

RELIASTAR LIFE INSURANCE
COMPANY,

Plaintiff,

v.

AON RE, INC., and ROGER SMITH,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
MIDDLESEX COUNTY
DOCKET NO. L-3916-03

Civil Action

Hon. Ann G. McCormick, J.S.C.

FINAL JOINT PRETRIAL ORDER

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This matter is before the Court on a Final Pretrial Conference pursuant to R.4:25-1. This Final Joint Pretrial Order shall govern the conduct of the trial in this case and amendments will be allowed only in exceptional circumstances to prevent manifest injustice.

I. APPEARANCES.

A. Plaintiff:

John E. Beerbower

B. Defendants:

Shand S. Stephens

II. STATEMENT OF THE NATURE OF THE ACTION.

Plaintiff's Proposal

This is a dispute between plaintiff ReliaStar, a life insurance company that bought reinsurance from a group of reinsurers, and defendants Aon Re, and its employee, Roger Smith, who were intermediaries dealing with the reinsurers on ReliaStar's behalf. Defendants arranged and managed the reinsurance on which ReliaStar relied. As the amount of business increased, the companies that were providing reinsurance to ReliaStar began to complain to defendants that there was more business being written than they had agreed or were willing to accept. These companies even threatened to seek to terminate coverage if the writing of more business did not stop. The money defendants made in commissions, however, depended upon the amount of business that was written. Thus, although defendants recognized the risk posed to ReliaStar, they actively sought to increase further the amount of business being written and did not tell plaintiff about these complaints or threats.

Ultimately, the complaining companies went to an arbitrator, who ruled that the companies did not have to pay the losses they had reinsured. As a result, ReliaStar had to bear those losses without recovery from the reinsurers.

In this lawsuit, ReliaStar asserts that defendants were its agents and, as such, were required to look out for ReliaStar's interests and keep it informed about matters related to the reinsurance coverage. ReliaStar claims that defendants, in order to increase the amount of money they themselves made, actively encouraged the writing of business when they knew that doing so increased the risks to ReliaStar of the loss of its reinsurance and failed to warn ReliaStar about the dangers. ReliaStar further claims that had defendants warned it about the risks that the additional business was causing, ReliaStar would have taken steps to prevent those losses. Defendants, in contrast, assert that they were not agents of ReliaStar and were not required to tell ReliaStar about the complaints or threats. Defendants further assert that ReliaStar knew that there were risks, that it could and should have discovered the problems on its own and that, in any event, ReliaStar would not have taken steps to avoid the writing of more business even if defendants had told it about the risks.

Defendants' Proposal

This case involves a dispute between plaintiff, ReliaStar Life Insurance Company ("ReliaStar Life Insurance"), and defendants, Aon Re and Smith, arising out of the parties' involvement in what will be referred to as the Unicover Pool. The Unicover Pool was a group of insurance and reinsurance companies that provided reinsurance coverage for certain workers' compensation risks. The Unicover Pool was managed by an entity known as Unicover Managers, Inc., which acted as the pool members' agent and

underwrote business on the Unicover Pool's behalf. ReliaStar Life Insurance was one of four pool members during pool year four, which ran from March 1, 1998, through February 29, 1999.

Unicover hired insurance brokers Chris Mays of Rattner Mackenzie and Roger Smith of Aon Re to, among other things, assist in obtaining reinsurance coverage for the risks assumed by the Unicover Pool. Unicover obtained reinsurance coverage for the risks assumed by the Unicover Pool at a rate that was highly advantageous to the pool members and which, as the pool members recognized, nearly guaranteed that the Unicover Pool's reinsurers would be required to pay more in claims than they received in premium, thus operating at a net loss. In other words, the Unicover Pool was going to make money, but it appeared that its reinsurers would lose money.

Approximately ten months after ReliaStar Life Insurance joined the Unicover Pool, one of the Unicover Pool's reinsurers unilaterally attempted to terminate its agreement to provide reinsurance to the Unicover Pool because it contended that Unicover had written substantially more business than Unicover originally had estimated it would write and, as a result, the reinsurer would be exposed to far more risk than it had expected based on Unicover's estimates. ReliaStar Life Insurance filed its claims here against Aon Re and Smith seeking to recover the damages it purportedly incurred as a result of disputes about the Unicover Pool's reinsurance protection. ReliaStar Life Insurance asserts causes of action against Aon Re and Smith for:

1. Conspiracy to commit fraud;
2. Aiding and abetting fraud;
3. Fraudulent concealment;
4. Breach of fiduciary duty; and

5. Aiding and abetting breach of fiduciary duty.

Aon Re and Smith deny ReliaStar Life Insurance's claims in their entirety.

III. ADMISSIONS AND STIPULATIONS.

None.

IV. FACTUAL AND LEGAL CONTENTIONS OF PLAINTIFF.

A. Factual Contentions

1. The Unicover Occupational Accident Reinsurance Pool (the "Unicover Pool") was composed of life insurance companies and provided reinsurance for occupational accident insurance and workers compensation insurance.
2. Unicover Managers, Inc. ("Unicover"), run by John Pallat, was the Unicover Pool's intermediary manager or MGU.
3. Plaintiff ReliaStar had a 5% interest in the Unicover Pool in pool year 4. It did not participate in pool years 1 through 3. The fourth pool year ran from March 1, 1998 to March 1, 1999.
4. The Centaur Pool provided retrocession to the Unicover Pool under the Whole Account agreement. Sun Life Assurance Company of Canada ("Sun Life") was the primary participant in the Centaur Pool. Centaur Underwriting Management, Ltd. ("Centaur"), run by John Cackett, was the Centaur Pool's MGU.
5. Cologne Life Insurance Company ("Cologne Re") also provided retrocession to the Unicover Pool, under the Whole Account agreement. CRF Underwriting Management, run by Jim Collins, was Cologne's MGU.
6. Defendant Roger Smith is employed by Defendant Aon Re, Inc. ("Aon Re"). He was responsible for the Accident and Health division of Aon Re.
7. Aon Re was an intermediary broker for the Unicover Pool members, one of which was ReliaStar.
8. Defendants were agents of ReliaStar.
9. Defendants were subagents of Unicover, which was an agent of ReliaStar.

10. Smith recruited ReliaStar to participate in the Unicover Pool.
11. Smith and Aon Re also acted as brokers for the Centaur Pool in its own efforts to obtain retrocession.
12. Chris Mays also acted as a broker for the Unicover Pool members, first as an employee of an Aon affiliate and then as an employee of Rattner Mackenzie until Rattner's duties as broker were reduced in mid-1998 and eliminated by December 1998.
13. Aon Re and Aon Corp. derived substantial fees and commissions from business written in connection with the Unicover Pool.
14. Aon Re and Smith failed timely to disclose to ReliaStar material information, including:
 - a. the actual and projected volume of business being written under the Whole Account;
 - b. the creation, use and volume of the business written to the Facilities.
 - c. the retrocessionaires' expressions of concern regarding the volume and type of business being ceded under the Whole Account;
 - d. a retrocessionaire's threat to terminate or limit coverage;
 - e. the difficulties in securing retrocessional protection for the retrocessionaires or replacement coverage for the members of the Pool; and
 - f. Pallat's expressions of concern regarding the risk of an arbitrator restricting coverage under the Whole Account.
15. Unicover and Pallat failed timely to disclose to ReliaStar the same material information.
16. Unicover and Pallat made material misrepresentations to ReliaStar regarding the volume and type of business written.
17. Aon Re and Smith made additional misrepresentations to Cackett and to Pallat concerning the progress of the cancel/re-write and to Pallat concerning the soundness of the retrocessionaires' own retrocessional protection.

18. Aon Re and Smith intended to conceal information in order to cause ReliaStar falsely to believe that the promised retrocessional protection remained secure.
19. Pallat and Unicover intended to conceal information and misrepresent the information in order to cause ReliaStar falsely to believe that the expected retrocessional protection was and remained secure.
20. Aon Re and Smith misrepresented information to Pallat and Cackett in order to facilitate the continued writing of business under the Whole Account.
21. While aware of the growing risk to ReliaStar's retrocessional coverage, Unicover and Pallat continued writing additional business for the Unicover Pool.
22. While aware of the growing risk to ReliaStar's retrocessional coverage, defendants actively and affirmatively encouraged Unicover and Pallat to keep writing business and solicited of behalf of Unicover new business to be placed under the Whole Account.
23. Defendants had an agreement with Unicover and Pallat to engage in this conduct.
24. Defendants knowingly participated and assisted in Unicover's and Pallat's omissions and misrepresentations.
25. Defendants accepted the fruits of Unicover's and Pallat's misconduct, including in the form of increased fees.
26. Defendants actively, knowingly and substantially assisted Unicover and Pallat in breaching fiduciary duties owed to ReliaStar by (i) encouraging Pallat to keep writing business, (ii) holding a meeting with Aon Corp. brokers designed to increase inward business and (iii) making statements to Cackett designed to mislead the retrocessionaires concerning the amounts of business being written and the possibility of finding replacement coverage.
27. Defendants were regularly aware of Unicover's and Pallat's role in the breaching of their fiduciary duties owed to ReliaStar.
28. Unicover and Pallat made Aon Re the sole broker for the Pool members because Aon Re was assisting Unicover and Pallat in increasing the business written, despite the growing risk to ReliaStar's retrocessional coverage.

29. ReliaStar relied upon Aon Re and Smith to disclose material information and to act to protect its interests.
30. It was reasonable and appropriate for ReliaStar to rely on defendants to protect ReliaStar's interests and to disclose material information.
31. ReliaStar relied upon Unicover and Pallat to disclose material information and to act to protect its interests.
32. It was reasonable and appropriate for ReliaStar to rely on Unicover and Pallat to protect ReliaStar's interests and to disclose material information.
33. Had defendants or Unicover and Pallat disclosed the relevant information to ReliaStar, ReliaStar would have taken steps to stop Unicover from writing more business on its behalf.
34. Had Unicover and Pallat not made misrepresentations to ReliaStar, ReliaStar would have taken steps to stop Unicover from writing more business on its behalf.
35. The increase in volume of business placed under the Whole Account in late 1998 and early 1999, despite the protests of the retrocessionaires, was a substantial factor in the loss of retrocessional coverage.
36. The loss of retrocessional coverage was a foreseeable result of the increasing volume of business being ceded under the Whole Account.
37. ReliaStar was damaged by the loss of retrocessional coverage under the Whole Account.

B. Legal Contentions

See the parties' alternative proposed instructions and stated objections contained in the attached Proposed Joint Jury Instructions and the Motions in Limine identified below. Without limitation to the issues in dispute reflected therein, plaintiff identifies the following Legal Contentions as likely to be in dispute:

1. An insurance broker owes to the insured fiduciary duties of utmost good faith, rectitude, care and loyalty, including a duty to disclose to the insured all material facts.
2. An insurance broker owes to the insured the exercise of competence, reasonable skill and diligence.
3. A reinsurance broker owes to the reinsured the same fiduciary duties as an insurance broker owes to an insured.
4. An agent owes its principal the fiduciary duties of utmost good faith, rectitude, care and loyalty, including the duty to disclose all material facts.
5. A sub-agent owes the principal the same fiduciary duties as the agent owes to the principal.
6. Defendants owed fiduciary duties to ReliaStar
 - a. as intermediary brokers;
 - b. as sub-agents;
 - c. as a licensed reinsurance intermediary; and
 - d. as the intermediary that recruited ReliaStar to join the Unicover Pool.

7. Unicover and Pallat owed fiduciary duties to ReliaStar.
8. An agent can enter into a conspiracy with a subagent.
9. Statements that are technically true may be fraudulent where they omit material qualifying information.
10. A principal cannot be charged with knowledge of what any of its agents knows, receives notice of, or could have learned through reasonable diligence, where the agent has failed to act with good faith, honesty, and fairness toward the principal; the person claiming the benefit of notice to the principal through notice to the agent has colluded with the agent to defraud the principal; the person claiming the benefit of notice has reason to expect that that the agent will not communicate the knowledge to the principal, because the agent is acting in his own interest and adverse to that of his principal or has a motive or interest in concealing the fact; or the subject of the knowledge is outside the scope of the agent's responsibilities as agent or the person claiming the benefit of notice has a duty or has undertaken to provide the information to the principal, rather than to the agent.
11. ReliaStar is entitled to recover compensation for the full amount of its injury from any defendant responsible for the injury. The Court may reduce recovery by the amount of settlements.

V. FACTUAL AND LEGAL CONTENTIONS OF DEFENDANTS AS TO NON-LIABILITY AND AFFIRMATIVE DEFENSES.

A. Factual Contentions

1. Unicover Mangers, Inc. ("Unicover") was a reinsurance underwriting management company founded by John Pallat ("Pallat") and Tom Dunn ("Dunn") that produced and underwrote reinsurance of occupational accident liability arising from workers' compensation insurance.
2. The Occupational Accident Reinsurance Pool ("Unicover Pool") was a group of insurance and reinsurance companies that assumed reinsurance obligations arising out of primary workers' compensation business, i.e., "carve-out" reinsurance for all but the "Employer's Liability" portion of workers' compensation coverage.
3. Unicover was the agent of the Unicover Pool.

4. Chris Mays (“Mays”) was an insurance/reinsurance broker who, at all relevant times, worked for Rattner Mackenzie Limited (“Rattner Mackenzie”). Mays assisted Pallat and Dunn in identifying and recruiting potential pool members, and he helped them set up the Unicover Pool.
5. As agent of the Unicover Pool, Unicover hired Mays to obtain retrocessional coverage for the Unicover Pool and to help manage the Unicover Pool.
6. Unicover also hired Roger Smith (“Smith”) of Aon Re, Inc. (“Aon Re”) to assist Mays in obtaining retrocessional coverage for the Unicover Pool and in managing the Unicover Pool.
7. The Unicover Pool Management Agreement (“Management Agreement”) entered into between Unicover and the pool members did not impose any limitation on the amount of business that Unicover could write.
8. The Unicover Pool operated on an annual basis - - each year comprising a “Pool Year” that ran from March 1 through February 28 of the following year. The first pool year ran from March 1995 through February 1996 (“Pool Year One”), the second pool year ran from March 1996 through February 1997 (“Pool Year Two”), the third pool year ran from March 1997 through February 1998 (“Pool Year Three”) and the fourth pool year ran from March 1998 through February 1999 (“Pool Year Four”).
9. ReliaStar Life Insurance was not a member of Pool Years One through Three, but became a 5% member in Pool Year Four.
10. ReliaStar Life Insurance is a sophisticated insurance company and a lead player in the workers’ compensation carve-out market.
11. Before ReliaStar Life Insurance decided to join the Unicover Pool, ReliaStar Life Insurance conducted extensive due diligence and analysis of the Unicover Pool and learned that:
 - a. Unicover’s primary goal was to earn a profit for the pool members;
 - b. Unicover did not consider whether the retrocessionaires for the Unicover Pool would make a profit or suffer losses;
 - c. there was no limit in the amount of premium that Unicover could cede to the Unicover Pool’s retrocessionaires;

- d. the rates charged by the retrocessionaires were significantly less than the losses that were likely to be assumed by them; and
- e. given the structure of the Unicover Pool, there was a chance that the retrocessionaires would refuse to pay all of their obligations.

12. Although Unicover estimated that for Pool Year Four it would write \$150 million in business, ReliaStar Life Insurance knew that this was only an estimate and expected that the estimate would be exceeded by multiples.
13. None of the pool members, including ReliaStar Life Insurance, ever insisted on a limitation of the amount of business that Unicover could write.
14. None of the pool members, including ReliaStar Life Insurance, ever objected to the amount of business that Unicover wrote during Pool Year Four.
15. In August 1997, Unicover appointed Mays as “the lead and servicing broker for all business reinsured by the pool.” As the lead broker, Unicover required that Mays, among other things, handle all administrative matters of the pool between its members and Unicover and act as the conduit of communication between Unicover and the pool members. Mays also was required by Unicover to “place and administer retrocessions.”
16. Mays obtained retrocessional coverage for the Unicover Pool from Sun Life Assurance Company of Canada (“Sun Life”) and Phoenix Home Life Insurance Company (“Phoenix”) through their managing general underwriter (“MGU”), Centaur Underwriting Management, Ltd. (“Centaur”), and from Cologne Life Reinsurance Company (“Cologne”) through its MGU, CRF Underwriting Management (“CRF”) (the “Pool Retros”).
17. John Cackett (“Cackett”), an underwriter well known in industry circles as a successful arbitrageur, founded Centaur in 1996 and managed Centaur’s relationship with Unicover.
18. For the first two pool years (March 1995 through February 1997), the Unicover Pool ceded risks to the Pool Retros on a per risk basis, known as a facultative basis.
19. Effective March 1, 1997, Unicover and the Pool Retros entered into an obligatory treaty pursuant to which the Pool Retros agreed to assume all the risks ceded by the Unicover Pool for a period of one year (the “One Year Whole Account”).
20. Mays alone negotiated and placed the One Year Whole Account with Centaur and CRF on behalf of the Pool Retros - - Smith had no involvement.

21. At Cackett's suggestion, the One Year Whole Account was cancelled mid-term and replaced with a three year treaty through which the Pool Retros agreed to assume all risks ceded by Unicover from any facility for which Unicover underwrote (the "Three Year Whole Account").
22. Mays alone negotiated and placed the Three Year Whole Account with Centaur and CRF on behalf of the Pool Retros - - Smith had no involvement.
23. There was no limit on the amount of business that Unicover was permitted to cede to the Pool Retros under the Three Year Whole Account.
24. Cackett informed Pallat and Mays that Centaur had no premium limits with Sun Life and Phoenix and that he could absorb increased premium written by Unicover.
25. Cackett obtained outwards retrocessional protection for the business that Centaur wrote on behalf of Sun Life and Phoenix.
26. At various points during 1998, Cackett informed Pallat and Mays, at meetings without Smith, that he was happy with the premium volume ceded by Unicover, but that he was having difficulties with Centaur's reinsurance because of premium limits in the agreements with the outwards retrocessions Centaur had behind Sun Life and Phoenix.
27. In June 1998, pursuant to Unicover's direction, Smith replaced Mays as the lead broker with respect to placing and administering the Unicover Pool's retrocessions. Mays continued in his role as lead pool facilitator responsible for administering pool business and communicating with the pool members. Smith did not have this responsibility.
28. Mays served as the lead pool facilitator charged with communicating with the pool members until December 1998.
29. After Smith replaced Mays as the lead broker responsible for placing and administering the Unicover Pool's retrocessions, Smith kept Mays and Pallat informed about Cackett's reinsurance issues.
30. At all relevant times, Pallat was aware of all material facts with respect to the Unicover Pool's retrocessions and the Pool Retros.
31. Unicover, Rattner Mackenzie and Aon Re all undertook efforts to help solve Cackett's retrocessional problems.

32. ReliaStar Life Insurance knew about Cackett's problem with his outwards retrocessions.
33. The Unicover Pool members, including ReliaStar Life Insurance, regularly communicated directly with Unicover throughout Pool Year Four.
34. ReliaStar Life Insurance received regular reports from Unicover, which provided detail regarding the business written by Unicover.
35. In July 1998, ReliaStar Life Insurance learned from Unicover that the projected premium for Pool Year Four was more than double the estimate that had been provided to ReliaStar Life Insurance when it joined the Unicover Pool. ReliaStar Life Insurance was happy with the volume and viewed the Unicover Pool as a success.
36. In late July 1998, Sun Life conducted an audit of Unicover's operations and issued a report in September. Sun Life made no complaint about the volume of business written by Unicover or any other material aspect of Unicover's underwriting.
37. In August 1998, Unicover held a meeting for Unicover Pool members at which it provided an update on the status of pool business. ReliaStar Life Insurance was unable to attend, so Unicover held a separate meeting with ReliaStar Life Insurance. At this meeting, ReliaStar Life Insurance learned that Unicover had a significant amount of prospective business coming in. ReliaStar Life Insurance came away from this meeting with the impression that "business was booming" and that the pool members would realize "very respectable returns by Unicover's arbitrage method" of underwriting business.
38. Unicover subsequently provided ReliaStar Life Insurance with the written materials that it provided to the other Unicover Pool members at the group meeting.
39. Following the August 1998 Unicover Pool meeting, all the Unicover Pool members, including ReliaStar Life Insurance, were aware of the significant growth of business written to the Unicover Pool and ceded to the Pool Retros.
40. ReliaStar Life Insurance learned during the Fall of 1998 that Unicover had vastly exceeded the already increased estimates it provided in July and August.

41. Phoenix and Cologne, Pool Year Four members, were aware of (a) the volume of business written by Unicover and, (b) the issues concerning the Pool Retros because they were both pool members and retrocessionaires. Neither Phoenix nor Cologne instructed Unicover to cease writing business.
42. In September 1998, based upon information provided by Unicover to the Unicover Pool members (including ReliaStar Life Insurance) at the August 1998 meeting, CIGNA, the pool member with the greatest percentage interest, expressed to Unicover its concern about whether the Pool Retros would be willing to pay the significant losses which would be generated by the increased business.
43. On November 10, 1998, CIGNA met with Unicover and Mays, without Smith, to discuss concerns about the Pool Retros' willingness to pay the losses ceded to them by the Unicover Pool.
44. CIGNA did not request that Unicover stop writing new business.
45. Even though the other Pool Year Four members audited Unicover, ReliaStar Life Insurance never did.
46. ReliaStar Life Insurance never asked Unicover to stop writing business.
47. The other Unicover Pool members did not ask Unicover to stop writing business until after January 25, 1999, when one of the Pool Retros claimed rescission of its agreement to provide reinsurance to the Unicover Pool.
48. Even when ReliaStar Life Insurance learned that Unicover may have written \$1 billion in premium, ReliaStar Life Insurance's only concern was whether Unicover had the administrative capability to manage the business.
49. If Pallat concealed any material information from ReliaStar Life Insurance, Aon Re and Smith were not aware of it.
50. If Pallat made any misrepresentations to ReliaStar Life Insurance, Aon Re and Smith were not aware of it.
51. The Unicover Pool members, including ReliaStar Life Insurance, were aware, or could have become aware with reasonable inquiry, of all material facts with respect to the Unicover Pool's retrocessions and the Pool Retros.

B. Legal Contentions

See the parties' alternative proposed instructions and stated objections contained in the attached Proposed Joint Jury Instructions and the Motions in Limine identified below. Without limitation to the issues in dispute reflected therein, defendants identify the following Legal Contentions as likely to be in dispute:

1. Unicover was an agent of the members of the Unicover Pool.
2. Any information communicated by Aon Re and Smith to Pallat and/or Unicover is imputed to the Unicover Pool members.
3. Any information that Pallat and/or Unicover could have ascertained through reasonable diligence is imputed to the Unicover Pool members.
4. If Pallat or Unicover were aware of any fact that ReliaStar Life Insurance alleges it was not aware of, ReliaStar Life Insurance, by operation of law, is aware of that fact.
5. Any information communicated by Aon Re and Smith to Mays and/or Rattner Mackeznie is imputed to the Unicover Pool members.
6. Any information that Mays and/or Rattner Mackenzie could have ascertained through reasonable diligence is imputed to the Unicover Pool members.
7. If Mays or Rattner Mackenzie were aware of any fact that ReliaStar Life Insurance alleges it was not aware of, ReliaStar Life Insurance, by operation of law, is aware of that fact.
8. If ReliaStar Life Insurance fails to prove by clear and convincing evidence that a fraudulent conspiracy existed between Aon Re and Smith on the one hand, and Pallat on the other, or that Aon Re and Smith aided and abetted Pallat in defrauding ReliaStar, then ReliaStar Life Insurance will not be able to prove its breach of fiduciary duty claim, because the evidence will show that Pallat knew material facts concerning the Unicover Pool's retrocessions and the Pool Retros. In this event, this case cannot go to a jury based on breach of fiduciary duty or aiding and abetting same.
9. The scope of the fiduciary relationship between a sub-agent and principal extends only to matters over which the parties have agreed that the sub-agent would act on the principal's behalf.
10. The scope of a sub-agent's fiduciary duties also may be determined by custom and practice in the relevant industry.

11. Aon Re and Smith did not breach any fiduciary duties that they may have owed to ReliaStar Life Insurance.
12. Aon Re and Smith did not assist Pallat in breaching any of the duties Pallat and Unicover owed to ReliaStar Life Insurance.
13. Aon Re and Smith did not withhold or conceal material information from ReliaStar Life Insurance.
14. ReliaStar Life Insurance is unable to prove what material fact was withheld or concealed by Aon Re and Smith.
15. ReliaStar Life Insurance knew or could have discovered the facts it alleges were withheld or concealed by Aon Re, Smith and/or Pallat.
16. Even if Aon Re and Smith did conceal or withhold material information from ReliaStar Life Insurance, ReliaStar Life Insurance did not rely on any such concealment because it cannot demonstrate that it could or would have taken different steps had it known, or that any steps it could or would have taken would have prevented or reduced its purported damages.
17. If Pallat defrauded ReliaStar Life Insurance, Aon Re and Smith did not assist him.
18. If Pallat concealed or withheld material information from ReliaStar Life Insurance, Aon Re and Smith did not assist him.
19. A party must be aware of its role in aiding and abetting a fraudulent scheme to be liable for aiding and abetting fraud.
20. A party must substantially assist the primary actor to be liable for aiding and abetting fraud.
21. A party must be aware of its role in aiding and abetting a breach of fiduciary duty to be liable for aiding and abetting breach of fiduciary duty.
22. A party must substantially assist the primary actor to be liable for aiding and abetting breach of fiduciary duty.
23. A party cannot be liable for conspiracy to commit fraud unless it knowingly and voluntarily participated in a common scheme to defraud a third party.
24. ReliaStar Life Insurance cannot demonstrate that there was an agreement between Aon Re and Smith on the one hand, and Pallat on the other, to defraud ReliaStar Life Insurance.

25. ReliaStar Life Insurance is unable to establish that the decision by the Sun Life Arbitration panel to truncate the Unicover Pool's retrocessional coverage was based on any conduct by Aon Re and Smith.
26. ReliaStar Life Insurance is unable to prove what it could or would have done had it known about either the information allegedly withheld or concealed or the truth with respect to any fraudulent misrepresentations made by Pallat.
27. To prove its damages, ReliaStar Life Insurance must demonstrate what risks were bound to the Unicover Pool after any tortious act committed by Aon Re and Smith occurred.
28. ReliaStar Life Insurance has suffered no recoverable damages.
29. To the extent that ReliaStar Life Insurance has suffered recoverable damages, Pallat, Dunn, Unicover, Mays and/or Rattner are responsible for ReliaStar Life Insurance's purported damages.
30. Any misrepresentations allegedly made by Aon Re and Smith to Pallat or Cackett cannot form the basis for a fraud claim by ReliaStar Life Insurance against Aon Re and Smith.
31. In deciding Aon's motion for summary judgment, the Court determined that ReliaStar Life Insurance failed to prove that Aon Re and Smith misrepresented a material fact.
32. The responsibility of Aon Re and Smith and the right of ReliaStar Life Insurance to recover in this action can only be determined after the percentages of responsibility of all parties involved, including the settling defendants, are determined.
33. See Defendants' Motions in Limine Section XIX *infra*.

VI. PLAINTIFF'S STATEMENT OF THE NATURE OF DAMAGES.

ReliaStar is seeking to recover in damages the amount of money it lost as a result of its participation in the Unicover Pool, the compensation paid to defendants and the costs and expenses it incurred in the efforts it undertook successfully to mitigate and reduce the amount of such losses. ReliaStar is also seeking prejudgment interest and punitive damages for the breaches of fiduciary duty.

VII. STATEMENT OF THE LEGAL ISSUES PRESENTED.

See the parties' respective Statements of Legal Contentions and Motions in Limine. Without limitation to the issues in dispute reflected therein, the parties identify the following Legal Issues Presented:

1. Whether ReliaStar may be charged with knowledge of particular facts that Unicover, Pallat, Rattner Mackenzie or Mays knew or could have learned through reasonable diligence?
2. If Aon Re and Smith were brokers, agents and/or subagents of ReliaStar, what duties did they owe to ReliaStar.
3. Whether the New Jersey rule or the Illinois rule regarding apportionment and/or set off applies with respect to ReliaStar's damages claim against Aon Re and Smith.
4. Whether a finding that defendants conspired with Pallat or Unicover, or aided and abetted a fraud by Pallat or Unicover, a necessary condition to either a claim for breach of fiduciary duty by defendants or a claim for aiding and abetting by defendants of a breach of fiduciary duty by Pallat or Unicover.

VIII. PLAINTIFF'S WITNESSES

Witness	Form	Subject
Paul Kersten	Live	Mr. Kersten will testify about ReliaStar's participation in the Unicover Pool and its dealings with Unicover Managers.
Teresa Wurst Carroll	Live	Ms. Carroll will testify about ReliaStar's reinsurance business, its relationships with defendants, its decision to participate in the Unicover Pool and its participation in the Unicover Pool.
John Pallat	Live	Mr. Pallat will testify about the Unicover Pool, his dealings with ReliaStar and his dealings with defendants.
Roger Smith	Live	Mr. Smith will testify about the business of Aon Re, his dealings with ReliaStar, his dealings with the Unicover Pool and John Pallat, his dealings with John Cackett and the Pool retrocessionaries and the role of Aon Corp. in connection with the Unicover Managers business.

Chris Mays	Deposition	Mr. Mays will testify about his dealings with the Unicover Pool and John Pallat, his dealings with the Pool retrocessionaires, his dealings with ReliaStar and his dealings with defendants.
Mike Emerson or Eric Griffin	Live	Mr. [Emerson/Griffin] will testify about accounting books and records of ReliaStar and the accounting impact on ReliaStar of the loss of retrocessional coverage in connection with the Unicover Pool.
Milliman Representative	Live	The Milliman representative will testify about the calculation of the IBNR for the Unicover Pool.
Gerald Sherman	Live	Mr. Sherman will testify, if such subjects are deemed admissible, about the amendments to the Complaint and the settlements with other original defendants.
Mike Bungert	Live	Mr. Bungert will testify about fees and commissions received by Aon Re and Aon Corp. in connection with the Unicover Pool, and the importance of the Unicover business to Aon Re and Aon Corp.
Mike O'Halleran	Live	Mr. O'Halleran will testify about fees and commissions received by Aon Re and Aon Corp. in connection with the Unicover Pool, and the importance of the Unicover business to Aon Re and Aon Corp.
[]	Live	Witnesses to authenticate documents, to the extent necessary.

IX. DEFENDANTS' WITNESSES

Witness	Form	Subject Matter
Roger Smith	Live	Mr. Smith will testify about his involvement with Unicover, the Unicover Pool and with the Pool Retros.
Chris Mays	Deposition	Mr. Mays will testify about his dealings with Unicover, the Unicover Pool, the Pool Retros and with Mr. Smith.
John Pallat	Live	Mr. Pallat will testify about Unicover, the Unicover Pool, his dealings with the Pool Retros and with Messrs. Mays and Smith.
Paul Kersten	Live	Mr. Kersten will testify about ReliaStar Life Insurance's involvement with Unicover and the

		Unicover Pool.
Theresa Wurst	Live	Ms. Wurst will testify about ReliaStar Life Insurance's involvement with Unicover and the Unicover Pool.
Erik Rasmussen	Live or Deposition	Mr. Rasmussen will testify about ReliaStar Life Insurance's workers' compensation carve out business.
[_____]	Live	Witnesses to authenticate documents, to the extent necessary.

Aon Re reserves the right to call as witnesses at trial any witnesses identified by ReliaStar Life Insurance and not excluded from testifying pursuant to Aon Re's objections.

X. PLAINTIFF EXPERT WITNESSES

Plaintiff will call no expert witnesses.

XI. DEFENDANTS EXPERT WITNESSES

Witness	Form	Subject Matter
E.W. Blanch, Jr.	Live	Mr. Blanch will testify about customs, practices and industry standards regarding the duties of reinsurance brokers in a pool context. <u>See</u> Expert Report.

XII. PLAINTIFF'S EXHIBIT LIST

See attached.

XIII. DEFENDANTS' EXHIBIT LIST

See attached.

XIV. DEPOSITION AND DISCOVERY EXCERPTS TO BE USED AS EVIDENCE

A. Plaintiff's Designations

1. Chris Mays

- 8:7-8:10
- 9:19-11:25
- 14:15-16:25
- 17:15-18:23
- 19:13-19:24
- 22:22-23:9
- 23:19-24:1
- 24:9-24:25
- 25:3-25:8
- 25:19-27:19
- 28:20-30:2
- 30:13-30:20
- 30:23-31:5
- 32:22-33:24
- 37:6-37:11
- 37:13-39:23
- 40:8-42:4
- 42:21-44:18
- 46:7-47:21
- 49:9-50:10
- 52:9-56:20
- 57:19-58:21
- 61:17-62:5
- 62:11-63:4
- 65:3-67:6
- 67:20-70:19
- 71:5-72:1
- 72:8-74:19
- 75:19-76:18
- 77:11-77:19
- 79:1-80:6
- 81:24-82:7
- 83:11-83:18
- 84:20-85:7
- 87:19-89:5
- 89:18-90:3
- 90:24-91:15

- 92:10-94:15
- 95:22-97:4
- 99:18-100:13
- 101:5-102:9
- 102:14-104:6
- 104:14-104:21
- 105:14-106:25
- 107:5-110:7
- 110:18-112:1
- 112:24-114:19
- 114:24-115:4
- 115:13-117:18
- 118:6-118:22
- 119:21-121:2
- 121:17-125:14
- 126:11-128:25
- 130:13-131:10
- 131:25-135:7
- 136:5-136:17
- 136:24-138:13
- 138:21-140:24

Defendants' Objections to Plaintiff's Designations

- 8:7-10; 9:19-10:11—violates R. 4:16-1(c)
- 28:20-29:23 —speculation, lack of foundation
- 33:19-24 —speculation; lack of foundation.
- 37:14-24; 39:11-12 —speculation, lack of foundation
- 39:18-23; 40:18-42:4—403; hearsay; authentication; speculation; lack of foundation.
- 43:1-44:18—speculation; lack of foundation; relevance
- 61:23-62:5—speculation; lack of foundation
- 66:13-21—leading; vague; speculation; lack of foundation
- 75:25-76:8—speculation; lack of foundation
- 79:1-4—speculation; lack of foundation
- 81:24-82:7—strike answer as non-responsive
- 84:20-85:7—speculation; assumes fact not in evidence
- 87:19-89:5—violates R 4:16-1(c); hearsay
- 89:18-90:3—speculation
- 90:24-91:15—opinion; legal conclusion; speculation; lack foundation
- 99:18-100:13—violates R 4:16-1(c); speculation; lack of foundation
- 107:23-108:21—speculation; lack of foundation; assumes fact not in evidence

- 108:22-109:7—speculation; relevance; misleading
- 126:15-127:2—speculation; lack of foundation; assumes fact not in evidence
- 342:24-343:7—speculation

Defendants' Counter-Designations

- 30:20-22
- 31:6-21
- 32:8-21
- 33:25-34:5
- 50:10-18
- 67:7-19
- 70:20-71:4
- 74:20-75:2
- 75:14-18
- 77:20-25
- 78:6-25
- 82:8-83:10
- 90:4-13
- 91:16-21
- 97:5-98:6
- 104:7-13
- 104:22-25
- 107:1-4
- 117:19-118:5
- 118:23-119:20
- 129:4-130:8
- 135:22-136:4
- 343:8-17

B. Defendants' Designations

1. Chris Mays:

- 10:19-24
- 11:3-13:20
- 14:15-16
- 14:19-15:15
- 15:24-16:12
- 17:15-21
- 19:13-24
- 22:4-11
- 31:16-21
- 32:8-33:11

- 52:9-57:13
- 62:11-63:4
- 67:7-69:22
- 70:2-11
- 70:15-25
- 71:5-19
- 72:8-75:2
- 75:14-18
- 77:11-25
- 78:6-7
- 78:9-25
- 92:10-93:21
- 94:16-95:17
- 95:22-96:7
- 96:21-97:17
- 97:25-98:6
- 102:14-104:25
- 105:14-106:14
- 106:18-107:15
- 109:14-112:1
- 113:13-114:19
- 114:24-125:14
- 126:11-14
- 129:4-130:8
- 131:25-134:24
- 135:22-136:4
- 138:21-140:24
- 149:11-152:23
- 153:8-17
- 154:23-156:8
- 157:18-158:17
- 159:7-161:4
- 161:12-163:14
- 166:13-168:4
- 168:8-169:12
- 169:14
- 171:6-9
- 171:12-25
- 172:13-15
- 172:17-173:5
- 173:7-10
- 173:15-176:15
- 176:17-177:25
- 178:2-18

- 178:20-180:12
- 184:15-186:3
- 186:20-187:25
- 188:12-21
- 188:23-190:9
- 190:12-192:17
- 193:2-194:3
- 197:1-198:16
- 198:18-198:22
- 198:24-199:9
- 199:17-200:11
- 200:17-202:14
- 203:6-204:1
- 204:11-205:13
- 206:2-7
- 207:12-17
- 214:11-215:5
- 218:23-219:13
- 219:25-220:7
- 220:19-221:2
- 221:12-23
- 236:14-238:11
- 239:23-243:6
- 243:12-252:12
- 253:6-254:5
- 254:25-256:16
- 256:18-257:1
- 257:3-6
- 257:21-258:6
- 258:8-259:7
- 260:3-5
- 260:8-24
- 261:6-265:13
- 266:4-268:14
- 268:16-270:7
- 271:2-273:15
- 274:1-275:9
- 275:19-24
- 277:13-23
- 277:25-279:19
- 280:7-15-282:6
- 282:16-283:2
- 283:4-12
- 285:18-288:2

- 288:13-291:10
- 291:12-293:17
- 293:19-21
- 294:7-297:17
- 298:14-21
- 299:8-309:4
- 309: 16-310:17
- 310:19-311:19
- 311:21-312:23
- 312:25-315:13
- 315:20-317:1
- 317:3-8
- 317:10-21
- 317:24-321:24
- 322:5-326:12
- 326:21-327:15
- 329:12-330:22
- 330:24-332:10
- 332:20-333:16
- 334:10-335:15
- 335:18-337:24
- 338:2-9
- 338:19-339:9

Plaintiff's Objections to Defendants' Designations

- 161:24-163:2—speculation, lack of foundation, assumes facts not in evidence
- 168:1-4—speculation, assumes facts not in evidence
- 169:11-14—leading
- 171:6-25—leading, speculation, assumes facts not in evidence
- 172:13-173:1—speculation , assumes facts not in evidence
- 173:2-10—leading, speculation
- 177:22-178:12—lack of foundation
- 198:15-199:2—speculation, leading
- 203:6-204:1—speculation, lack of foundation
- 204:11-205:13—speculation, lack of foundation
- 206:2-7—speculation
- 207:12-17—speculation
- 240:7-24—speculation
- 245:15-24—speculation
- 247:25-248:11—speculation, leading
- 255:13-16—speculation

- 256:14-17—leading
- 258:2-9—leading
- 268:12-16—leading
- 277:22-278:1—leading
- 304:14-21—leading, assumes facts not in evidence
- 310:15-22—speculation
- 312:22-313:22—leading

Plaintiff's Counter-Designations

- 156:9-23
- 157:8-17
- 158:18-21
- 161:5-11
- 163:15-164:2
- 164:9-165:13
- 169:13
- 171:10-11
- 172:16
- 173:6
- 176:16
- 178:1
- 178:19
- 180:13-181:13
- 186:4-9
- 186:16-19
- 188:1-11
- 188:22
- 198:17
- 198:23
- 204:7-10
- 219:22-23
- 224:10-17
- 254:6-9
- 256:17
- 257:7-20
- 258:7
- 259:8-13
- 260:6-7
- 273:16-25
- 277:24
- 280:4-6
- 283:3
- 284:1-24

- 291:11
- 293:18
- 293:22-294:6
- 310:18
- 311:20
- 312:24
- 317:2
- 317:9
- 317:22-23
- 326:13-18
- 330:23
- 337:25
- 340:5-14

Defendants' Objections to Plaintiff's Counter-designations

- 161:5-11—speculation
- 257:7-20—speculation; lack of foundation
- 273:16-25—lack of foundation
- 293:22-294:6—speculation; lack of foundation

Defendants' Counter-counter-designations

- 165:14-166:12
- 204:2-6
- 259:19-260:2
- 283:13-25
- 339:10-340:4

2. Erik Rasmussen

- 4:13-14
- 6:12-8:8
- 9:21-13:14
- 18:14-19:2
- 19:14-18
- 23:24-24:5
- 24:16-21
- 25:6-15
- 26:22-27:4
- 35:18-24
- 37:18-38:16
- 40:3-41:12
- 43:25-45:21

- 46:17-25
- 47:15-48:15
- 49:11-50:18
- 64:25-68:2
- 68:20-69:6
- 70:19-71:2
- 71:21-73:4
- 75:2-8
- 83:6-15
- 86:6-87:7
- 95:11-21
- 99:22-100:9
- 165:2-18
- 171:16-20
- 172:9-14
- 177:2-11
- 178:22-180:2
- 180:6-11

Plaintiff's Counter-Designations

- 4:15-17
- 6:19-21
- 6:24-7:15
- 10:10-15
- 11:14-23
- 13:5-22
- 17:7-15
- 17:22-19:7
- 25:6-15
- 26:22-27:9
- 28:14-29:11
- 30:18-23
- 31:3-5
- 31:22-32:13
- 33:3-16
- 43:19-21
- 43:25-44:14
- 45:22-46:6
- 46:7-16
- 47:15-23
- 48:4-19
- 49:11-50:5
- 50:19-51:8

- 54:14-55:9
- 57:3-9
- 57:18-58:2
- 58:14-17
- 58:22-59:4
- 64:5-15
- 66:11-20
- 69:7-9
- 82:25-83:5
- 83:16-19
- 83:24-84:5
- 85:10-86:5
- 88:23-89:24
- 98:12-99:3
- 99:10-21
- 138:12-139:13
- 143:17-25
- 145:8-146:19
- 150:24-151:8
- 159:15-160:3
- 160:9
- 160:13-161:22
- 171:21-172:8
- 214:15-25

Defendants' Objections to Plaintiff's Counter-Designations

- 64:10-15—assumes facts not in evidence
- 97:12-99:3—calls for legal conclusion
- 138:12-139:13—lack of foundation
- 145:8-146:19—lack of foundation; improper opinion testimony
- 150:24-151:8—lack of foundation; relevance

Defendants' Counter-Counter-Designations

- 17:16-21
- 19:14-18
- 29:12-30:17
- 32:14-33:2
- 43:22-24
- 44:15-45:21
- 46:17-25
- 47:24-48:2

- 50:6-18
- 64:25-66:10
- 66:21-68:2
- 68:20-69:6
- 69:10-70:4
- 70:19-71:2
- 83:6-15
- 84:6-18
- 86:6-87:7
- 99:4-9
- 99:22-100:9
- 139:14-24
- 144:2-10
- 144:19-145:7
- 146:20-147:20
- 151:9-25
- 172:9-14

Plaintiff's Objections to Defendants' Counter-Counter-Designations

- 144:2-10—calls for a legal conclusion
- 151:9-25—relevance

XV. DEMONSTRATIVE EXHIBITS. (Demonstrative exhibits are to be made available for review or specifically described. Each demonstrative exhibit is to be separately set forth.)

A. Plaintiff.

1. Exhibit(s) setting forth relationships among the parties and other participants in the Uncover business.
2. Exhibit(s) setting forth chronologies of relevant events.
3. Exhibit(s) demonstrating the flows of funds among the participants in the Uncover business.
4. Exhibit(s) demonstrating the volume of business written by Uncover and ceded to the Whole Account.

B. Defendants.

1. Exhibit(s) setting forth the relationships among the parties and other key players involved in the Uncover Pool or the retrocessional agreements covering the Uncover Pool.
2. Exhibit(s) setting forth the responsibilities of each of the agents and sub-agents.
3. Exhibit(s) setting forth the facts known to ReliaStar Life Insurance before it joined the Uncover Pool.
4. Exhibit(s) setting forth chronologies of relevant events.
5. Exhibit(s) setting forth communications between the relevant players.
6. Exhibit(s) setting forth the facts known to Pallat and Uncover or Mays and Rattner Mackenzie during the relevant time period.

The parties agree that the demonstrative exhibits described herein are preliminary only and that the parties may supplement or edit same until they exchange such demonstratives in advance of their anticipated use. The parties will exchange demonstrative exhibits ___ in advance of their anticipated use. Opposing counsel will advise of any objections within _____.

XVI. JURY INSTRUCTIONS.

See attached.

XVII. JURY QUESTIONS.

See attached.

XVIII. PLAINTIFF'S IN LIMINE MOTIONS

1. Motion to preclude various portions of the expert report of E.W. Blanch, Jr. and any testimony reflecting or relating to such portions.
2. Motion to preclude statements made by counsel for ReliaStar in the arbitration and certain pleadings filed in the arbitration.
3. Motion to preclude ReliaStar's settlement agreements with the settling defendants and testimony related thereto.
4. Motion to preclude ReliaStar's first complaint.

XIX. DEFENDANTS' IN LIMINE MOTIONS

1. Motion to preclude ReliaStar Life Insurance from offering testimony in its case in chief as to the standard of care owed by Aon Re or Smith to ReliaStar Life Insurance.
2. Motion to preclude ReliaStar Life Insurance from offering testimony to support its damages claim that would expand the scope of deposition testimony offered by ReliaStar Life Insurance's corporate designees.
3. Motion to preclude ReliaStar Life Insurance from offering evidence of any IBNR damages it purports to have suffered.
4. Motion to preclude ReliaStar Life Insurance from offering evidence of its claim for attorneys fees and expenses.
5. Motion to preclude ReliaStar Life Insurance from introducing evidence of the decision in the Sun Life Arbitration or the basis for that decision.
6. Motion for an instruction to the jury regarding certain positions taken by ReliaStar Life Insurance in this litigation or, in the alternative, to preclude ReliaStar Life Insurance from denying positions it took in this litigation.
7. Motion to preclude ReliaStar Life Insurance from introducing evidence that Roger Smith avoided service in the Sun Life Arbitration and/or that he refused to produce documents in connection with that arbitration.

8. Motion to preclude ReliaStar Life Insurance from introducing evidence that Roger Smith and/or Aon Re refused to produce or provide access to documents prior to or in connection with any Unicover-related dispute, litigation or arbitration.
9. Motion to preclude ReliaStar Life Insurance from introducing into evidence an email dated June 10, 1998, from David Claughton to Jason Limber and Mark Troutman marked as Exhibit 27 at the deposition of John Pallat.
10. Motion to preclude ReliaStar Life Insurance from seeking to recover punitive damages.
11. Motion to preclude ReliaStar Life Insurance from seeking to recover “the compensation paid” to Aon Re and Smith.
12. Motion to preclude ReliaStar Life Insurance from arguing, referring to, or introducing evidence of any misrepresentations allegedly made by Mr. Smith.
13. Motion to preclude ReliaStar Life Insurance from introducing any evidence from any other arbitration or litigation, including, but not limited to pleadings, correspondence, evidence or testimony given in any other arbitration or litigation.
14. Motion to preclude ReliaStar Life Insurance from calling Gerald Sherman or Mike Emerson as witnesses at trial.
15. Motion to preclude ReliaStar Life Insurance from calling a representative of Millimen as a witness at trial.
16. Motion to preclude ReliaStar Life Insurance from introducing any evidence or testimony about what it could or would have done had it known about either the information allegedly withheld or concealed or the truth with respect to any fraudulent misrepresentations made by Pallat.

XX. MISCELLANEOUS.

- A. The jury may take notes.
- B. The jury may ask questions through the Court.
- C. The number of jurors on the panel shall be six with two alternates.
- D. The estimated length of trial is ___ days.
- E. Further scheduling as to any pretrial issues is as follows:

F. The trial date is: _____

G. Trial Briefs on the following issues shall be filed and served on
_____:

Dated:

ANN G. McCORMICK, J.S.C.

Attorneys for Plaintiff

Attorneys for Defendants