

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ENDURANCE AMERICAN SPECIALTY
INSURANCE COMPANY,

Plaintiff,

v.

NORTHLAND INVESTMENT CORP.,
CHURCH STREET NEW HAVEN, LLC,
NORTHLAND FUND II LP, NORTHLAND
FUND II PARTNERS, LLC, CINQUE
GREEN LIMITED PARTNERSHIP, AND
LAWRENCE R. GOTTESDIENER,

Defendants.

Civil Action No. 1:18-cv-10724

**AFFIDAVIT OF SUZANNE D. ABAIR IN SUPPORT OF NORTHLAND
DEFENDANTS' MOTION REQUIRING PLAINTIFF
TO FILE FIRST AMENDED COMPLAINT UNDER SEAL**

I, Suzanne D. Abair, do hereby depose and state as follows:

1. I am of the age of majority, and I make this affidavit freely, voluntarily and based on my own knowledge acquired through my role as Chief Operating Officer of Northland Investment Corporation.

2. I submit this affidavit in support of the Motion Requiring Plaintiffs to File First Amended Complaint Under Seal submitted by Defendants Northland Investment Corp., Church Street New Haven, LLC, Northland Fund II, LP, Northland Fund II Partners, LLC, and Lawrence R. Gottesdiener (collectively "Northland").

3. On or about October 20, 2016, a group of plaintiffs initiated a class action against certain of the Northland Defendants in an action titled *Noble v. Northland Investment Corporation, et al.* in federal court in the District of Connecticut. That case was voluntarily dismissed by the plaintiffs and refiled on November 23, 2016 in the State of Connecticut

Superior Court, where it is now pending. The named plaintiffs in the putative class in *Noble* seek relief for claimed injuries relating to Northland's alleged ownership and/or management of the Church Street South Housing complex in New Haven, Connecticut ("Church Street South").

4. On or about November 30, 2016, Ruben Negron, Luisa Negron and their three minor children initiated a lawsuit against certain Northland Defendants in state Superior Court in Connecticut and titled *Negron v. Church Street New Haven LLC*. The *Negron* plaintiffs similarly allege claims arising out of the Church Street South complex.

5. The Northland defendants are vigorously defending against the *Noble* and *Negron* suits, and the parties are currently engaged in discovery.

6. Northland timely notified Endurance of both the *Noble* and *Negron* lawsuits (together, the "Church Street South Lawsuits").

7. Several months after receiving notice of these lawsuits, Endurance agreed to defend Northland in the *Noble* action pursuant to a reservation of rights issued on or about April 17, 2017; and Endurance agreed to defend Northland in the *Negron* action pursuant to a reservation of rights issued on or about February 1, 2018.

8. Thereafter, Endurance participated in the defense with other insurers that had issued CGL and/or environmental coverage to Northland. Endurance has paid some of Northland's defense costs (although substantially less than Northland believes to be owed).

9. The Northland Defendants have provided Endurance and the other defending insurers with substantial information about the status of the Church Street South Lawsuits, including teleconferences, written status reports, and an in-person meeting on March 16, 2018, that was attended by myself, Northland's defense counsel (Henry Sullivan, Esq.), Northland's coverage counsel (Steven Torres, Esq.), and representatives and attorneys from Endurance and other insurers. The Endurance representatives included Eric Hermanson, Esq., of White &

Williams. Northland believed that these communications and meetings were undertaken as part of a common interest in the successful defense of the underlying Church Street South Lawsuits. Northland also believed that all communications and meetings would be privileged and protected from disclosure, and that the sharing with Northland insurers of otherwise privileged materials relating to the subject of our common interest in the defense of the *Noble* and *Negron* actions would retain their privileged status.

10. Following the in-person meeting on March 16, 2018, Northland's counsel sent a letter to Endurance's counsel dated April 10, 2018, in which Northland (i) sought payment for several months of unpaid invoices; (ii) contested the inadequate hourly rates that Endurance had elected to pay; and (iii) proposed mediation with Endurance.

11. Rather than responding to Northland's proposal to mediate, Endurance instead filed this action three days later, on April 13, 2018. In its Complaint, Endurance seeks rescission of the 2015 Policy as well as a determination of its coverage obligations under the two policies with respect to each of the Church Street South Lawsuits. See Complaint, Dkt. 1. In the meantime, Endurance has ceased paying any defense costs.

12. Northland vehemently disputes Endurance's claims of omission or misrepresentation in the application process. Northland further believes that Endurance is in breach of its coverage obligations under both policies.

13. On April 13, 2018, counsel for Endurance provided Northland's counsel with a copy of a draft "long-form" complaint. Unlike the filed Complaint, which relied on notice pleading and limited its substantive allegations to four paragraphs, the draft First Amended Complaint contains 34 paragraphs of detailed factual background. Most of these allegations are taken from documents that were either already available to Endurance through the underwriting process or are otherwise publicly available.

14. Two sentences in the proposed First Amended Complaint contain factual allegations that appear to be based solely on information provided by Northland to Endurance during the confidential defense-strategy meeting on March 16, 2018, or in the communications that followed thereafter.

15. First, the final sentence of proposed Paragraph 15 quotes from a correspondence sent to Northland by its outside counsel, which was shared with Endurance following a discussion about claims asserted by certain Church Street South residents that occurred at the defense-strategy meeting on March 16, 2018. See Exh. A. This letter has never been shared outside the joint common interest community.

16. Second, the final sentence of proposed Paragraph 19 purports to set forth the substance of statements made by Northland and Northland's defense counsel to the participants in the March 16, 2018 defense strategy meeting, in which defense counsel explained the legal and strategic basis for Northland having taken certain actions in connection with the Church Street South property. See Exh. A. This statement has never been shared outside the joint common interest community.

Signed under the pains and penalties of perjury this 11th day of May, 2018.

/s/ Suzanne D. Abair
Suzanne D. Abair

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2018, a copy of the above document was served upon the attorneys of record for the Plaintiff through the Court's ECF system.

/s/ Robert J. Gilbert
Robert J. Gilbert