Plaintiff v. Defendants J. Hagen, T. Hagen and Vorsheck)

124. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-123 of this Complaint as if fully set forth herein.

125. Defendants J. Hagen, T. Hagen and Vorsheck, have received excessive and unwarranted payments or the inequitable transfer of Exchange assets in the form of Indemnity dividends as a result of the misconduct complained of herein.

126. It would be unconscionable and against the fundamental principles of justice, equity and good conscience for these defendants to retain the excessive and unwarranted payments or the inequitable transfer of Exchange's assets they have received.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter a judgment against Defendants and in favor of Plaintiff:

A. Certifying this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, declaring Plaintiff as a representative of the Class and Plaintiff's counsel as counsel for the Class;

B. Declaring, adjudging and decreeing the conduct alleged herein as unlawful including, but not limited to, Defendants' retention of grossly excessive Management Fees;

C. Enjoining Defendants from continuing to retain excessive Management Fees;

D. Awarding compensatory and punitive damages along with pre- and post-judgment interest;

E. Granting Plaintiff the costs of suit, including reasonable attorneys' fees and expenses; and

F. Affording Plaintiff with such other, further and different relief as the nature of the case may require or as may be determined to be just, equitable and proper by this Court.

Appendix F

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: December 28, 2017

Respectfully submitted,
Kessler Topaz Meltzer & Check, LLP
By: */s/ Joseph H. Meltzer*
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APPENDIX G — COMPLAINT OF THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF PENNSYLVANIA, FILED JULY 8, 2016

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF PENNSYLVANIA

Civil Action 1:16-cv-179

PATRICIA R. BELTZ, JOSEPH S. SULLIVAN, AND ANITA SULLIVAN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, AND DERIVATIVELY ON BEHALF OF NOMINAL DEFENDANT ERIE INSURANCE EXCHANGE,

Plaintiffs,

v.

ERIE INDEMNITY COMPANY, KAJ AHLMANN, JOHN T. BAILY, SAMUEL P. BLACK, III, J. RALPH BORNEMAN, JR., TERRENCE W. CAVANAUGH, WILSON C. COONEY, LUANN DATESH, PATRICIA A. GOLDMAN, JONATHAN HIRT HAGEN, THOMAS B. HAGEN, C. SCOTT HARTZ, SAMUEL P. KATZ, GWENDOLYN KING, CLAUDE C. LILLY, III, MARTIN J. LIPPERT, GEORGE R. LUCORE, JEFFREY A. LUDROF, EDMUND J. MEHL, HENRY N. NASSAU, THOMAS W. PALMER, MARTIN P. SHEFFIELD, SETH E. SCHOFIELD, RICHARD L. STOVER, JAN R. VAN GORDER, ELIZABETH A. HIRT VORSHECK, HARRY H. WEIL AND ROBERT C. WILBURN,

Defendants,

and

ERIE INSURANCE EXCHANGE,

Nominal Defendant.

Appendix G

Filed July 8, 2016

VERIFIED DERIVATIVE AND CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

Plaintiffs, Patricia R. Beltz, Joseph S. Sullivan and Anita Sullivan (collectively "Plaintiffs"), by and through their attorneys, on behalf of themselves and all others similarly situated and derivatively on behalf of Erie Insurance Exchange, based upon personal knowledge with respect to their own circumstances and based upon information and belief or the investigation of their counsel as to all other allegations, allege the following:

INTRODUCTION

1. In 1925, H.O. Hirt founded the Erie Insurance Exchange ("Exchange" or the "Exchange") and Erie Indemnity Company ("Indemnity") with the express intent that the Exchange is "organized and exists primarily *for the benefit of its subscribers* or policyholders and that therefore the interests of the people who put their trust in the Exchange for the protection of their personal business affairs must come first."[1] Unfortunately, as time passed, priorities were inverted, and the interests of the subscribers of Exchange became subservient to those of a conflicted and self-interested board of directors of Indemnity (the "Board") and its controlling stockholders.

1. *See* In re Trust of Hirt, 832 A.2d 438, 441 (Pa. Super 2003) (citing to Subparagraph 4.03(B) of the Hirt Trust Agreement, discussed *infra*.) (emphasis added).

2. The Exchange is not structured as a traditional insurance company. Instead, Exchange is a subscriber-owned reciprocal insurer wherein every policyholder (each, a "Subscriber" and, together, "Subscribers") agrees to pool risk by acknowledging a reciprocal agreement of indemnity. This type of organizational structure is "of interest to individuals wanting to participate in a not-for-profit insurance environment focused on the policyholder."[2] As a reciprocal insurer, the Exchange is an unincorporated association with no board of directors or employees of its own. Accordingly, every Subscriber executes a "Subscriber's Agreement" appointing Indemnity as their attorney-in-fact to manage and conduct the business and affairs of the Exchange. *See* a true and correct copy of the Subscriber's Agreement, attached hereto as Exhibit A.

3. As the attorney-in-fact, Indemnity, through the Board, serves as a fiduciary to Exchange and the Subscribers and is obligated to act with the utmost loyalty, honesty and integrity and at all times in the best interests of Exchange and the Subscribers.

4. In addition to Indemnity and the Board's core fiduciary obligations, Indemnity is also contractually obligated to the Subscribers to adhere to the terms of the Subscriber's Agreement. The Subscriber's Agreement specifically provides that Indemnity's compensation for serving as attorney-in-fact for and managing and conducting the business and affairs of Exchange, including the payment of general administrative expenses, will be

2. *See* Alex Burke, *What Is a Reciprocal Insurance Company?,* ZACKS, http://finance.zacks.com/reciprocal-insurance-company-7135.html (last visited July 7, 2016).

no more than 25% of the premiums written or assumed by Exchange. *See* Exhibit A.

5. As detailed below, instead of acting with undivided loyalty and integrity and in compliance with the Subscriber's Agreement, the Defendants have operated with hopelessly conflicted interests and abused their position of absolute power so as to benefit themselves at the expense of Exchange and the Subscribers. In particular, subsequent to Indemnity becoming a publicly traded company on NASDAQ in or around 1995, the interests of the shareholders of Indemnity, and specifically the majority shareholders who dominate the Board, have taken priority over the interests of the Exchange and the Subscribers. Since 1997, Defendants have misappropriated hundreds of millions of dollars from Exchange and the Class (hereinafter defined). During that time, Indemnity's controlling stockholders, who are among the Defendants, have reaped *hundreds of millions of dollars* in dividends from Indemnity stock, based in large part on amounts wrongfully taken from Exchange and the Class.

6. Plaintiffs now seek to recover for themselves and all similarly situated Subscribers who are members of the proposed class defined below (the "Class") for harm suffered as a result of the Defendants' utter disregard of their fiduciary duties and breach of contractual obligations while serving as the attorney-in-fact for the Class. Plaintiffs also bring derivative claims on behalf of nominal defendant Exchange to remedy Defendants' breaches of fiduciary duties and to recover the losses that Exchange has suffered as a result of Defendants' self-interested misconduct.

7. In addition, Plaintiffs request injunctive relief to bring to a halt Defendants' ongoing unlawful practices.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) because one or more members of the Class are citizens of states different from the states of which some Defendants are citizens, there are well in excess of one hundred (100) Class members and the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs. This Court also has supplemental subject matter jurisdiction over the claims of Plaintiffs and the proposed Class pursuant to 28 U.S.C. § 1367(a).

9. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this district, and Plaintiffs reside within this district.

PARTIES

10. Plaintiff Patricia R. Beltz has been a Subscriber of Exchange since before 1997 and is a citizen of Pennsylvania.

11. Plaintiff Joseph S. Sullivan has been a Subscriber of Exchange since approximately 2006 and is a citizen of Pennsylvania.

12. Plaintiff Anita Sullivan has been a Subscriber of Exchange since before 1997 and is a citizen of Pennsylvania.

13. The nominal defendant Exchange is a reciprocal insurance exchange – an unincorporated association through which individuals, or "Subscribers," may exchange contracts to indemnify each other for losses – organized under the laws of the Commonwealth of Pennsylvania.[3] Exchange functions as a type of insurance company and, in that capacity, issues policies of insurance to Subscribers located in Pennsylvania and at least eleven (11) other states, as well as the District of Columbia. Because Exchange is a reciprocal insurance exchange with no employees, officers, board of directors, bylaws or organizing documents, the Exchange is operated and managed by Indemnity.

14. Defendant Indemnity is a publicly traded corporation organized under the laws of the Commonwealth of Pennsylvania and doing business throughout the United States. Both Exchange and Indemnity and their subsidiaries and affiliates operate, collectively, under the name "Erie Insurance Group."

15. Defendant Kaj Ahlmann ("Ahlmann") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 2003 until 2007. Ahlmann served

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3. *See* 40 Pa. Stat. § 961 (authorizing the exchange of reciprocal or inter-insurance contracts amongst individuals, partnerships, and corporations of the Commonwealth of Pennsylvania).

on several of Indemnity's committees, including the Executive Compensation Committee from 2004 through 2007, the Nominating Committee from 2004 through 2007, the Technology Committee from 2005 through 2007, the Strategy Committee in 2006 and the Executive Committee from 2006 through 2007. Ahlmann is a citizen of California.

16. Defendant John T. Baily ("Baily") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 2003 until 2007. Baily served on several of Indemnity's committees, including the Executive Committee from 2004 through 2006, the Audit Committee from 2004 through 2006, the Investment Committee from 2004 through 2006 and the Strategy Committee from 2005 through 2006. Baily is a citizen of Connecticut.

17. Defendant Samuel P. Black, III ("Black") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 1997 until 2004. Black served on several of Indemnity's committees, including the Executive Committee in 2002, the Audit Committee from 1998 through 2001, the Charitable Giving Committee from 1997 through 2001, the Nominating Committee from 1999 through 2001, the Investment Committee in 2000 and the Executive Compensation Committee from 1999 through 2001. Between 1997 and 2004, Black served as the managing general partner and a limited partner of the Black Interests Limited Partnership, Erie Pennsylvania ("BILP"). During such time, Black held the right to vote the Class B shares held by BILP. Between 1997 and 2004, Black additionally served as President of Samuel

P. Black & Associates, Inc. During such time, he held the right to vote the Class B shares held by Samuel P. Black & Associates, Inc. From 1997 to 2001, Black held a durable power of attorney for his father Samuel P. Black, Jr. and had voting power of the Class B shares owned by his father. He later had voting power over such shares in his capacity as executor of his father's estate. In addition, from approximately 1997 through 2003, Black owned approximately 13% of the outstanding Class A stock and from 2003 through 2006, owned approximately 9% of the Class A stock. Black is a citizen of Pennsylvania.

18. Defendant J. Ralph Borneman, Jr. ("Borneman") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 1992. He has served on several of Indemnity's committees, including the Executive Compensation Committee from 1997 through 1999, the Nominating Committee from 1997 through 2004, the Charitable Giving Committee from 2005 through 2012, the Technology Committee from 2005 through 2008, the Strategy Committee from 2005 through 2008, the Strategy and Technology Committee from 2009 through 2012, the Executive Committee in 2009 and the Exchange Relationship Committee from 2009 through 2012. Borneman is a citizen of Florida.

19. Defendant Terrence W. Cavanaugh ("Cavanaugh") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2008. He has served on the Charitable Giving Committee, the Investment Committee and the Strategy and Technology Committee from 2009 through 2016. Cavanaugh served as the

President and Chief Executive Officer of Indemnity from July 2008 through May 31, 2016. Cavanaugh is a citizen of Pennsylvania.

20. Defendant Wilson C. Cooney ("Cooney") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 2003 until 2006. He served on several of Indemnity's committees, including the Executive Compensation Committee from 2004 through 2006, the Nominating Committee from 2004 through 2006, the Technology Committee from 2005 through 2006 and the Executive Committee in 2006. Cooney is a citizen of Texas.

21. Defendant LuAnn Datesh ("Datesh") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2016. She serves on the Audit Committee. Datesh is a citizen of Pennsylvania.

22. Defendant Patricia A. Goldman (Goldman") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 1994 until 2000. Goldman served on the Audit Committee from 1997 through 2000 and the Nominating Committee from 1997 through 2000. Goldman is a citizen of Washington, D.C.

23. Defendant Jonathan Hirt Hagen ("J. Hagen") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2005 and as Vice-Chair of the Board since 2013. During such time, he served on several of Indemnity's committees, including the Strategy Committee from 2006 through 2008, the Audit Committee from 2011 through 2016, the Executive Compensation

Committee from 2007 through 2016, the Nominating Committee from 2006 through 2016, the Strategy and Technology Committee from 2009 through 2016, the Exchange Relationship Committee from 2009 through 2016 and the Executive Committee in 2010 and 2016. In addition to the foregoing, J. Hagen has served as one of the three trustees for the three H.O. Hirt Trusts (the "H.O. Trusts") since 2015. J. Hagen is also a beneficiary of the H.O. Trusts which control a majority of the voting stock of Indemnity. J. Hagen is the grandson of H.O. Hirt, the late co-founder of Indemnity, and son of the late Susan Hirt Hagen, a former director of Indemnity, and defendant Thomas B. Hagen, the Chairman of the Board. J. Hagen is a citizen of Pennsylvania.

24. Defendant Thomas B. Hagen ("T. Hagen") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 1979 until 1998 and since 2007. He has served as the Chairman of the Board of Indemnity since 2007. T. Hagen has served on several of Indemnity's committees, including the Charitable Giving Committee in 1997 and the Executive Committee from 2008 through 2016. Since 2008, T. Hagen has served as an *Ex-officio* member of all of the committees of Indemnity. He served as an employee of Indemnity from 1953 to 1995, and during such time, he served as President of Indemnity from 1982 to 1990 and as the Chairman and Chief Executive Officer of Indemnity from 1990 to 1993. T. Hagen is a beneficiary of the H.O. Trusts. He served as the general partner of the Hagen Family Limited Partnership since 1989. As general partner, T. Hagen has sole voting power and investment power over the shares of Class B common

stock held by the Hagen Family Limited Partnership. T. Hagen is the father of defendant J. Hagen. According to Indemnity's public filings, T. Hagen "is the son-in-law and close associate of [the] late founder and longtime leader of [Indemnity]" H.O. Hirt. T. Hagen is a citizen of New York.

25. Defendant C. Scott Hartz ("Hartz") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2003. Hartz has served on several of Indemnity's committees, including the Audit Committee from 2004 through 2009, the Investment Committee from 2004 through 2016, the Technology Committee from 2005 through 2008, the Executive Committee from 2005 through 2008 and in 2010 and the Strategy and Technology Committee from 2009 through 2016. Hartz is a citizen of Pennsylvania.

26. Defendant Samuel P. Katz ("Katz") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 2001 until 2004. He served on the Audit Committee and Executive Compensation Committee from 2001 through 2004. Katz is a citizen of Pennsylvania.

27. Defendant Gwendolyn King ("King") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 1999 until 2000. She served on the Nominating Committee in 2000. King is a citizen of Washington, D.C.

28. Defendant Claude C. Lilly, III ("Lilly") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2000. Lilly has served on several of

Indemnity's committees, including the Audit Committee from 2001 through 2016, the Investment Committee from 2004 through 2016, the Strategy Committee from 2005 through 2008, the Executive Committee in 2008 and 2011, the Strategy and Technology Committee from 2009 through 2016 and the Exchange Relationship Committee from 2009 through 2016. Lilly is a citizen of South Carolina.

29. Defendant Martin J. Lippert ("Lippert") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 1999 until 2000 during which time he served on the Audit Committee. Lippert is a citizen of New York.

30. Defendant George R. Lucore ("Lucore") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2016. He serves on the Charitable Giving Committee and the Strategy Committee. Lucore is a citizen of Florida.

31. Defendant Jeffrey A. Ludrof ("Ludrof ") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 2002 until 2007. During such time, he served on several of Indemnity's committees, including the Executive Committee from 2003 through 2007, the Investment Committee in 2003, the Charitable Giving Committee from 2004 through 2007, the Technology Committee from 2005 through 2007 and the Strategy Committee from 2005 through 2007. Ludrof also served in various executive officer roles at Indemnity including serving as Senior Vice President from 1994 to 1999, as

Executive Vice President of Insurance Operations from 1999 to 2002 and as President and Chief Executive Officer from 2002 until August 2007. Ludrof is a citizen of North Carolina.

32. Defendant Edmund J. Mehl ("Mehl") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 1969 until 1999. He has served on several of Indemnity's committees, including the Executive Committee from 1997 through 1999, the Audit Committee from 1997 through 1999 and the Nominating Committee from 1997 through 1998. Mehl is a citizen of Pennsylvania.

33. Defendant Henry N. Nassau ("Nassau") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 2000 until 2002. During such time, he served on several of Indemnity's committees, including the Executive Committee and the Investment Committee from 2001 through 2002. Nassau is a citizen of Pennsylvania.

34. Defendant Thomas W. Palmer ("Palmer") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2006. Palmer has served on several of Indemnity's committees, including the Audit Committee from 2009 through 2015, the Nominating Committee from 2007 through 2015, the Strategy Committee in 2007 and 2008, the Executive Compensation Committee from 2009 through 2015, the Strategy and Technology Committee from 2009 through 2015, the Exchange Relationship Committee in 2016 and the Executive Committee in 2015. Palmer is a citizen of Ohio.

35. Defendant Martin P. Sheffield ("Sheffield") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2010. During such time, he has served on several of Indemnity's committees, including the Audit Committee from 2011 through 2016, the Strategy and Technology Committee from 2011 through 2016, the Exchange Relationship Committee from 2012 through 2016 and the Executive Committee from 2013 through 2016. Sheffield is a citizen of Pennsylvania.

36. Defendant Seth E. Schofield ("Schofield") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 1991 until 1998. He served on the Executive Compensation Committee and the Nominating Committee in 1997 and 1998. Schofield is a citizen of Florida.

37. Defendant Richard L. Stover ("Stover") has served as a director of Indemnity, and as fiduciary for the Class and Exchange, since 2010. He has served on several of Indemnity's committees, including the Audit Committee from 2011 through 2016, the Investment Committee from 2011 through 2016 and the Executive Committee from 2012 through 2013. Stover is a citizen of Florida.

38. Defendant Jan R. Van Gorder ("Van Gorder") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 1990 until 2004. He served on several of Indemnity's committees, including the Executive Committee from 1997 through 2002 and the Investment Committee from 2003 through 2004. Van Gorder also served as Senior Executive Vice President,

Secretary and General Counsel of Indemnity from 1990 through 2004. Van Gorder is a citizen of Florida.

39. Defendant Elizabeth A. Hirt Vorsheck ("Vorsheck") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 2007. She has served on several of Indemnity's committees, including the Executive Committee from 2008 through 2016, the Charitable Giving Committee from 2008 through 2016, the Strategy Committee in 2008, the Strategy and Technology Committee from 2009 through 2016, the Exchange Relationship Committee from 2009 through 2016 and the Nominating Committee from 2010 through 2016. Vorsheck has served as one of the three trustees of the H.O. Trusts since 2007. She also is a beneficiary of the H.O. Trusts which control a majority of the voting stock of Indemnity. According to Indemnity's Proxy Statement, filed with the Securities and Exchange Commission ("SEC") on March 18, 2016, Vorsheck owns 69,516 shares of Class A common stock directly and 4,713,766 shares of Class A common stock indirectly through several trusts which amounts to approximately 10.36% of the outstanding Class A shares. Vorsheck is the first cousin of J. Hagen. Vorsheck is a citizen of Pennsylvania.

40. Defendant Harry H. Weil ("Weil") served as a director of Indemnity, and as a fiduciary for the Class and Exchange, from 1994 until 2000. He served on the Audit Committee in 1997 and from 1999 through 2000, the Executive Compensation Committee from 1997 through 2000, the Investment Committee from 1997 through 1999 and the Executive Committee in 1998. Weil is a citizen of Maryland.

41. Defendant Robert C. Wilburn ("Wilburn") has served as a director of Indemnity, and as a fiduciary for the Class and Exchange, since 1999. He has served on several of Indemnity's committees, including the Audit Committee from 2000 through 2010, the Executive Compensation Committee from 2000 through 2016, the Nominating Committee from 2000 through 2003, the Investment Committee in 2003 and from 2009 through 2016, the Executive Committee from 2004 through 2008 and in 2014, and the Charitable Giving Committee from 2011 through 2016. Wilburn is a citizen of Virginia.

42. The Director Defendants are collectively hereinafter referred to as the "Directors." Each of the Directors received and/or receives both monetary and/or non-monetary compensation, including shares of Indemnity stock, for serving on the Board.

FACTUAL ALLEGATIONS

History and Relationships

43. When founding the Exchange in 1925, H.O. Hirt did not structure it as a traditional stock insurance company. He wanted Exchange to be different, and he wanted its operation to be based on "simple common sense, mixed with just plain decency."[4] In fact, the guiding principle was: "Do unto others as you would have them do unto you."[5]

4. *History of Erie Insurance,* Erie Insurance, https://www.erieinsurance.com/about-us/company-profile/history (last visited July 7, 2016).

5. *Id.*

44. The "founding purpose" of the Exchange was to provide the "[p]olicyholders with as near perfect protection, as near perfect service as is humanly possible and to do so *at the lowest possible cost*."[6] H.O. Hirt was President and Chief Executive Officer of Indemnity until 1976 and remained on the Board until 1980. Through the years, he never forgot the guiding principles, and when he created the H.O. Trusts, prior to his passing in 1982, as a means of transferring his controlling interest in Indemnity to his children – F. William Hirt ("F.W. Hirt") and Susan Hirt Hagen – he specifically reminded them that Exchange "was organized and exists primarily *for the benefit of its subscribers* or policyholders and that therefore the interests of the people who put their trust in the Exchange for the protection of their personal business affairs must come first."[7]

45. Indemnity was structured with two classes of common stock – Class A and Class B. Upon the death of H.O. Hirt in 1982, 50% of all Class A shares and 76.22% of the Class B shares, which are the only voting shares, were passed to F.W. Hirt and Susan Hirt Hagen by way of two trusts, each holding equal halves of the shares for their respective benefit. At that time, Indemnity stock was not publicly traded.

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6. *Above All Together: Erie Insurance Group Historic Timeline 1925-2015* at p. 3, Erie Insurance, https://www.erieinsurance.com/-/media/files/timeline.pdf (last visited July 7, 2016).

7. *See In re Trust of Hirt*, 832 A.2d at 441 (citing to Subparagraph 4.03(B) of the Hirt Trust Agreement) (emphasis added).

46. In May 1994, for the first time, shares of Indemnity stock were made available for sale to the public through the filing of a Form 10 with the Securities and Exchange Commission ("SEC"). The following year, it became listed on NASDAQ.[8] Since then, as described below, the financial interests of Indemnity's shareholders, particularly those of Indemnity's controlling shareholders, have dominated those of Exchange and the Subscribers – to the point where Indemnity and the Directors are wholly disregarding their fiduciary and contractual obligations to Exchange and the Class.

47. Prior to Indemnity becoming a publicly traded company, and consistent with the ideals of a reciprocal insurance exchange, Exchange paid dividends to Subscribers even though its total net premiums were just a fraction of what they are today. For example, in 1975, when Exchange wrote $108 million in premiums, the Subscribers received $10 million in dividends.[9] In contrast, despite the fact that Exchange's premiums have continually grown over the years, and were nearly $6 billion in 2015, the Subscribers have not received any

8. *See Above All Together: Erie Insurance Group Historic Timeline 1925-2015 1925-2015* at p. 14, Erie Insurance, https://www.erieinsurance.com/-/media/files/timeline.pdf (last visited July 7, 2016). As reported in Indemnity's current Proxy Statement filed with the SEC on March 18, 2016, Indemnity has two classes of common stock. Class A stock is non-voting and publicly traded on the NASDAQ and has approximately 46,189,068 million shares outstanding. Class B stock has exclusive voting rights and there are approximately 2,542 shares outstanding.

9. *Id.* at p. 11.

dividends in over 25 years.[10] Instead, since 1997, *over $1.6 billion* has been funneled from Exchange in the form of dividends to Indemnity's Class A and Class B shareholders.

The Hirt Descendants Control the Board and Pay Themselves Huge Amounts in Dividends

48. At all relevant times, Board members have served at the pleasure of the Class B shareholders,[11] and the Board has long been comprised of multiple Hirt family members. For example, F.W. Hirt, who was H.O Hirt's son, was an executive of several Indemnity subsidiaries and served as a member of the Board from 1965 until his death in 2007, with the exception of a three-year period between 1990 and 1993, having served as Chairman of the Board since at least 1995. H.O. Hirt's daughter, Susan Hirt Hagen, was a member of the Board from 1980 until

10. *Erie Ins. Exch. v. Erie Indem. Co.,* No. MS14-03-003, Declaratory Opinion and Order, ¶ 43 (Ins. Comm'r of Pa. Apr. 29, 2015).

11. Since 2006, J. Hagen has been a member of the Board's Nominating Committee – the Board committee responsible for determining and nominating the candidates for the office of director to be elected by the holders of Class B common stock, and has served as the Chair of the Nominating Committee since 2008. Since 2010, defendant Vorsheck has also been a member of the Nominating Committee as well as Susan Hirt Hagen until her death in 2015. Further, T. Hagen is an *ex officio* member of the Nominating Committee. Thus, with the Nominating Committee comprised of a majority of insiders and/or directors hand-picked by them, there is no "independent" body to select board nominees.

her death in 2015. Defendant J. Hagen, the son of Susan Hirt Hagen and defendant T. Hagen, has served on the Board since 2005 and as Vice-Chairman of the Board since 2013. T. Hagen, the husband of the late Susan Hirt Hagen and father of defendant J. Hagen, has been a director since 2007, having previously served as a director from 1979 through 2007, and has been Chairman of the Board since 2007. Defendant Vorsheck is F.W. Hirt's daughter. The other members of the Board were nominated (and appointed) by the H.O. Trusts' beneficiaries and many of them have had long standing personal relationships with the beneficiaries.[12]

49. The Class B shares passed down from H.O. Hirt are now held in three trusts, the H.O. Trusts. Presently, the three trustees are defendant J. Hagen, defendant Vorsheck and Sentinel Trust Company, L.B.A. ("Sentinel") – the corporate trustee since 2006.[13] As reported in Indemnity's Proxy Statement filed with the

12. For example, as part of a legal proceeding initiated in 1998 by Susan Hirt Hagen to remove Mellon Bank, N.A. ("Mellon Bank") as a trustee of the H.O. Trusts, it was revealed that her brother, F. W. Hirt (then Chairman of the Board), had made a series of gifts of Class A common stock between 1994 and 1997, aggregating $10.3 million (market value at time of gift), to certain Indemnity personnel and/or directors, including defendants Schofield and Van Gorder. F. W. Hirt also gave $340,097 of Class A stock to Stephen A. Milne, Indemnity's then President, Chief Executive Officer and a director, and $169,438 of Class A stock to John M. Petersen, Indemnity's then-former Chief Executive Officer, consultant and a director.

13. Sentinel was named as the corporate trustee after years of legal proceedings initiated by Susan Hirt Hagen who sought to replace Mellon Bank, the former trustee.

SEC on March 18, 2016, the H.O. Trusts collectively own 2,340 shares of Class B common stock, which, because such shares represent 92.05% of the outstanding shares of Class B common stock, is sufficient to determine the outcome of any matter submitted to a vote of the holders of Class B common stock.

50. The descendants of H.O. Hirt, in addition to controlling the Class B shares, also own approximately 47.7% (around 20 million shares) of Indemnity's Class A stock and benefit substantially from the Indemnity dividends which are distributed to them as income. Therefore, defendants T. Hagen, J. Hagen and Vorsheck, and certain other Hirt family members who have served on the Board, directly benefit from Indemnity's dividends which are set at the sole discretion of the Hirt-dominated Board.

51. Since 1997, the Board has consistently and significantly increased the annual dividend amount, to the direct benefit of the Board members who are beneficiaries of the H.O. Trusts, as well as other shareholders of Indemnity, and at the expense of and to the detriment of Exchange and the Subscribers.

The Subscriber's Agreement Governs Indemnity's Relationship with Exchange and the Subscribers

52. Policyholders of the Exchange are known as Subscribers. Since 1925, each Subscriber, including each Plaintiff, has been required to execute a non-negotiable Subscriber's Agreement drafted by Indemnity. Every

Subscriber of Exchange signs an identical Subscriber's Agreement. The material language in the Subscriber's Agreement has remained unchanged since 1975. *See* Exhibit A.

53. Pursuant to the terms of the Subscriber's Agreement, Indemnity is appointed the attorney-in-fact for the Subscribers and Exchange. *See id.* This obligates Indemnity to act with utmost trust and honesty in all dealings concerning the Subscribers and Exchange.

54. Among other things, the Subscriber's Agreement provides Indemnity with "the power to . . . issue, change, nonrenew or cancel policies . . . collect premiums . . . [and] manage and conduct the business and affairs of [Exchange], its affiliates and subsidiaries." *Id.*

55. The activities performed by Indemnity as attorney-in-fact for the Exchange include insurance underwriting, policy issuance, policy exchange and cancellation, processing of invoices for premiums, the establishing and monitoring of loss reserves, oversight of reinsurance transactions, investment management, payment of insurance commissions to insurance agents, compliance with rules and regulations of supervisory authorities and monitoring of legal affairs.[14] Indemnity is obligated to conduct these activities at its own expense.[15]

56. Pursuant to the Subscriber's Agreement, as compensation for all services performed as attorney-in-

14. Annual Report on Form 10- K filed March 26, 1998.

15. *Id.*

fact and for managing and conducting the business of Exchange and paying general administrative expenses, Indemnity is permitted to retain up to 25% of all premiums written or assumed by Exchange. *See id.*

57. The Subscriber's Agreement is the sole written agreement authorizing Indemnity to retain or receive compensation for services performed as attorney-in-fact and/or for managing and conducting the business and affairs of Exchange.

58. The Subscriber's Agreement does not authorize Indemnity to receive any compensation for any services provided for Subscribers or Exchange beyond the maximum amount of 25% of said premiums. *See id.*

59. Since at least 2007, Indemnity has retained the maximum amount allowed by the Subscriber's Agreement – 25% of all premiums written or assumed by Exchange – as compensation for services performed pursuant to the Subscriber's Agreement, and since 1997 Indemnity has taken the full 25% of premiums in all but 6 years.

Indemnity and the Board Owe Fiduciary Duties to Exchange and the Subscribers

60. The Subscribers place their trust and confidence in Indemnity and the Board to serve loyally as attorney-in-fact and to act in the best interests of the Exchange and the Subscribers.

61. Indemnity and the Board have accepted the trust and confidence of the Subscribers. Indeed, the fiduciary

obligations of Indemnity and the Board to Exchange and the Subscribers have long been memorialized in various corporate documents of Indemnity as well as in Indemnity's filings with the SEC.

62. For example, until at least 2006, each of the Directors executed an "Acceptance of Trust" upon being appointed to the Board which explicitly acknowledged that as attorney-in-fact for the Subscribers, he/she "shall be deemed to stand in a fiduciary relationship." *See* a true and correct copy of an Acceptance of Trust, attached hereto as Exhibit B.

63. Thereafter, in 2007, Indemnity adopted Corporate Governance Guidelines[16], which are in effect to the present, "to set forth a common set of expectations as to how the Board should perform its functions." In the first section entitled "Role of the Board," the Corporate Governance Guidelines specifically set forth the fiduciary duties of Indemnity and its Directors to Exchange and its Subscribers as it states:

> In discharging their duties, the Directors must also be mindful of the fact that [Indemnity] is appointed to act as the Attorney-in-Fact to [Exchange] . . . by the policyholders of the Exchange under the terms of the Subscriber's Agreement between each policyholder and [Indemnity] that provides generally for

16. Indemnity *Corporate Governance Guidelines*: https://www.erieinsurance.com/about-us/investor/governance.

> the relationship between policyholders and [Indemnity] . . . Directors should treat this responsibility of [Indemnity] as one that is fiduciary in nature and consistent with each Director's Acceptance of Trust, which recognizes the Director's 'fiduciary relationship to [Indemnity] in its own right and as Attorney-in-Fact for the Subscribers of [Exchange].'

See id. at 2.

64. The Corporate Governance Guidelines further state that, in discharging their duties to Exchange and the Subscribers, the Directors must do so with the express understanding that "the Company's relationship with the Exchange and its policyholders is the Company's most valuable asset."

65. Indemnity's filings with the SEC also confirm the fiduciary duties owed to Exchange and the Subscribers by Indemnity and its Board. For example, Indemnity has stated that "[t]he Company's Board of Directors [] acts in a fiduciary capacity with respect to the operation of the Exchange,"[17] and that "the Board has a fiduciary duty to protect the interests of the policyholders of Exchange."[18] Further, Indemnity admits that its "primary purpose is to manage the affairs at the Exchange for the benefit of

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17. Annual Reports on Form 1 0-K filed March 12, 2002 and Form 1 0-K/A filed January 27, 2003.

18. Annual Reports on Form 1 0-K filed March 8, 2004 and February 24, 2005.

the policyholders,"[19] its "results of operations are tied to the growth and financial condition of the Exchange, and that "Exchange is [its] sole customer and [its] earnings are largely generated from management fees based on the direct and assumed premiums written by the Exchange ."[20] Indeed, as disclosed in Indemnity's 10-Q filed with the SEC on October 29, 2015, "Indemnity has the power to direct the activities of the Exchange that most significantly impact the Exchange's economic performance by acting as the common attorney-in-fact and decision maker for the subscribers (policyholders) at the Exchange."

66. Due to the Board's dual fiduciary duties to Exchange and its Subscribers, on one hand, and Indemnity's shareholders, on the other, Indemnity admits that the "Board of Directors must make decisions or take actions that are not solely in the interest of the Company's shareholders. Certain conflicting interests are inherent in these separate fiduciary duties such as: (1) the Company's Board sets the management fee rate paid by the Exchange to the Company, (2) the Company's Board of Directors determines the participation percentages of the intercompany pooling agreement and (3) the Company's Board approves the annual shareholders' dividend."[21] In actuality, the Board has continuously favored the interests of Indemnity's shareholders, especially its majority shareholders, over those of Exchange and the Subscribers.

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19. Annual Report on Form 10-K filed February 25, 2016.

20. Annual Report on Form 10-K filed February 25, 2016.

21. Annual Report on Form 1 0-K filed February 24, 2005.

67. As set forth below, Indemnity and the Board have breached their fiduciary duties to Exchange and the Class, and Indemnity has breached the Subscriber's Agreement, by unlawfully diverting to Indemnity hundreds of millions of dollars of revenue that belongs to Exchange. Instead of this revenue being used for the benefit of Exchange and the Subscribers, the conflicted and self-interested members of the Board have funneled the money to themselves and other shareholders of Indemnity through substantial dividend payments.

Indemnity Unlawfully Takes Service Charges Belonging to Exchange

68. Since at least 1975, Subscribers have been permitted to pay premiums for their insurance policies in multiple installments rather than in a lump sum. If a Subscriber elects to pay his/her premium in installments, in certain instances, a service charge is added to the amount owed ("Service Charges").

69. When Service Charges are paid, the funds are deposited into accounts belonging to Exchange.

70. Prior to 1997, Exchange retained all of the Service Charges as revenue. This revenue was available for the ultimate benefit of all Subscribers.

71. However, beginning in 1997, just a couple of years after Indemnity became a public company traded on NASDAQ, Indemnity decided to take for itself a substantial portion of the Service Charges as additional

compensation for the services it provided to Exchange and the Subscribers as attorney-in-fact.

72. As of September 1, 1997, Indemnity began taking the Service Charges revenue from Exchange's accounts. Indemnity took these funds as compensation above and beyond the compensation it was authorized to receive as a percentage of the premiums authorized by the Subscriber's Agreement.

73. The Directors approved the taking of a portion of the Service Charges revenue from Exchange in 1997 without obtaining a fairness opinion or other opinion from an independent person, expert, or entity solely representing Exchange's interests regarding whether Indemnity could retain those Service Charges.

74. Indemnity continued in 1998 to take a portion of the Service Charges as additional compensation. In 1999, Indemnity began taking *all* of the Service Charges revenue from Exchange. This was above and beyond the compensation received as a percentage of the premiums authorized by the Subscriber's Agreement.

75. The Directors, each year since then, have similarly authorized and/or allowed the taking of all of the Service Charges revenue from Exchange without obtaining a fairness opinion or other opinion from an independent person, expert, or entity solely representing Exchange's interests regarding whether Indemnity could retain all of those Service Charges.

76. Indemnity has continued since 1999 to take for itself all of the Service Charges revenue which otherwise would have been retained by Exchange for the ultimate benefit of all Subscribers.

Indemnity Unlawfully Takes Additional Fees Belonging to Exchange

77. Beginning in or around 2008, separate and apart from any Service Charges, Subscribers became subjected to additional fees for checks or other payments returned unpaid, for cancellation notices issued due to non-payment of a policy, and for reinstatements of policies following a lapse in coverage after non-payment cancellations ("Additional Fees").

78. When Additional Fees are paid, the funds are deposited into accounts belonging to Exchange.

79. In 2008, and each year since then, Indemnity has taken from Exchange's accounts *all* Additional Fees paid by the Subscribers. Indemnity takes these funds as compensation above and beyond the compensation received as a percentage of the premiums authorized by the Subscriber's Agreement. The Directors, each year since 2008, have authorized and/or allowed the taking of the Additional Fees from Exchange.

80. If Indemnity did not take the Additional Fees as additional compensation, that revenue would be available for the ultimate benefit of Exchange and the Subscribers.

81. The Directors allowed the taking of all of the Additional Fees revenue from Exchange without first obtaining a fairness opinion or other opinion from an independent person, expert, or entity solely representing Exchange's interests regarding whether Indemnity could retain all of those Additional Fees. Similarly, the Directors have authorized and/or allowed the taking of the Additional Fees each year since then without obtaining a fairness opinion or other opinion from an independent person, expert, or entity solely representing Exchange's interests regarding whether Indemnity could retain all of those Additional Fees.

Service Charges and Additional Fees are Substantial and Belong to Exchange

82. At no time since 1997 has Indemnity performed any services for Exchange other than those authorized by the Subscriber's Agreement.

83. Since 1997, the amount of Service Charges and Additional Fees wrongfully taken by Indemnity as unauthorized compensation, which otherwise would have gone to the benefit of Exchange and the Subscribers, exceeds $400 million.

84. Further, as set forth above, since at least 2007, Indemnity has retained the maximum amount of 25% allowed by the Subscriber's Agreement of all premiums written or assumed by Exchange. Indemnity has not disclosed any rationale or justification that it is entitled to the entire 25%, rather, Indemnity has repeatedly taken

the full amount allowable pursuant to the Subscriber's Agreement. The value for the services rendered by Indemnity, as attorney-in-fact, must be reasonable, and any amount taken in excess of that is a breach of fiduciary duty. *See*, e.g., *Fogel v. Farmers Group Inc., et al.*, BC300142 (Cal. Super. Ct. Aug. 1, 2013) (subscriber of reciprocal insurance exchanges, on behalf of other subscribers, sued defendant attorneys-in-fact to recover alleged excessive fees the attorneys-in-fact collected in breach of their fiduciary duty to the subscribers where the attorneys-in-fact took a management fee of between 12 and 13% of the gross premiums under a contract with the subscriber which allowed for the attorneys-in-fact to take a maximum of 20%).

85. The chart below demonstrates the huge sums that Indemnity has taken from Exchange from the years 1997-2015 both in management fees and in Service Charges and Additional Fees (from 2008-2015):

Year	**Management Fees**	**Service Charges and Additional Fees**
1997	$379,006,249	$6,004,098
1998	$398,711,481	$6,398,800
1999	$419,068,180	$6,881,860
2000	$447,098,523	$9,497,214
2001	$510,757,952	$12,272,903
2002	$629,511,324	$14,261,900
2003	$706,385,018	$15,684,474
2004	$769,318,749	$16,154,833

Appendix G

2005	$766,686,641	$16,040,781
2006	$777,811,701	$23,866,187
2007	$784,686,079	$23,615,783
2008	$786,673,957	$25,871,009
2009	$796,272,801	$28,021,238
2010	$830,086,815	$27,602,861
2011	$874,586,973	$21,032,575
2012	$936,054,969	$23,414,388
2013	$994,592,339	$24,735,474
2014	$1,047,531,629	$24,205,174
2015	$1,091,391,585	$23,113,416
TOTAL	$13,946,232,965	$348,674,968

86. These enormous sums paid to Indemnity for management fees, combined with the unlawful retention of hundreds of millions of dollars in Service Charges and Additional Fees that belong to Exchange, have allowed Indemnity's shareholders, especially the insiders on the Board who are beneficiaries of the H.O. Trusts, to benefit considerably through the dividends paid by Indemnity to its Class A and Class B shareholders. Throughout the relevant period, the insider beneficiaries of Indemnity have owned approximately 47.7% of the outstanding Class A stock or about 20 million shares. Further, the amounts set forth in the above chart reflect management fees calculated based upon only direct premiums written by Exchange as reported in Indemnity's Annual Statements submitted to the Insurance Department of Pennsylvania. However, the yearly and total amount of management fees

taken by Indemnity may be higher, as pursuant to the Subscriber's Agreement, Indemnity's management fee is calculated as a percentage of the direct *and assumed premiums* written by Exchange, and Exchange assumes the premiums of other Erie affiliated entities.

87. The chart below reflects the total amount of dividends paid by Indemnity from 1997-2015 and the per share basis to the Class A and Class B shareholders:

Year	**Total $ (in millions)**	**Class A**	**Class B**
1997	$26.5	$.3925	$58.875
1998	$29.9	$.4425	$66.375
1999	$32.8	$.4950	$74.250
2000	$36.1	$.5575	$83.625
2001	$40.4	$.6275	$94.125
2002	$45.0	$.7000	$105.000
2003	$50.6	$.7850	$117.750
2004	$55.1	$.9700	$145.500
2005	$81.9	$1.335	$200.250
2006	$86.1	$1.480	$222.000
2007	$91.1	$1.640	$246.000
2008	$92.3	$1.770	$265.500
2009	$93.0	$1.830	$274.500
2010	$98.0	$1.955	$293.250
2011	$102.0	$2.0975	$314.625

2012*	$95.0	$2.000	$300.000
2012	$229.0	$4.250	$637.500
2013	$83.6	$2.4125	$361.875
2014	$118.5	$2.586	$387.900
2015	$126.9	$2.773	$415.950
TOTAL	$1,613.8		

* In 2012, in addition to its regular dividend payment, Indemnity made an additional "special" dividend payment to its stockholders.

88. Since 1997, through the premiums generated by Exchange, Indemnity has paid over $1.6 billion in dividends to its shareholders, with the beneficiaries of the H.O. Trusts reaping ***over $640 million*** from their ownership of the Class A stock alone. In 2012, in addition to the regularly quarterly dividend declared in November, the Board also declared a special one-time cash dividend of $2.00 on each Class A share and $300.00 on each Class B share, totaling $95 million. The Board declared the special dividend "due to the potential significant increases in tax rates on 2013 dividend income" which would have affected those in higher tax brackets such as the Hirt beneficiaries.

CLASS ACTION STATEMENT

89. Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), (b)(2), and/or (b)(3) on behalf of the following proposed Class:

Appendix G

All current and former Subscribers of Erie Insurance Exchange between September 1, 1997 and the present.

90. The Class excludes Defendants and any entity in which Defendants have a controlling interest, and their officers, directors, legal representatives, successors and assigns.

91. The Class is so numerous that joinder of all members is impracticable.

92. The Class can be readily ascertained through the records maintained by Indemnity and Exchange.

93. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

94. Plaintiffs' claims are typical of the claims of the Class. As alleged herein, Plaintiffs and members of the Class sustained damages arising out of Defendants' common course of unlawful conduct.

95. There are questions of law and fact common to the Class, the answers to which will advance the resolution of the claims of all class members, including but not limited to:

a. Whether Indemnity's retention of Service Charges and/or Additional Fees – in addition to the percentage of premiums it received on behalf of Exchange – constitutes a breach of its Subscriber Agreements.

b. Whether Indemnity breached its fiduciary duties to Subscribers and Exchange.

c. Whether the Directors breached their fiduciary duties to Subscribers and Exchange.

96. These and other questions of law and/or fact are common to the Class and predominate over any questions affecting only individual class members.

97. The same common issues predominate with respect to all members of the Class, regardless of when they were Subscribers.

98. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have no claims antagonistic to those of the Class. Plaintiffs have retained counsel competent and experienced in complex nationwide class actions, including all aspects of litigation. Plaintiffs' counsel will fairly, adequately and vigorously protect the interests of the Class.

99. Class action status is warranted under Rule 23(b)(1)(A) because the prosecution of separate actions by or against individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants.

100. Class action status is also warranted under Rule 23(b)(1)(B) because the prosecution of separate actions by or against individual members of the Class would create a

risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

101. Class action status is also warranted under Rule 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

102. Class action status is also warranted under Rule 23(b)(3) because questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

DERIVATIVE ALLEGATIONS

103. Plaintiffs bring claims derivatively in the right and for the benefit of Exchange to redress the Directors' breaches of fiduciary duties and other violations of law.

104. Plaintiffs are Subscribers of the Exchange and were Subscribers of the Exchange at all times relevant hereto.

105. Plaintiffs will adequately and fairly represent the interests of Exchange and the Subscribers in enforcing and prosecuting its rights.

106. Pa. R.C.P. No. 1506 permits "members of a corporation or similar entity" to file a derivative action when "the corporation or entity refuses or fails to enforce rights which could be asserted by it."

107. Exchange does not have its own board of directors, thus, there is no board upon which to make a demand. Rather, the Directors, as attorneys-in-fact for Exchange, are charged with acting as fiduciaries on behalf of Exchange. Further, Indemnity and the Board have been on notice of Plaintiffs' claims and allegations regarding Indemnity's unlawful retention of the Service Charges and Additional Fees as described herein since at least August 1, 2012, when Plaintiffs initiated a lawsuit against Indemnity in the Court of Common Pleas of Fayette County, Pennsylvania. However, despite the foregoing, along with other means of notice, the Board has not taken any action to correct the misconduct as Indemnity continues to unlawfully retain the Services Charges and Additional Fees as of the filing of this complaint.[22]

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22. The action is captioned *Erie Insurance Exchange, et al.* v. *Erie Indemnity Company*, No. 1712 of 2012, G.D. (Pa. Ct. Com. Pl. Nov. 5, 2012) and only pleads derivative claims against Indemnity for assumpsit, self-dealing and equity. After being improperly transferred to the Pennsylvania Insurance Department on December 19, 2013, the action was remanded back to the Court of Common Pleas following a January 27, 2016 decision by the Commonwealth Court of Pennsylvania in which the Court determined that Plaintiffs' claims and allegations did not fall within the Pennsylvania Insurance Department's jurisdiction. On February 26, 2016, defendants filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania which has been fully briefed.

108. As discussed herein, pursuant to the Corporate Governance Guidelines, "the Directors should treat this responsibility of the Company as one that is fiduciary in nature and consistent with each Director's Acceptance of Trust . . . to satisfy the obligations of the Company to the Exchange, the Directors should cause the Company to act in a manner they reasonably believe is in the best interests of the Exchange and its policyholders." There has been a standing subcommittee of the Board which was formed in 2008 entitled the "Exchange Relationship Committee," however, in its public filings, Indemnity has never disclosed the responsibilities of this committee and has never reported that the members of the committee have ever met in the eight years of its existence.

109. By reason of their positions as attorneys-in-fact for Exchange and because of their ability to control and conduct the business and corporate affairs of Exchange, the Directors owed Exchange the fiduciary obligations of good faith, trust and loyalty and were and are required to use their utmost ability to control and manage the Exchange in a fair, just, honest, and equitable manner.

110. The Directors were and are required to act in furtherance of the best interests of Exchange so as to benefit Exchange and the Subscribers and not in furtherance of their personal interest or benefit and were required to refrain from unduly benefiting themselves and Indemnity insiders at the expense of Exchange. Each Director owes to Exchange the fiduciary duty to exercise good faith and diligence in the administration of the business and affairs of Exchange and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

111. The Directors, because of their positions of control and authority as attorneys-in-fact for Exchange, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

112. The Directors have acted in their own best interests and/or in the best interests of Indemnity and its insiders by unlawfully retaining and misappropriating the Service Charges and the Additional Fees from Exchange. The Directors' unlawful misconduct was unjustifiable and constituted a gross breach of their fiduciary duties as fiduciaries to Exchange.

113. The Directors' foregoing misconduct was not, and could not have been, an exercise of good faith business judgment. Rather, their actions were patently unlawful, and as a direct and proximate result of the Directors' foregoing breaches of fiduciary duties, Exchange has sustained significant damages, including, but not limited to, the misappropriation of over $400 million of Service Charges and Additional Fees as well as the continued retention of such amounts.

CLAIMS FOR RELIEF

Count I Breach of Contract and Implied Covenant of Good Faith and Fair Dealing (Plaintiffs v. Indemnity)

114. Plaintiffs repeat and re-allege the allegations set forth in the foregoing Paragraphs of this Complaint as if fully set forth herein.

115. Pursuant to the terms of the Subscriber's Agreements, Indemnity agreed to limit its compensation for serving as attorney-in-fact, managing the business and affairs of Exchange and performing other services to a percentage of all premiums written or assumed by Exchange, with the maximum being 25%.

116. Within two years of Indemnity becoming a public company traded on NASDAQ, its own self-interest took priority over the best interests of Exchange and the Subscribers, and it began to unlawfully take compensation from Exchange beyond that to which it was permitted under the Subscriber's Agreement. Beginning in or around 1997 up through the present, in addition to the fixed percentage of premiums it has received on behalf of Exchange in a given year, Indemnity has retained substantial additional compensation in the form of Service Charges and/or Additional Fees.

117. The taking of this additional compensation by Indemnity is a breach of the Subscriber's Agreements.

118. As a result of the breach, Plaintiffs and Class have suffered substantial damages, including, but not limited to, monetary losses stemming from Indemnity's unlawful retention of the Service Charges and Additional Fees.

119. This conduct also constitutes a breach of the implied covenant of good faith and fair dealing by which Indemnity has precluded the Plaintiffs and Class from realizing the full benefits of their bargains under the terms of the Subscriber's Agreements.

120. Indemnity's intentional and unlawful retention of this additional compensation in addition to the fixed percentage of premiums it receives evidences bad faith, especially in light of Indemnity's role as a fiduciary to the Plaintiffs and Class.

121. As a result of Indemnity's breach of the implied covenant of good faith and fair dealing inherent to the Subscriber's Agreements, the Plaintiffs and Class have suffered substantial damages, including, but not limited to, significant monetary losses resulting from Indemnity's taking of the additional compensation which should have been used for the benefit of Plaintiffs and the Class.

Count II Breach of Fiduciary Duty
(Plaintiffs v. Indemnity and Directors)

122. Plaintiffs repeat and re-allege the allegations set forth in the Paragraphs 1-102 of this Complaint as if fully set forth herein.

123. At all relevant times, Indemnity agreed to serve as an agent, attorney-in-fact, and fiduciary for the Plaintiffs and Class.

124. At all relevant times in which they served on the Board of Indemnity, the Directors also agreed to serve as agents, attorneys-in-fact, and fiduciaries for the Plaintiffs and Class.

125. As fiduciaries, Indemnity and the Directors were obligated to act loyally, with utmost honesty and solely in the best interests of Plaintiffs and the Class.

126. The Directors have irreconcilable conflicts of interest, exacerbated when Indemnity became a publicly traded company on NASDAQ, in serving the shareholders of Indemnity and the Subscribers of Exchange.

127. Beginning in or around 1997 and continuing to the present, Indemnity and the Directors deviated from 70 years of prior conduct, and authorized, enabled and/or otherwise permitted Indemnity to retain Service Charges and/or Additional Fees as compensation in addition to a percentage of all premiums written or assumed by Exchange.

128. The Service Charges and Additional Fees would have been used for the benefit of Plaintiffs and the Class had they not been retained by Indemnity. Instead, Indemnity and its shareholders directly benefitted from the taking of this additional compensation.

129. Indemnity and the Directors breached their fiduciary duties to Plaintiffs and the Class by authorizing, enabling and/or otherwise permitting Indemnity to retain the Service Charges and Additional Fees in addition to a percentage of premiums as prescribed in the Subscriber's Agreements.

130. As a result of Defendants' breach of their respective fiduciary duties, Plaintiffs and the Class have suffered substantial damages, including, but not limited to, monetary losses stemming from Indemnity's unlawful retention of the revenue generated by the Service Charges and Additional Fees.

131. Because Defendants breached their duties knowingly, willingly, and/or with reckless disregard, the Plaintiffs and Class seek punitive damages.

Count III Conversion (Plaintiffs and Plaintiffs, derivatively on behalf of Exchange v. Indemnity)

132. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-113 of this Complaint as if fully set forth herein.

133. In taking each year from the accounts of Exchange, the Service Charges and Additional Fees, Indemnity was depriving Exchange and Plaintiffs of the use of the funds.

134. Indemnity took the funds from the accounts of Exchange without the consent of Exchange and Plaintiffs, to whom the funds belonged, and without legal justification.

135. Plaintiffs and Exchange have been wrongfully denied the use of the funds to which they had the right of possession.

Count IV Breach of Fiduciary Duty (Plaintiffs, derivatively on behalf of Exchange v. Indemnity and Directors)

136. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-113 of this Complaint as if fully set forth herein.

137. The Directors owed and owe Exchange fiduciary obligations. By reason of their fiduciary relationships, the Directors owed and owe Exchange the highest obligation of good faith and loyalty.

138. The Directors, and each of them, violated and breached their fiduciary duties of loyalty and good faith, as alleged herein.

139. As a direct and proximate result of the Directors' failure to perform their fiduciary obligations, Exchange has sustained significant damages, as alleged herein.

140. Plaintiffs, on behalf of Exchange, have no adequate remedy at law.

Count V Unjust Enrichment (Plaintiffs, derivatively on behalf of Exchange v. J. Hagen, T. Hagen, Vorsheck and Black)

141. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-113 of this Complaint as if fully set forth herein.

142. Defendants J. Hagen, T. Hagen, Vorsheck and Black have received excessive and unwarranted payments or the inequitable transfer of Exchange assets as a result of the misconduct complained of herein.

143. It would be unconscionable and against the fundamental principles of justice, equity and good conscience for defendants J. Hagen, T. Hagen, Vorsheck

and Black to retain the excessive and unwarranted payments or the inequitable transfer of Exchange's assets they have received.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter a judgment against Defendants and in favor of Plaintiffs:

A. Certifying this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, declaring Plaintiffs as representatives of the Class and Plaintiffs' counsel as counsel for the Class;

B. Declaring, adjudging and decreeing the conduct alleged herein as unlawful including, but not limited to, Defendants' retention of the Service Charges and Additional Fees as compensation;

C. Enjoining Defendants from continuing to retain the Service Charges and Additional Fees;

D. Awarding compensatory and punitive damages along with pre- and post-judgment interest;

E. Granting Plaintiffs the costs of suit, including reasonable attorneys' fees and expenses; and

F. Affording Plaintiffs with such other, further and different relief as the nature of the case may require or as may be determined to be just, equitable and proper by this Court.

Appendix G

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Dated: July 8, 2016

Respectfully submitted,

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APPENDIX H — RELEVANT STATUTORY PROVISIONS

28 U.S.C. § 1651 – Writs.

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

28 U.S.C. § 2283 – Stay of State court proceedings.

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.