

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT IN AND FOR
ORANGE COUNTY, FLORIDA

CERTAIN UNDERWRITERS AT LLOYD'S,
LONDON

CASE NO.:

Plaintiff,

v.

MAGIC IN THE SKY, LLC, PRECOCIOUS
PYROTECHNICS, INC., NATHAN'S
PROPERTIES, INC., CONTINENTAL
PROPERTY, LLC, SEAWORLD
ENTERTAINMENT, INC., POOLPLIES, LLC,
FRENCH FURNITURE ORLANDO, LLC,
LINDSEY A. TALLAFUSS, JAMES
BOURLAND, as Personal Representative of
THE ESTATE OF LANDON BOURLAND,
OCTAVIO GONZALEZ, as the Personal
Representative of THE ESTATE OF DAVID
MANUEL GONZALEZ, MARK PHILLIPS, as
the Personal Representative of THE ESTATE
OF LINDSEY PHILLIPS, and SEBASTIANO
TIRALONGO, as the Personal Representative of
THE ESTATE OF ELIZABETH TIRALONGO,

Defendants.

COMPLAINT FOR INTERPLEADER

Plaintiff, CERTAIN UNDERWRITERS AT LLOYD'S, LONDON
("UNDERWRITERS"), by and through undersigned counsel, sue Defendants, MAGIC IN THE
SKY, LLC ("MITS"), PRECOCIOUS PYROTECHNICS, INC. ("PRECOCIOUS"), NATHAN'S
PROPERTIES, INC. ("NATHAN'S"), CONTINENTAL PROPERTY, LLC
("CONTINENTAL"), SEAWORLD ENTERTAINMENT, INC. ("SEAWORLD"), POOLPLIES,
LLC ("POOLPLIES"), FRENCH FURNITURE ORLANDO, LLC ("FRENCH"), LINDSEY A.

TALLAFUSS, JAMES BOURLAND, as Personal Representative of THE ESTATE OF LANDON BOURLAND, OCTAVIO GONZALEZ, as the Personal Representative of THE ESTATE OF DAVID MANUEL GONZALEZ, MARK PHILLIPS, as the Personal Representative of THE ESTATE OF LINDSEY PHILLIPS, and SEBASTIANO TIRALONGO, as the Personal Representative of THE ESTATE OF ELIZABETH TIRALONGO, and states as follows:

THE PARTIES

1. Plaintiff UNDERWRITERS are members of Syndicates 2623 and 623 at Lloyd's who subscribe to the policies of insurance described herein.

2. Defendant MITS is a limited liability company organized under the laws of the State of Texas with its principal place of business in the State of Texas. MITS is authorized to and does regularly conduct business in Orange County, Florida. MITS has a purported interest in the policies of insurance that are the subject of this action.

3. Defendant PRECOCIOUS is a Minnesota corporation with its principal place of business in the State of Minnesota. Upon information and belief, PRECOCIOUS was authorized to and did conduct business in Orange County, Florida. PRECOCIOUS has a purported interest in the policies of insurance that are the subject of this action.

4. Defendant NATHAN'S is a Florida corporation with its principal place of business in the State of Florida. NATHAN'S is authorized to and does regularly conduct business in Orange County, Florida. NATHAN'S has a purported interest in the policies of insurance that are the subject of this action.

5. Defendant CONTINENTAL is a Florida corporation with its principal place of business in the State of Florida. CONTINENTAL is authorized to and does regularly conduct business in Orange County, Florida. CONTINENTAL has a purported interest in the policies of insurance that are the subject of this action.

6. Defendant SEAWORLD is a Foreign Profit Corporation organized under the laws of the State of Delaware with its principal place of business in the State of Florida. SEAWORLD is authorized to and does regularly conduct business in Orange County, Florida. SEAWORLD has a purported interest in the policies of insurance that are the subject of this action.

7. Defendant POOLPLIES is a limited liability company organized under the laws of the State of Florida with its principal place of business in the State of Florida. POOLPLIES is authorized to and does regularly conduct business in Orange County, Florida. POOLPLIES has a purported interest in the policies of insurance that are the subject of this action.

8. Defendant FRENCH is a limited liability company organized under the laws of the State of Florida with its principal place of business in the State of Florida. FRENCH is authorized to and does regularly conduct business in Orange County, Florida. FRENCH has a purported interest in the policies of insurance that are the subject of this action.

9. Defendant LINDSEY A. TALLAFUSS is a resident of Orange County, Florida, and has a purported interest in the policies of insurance that are the subject of this action.

10. Defendant JAMES BOURLAND is the duly appointed Personal Representative of the ESTATE OF LANDON BOURLAND, which is pending in Orange County, Florida, and has a purported interest in the policies of insurance that are the subject of this action. Upon information and belief, Landon Bourland was a resident of the State of Florida at all times material to this Complaint.

11. Defendant OCTAVIO GONZALEZ is the duly appointed Personal Representative of THE ESTATE OF DAVID MANUEL GONZALEZ, which is pending in Orange County, Florida, and has a purported interest in the policies of insurance that are the subject of this action. Upon information and belief, David Gonzalz was a resident of the State of Florida at all times

material to this Complaint.

12. Defendant MARK PHILLIPS is the duly appointed Personal Representative of THE ESTATE OF LINDSEY PHILLIPS, which is pending in Orange County, Florida, and has a purported interest in the policies of insurance that are the subject of this action. Upon information and belief, Lindsey Phillips was a resident of the State of Florida at all times material to this Complaint.

13. Defendant SEBASTIANO TIRALONGO is the duly appointed Personal Representative of THE ESTATE OF ELIZABETH TIRALONGO, which is pending in Orange County, Florida, and has a purported interest in the policies of insurance that are the subject of this action. Upon information and belief, Elizabeth Tiralongo was a resident of the State of Florida at all times material to this Complaint.

JURISDICTION AND VENUE

14. This is an action for interpleader, pursuant to Florida Rule of Civil Procedure 1.240, seeking to interplead monies in excess of \$15,000.00, to obtain an order from the Court to designate the proper payee of such funds, and for other relief as deemed appropriate.

15. Jurisdiction of this Court is proper based on Florida Statute section 26.012.

16. Venue is proper in this Court pursuant to Florida Statute section 47.011, in that at least one Defendant resides in Orange County, the events and circumstances giving rise to this action occurred in Orange County, or the causes of action asserted accrued in Orange County, Florida.

17. This Court has personal jurisdiction over each of NATHAN's, SEAWORLD, POOLPLIES, FRENCH, TALLAFUS, BOURLAND, GONZALEZ, PHILLIPS, and TIRALONGO because each is a resident or citizen of the state of Florida or the administrator of an estate of a resident of the State of Florida and the claims described herein arise out of each

Defendant's or decedent's intentional actions within the State of Florida.

18. This court has personal jurisdiction over MITS and PRECOCIOUS because the claims described herein arise out of their intentional actions within or directed into the State of Florida.

BACKGROUND

I. The Policies

19. UNDERWRITERS issued Pyrotechnics Liability Claims Made and Reported Insurance policy, No. PY/22-0010, to MITS for the policy period of January 29, 2022 to January 29, 2023 ("MITS Policy"). A true and correct copy of the MITS Policy is attached hereto as "Exhibit A".

20. Subject to all terms, conditions, and exclusions, the MITS Policy provides certain specified coverages, each subject to a Limit of Liability set forth in the Declarations. The MITS Policy's Limit of Liability for Bodily Injury and Property Damage is \$10,000,000 for each Accident and in the aggregate, inclusive of all Claims Expenses and Supplementary Payments. The MITS Policy also contains a \$50,000 Limit of Liability for coverage for Fire Legal Liability. The Policy Aggregate Limit of Liability under the MITS Policy is \$10,000,000.

21. UNDERWRITERS issued Pyrotechnics Liability Claims Made and Reported Insurance policy, No. PY/22-0252, to PRECOCIOUS for the policy period of October 15, 2022 to October 15, 2023 (the "Precocious Policy"). A true and correct copy of the Precocious Policy is attached hereto as "Exhibit B".

22. Subject to all terms, conditions, and exclusions, the Precocious Policy provides certain specified coverages, each subject to a Limit of Liability set forth in the Declarations. The Precocious Policy's Limit of Liability for Bodily Injury and Property Damage for Other Than For

Display or Special Effects liability, which includes the Products-Completed Operations Hazard is \$1,000,000 for each Accident and \$2,000,000 in the aggregate, inclusive of all Claims Expenses and Supplementary Payments.

23. The MITS Policy and Precocious Policy state:

THIS IS A CLAIMS MADE AND REPORTED POLICY, SUBJECT TO ITS TERMS, THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED IN WRITING TO THE UNDERWRITERS DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE. DAMAGES AND CLAIMS EXPENSES SHALL BE APPLIED AGAINST THE DEDUCTIBLE, CLAIMS EXPENSES ARE WITHIN AND REDUCE THE LIMIT OF LIABILITY UNDER THIS POLICY. THE UNDERWRITERS SHALL NOT BE LIABLE FOR ANY CLAIMS EXPENSES OR PAY FOR ANY JUDGMENT OR SETTLEMENT AFTER THE LIMIT OF LIABILITY HAVE BEEN EXHAUSTED.

24. The MITS Policy and Precocious Policy both provide that:

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses** which the **Insured** shall become legally obligated to pay because of any **Claim** or **Claims** for **Bodily Injury** and/or **Property Damage** to which this coverage applies caused by an Accident, except as excluded or limited by the terms, conditions and exclusion of this Policy. This insurance applies only if:

- a) The **Accident** occurred on or after the Retroactive Date set forth in Item 6. of the Declarations, prior to the end of the **Policy Period** and within the **Coverage Territory**.
- b) The **Bodily Injury** and/or **Property Damage** did not occur before the Retroactive Date, if any, set forth in Item 6. of the Declarations or after the end of the **Policy Period**.
- c) A **Claim** or **Claims** for **Damages** because of the **Bodily Injury** and/or **Property Damage** is first made against the **Insured** during the **Policy Period** and/or any applicable **Extended Reporting Period** and reported to the Underwriters during the **Policy Period** or any applicable **Extended Reporting Period**.

25. The MITS Policy and Precocious Policy both provide that:
1. The Underwriters shall have the right and duty to defend the **Insured**, subject to the Limit of Liability, for any **Claim** first made against the **Insured** seeking damages to which this insurance applies even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Underwriters shall choose defense counsel in consultation with the **Insured**, but in the event of any disagreement, the decision of the Underwriters is final. Underwriters will have no duty to defend the **Insured** for any **Claim** made against the **Insured** seeking **Damages, Claims Expenses** or payment to which this insurance does not apply.
 2. **Claim Expenses** are within and not in addition to the Limit of Liability. The Limit of Liability available shall be reduced and may be completely exhausted by payment of **Claims Expenses. Damages** and **Claims Expenses** shall be applied against the Deductible set forth in Item 4. of the Declarations.
 3. The Underwriters shall have the right to make any investigation they deem necessary, including, without limitation, any investigation with respect to coverage and statements made in the application.
 4. Underwriters shall have the right to settle any **Claim** Underwriters deem in their discretion is appropriate including **Claims** within the **Insured's** deductible.
 5. It is further provided that the Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any **Claim** after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expenses** or after deposit of the remaining applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the right to withdraw from the further defense of the **Claim** by tendering control of said defense to the **Insured**.
26. The MITS Policy and Precocious Policy define Claims Expenses as:
1. Reasonable and customary fees charged by an attorney(s) designated and agreed by the Underwriters in consultation with the **Insured**, but subject always to the Underwriters' final decision; and

2. fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, if incurred by the Underwriters, or by the **Insured** with the written consent of the Underwriters.

Claims Expenses does not include any salary, overhead or other charged by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance which might lead to a **Claim**.

II. The Fire and Claims Arising Therefrom

27. On Thursday, December 1, 2022, a fire occurred in Suite A-1 at the storage facility at 901 Central Florida Parkway, Orlando, FL 32824, which had been rented by MITS for the storage and staging of firework displays.

28. MITS rents the storage facility from NATHAN'S.

29. Upon information and belief, CONTINENTAL owns or has an ownership interest in the storage facility.

30. Upon information and belief, MITS purchases certain fireworks from PRECOCIOUS, a fireworks manufacturer, and fireworks manufactured and/or shipped by PRECOCIOUS may have been present at the storage facility at the time of the fire.

31. Upon information and belief, five individuals were inside Suite A-1 at the time the fire began. These five individuals were all employed by MITS to assist with storage and preparation of fireworks in advance of an upcoming display at SeaWorld.

32. Four of the five individuals in Suite A-1 died as a result of the fire: Elizabeth Tiralongo, David Gonzalez, Lindsey Phillips, and Landon Bourland.

33. Defendant TALLAFUSS survived the fire and is undergoing treatment for serious injuries.

34. Other tenants of 901 Central Florida Parkway include FRENCH and POOLPLIES.

35. The MITS Policy and Precocious Policy were in full force and effect at the time of

the fire.

36. Defendants TALLAFUSS, BOURLAND, GONZALEZ, PHILLIPS, and TIRALONGO have made claims against Defendants MITS and PRECOCIOUS for injuries arising out of the fire.

37. Defendants NATHAN'S, CONTINENTAL, POOLPLIES, and FRENCH have made claims against MITS for property damage allegedly resulting from the fire.

38. Defendants NATHAN'S, CONTINENTAL, POOLPLIES, FRENCH, TALLAFUSS, BOURLAND, PHILLIPS, and TIRALONGO, have all sought disclosure of insurance information from some or all of MITS, NATHAN's, and PRECOCIOUS in connection with their claims arising out of the fire pursuant to Florida Statutes Section 627.4137.

39. Defendants NATHAN'S and SEAWORLD have sought defense and indemnity from MITS and under the MITS Policy for claims arising out of the fire.

40. On January 12, 2023, Defendant TALLAFUSS demanded Underwriters pay to TALLAFUSS the full limits of the MITS policy for her claim against MITS arising out of the fire.

41. On March 17, 2023, Defendant NATHAN's demanded payment of \$2,600,000 from MITS for damages arising out of the fire.

42. On or about March 17, 2023, Defendant TIRALONGO filed a civil action in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida against certain defendants including Defendants MITS, PRECOCIOUS, NATHAN'S, CONTINENTAL, FRENCH, and SEAWORLD and alleging liability for and seeking payment for damages arising out of the fire.

43. On or about March 20, 2023, Defendant PHILLIPS filed a civil action in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida against certain defendants

including Defendants MITS, PRECOCIOUS, NATHAN’S, CONTINENTAL, FRENCH, and SEAWORLD alleging liability for and seeking payment for damages arising out of the fire.

44. On or about March 21, 2023, Defendant TIRALONGO filed a civil action in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida against certain defendants including Defendants MITS, PRECOCIOUS, NATHAN’S, CONTINENTAL, FRENCH, and SEAWORLD alleging liability for and seeking payment for damages arising out of the fire.

45. On or about March 22, 2023, Defendant TALLAFUSS filed a civil action in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida against certain defendants including Defendants MITS, PRECOCIOUS, NATHAN’S, CONTINENTAL, FRENCH, and SEAWORLD alleging liability for and seeking payment for damages arising out of the fire.¹

46. On or about March 23, 2023, Defendant GONZALEZ filed a civil action in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida against certain defendants including Defendants MITS, PRECOCIOUS, NATHAN’S, CONTINENTAL, FRENCH, and SEAWORLD alleging liability for and seeking payment for damages arising out of the fire.

47. Underwriters have asserted certain defenses to coverage under the MITS and

¹ Defendant TALLAFUSS has also brought claims against Ralph Santore and Sons, Inc. (“Santore”). UNDERWRITERS issued Pyrotechnics Liability Claims Made and Reported Insurance policy, No. PY/22-0224, to SANTORE for the policy period of September 15, 2022 to September 15, 2023 (the “Santore Policy”). The Santore Policy’s Limit of Liability for Bodily Injury and Property Damage, which includes the Products-Completed Operations Hazard, is \$2,000,000 for each Accident and \$2,000,000 in the aggregate, inclusive of all Claims Expenses and Supplementary Payments. Underwriters are not aware of any other claims against Santore arising out of the fire and are investigating coverage thereunder. Underwriters reserve the right to amend this pleading to address the proceeds of the Santore Policy should it become necessary.

Precocious Policies for claims arising out of the fire.

48. UNDERWRITERS have been providing a defense to MITS and PRECOCIOUS in connection with claims arising out of the fire, each under their respective policies of insurance, pursuant to a complete reservation of rights.

49. Underwriters have further acknowledged to NATHAN's that NATHAN's may be entitled to a defense under the MITS Policy by virtue of an Insured Contract with MITS, subject to compliance with certain terms and conditions under the MITS Policy.

50. On or about April 11, 2023, Defendant SEAWORLD asserted a demand for defense and indemnity as an Additional Insured under the MITS Policy. Underwriters have not yet responded to SEAWORLD's demand, but Underwriters acknowledge that SEAWORLD is claiming that it is an Additional Insured entitled to defense and indemnity under the MITS Policy.

51. Pursuant to its terms and coverage provisions, the limit of liability of the MITS Policy and Precocious Policy are and will be reduced through payment of Claim Expenses associated with the defense of MITS and PRECOCIOUS and any other Defendant who may be entitled to a defense under the policies.

52. Defendants' claims or potential claims for relief under the MITS Policy and Precocious Policy, including for payment of Claims Expenses and for payment of damages for bodily injury and property damage arising out of the fire exceed or will exceed the available policy limits.

53. Underwriters face real and significant concerns that they may be exposed to double or multiple liability, including to the extent that one or more Defendant contests any decision by Underwriters with respect to the distribution of limits under the policies.

54. All conditions precedent to the bringing of this action have occurred.

INTERPLEADER

55. UNDERWRITERS reallege paragraphs 1-54 as though fully set forth herein.

56. UNDERWRITERS have received competing claims under the MITS Policy and Precocious Policy that may exceed the available policy limits.

57. The limits of liability of the MITS Policy and Precocious Policy are being or may be reduced through payment of Claims Expenses, reducing the available limits of liability to pay claims for damages under the Policies.

58. UNDERWRITERS are ready, able and willing to pay the available limits of liability of MITS Policy and Precocious Policy except that UNDERWRITERS are in doubt as to which Defendant(s) is/are entitled to payment of the insurance proceeds and the amount of any such entitlement.

59. UNDERWRITERS are without adequate knowledge and information to determine which Defendant(s) is/are entitled to the proceeds of the Policies and the amount of any such entitlement.

60. UNDERWRITERS did not cause the potential conflicting claims between Defendants and have no interest in the Policies' limits of liability, other than to bring all such claims before this Court for judicial determination.

61. UNDERWRITERS seek an Order of this Court for Underwriters to pay \$9,942,950.02, representing the remaining limit of liability of the MITS Policy as of March 31, 2023, or such amount as remains of the available limit as of the time of the Court's Order, into the Court Registry to be held pending disbursement to the rightful beneficiar(y/ies) pursuant to a judicial determination.

62. UNDERWRITERS seek an Order of this Court for Underwriters to pay

\$999,357.00, representing the remaining per Accident Limit of Liability of the Precocious Policy as of March 31, 2023, or such amount as remains of the available limit as of the time of the Court's Order, into the Court Registry to be held pending disbursement to the rightful beneficiar(y/ies) pursuant to a judicial determination.

63. UNDERWRITERS have retained the undersigned counsel to represent them in this cause and have agreed to pay reasonable fees for such representation.

WHEREFORE, UNDERWRITERS respectfully request that the Court enter judgment:

- A. Directing UNDERWRITERS to pay the sum of \$10,942,307.02, reflecting the combined remaining available limits of liability of the Policies, or such amount as remains of the available limits as of the time of the Court's Order, into the Registry of this Court;
- B. Directing the Defendants to interplead their rights to payment under the Policies;
- C. Restraining Defendants, their agents and attorneys, from instituting any action against UNDERWRITERS to recover any sum under the Policy;
- D. Discharging UNDERWRITERS, with prejudice, from all liability to Defendants arising out of the matters set forth herein, including any obligation to defend or pay for the defense of any of the Defendants, upon payment of the sum of \$10,942,307.02, or such amount as remains of the available limits as of the time of the Court's Order, into the Court Registry;
- E. Entering an Order awarding UNDERWRITERS payment of their reasonable attorneys' fees and costs necessitated by the bringing of this action; and
- F. For such other and further relief as this Court deems just and proper.

Dated: April 14, 2023

s/ Heidi Hudson Raschke _____

Heidi Hudson Raschke

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