

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

VESTTOO LTD., *et al.*,

Debtors.

CHAUCER INSURANCE CO. DAC and
CHAUCER SYNDICATES LTD., as managing
agent for LLOYD'S SYNDICATE 1084,

Plaintiffs,

v.

VESTOO BAY XXIV, LIMITED
PARTNERSHIP, WHITE ROCK INSURANCE
(SAC) LTD. IN RESPECT OF SEGREGATED
ACCOUNT T108-CHAUCER, AND CHARLES
THRESH AND MICHAEL MORRISON AS
JOINT PROVISIONAL LIQUIDATORS OF
WHITE ROCK INSURANCE (SAC) LTD.,

Defendants.

Chapter 11

Case No. 23-11160 (MFW)

(Jointly Administered)

Adv. Proc. No. ____ - ____

COMPLAINT

Chaucer Insurance Company DAC and Chaucer Syndicates Limited, as managing agent of Lloyd's Syndicate 1084 (together, "**Chaucer**" or "**Plaintiffs**"), by and through undersigned counsel, respectfully bring this Complaint for a declaratory judgment, the imposition of a constructive trust, and injunctive relief against debtor Vesttoo Bay XXIV, Limited Partnership (the "**Bay XXIV Debtor**" or "**Bay XXIV**") and Co-Defendants White Rock Insurance (SAC) Ltd., in respect of that certain segregated account formed pursuant to the Bermuda Segregated Account Companies Act (the "**Bermuda SAC Act**") designated "T108 – Chaucer" (such segregated account, the "**Chaucer Cell**" and, White Rock Insurance (SAC) Ltd., "**White Rock**"), and Charles

Thresh and Michael Morrison in their capacities as the joint provisional liquidators of White Rock, with supervisory authority over White Rock's affairs respecting the Chaucer Cell (the "**JPLs**" and, collectively with the Bay XXIV Debtor, the Chaucer Cell and White Rock, the "**Defendants**"), and allege and state as follows:

SUMMARY OF THE ACTION

1. This action seeks: (a) a determination from the Court that the premium payments (together with any proceeds thereon, the "**Premium Payments**") Plaintiffs made to the Chaucer Cell, which payments were induced by the Bay XXIV Debtor's fraud, were received by the Chaucer Cell subject to and in constructive trust for Plaintiffs; (b) a determination from the Court that the portion of such Premium Payments subsequently transferred from the Chaucer Cell to the Bay XXIV Debtor (such portion together with any proceeds thereon, the "**Transferred Premium**" and, the portion retained by the Chaucer Cell together with any proceeds thereon, the "**Cell Premium**") was received by and has been held by the Bay XXIV Debtor subject to and in constructive trust for Plaintiffs; (c) a determination from the Court that the entirety of the Premium Payments is not part of the Bay XXIV Debtor's estate (1) in the case of the Transferred Premium, because the Bay XXIV Debtor holds no equitable interest as a result of the constructive trust described above and (2) in the case of the Cell Premium, because the Bay XXIV Debtor as Account Owner (as defined in the Bermuda SAC Act) had no direct interest in the assets of the Chaucer Cell or, in the alternative to the extent the Court finds that the assets of the Chaucer Cell would otherwise be a part of the Bay XXIV Debtor's estate, because the Bay XXIV Debtor holds no equitable interest as a result of the constructive trust described above; (d) injunctive relief directing Defendants to turn over the Transferred Premium (and, to the extent that the Cell Premium would be part of the Bay XXIV Debtor's estate but for the above-described constructive trust, the Cell

Premium) to Plaintiffs in full; (e) injunctive relief directing Defendants to take all actions as are necessary to retain and preserve the Premium Payments, including the Transferred Premium and the Cell Premium, pending resolution of this adversary proceeding; and (f) injunctive relief staying the effect of any chapter 11 plan confirmed in the chapter 11 cases (the “**Bankruptcy Cases**”) of the Bay XXIV Debtor and its affiliated debtors (the Bay XXIV Debtor and such affiliated debtors, collectively, the “**Debtors**”) on any portion of the Premium Payments, including the Transferred Premium and the Cell Premium, pending resolution of this adversary proceeding.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

3. This action is an adversary proceeding pursuant to §§ 7001(1), 7001(2), 7001(7) and 7001(9) of the Federal Rules of Bankruptcy Procedure because it is a proceeding (a) to recover, and to compel the Bay XXIV Debtor to deliver, the Premium Payments, (b) to determine respective interests in the Premium Payments, (c) to obtain injunctive and other equitable relief with respect to the Premium Payments, and (d) to obtain declaratory relief in connection with the foregoing.

4. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) because, among other things, it involves matters concerning the administration of the Debtors’ estates. In accordance with Rule 7008-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, Plaintiffs confirm they consent to the entry of final orders or judgments by the Court in connection with this adversary proceeding to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

5. Venue is proper pursuant to 28 U.S.C. §§ 1409 because this adversary proceeding arises in and relates to the Bankruptcy Cases pending in this Court.

PARTIES

6. Plaintiffs are Chaucer Insurance Company DAC and Chaucer Syndicates Limited, as managing agent of Lloyd's Syndicate 1084. Chaucer Insurance Company DAC is an insurance company whose principal place of business is in Dublin, Ireland. Chaucer Syndicates Limited is the Lloyd's Managing Agent of Lloyd's Syndicate 1084 and has its principal place of business in London, United Kingdom.

7. Defendant Bay XXIV Debtor is a debtor in *In re: Vesttoo Bay XXIV, Limited Partnership*, Case No. 23-11208 (MFW), one of the Bankruptcy Cases. On information and belief, the business operations, capital structure and debt structure of Debtors is set forth in the First Day Declaration of Ami Barlev, *Amended and Restated Declaration of Ami Barlev in Support of Chapter 11 Petitions and First Day Pleadings*, filed [D.I. 27], which is incorporated by reference herein.

8. Defendant Chaucer Cell is a segregated account formed pursuant to the Bermuda SAC Act. On information and belief, White Rock created the Chaucer Cell at the Bay XXIV Debtor's request in order to effect certain reinsurance arrangements with Chaucer. The Chaucer Cell's business was limited to segregating certain assets and liabilities in connection with those reinsurance arrangements. The Bay XXIV Debtor's business was limited to reinsurance arrangements with the Chaucer Cell, and the Bay XXIV Debtor was the Account Owner of the Chaucer Cell and held a 100% interest in the Chaucer Cell. At no time did the Bay XXIV Debtor hold any direct interest in the assets within the Chaucer Cell.

9. Defendant White Rock is a Bermuda Company that, among other things, creates segregated accounts, including the Chaucer Cell, under the Bermuda SAC Act to facilitate reinsurance transactions involving Vesttoo Ltd. and its affiliates, including the Bay XXIV Debtor.

10. Defendants Charles Thresh and Michael Morrison are the joint provisional liquidators of White Rock, with supervisory authority over White Rock's affairs respecting the Chaucer Cell, selected by the Bermuda Monetary Authority and appointed pursuant to an Order of the Supreme Court of Bermuda dated August 18, 2023. That Order provides, among other things, for the JPLs to "be empowered" to: (a) "develop and propose a plan to mitigate, correct or otherwise address the negative impact of loss or impairment of collateral by the [Segregated] Cells . . . with a view to making a compromise or arrangement with the [Segregated] Cell cedents, including (without limitation) a compromise or arrangement by way of a scheme of arrangement, or novating the [Segregated] Cells outside of [White Rock];" (b) consult with "the Board and cedents of the [Segregated] Cells in determining the most appropriate manner to conduct the ongoing negotiations with third parties"; (c) ensure "the orderly disposal or other treatment of the [Segregated] Cells and the liabilities thereto"; and (d) "[i]n consultation with the Board to locate, protect, secure and take into their possession and control all assets and property to which [White Rock] acting in respect of the [Segregated] Cells is or appears to be entitled."

BACKGROUND AND FACTS

11. As set forth in the First Day Declaration, the Debtors purported to be providers of financial technology that allowed insurance and reinsurance companies, or cedents, to transfer their insurance risks and/or related collateral security obligations to capital market investors through a technological reinsurance transaction platform, reinsurance-related financial

instruments, and other contracts. As has become clear during these Bankruptcy Cases, however, such business was fraudulent.

12. The Debtors conducted their fraudulent reinsurance business using various special purpose partnerships and segregated accounts formed pursuant to the Bermuda SAC Act (each segregated account, a “**Segregated Cell**” and such segregated accounts collectively, together with the Chaucer Cell, the “**Segregated Cells**”) so that the assets and liabilities associated with reinsurance transactions involving a particular cedent (*e.g.*, Chaucer) would be segregated from the assets and liabilities associated with reinsurance transactions involving other cedents.

13. The Bay XXIV Debtor was one such special purpose partnership and the Chaucer Cell was one such Segregated Cell, and their collective purpose was to engage in segregated reinsurance transactions involving Plaintiffs. The business of the Bay XXIV Debtor was limited in all material respects to certain transactions with the Chaucer Cell (such transactions, the “**Reinsurance Transactions**”), and the Bay XXIV Debtor has not engaged in any other reinsurance arrangements involving any other Segregated Cell or cedent.

14. The Bay XXIV Debtor was the Account Owner of the Chaucer Cell and held a 100% interest in the Chaucer Cell, which could have provided the Bay XXIV Debtor with a surplus equal to the net proceeds (premiums minus losses, expenses, and fees) from the Chaucer Cell, in exchange for the Bay XXIV Debtor providing an “acceptable security” to collateralize the Chaucer Cell’s reinsurance obligation.

15. On August 14 and 15, 2023 (the “**Petition Date**”), the Debtors filed voluntary petitions under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), commencing these Bankruptcy Cases.

16. Prior to the Petition Date, Plaintiffs, among other things in reliance upon certain fraudulent letters of credit purportedly obtained from China Construction Bank (“CCB”) and delivered by or on behalf of the Bay XXIV Debtor (such letters of credit, the “**Fraudulent LOCs**”), engaged in the Reinsurance Transactions and in connection with such Reinsurance Transactions entered into certain casualty quota share reinsurance contracts with the Chaucer Cell, effective January 1, 2022, and January 1, 2023, respectively (such agreements, together with all amendments, assignments, addenda and exhibits thereto, the “**Reinsurance Contracts**”).

17. Based on information available to Chaucer, an integral part of the structure of the Reinsurance Transactions was the formation of the Bay XXIV Debtor and the Chaucer Cell, which were specifically intended to segregate such Reinsurance Transactions from the other reinsurance arrangements and Segregated Cells being created and utilized by or on behalf of the Debtors.

18. Plaintiffs relied upon the representations of the Bay XXIV Debtor and the Chaucer Cell that the Fraudulent LOCs were valid and enforceable letters of credit, and, but for such representations, Plaintiffs would not have engaged in the Reinsurance Transactions with the Bay XXIV Debtor or the Chaucer Cell. The Fraudulent LOCs were thus a material inducement to Plaintiffs’ participation in the Reinsurance Transactions and entry into the Reinsurance Contracts.

19. Plaintiffs, acting under the mistaken belief that the Fraudulent LOCs were valid and enforceable, paid the Premium Payments, initially equal to approximately \$28.8 million in the aggregate, to the Chaucer Cell pursuant to the Reinsurance Agreements.

20. In or around June 2023, the Chaucer Cell improperly distributed the Transferred Premium, at the time equal to approximately \$18.7 million, to the Chaucer Cell’s sole shareholder, the Bay XXIV Debtor.

21. The Bay XXIV Debtor opened an account at Israel Discount Bank solely for purposes of receiving the Transferred Premium.

22. The Bay XXIV Debtor's legal interest in the Transferred Premium as of the Petition Date constituted, and has continued to constitute at all times since the Petition Date, the Bay XXIV Debtor's only material asset.

23. In an email to Plaintiffs' counsel dated November 1, 2023, Debtors' counsel, Ronit Scharf, described the funds held in the Bay XXIV Debtor's bank account as "premium (which had been transferred from the [Chaucer] [C]ell)". Thus, upon information and belief, those funds were not commingled with any of the Debtors' other assets.

24. In fact, the account into which the Bay XXIV Debtor deposited the Transferred Premium had a zero balance before the Transferred Premium was placed in such account. The activity in the account between June 23, 2023 and September 1, 2023 reflects interest earned and tax deductions but no commingling of any other funds. The balance of the account on the Petition Date was approximately \$18.7 million, reflecting the amount of the Transferred Premium, plus interest earned on that amount, less deductions for taxes.

25. In contrast to the Transferred Premium, the Cell Premium remained in the Chaucer Cell at all times after Plaintiffs paid the Premium Payments.

26. In July 2023, the Bermuda Monetary Authority learned that certain letters of credit delivered by the Debtors, including the Bay XXIV Debtor, were suspected to be fraudulent. At around that time, media reports described an incident in which Santander Bank denied knowledge of a letter of credit presented in a transaction facilitated by a Debtor entity. The Debtors then engaged DLA Piper LLP and Kroll Associates UK to conduct an internal investigation of these allegations and to propose remedial steps.

27. By September 2023, a preliminary report of such investigation filed before this Court revealed “pervasive and systematic misconduct . . . both by a limited set of Vesttoo executives, and others within their sphere of influence, including external entities and individuals.” [D.I. 118]. The fraudulent scheme involved multiple members of the Debtors’ highest leadership, as well as individuals associated with CCB. These individuals worked collaboratively to create fraudulent letters of credit with forged signatures.

28. According to the investigation, essentially all except one of the letters of credit the Debtors obtained from three separate banks, including CCB, were fraudulent, with such fraudulent letters of credit including the Fraudulent LOCs delivered by or on behalf of the Bay XXIV Debtor in connection with Plaintiff’s Reinsurance Transactions. The letters of credit attributed to CCB since 2020 amounted to \$2.81 billion dollars in collateral, the vast majority of which was fraudulent. Thus, the letters of credit that were the foundation of Debtors’ business were “largely illusory.”

29. After news of the fraudulent scheme broke, lawyers acting for the New York Branch of CCB informed Plaintiffs’ broker, TigerRisk Partners (UK) Limited, that CCB had not issued any valid or enforceable LOCs in connection with Plaintiffs’ Reinsurance Transactions. CCB’s counsel further explained that CCB does not issue letters of credit for this type of business or in the format that was provided to Plaintiffs by or on behalf of the Bay XXIV Debtor. CCB’s counsel further informed Plaintiffs that one of the purported signatories of the Fraudulent LOCs, Su Yingde, was never a CCB employee and that the other signatory, Chun Yim Lam, did not have the relevant authorization.

30. In short, Plaintiffs were the victims of a widespread scheme by the Debtors, including the Bay XXIV Debtor, to “defraud the insurance markets,” particularly cedent insurance

companies such as Plaintiffs, through forged letters of credit. [D.I. 118]. Nevertheless, the Bay XXIV Debtor and the Chaucer Cell continue to hold the Premium Payments obtained from Plaintiffs by fraud, resulting in the Bay XXIV Debtor's and the Chaucer Cell's unjust enrichment at Plaintiffs' expense. Accordingly, the Bay XXIV Debtor and the Chaucer Cell received the Premium Payments subject to, and continue to hold the Premium Payments in, constructive trust for the Plaintiffs.

FIRST CLAIM FOR RELIEF

(Declaratory judgment that all Premium Payments Plaintiffs transferred to the Chaucer Cell are held in constructive trust for Plaintiffs)

31. Plaintiffs restate and reincorporate the paragraphs above as if fully restated herein.

32. As discussed above, Plaintiffs entered into the Reinsurance Contracts with the Chaucer Cell partly on the basis that Plaintiffs would be provided valid, legally enforceable LOCs.

33. The Bay XXIV Debtor, however, instead obtained the Fraudulent LOCs and caused them to be delivered to Plaintiffs.

34. Plaintiffs relied upon representations that the Fraudulent LOCs were valid and enforceable letters of credit, and but for such representations Plaintiffs would not have engaged in the Reinsurance Transactions with the Chaucer Cell or the Bay XXIV Debtor.

35. Plaintiffs, acting under the mistaken belief that the Fraudulent LOCs were valid and enforceable, transferred the Premium Payments, initially equal to approximately \$28.8 million in the aggregate, to the Chaucer Cell pursuant to the Reinsurance Agreements.

36. Plaintiffs' transfer of the Premium Payments was the result of fraudulent, unfair, and unconscionable conduct by the Bay XXIV Debtor.

37. Accordingly, Plaintiffs are entitled to a declaration that the Premium Payments were received by the Chaucer Cell and held in constructive trust with Plaintiffs as the sole beneficiaries.

SECOND CLAIM FOR RELIEF

(Declaratory judgment that the portion of Premium Payments subsequently transferred from the Chaucer Cell to the Bay XXIV Debtor has been held by the Bay XXIV Debtor subject to and in constructive trust for Plaintiffs)

38. Plaintiffs restate and reincorporate the paragraphs above as if fully restated herein.

39. In or around June 2023, the Chaucer Cell improperly distributed the Transferred Premium to the Bay XXIV Debtor.

40. Upon information and belief, the Transferred Premium was not commingled with any of the Bay XXIV Debtor's other assets (or, for that matter, any other Debtor's assets) and is thus directly traceable to Plaintiffs' initial transfer of the Premium Payments to the Chaucer Cell.

41. Accordingly, Plaintiffs are entitled to a declaration that the Transferred Premium remains held in constructive trust by the Bay XXIV Debtor with Plaintiffs as the sole beneficiaries.

THIRD CLAIM FOR RELIEF

(Declaratory judgment that the entirety of the Premium Payments is not part of the Debtors' estates)

42. Plaintiffs restate and reincorporate the paragraphs above as if fully restated herein.

43. As a result of the constructive trust alleged herein, the Bay XXIV Debtor does not hold an equitable interest in the Transferred Premium.

44. Accordingly, pursuant to section 541 of the Bankruptcy Code, the Transferred Premium is not part of the Bay XXIV Debtor's (or, for that matter, any other Debtor's) estate.

45. Furthermore, the Cell Premium has at all times been held by the Chaucer Cell.

46. At all relevant times, the Bay XXIV Debtor's interest in the Chaucer Cell has been limited to a contingent beneficial interest. At no time did the Bay XXIV Debtor hold any direct interest in the assets within the Chaucer Cell.

47. Accordingly, because the Bay XXIV Debtor's interest in the assets of the Chaucer Cell is limited to a beneficiary's contingent distribution entitlement, the Cell Premium is not part of the Bay XXIV Debtor's (or, for that matter, any other Debtor's) estate.

48. Moreover, to the extent the Court finds that the assets of the Chaucer Cell would otherwise be a part of the Bay XXIV Debtor's (or any other Debtor's) estate, the Bay XXIV Debtor does not hold an equitable interest in the Transferred Premium as a result of the constructive trust alleged herein.

49. Accordingly, pursuant to section 541 of the Bankruptcy Code, the Transferred Premium is not part of the Bay XXIV Debtor's (or, for that matter, any other Debtor's) estate.

FOURTH CLAIM FOR RELIEF
**(Injunctive relief regarding the Transferred Premium, the Cell Premium
and the Premium Payments)**

50. Plaintiffs restate and reincorporate the paragraphs above as if fully restated herein.

51. Insofar as neither the Transferred Premium, the Cell Premium nor the Premium Payments are estate property, the same should and must be returned to Chaucer. The failure to do so, particularly under the circumstances presented herein (including the acknowledged wind-down and liquidation of the Debtors), would result in immediate and irreparable harm to Chaucer.

52. Accordingly, the Debtors and the Defendants generally should be required and compelled to turn over the same to Plaintiffs in full. Moreover, the Court should enter an injunction staying the effect of any chapter 11 plan confirmed in the Bankruptcy Cases on any

portion of the Premium Payments, including the Transferred Premium and the Cell Premium, pending resolution of this adversary proceeding.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court enter an Order:

- (1) declaring that the Premium Payments Plaintiffs made to the Chaucer Cell were received by the Chaucer Cell subject to and in constructive trust for Plaintiffs;
- (2) declaring that the Transferred Premium was received by and has been held by the Bay XXIV Debtor subject to and in constructive trust for Plaintiffs;
- (3) declaring that the entirety of the Premium Payments is not part of the Bay XXIV Debtor's estate because, in the case of the Transferred Premium, the Bay XXIV Debtor holds no equitable interest as a result of the constructive trust described above and because, in the case of the Cell Premium, the Bay XXIV Debtor's interest in the assets of the Chaucer Cell is limited to a beneficiary's contingent distribution entitlement or, in the alternative to the extent the Court finds that the assets of the Chaucer Cell would otherwise be a part of the Bay XXIV Debtor's or any other Debtor's estate, because the Bay XXIV Debtor holds no equitable interest as a result of the constructive trust described above.
- (4) entering an injunction directing the Debtors to turn over the Transferred Premium, and to the extent the Cell Premium would be part of any Debtors' estate but for the above-described constructive trust, the Cell Premium, to Plaintiffs in full;
- (5) entering an injunction directing the Debtors to turn over the Transferred Premium (and, to the extent that the Cell Premium would be part of any Debtors' estate but for the above-described constructive trust, the Cell Premium) to Plaintiffs in full;

- (6) entering an injunction staying the effect of any chapter 11 plan confirmed in the Bankruptcy Cases on any portion of the Premium Payments, including the Transferred Premium and the Cell Premium, pending resolution of this adversary proceeding; and
- (7) imposing such other and further relief as the Court deems just and proper.

Dated: January 23, 2024
Wilmington, Delaware

ASHBY & GEDDES, P.A.

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