SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Kenneth Roth on behalf of himself and all similarly-situated bondholders, Plaintiff, v. The Phoenix Companies, Inc. and U.S. Bank National Association, in its capacity as Indenture Trustee, Defendants.	Index No. _____ Date Summon Filed: Feb. 8, 2016 **SUMMONS** Plaintiff designated the County of New York as the place of trial. Basis of venue: Bonds are traded on the New York Stock Exchange, Wrongdoing Occurred in NY and Defendants do business in New York

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of the answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in the case of your failure to

appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP

DATED: February 8, 2016

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Kenneth Roth on behalf of himself and all similarly-situated bondholders, Plaintiff, v. The Phoenix Companies, Inc. and U.S. Bank National Association in its capacity as Indenture Trustee Defendants.	Index No. _____/2016 IAS Part _____ CLASS ACTION COMPLAINT JURY TRIAL DEMANDED Plaintiff designated the County of New York as the place of trial.

1. Plaintiff Kenneth Roth (the "Plaintiff") brings this class complaint on behalf of himself and all other holders (the "Bondholders") of the 7.45% Quarterly Interest Bonds due 2032 (the "Bonds") (CUSIP: 71902E 20 8) issued by The Phoenix Companies ("Phoenix" or the "Company") against Phoenix, and U.S. Bank National Association ("Trustee") (Phoenix and the Trustee are collectively referred to as "Defendants"). Phoenix, a publicly-traded insurance company, issued and sold $300 million of Bonds to the public pursuant to a registered offering in 2001. The Bonds currently trade on the New York Stock Exchange ("NYSE") under ticker "PFX".

2. The allegations below are based upon personal knowledge as to Plaintiff and his own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation of counsel, which included a review of United States Securities and Exchange Commission ("SEC") public filings and comment letters, submissions made to the Commissioner of Insurance of the State of Connecticut ("CID"), the Department of Financial Services of the

State of New York, (the "NYDFS"), court documents and press releases and other publicly available materials.

NATURE OF THE ACTION

3. Plaintiff brings this action to prevent the imminent and irreparable harm that would be caused to him and other Bondholders by the conduct alleged herein.

4. Bondholders are being asked to consent to a material amendment to the document that serves to protect their fundamental rights as Bondholders, the Indenture Agreement, dated December 27, 2001, as amended by the Third Supplemental Indenture, dated February 21, 2014 (the "Indenture"), a true and correct copy of which is as Exhibit A hereto.

5. Based on false and misleading information, coupled with the promise of a payment in exchange for giving their approval, Phoenix wants Bondholders to agree to an amendment of the Indenture that would: (a) jettison Bondholders' right to receive material financial information, to which they are otherwise entitled; and (b) allow the Bondholders' trustee to waive material duties otherwise owed to the Bondholders. To this end, on January 7, 2016, Phoenix launched a consent solicitation ("Consent Solicitation", Exhibit B, hereto) seeking the Bondholders' approval to a proposed Supplemental Indenture that amends § 704 of the Indenture (the "Supplemental Indenture") in exchange for $.0625 per $25 of principal. The Consent Solicitation is scheduled to expire on **February 9, 2016.**

6. The impact on Bondholders if the Supplemental Indenture is adopted is material. Without access to material financial information, the Bondholders are: left in the dark about the security underlying the Bonds; and, unable to know about or assess the Company's ability to comply with the financial obligations owed to the Bondholders, as set forth in the Indenture (this includes whether the Company is operating as a going concern as well as whether the Company

has violated the terms of the Indenture). The value of the Bonds will also, necessarily, be materially impaired because of the lack of financial information. Further, the impact is compounded by allowing the Trustee, as the amendment does through language buried deep into a page-long, one paragraph amendment, to ignore any financial information it receives. One, if not the most, valuable protection afforded by the Indenture to Bondholders is the covenant at § 704 of the Indenture that gives Bondholders access to financial information regardless of whether such information must be reported under the Securities Exchange Act of 1934 ("Exchange Act"). (Ex. A, Indenture, § 704.) This right will be eviscerated if Defendants' Consent Solicitation is not enjoined or the approval of the Supplemental Indenture not nullified.

7. As more fully alleged below, the Consent Solicitation, is false and misleading and omits material information by:

a. failing to inform Bondholders of their current right to information under § 704 of the Indenture;

b. failing to inform Bondholders that, absent the amendment, they remain entitled to receive meaningful financial information;

c. presenting the amendment as necessary and beneficial to the Bondholders (which it is not) because the amendment will assure that some financial information will continue to be provided by the Company to the Trustee (which is, nevertheless, waiving any obligation and responsibility to even look at the financial information);

d. giving Bondholders the false and misleading impression that the Supplemental Indenture is actually beneficial to Bondholders and enhances existing disclosures;

e. failing to explain and discuss, but instead burying it in the Consent Solicitation, the waiver of the Trustee's fundamental obligations with respect to the financial information;

f. failing to inform Bondholders how, if the amendment is approved, the Company will take steps to exempt itself from any state or federal reporting requirements, that would have otherwise triggered reporting obligations to the Bondholders under the Indenture; and,

g. omitting the fact that (including related discussion of how) the Supplemental Indenture will impact the value of and secondary market for the Bonds.

8. Unless the Consent Solicitation is adjudged a nullity, the Company will have eliminated the single protection available to Bondholders– the unequivocal right to access financial information about the Company to whom they lent money.

9. Plaintiff requests that the Court enjoin the Consent Solicitation in order to avoid irreparable harm to the Bondholders, and/or declare the approval of the Consent Solicitation null and void because such approval was secured by dissemination of materially false and misleading information.

PARTIES AND MATERIAL ENTITIES

10. Plaintiff Kenneth Roth has been a bondholder since 2009 and currently holds 2,700 shares.

11. Defendant The Phoenix Companies, Inc. ("Phoenix" or the "Company") is incorporated in the State of Delaware and its principal office is located at One American Row, Hartford, Connecticut. It operates its business principally through two insurance company subsidiaries: (a) Phoenix Life Insurance Company ("Phoenix Life"), domiciled in New York, and

(b) PHL Variable Insurance Company ("PHL Variable"), domiciled in Connecticut. Phoenix is a publicly-registered corporation that has listed its common stock on the NYSE under the ticker "PNX" and its bonds on the NYSE under the ticker "PFX". At all relevant times hereto, Phoenix owed and continues to owe various duties to the Bondholders and was at all relevant times hereto obligated to comply with federal rules and laws regarding consent solicitations.

12. Defendant U.S. Bank National Association is the successor Trustee to SunTrust Bank (the "Trustee"), with its principal place of business in Cincinnati, OH. The Trustee offers and performs corporate trust services throughout the country, including in New York, NY. At all relevant times hereto, the Trustee owed various duties to the Bondholders pursuant to the Indenture and the Trust Indenture Act of 1939.

13. Non-party Nassau Reinsurance Group Holdings, L.P. is a privately-held Delaware limited partnership founded by two Wall Street executives in 2015 and its principal office is located at 450 Park Avenue, 24th Floor, New York, NY 10022. Nassau claims to be financially backed by Golden Gate Private Equity, Inc., a private investment firm founded in 2000 with a reported $15 billion of committed capital.

14. Non-party Golden Gate Private Equity, Inc. ("Golden Gate") is a private investment firm reportedly with over $15 billion of committed capital and is located at One Embarcadero Center, Suite 3900, San Francisco, CA 94111. Golden Gate reportedly made an "equity seed capital commitment of $750 million" to Nassau, which refers to Golden Gate as its "affiliate" and is anticipated to both fund the merger transaction at issue in this Action and the operations of the Company following the merger.

15. Non-party Goldman Sachs & Co. ("Goldman Sachs"), located at 200 West Street, New York, NY 10282, was engaged by Phoenix to serve as its financial advisor, and upon

information and belief, negotiated and structured the going-private Merger transaction between Phoenix and Nassau, including the Supplemental Indenture proposed in the Consent Solicitation.

16. Non-party Sandler O'Neill + Partners, L.P. located at 1251 Avenue of the Americans, 6th Floor, New York, NY 10020, was engaged by Phoenix to serve as its merger advisor (along with Goldman Sachs) and, upon information and belief, negotiated and structured the going-private Merger transaction between Phoenix and Nassau, including the Supplemental Indenture proposed in the Consent Solicitation.

JURISDICTION AND VENUE

17. This Court has personal jurisdiction over Phoenix because it owns and operates an insurance subsidiary domiciled in New York, transacts business in the State of New York, the Bonds trade on the NYSE, the Indenture is governed by New York Law, the Company accessed the capital markets through New York, engaged in the Consent Solicitation through an agent located in New York, hired financial and legal advisors located in New York, Nassau is located in New York, certain wrongful conduct complained of herein was committed in the State of New York, and wrongful acts committed outside of the State have caused injury to persons and property within the State of New York. Also, pursuant to Section 112 of the Indenture, the Indenture and the Securities shall be governed by and construed in accordance with the law of the State of New York.

18. Venue is proper in this Court because, among other reasons, the conduct at issue took place and had an effect in New York County, Phoenix issued, sold and listed the security at issue in this County, Phoenix's legal and financial advisors assisted with the Merger and Consent Solicitation in this County, and Phoenix has sought and assisted with regulatory approval for the Merger from Department of Financial Services of the State of New York in this County.

19. This action is not removable under the Securities Litigation Uniform Standard Act, 15 U.S.C. § 78bb(f), because this action involves "contractual agreements between issuers and indenture trustees" and "a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party".

SUBSTANTIVE ALLEGATIONS

20. Phoenix is an insurance company incorporated under Delaware law with roots dating back to 1850. Its principal operating subsidiaries provide life insurance and annuity products through independent agents and financial advisors and its policyholder base includes both affluent and middle market consumers. The Company also owns a distribution subsidiary, Saybrus Partners, Inc., which provides life insurance and other consulting services to financial advisors in partner companies, as well as sales support for Phoenix's product lines sold through independent distribution organizations.

21. In 2001, Phoenix registered and sold in $25.00 increments $300 million worth of Bonds pursuant to a registration statement, dated November 21, 2001 (the "Registration Statement") and prospectus dated December 19, 2001 (the "Bond Prospectus").

A. Phoenix and Nassau Enter Into A Merger Transaction

22. In 2015, Phoenix's Board of Directors hired investment bankers Goldman Sachs and Sandler O'Neill to explore the potential sale of the Company to Nassau.

23. Nassau is a privately-held company recently formed in 2015 and has no operating history and a very limited financial history. It is reportedly backed by venture capital firm Golden Gate Capital and "received an equity capital commitment of $750 million in 2015 from

private equity funds with over $15 billion of committed capital managed by Golden Gate Private Equity, Inc., a registered investment advisor."

24. On September 29, 2015, the Company announced that it had entered into a going-private merger agreement (the "Merger Agreement") with Nassau Reinsurance Group Holdings, L.P. ("Parent") and its wholly owned subsidiary Davero Merger Sub Corp. ("Merger Sub," and together with Parent, "Nassau") on September 28, 2015. Nassau, a newly-formed private entity, with no operating or financial history to speak of.

25. According to the Company, Nassau agreed to acquire all of Phoenix's outstanding common shares for approximately $217.2 million, or $37.50 per share (the "Merger") but that "Phoenix's retail bonds (NYSE: PFX) will remain outstanding and, in connection with the transaction, Phoenix will solicit its bondholders to amend the indenture to replace its public filing obligations with reporting obligations more appropriate for a privately held company." *Id.*

26. The Company distributed a definitive merger proxy statement, dated November 19, 2015 (the "Merger Proxy") and a copy of the Merger Agreement to the Company's stockholders, seeking their approval to the Merger. The Bondholders' approval was not sought nor required.

27. The Merger Agreement glossed over the obligations owed by Nassau to Bondholders stating only that: "all debts liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation."

28. The only specific reference to Bondholders in the Merger Agreement and Merger Proxy is the requirement that the Company seek to eliminate certain disclosure obligations existing under the Indenture, which is now the subject of the Consent Solicitation.

29. Specifically, the Merger Proxy states, at pages 14 and 93, that:

> Phoenix must, at Nassau's sole expense, use its reasonable best efforts to amend the terms of Phoenix's indenture for its 7.45% senior unsecured notes to replace its public filing obligations with reporting obligations more appropriate for a privately held company. Phoenix intends to solicit its bondholders in order to amend such indenture.

30. Likewise, the Merger Agreement at Section 6.17(b) states:

> The Company shall, at Parent's sole expense, use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under the terms of the Indenture or applicable Laws, as reasonably requested by Parent, to amend Section 704(1) of the Indenture so as to read in its entirety as is set forth in Exhibit C hereto (and such other Supplemental Indentures to the Indenture as are reasonably necessary or desirable to give effect to such Supplemental Indenture) or to read as otherwise mutually agreed between the Company and Parent; ....

Notably, Exhibit C referenced above in the Merger Agreement has not been filed with the SEC or made publicly available.

31. The special meeting was held on December 17, 2015, at which Phoenix's common stockholders approved the Merger by a majority vote. Again, Bondholders did not vote to approve the Merger.

32. Phoenix announced that it expects to complete the Merger in early 2016 if and when the CID and NYDFS (collectively the "Insurance Regulators") review and approve the Merger. The effectiveness of the Supplemental Indenture, if approved, is conditioned on the consummation of the Merger.

33. Phoenix has stated that because upon consummation of the Merger it will be a wholly owned subsidiary of Nassau, it may determine to delist the Bonds from the NYSE or deregister the Bonds under the Exchange Act at the time the Merger is consummated.

B. The Company's Existing Disclosure Obligations

34. Phoenix's current disclosure obligations to Bondholders are set forth in § 704(1)-(2) of the Indenture, and in its present form, Phoenix is required to make financial disclosures to Bondholders, regardless of whether or not they are mandated to do so by Sections 13 or 15 of the Exchange Act:

> The Company ***shall***:
>
> (1) file with the Trustee, ... copies of the annual reports and of the information, documents and other reports ... which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; ***or,*** if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it ***shall file*** with the Trustee ***and the Commission***, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange ....;

35. Thus, § 704(1) of the Indenture provides that even if the Company is not "required to file information" it "shall file" financials and other disclosures with the "Trustee *and the Commission"* like that which may be required of securities listed on a "national securities exchange." Meaning that even if the Company were to go private and delist its Bonds, the Indenture protects Bondholders' access to financials by requiring that the Company file financials with the SEC. This covenant protects the value of, and secondary market for, the Bonds by ensuring information is available to current Bondholders and prospective investors, even going-private.

36. Phoenix, the Trustee and the Merger parties want to eviscerate this fundamental right of the Bondholders and to do so, they have made vague, incomprehensible, and misleading

statements about the Bondholders' rights and the impact of the amendment to the Indenture in the Consent Solicitation.

C. The Consent Solicitation and Material Change to the Indenture

37. On January 7, 2016, Phoenix launched the Consent Solicitation seeking approval of Bondholders' consent to adopt the Supplemental Indenture which amends § 704, *see, supra,* ¶33.

38. First, the Supplemental Indenture if approved will narrow the reporting obligations of the Company in the event it is "not required to file information" under the Exchange Act, by qualifying this obligation with the phrase "under the Trust Indenture Act", as follows:

> then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission **under the Trust Indenture Act,** such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations. [Ex. B, Consent Solicitation at 26 (emphasis in original).]

39. Second, the Supplemental Indenture also seeks to amend § 704 by adding the entire following paragraph:

> **If the Company is not otherwise required to file information, documents or reports with the Trustee or the Commission pursuant to any of the preceding provisions of this Section 704, then the Company shall deliver to the Trustee (1) within one hundred and twenty (120) days following the end of each fiscal year of the Company, the consolidated financial statements of the Company for such year prepared in accordance with generally accepted accounting principles in the United States ("GAAP"), together with a report thereon by the Company's independent auditors (it being understood that the Company shall not be required to include any separate consolidating financial information with respect to the Company, any Subsidiary, any joint venture or any other Affiliate of the Company, or any separate financial statements or information for the Company, any Subsidiary, any joint venture or any other Affiliate of the Company), (2) within sixty (60) days after the end of each of the**

first three fiscal quarters in each fiscal year of the Company, the condensed consolidated financial statements of the Company for such quarter prepared in accordance with GAAP (it being understood that the Company shall not be required to include any separate consolidating financial information with respect to the Company, any Subsidiary, any joint venture or any other Affiliate of the Company, or any separate financial statements or information for the Company, any Subsidiary, any joint venture or any other Affiliate of the Company), and (3) information substantially similar to the information that would be required to be included in a Current Report on Form 8K filed with the Commission by the Company (if the Company were required to prepare and file such form) pursuant to Item 1.03 (Bankruptcy or Receivership), 2.01 (Completion of Acquisition or Disposition of Assets), 4.01 (Changes in Registrant's Certifying Accountant) or 5.01 (Changes in Control of Registrant) of such form or similarly corresponding items of any revisions implemented by the Commission to such form (and in any event excluding, for the avoidance of doubt, the financial statements, pro forma financial information and exhibits, if any, that would be required by Item 9.01 (Financial Statements and Exhibits) of such form), within five (5) Business Days after the date of filing that would have been required for a Current Report on Form 8K (it being understood that the Company will be deemed to have satisfied the foregoing requirements if any parent of the Company furnishes or makes available information of the type otherwise so required within the applicable time periods and the Company is not required to make available such information separately under the applicable rules and regulations of the Commission (after giving effect to any exemptive relief) because of the filings by such parent). The Trustee shall have no duty to examine any such reports, information or documents. In connection with this paragraph, it is understood that the Company shall not be required to (a) comply with Section 302, Section 404 and Section 906 of the Sarbanes Oxley Act of 2002, as amended, or related Items 307, 308 and 308T of Regulation SK under the Securities Act or (b) comply with Rule 310 and Rule 316 of Regulation SX under the Securities Act. [Ex. B, Consent Solicitation at 27 (emphasis in original).]

40. Under the proposed Supplemental Indenture, Nassau will no longer owe Bondholders any obligation to file its financials and other reports with the SEC. Rather, revised § 704, above, ensures that Nassau's *only* reporting obligation will be ***exclusively*** to the Trustee, and no longer to the SEC though which Bondholders would have had full access to Nassau's financial reporting, or to the Bondholders themselves.

41. In addition to limiting how the information must be disclosed and disseminated, buried in the middle of this dense paragraph in the proposed Supplemental Indenture (¶38, *supra*) is language that eliminates ***any duty*** on the part of the Trustee to examine the reports,

information or documents that are provided by the Company *exclusively* to the Trustee, stating: "**The Trustee shall have no duty to examine any such reports, information or documents.**" Ex. B, Consent Solicitation at 27 (emphasis in original).

42. Furthermore, the proposed Supplemental Indenture contains several troubling exceptions that expose Bondholders to risk, such as: (1) the exclusion of certain financial information about the Company's subsidiaries and affiliates which may make the information provided incomplete or unclear, and (2) the financials will no longer comply with §§ 302, 404 and 906 of Sarbanes-Oxley or Items 307, 308 and 308T of Regulation S-K or comply with Rules 3-10 and 3-16 of Regulation S-X. *See id,* at 27.

43. Thus, the net effect of the proposed Supplemental Indenture is: (1) Nassau will have no obligation to report to the SEC (and therefore to Bondholders and the market) unless required to do so under federal law; (2) the Trustee will own *no duty* to review the information provided *exclusively* to the Trustee; (3) Nassau will be issuing less comprehensive financial reports; and (4) the public will lack access to information which will harm the value of and secondary market for the Bonds.

D. The Consent Solicitation Contains Materially False and Misleading Statements And Material Omissions

44. The Consent Solicitation is devoid of any meaningful information for the Bondholders in respect to the rights they have, the rights they giving up, and what will occur after the Supplemental Indenture and Merger are effectuated.

45. Instead, Phoenix has made vague and incomprehensible statements about the import of the Supplemental Indenture and Merger. For example, on January 7, 2016, in conjunction with the issuance of the Consent Solicitation, Phoenix stated:

> If the merger is consummated and the company is no longer required to file reports with the SEC, and is not otherwise required to file reports with the bond trustee or the SEC pursuant to the Trust Indenture Act of 1939, the proposed amendment would require Phoenix to deliver to the bond trustee certain annual financial statements, quarterly financial statements and reports on certain current events.

46. The foregoing statement and substantially similar statements are repeated throughout the Consent Solicitation. One cannot even reasonably be expected to parse through and understand a circular statement, with qualifiers like "if" and "not otherwise required", to know that they are actually giving up material rights to financial disclosures, and not, as the statement concludes with a misleading impression, otherwise "requir[ing] Phoenix" to do something apparently more than it otherwise would have had to do absent the amendment, which is not true.

47. The Consent Solicitation fails to tell Bondholders that they have the unequivocal right to information about the Company's finances and operations under the Indenture and applicable laws absent any amendment to the Indenture. This is something that was confirmed by Nassau in statements to insurance regulators during the Merger approval review process:

> [a]s a private company, the Company will no longer incur the significant recurring costs associated with being an S.E.C. registrant and making periodic public filings required for its common stock and publicly traded bonds ***(assuming a successful solicitation of bondholder).*** [Emphasis added.]

48. Defendants cannot dispute that once the Company is taken private, Nassau will be obligated to continue reporting to Phoenix's Bondholders, unless the Supplemental Indenture is approved by holders of a majority of the outstanding principal owed on the Bonds. Yet, the Consent Solicitation fails to disclose this indisputable, material fact. There is no reason given to Bondholders in the Consent Solicitation

49. ***Second***, Bondholders are given *no* financial information about the Company's acquirer, Nassau. Nassau has reportedly received a sizeable capital commitment from Golden Gate, but the extent and details of that commitment are unknown and could change at any point in the future without notice to Bondholders. Therefore, Bondholders are being asked to give up receipt of financial information about Nassau, the financial condition of which they have never known and, if the Supplemental Indenture is approved, will never know. Further, the failure of disclosure of financial information harms the Bondholders' ability to assess currently and in the future whether a default in payment is imminent and what appropriate action is needed to protect their interests.

50. ***Third,*** the Company claims throughout the Consent Solicitation that the Merger Agreement requires it to launch the Consent Solicitation. For example, in the cover letter to the Consent Solicitation, the Company states that: "[p]ursuant to the terms of the merger agreement, the Company has agreed to solicit bondholders to amend the bond indenture" and postures that amendment as "requir[ing]" financial disclosure. However, this is a ruse to mislead Bondholders into thinking that the amendment is to their benefit. The Consent Solicitation is required because § 902 of the Indenture *mandates* that the Company and Trustee obtain consent by a majority of holders of the outstanding debt for *any* Supplemental Indenture to the Indenture that ***is adverse to Bondholders' interests***. If this Supplemental Indenture was ***not adverse*** to Bondholder interests, the Trustee and Phoenix could, and would, unilaterally adopt the Supplemental Indenture pursuant to § 901 of the Indenture without engaging in the Consent Solicitation. To get the Bondholders' consent, Phoenix is misleading Bondholders about the adverse nature of the Supplemental Indenture.

51. In addition, the Consent Solicitation Statement gives the false impression that the Supplemental Indenture is somehow *beneficial* to bondholders or that it somehow adds access to disclosures, with this statement:

> If the Requisite Consents for the Proposed Supplemental Indenture are not received and the Merger is consummated, the **Company may not be required pursuant to the terms of the Indenture to deliver to the Trustee all of the information required by the Proposed Supplemental Indenture.** [Ex. B., Consent Solicitation (emphasis added).]

52. And, the Investor Relations designee at Phoenix during calls with Bondholders perpetuated the falsehood by claiming that the Supplemental Indenture gives Bondholders access to information that they would not otherwise have, which is untrue.

53. ***Third,*** the Consent Solicitation fails to inform Bondholders of their current right to information under § 704 of the Indenture and that by refusing to consent to the Supplemental Indenture, the Company would be required to maintain reporting obligations like that of an exchange traded security of a public company. In other words, the Consent Solicitation does not advise Bondholders of the alternative to consenting to the Supplemental Indenture (*i.e.*, if consent to the proposed Supplemental Indenture is not given or withheld). In making no attempt to describe the scope of existing disclosure obligations under the current § 704 of the Indenture, or providing Bondholders with the alternative, they are unable to make an informed decision.

54. ***Fourth***, the Supplemental Indenture will harm Bondholders' interests and harm the value of and secondary market for the Bonds, because if approved:

a. Nassau will no longer owe Bondholders any reporting obligation if after the Merger it qualifies for a reporting exemption under the Exchange Act.

b. Nassau's reporting obligations will be solely to the Trustee, not the Bondholders.

c. The Supplemental Indenture eliminates any responsibility or obligation on the part of the Trustee to review the information provided to it by Nassau.

d. The Supplemental Indenture sets forth that the financials no longer need to comply with §§ 302, 404 and 906 of Sarbanes-Oxley or Items 307, 308 and 308T of Regulation S-K or comply with Rules 3-10 and 3-16 of Regulation S-X.

Yet, none of this is fully and accurately explained in the Consent Solicitation.

55. ***Fifth***, the Consent Solicitation omits material events impacting the Bondholders that will occur if they approve the Supplemental Indenture and the Merger is consummated. The Company has failed to disclose that (which upon information and belief the Plaintiff alleges will occur): after the Merger, assuming the Bondholders have approved the Supplemental Indenture, Nassau will: (a) immediately de-list the Bonds from the NYSE and (b) file for a reporting exemption under Section 15 of the Exchange Act (because the Company purports to have fewer than 300 Bondholders of record) to eliminate any attendant reporting obligations and any last opportunity for a Bondholder to secure the financial information to which it is currently entitled. The Consent Solicitation fails to inform Bondholders that ***if the Supplemental Indenture is approved by Bondholders***, the ***only*** communication from Nassau will be more limited financials issued exclusively to the Trustee, who will have no duty to do anything with the financials, including reviewing them or disseminating them to Bondholders.

56. ***Finally***, once delisted, the only way to trade the Bonds will be over-the-counter through a bond trading system maintained by FINRA, referred to as TRACE. However, if the Supplemental Indenture is approved, and material and meaningful financial information is therefore unknowable by current Bondholders and prospective purchasers, the secondary market

for the Bond's and the Bonds' market value will be significantly impaired. The Consent Solicitation omits these material risks and facts.

57. The passage of the Supplemental Indenture fundamentally changes the nature of these Bonds and, once the Company goes private and de-lists its Bonds, Bondholders could be trapped for the next eighteen years in an illiquid investment without access to financial information. In fact, the passage of the Supplemental Indenture will also significantly harm the market for the Bonds as buyers and sellers will have no access to information and no means to assess whether or not to buy, hold or sell the Bonds and at what price. As a result of the lack of investor access to financial information, the value of the Bond will decline. Thus, continued access to financial information for Bondholders is particularly important where the Company is being taken private and the Bonds are being delisted.

58. In sum, the Company, in seeking the Supplemental Indenture, was obligated to disclose that: (1) Bondholders will have less (not more) access to information if the Supplemental Indenture is approved; (2) the Trustee is eliminating its duty to review the information and the reasons for this amendment; (3) the Trustee will owe no duty to disseminate the information it receives from Nassau; and (4) new disclosure covenant (coupled with the anticipated de-listing and going-private transaction) will negatively impact the value of and secondary market for the Bonds. The omission of these material facts negligently and in violations of contractual duties, has and continues to improperly induce Bondholders into consenting to the Supplemental Indenture.

59. The Consent Solicitation will expire at 5:00 p.m., New York City time, on February 9, 2016, or such date and time to which the Company may extend it.

60. As a result of the materially false and misleading disclosures and omissions in the Consent Solicitation, Defendants have breached their contractual obligations under § 902 of the Indenture, breached the implied contractual duty of good faith and fair dealing recognized under New York law, and/or made negligent misrepresentations to the Bondholders to whom a duty of candor was owed in order to obtain Bondholders' approval to the Supplemental Indenture.

61. By issuing the Consent Solicitation, the Company relied upon an exemption to Section 14(a) of the Exchange Act applicable to debt securities listed on a national exchange, 17 C.F.R. § 240.3a12-11. However, even if that exemption applied and the Company's failure to comply with it was proper, no Consent Solicitation may sidestep Rule 14a-9, which provides:

> (a) No solicitation subject to this regulation shall be made by means of any ... communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is **false or misleading** with respect to any material fact, **or which omits to state any material fact** necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation ....

62. Concerned over liability stemming from the Consent Solicitation, Nassau agreed to full indemnify the Company for its actions:

> Parent shall indemnify and hold harmless the Company, its subsidiaries and each of their respective officers, directors, managers, members, employees, advisors, agents and representatives, from and against any and all liabilities or obligations suffered or incurred ***in connection with the Supplemental Indenture to the Indenture or any assistance or activities provided in connection therewith***. [*See* § 6.17(b) of the Merger Agreement (emphasis added).]

CLASS ACTION ALLEGATIONS

63. Plaintiff brings this action on his own behalf and as a class action pursuant to New York Civil Practice Law and Rules § 901 on behalf of all Phoenix's Bondholders (except

Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with the Defendants), who will be threatened with injury arising from Defendants' actions as are described more fully below (the "Class").

64. This action is properly maintainable as a class action.

65. The Class is so numerous that joinder of all members is impracticable. Phoenix has thousands of Bondholders located throughout the United States.

66. There are questions of law and fact which are common to members of the Class and which predominate over any questions affecting any individual members. The common questions include, *inter alia*, the following:

a. whether Defendants are liable to Plaintiff and members of the Class by the conduct complained of herein;

b. whether the Consent Solicitation contains materially false and misleading statements and/or omissions of material facts and warrants an injunction and/or an invalidation; and

c. whether the Supplemental Indenture should be invalidated if approved by means of the false and misleading Consent Solicitation.

IF IT APPLIED, WHICH IT DOES NOT, COMPLIANCE WITH THE NO-ACTION CLAUSE IS EXCUSED

67. The subject of this action is a false and misleading Consent Solicitation disseminated directly from the Company to the Bondholders by which the Company seeks Bondholders approval of an amendment to the Indenture. As such, § 507 of the Indenture does not apply to the facts and claims alleged herein.

68. Even if § 507 applied (which it does not), given the exigent circumstances present here, Bondholders are excused from compliance. The expiration of the Consent Solicitation and consummation of the Merger are imminent.

69. Moreover, the Trustee acquiesced to, if not conspired with, the Company in preparing and disseminating a false and misleading Consent Solicitation which violated § 902, the implied duty of good faith and fair dealing, and applicable federal and state law.

70. Further, the Trustee's interests are in conflict with those of the Bondholders because the approval and implementation of the Supplemental Indenture will relieve the Trustee of any obligation to review the financial information provided by Nassau, even though the Trustee would become the sole recipient of that financial information.

71. Due to its conflict of interest, and its participation in the false and misleading Consent Solicitation, the Trustee is incapable of performing its duties under the Indenture, protecting the rights of the Bondholders and/or taking the action(s) needed to confront the allegations herein. Such a request would be futile.

CAUSES OF ACTION

COUNT I
BREACH OF CONTRACT

72. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs above as if fully set forth herein.

73. Section 902 of the Indenture provides that the Trustee and Company may enter into a supplement indenture with the Company that that adds, eliminates or modifies the rights of the Bondholders if they first obtain the ***consent*** of Bondholders with "not less than a majority in principal amount of the outstanding" Bonds affected by any supplemental indenture.

74. Defendants issued a false and misleading Consent Solicitation in an effort to adopt the Supplemental Indenture as a supplemental indenture under § 902 of the Indenture.

75. Defendants' attempt to implement and adopt the Supplemental Indenture through the use of an invalid Consent Solicitation is a breach of § 902 of the Indenture.

76. Therefore, the Company has not and cannot obtain any actual consent required from Bondholders through their use of false and misleading statements and material omissions to amend the Indenture and to proceed under the proposed Supplemental Indenture.

77. The Company's breach of § 902 of the Indenture has and will continue to cause the Plaintiff and other Bondholders substantial and irreparable harm to their rights and the value of the Bonds.

COUNT II
BREACH OF COVENANT OF
GOOD FAITH AND FAIR DEALING

78. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs above as if fully set forth herein.

79. The Indenture is a contract governed under New York law and includes the covenant of good faith and fair dealing implied in every contract.

80. A reasonable person understands that § 902 of the Indenture prohibits the Company from engaging in a false and misleading solicitation process in seeking to obtain Bondholders' approval of a Supplemental Indenture, and here specifically a Supplemental Indenture to materially alter Bondholders' disclosure rights under § 704 of the Indenture.

81. By disseminating false and misleading information in connection with the Consent Solicitation, Defendants deprived Bondholders of their right to properly evaluate and

determine whether to provide consent to the Supplemental Indenture in exchange for the consent fee offered.

82. This breach has and will cause the Plaintiff and other Bondholders substantial and irreparable harm to their rights and the value of their Bonds.

COUNT III
NEGLIGENT MISREPRESENTATION

83. Plaintiff repeats and realleges the allegations in the above paragraphs and incorporates them as if fully set forth herein.

84. When securing Bondholders' consent to amend the Supplement Indenture, Defendants were required to solicit and secure such consent based on accurate, complete and correct information.

85. This duty arose from the relationship between and among the Bondholders, the Company (as issuer of the Bonds), the Trustee, the Indenture, and the requirements thereunder with respect to amending § 704 of the Indenture.

86. Defendants breached this duty by virtue of a Consent Solicitation that contained statements which, at the time and in the light of the circumstances under which they were made, were false and misleading with respect to material facts and which omitted to state material facts necessary in order to make the statements made therein not false or misleading or necessary to correct statements in earlier communications with respect to the solicitation of the Bondholders' consent to approve the Supplemental Indenture.

87. Bondholders reasonably relied on the misstatements and material omissions set forth above in consenting to the Supplemental Indenture and both their rights and their Bonds were damaged as a result of Defendants' misconduct.

COUNT IV
TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION

88. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs above as if fully set forth herein.

89. Plaintiff has a substantial likelihood of success on its claim that Defendants' Consent Solicitation to Bondholders violates § 902 of the Indenture, the implied covenant of good faith and fair dealing and federal disclosure obligations.

90. The result of such a violative offer will be to substantially and adversely amend the Indenture by eliminating or amending provisions that will adversely affect the Bondholders' right to financial disclosures and the value of the Bonds after the Company is taken private.

91. Plaintiff and the other Bondholders will be irreparable harmed if the Supplemental Indenture is allowed to go into effect, in that the Supplemental Indentures will strip the Indenture of significant protective covenants and protections securing the Bondholders' right to financial information.

92. Without an injunction, the value of the Bond has and will continue to decline and the secondary market for the Bond will cease to exist as a result of buyers and sellers having no access to financial information about the Company and the Bondholders' investment.

93. In addition, the loss of those covenants and protections impacts Plaintiff's right as a Bondholder and changes the very nature of the Bond originally bargained for, reduces the value of the Bonds, and impairs the right and ability of the Bondholders to receive payment on their Bonds.

94. The interests of the public favors the issuance of a temporary restraining order and a preliminary and permanent injunction enjoining and restraining the Consent Solicitation and/or the Supplemental Indenture from taking effect.

COUNT V
DECLARATORY JUDGMENT

95. Plaintiff repeats and realleges the allegations in the above paragraphs and incorporates them as if fully set forth herein.

96. There is an actual controversy between Plaintiff and Defendants regarding the occurrence of a breach and violation of Sections § 902 of the Indenture, the implied covenant of good faith and fair dealing, and/or Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and Rule 14a-9 thereunder, 17 C.F.R. § 240.14a-9.

97. Plaintiff is entitled to a judicial declaration that Defendants issues a false and misleading Consent Solicitation.

98. By issuing this false and misleading Consent Solicitation, Defendants violated and, unless enjoined, will continue violating the express and implied covenants in the Indenture and their disclosure obligations set forth by Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and Rule 14a-9 thereunder, 17 C.F.R. § 240.14a-9.

99. If approved pursuant to this violative Consent Solicitation, the Supplemental Indenture must be declared null and void and of no force and effect and Plaintiff is also entitled to a judicial declaration that the Indenture, dated December 27, 2001 (as amended by the Third Supplemental Indenture, dated February 21, 2014), continues to control the rights and obligations of all parties thereto.

COUNT VI
BREACH OF FIDUCIARY DUTY
(against Trustee only)

100. Plaintiff repeats and realleges the allegations in the above paragraphs and incorporates them as if fully set forth herein.

101. Trustee owed the Bondholders a fiduciary duty under New York law to avoid and not create a conflict of interest between its own personal interests as Trustee and those of the Bondholders whose interests the Trustee seeks to represent.

102. Trustee violated this fiduciary duty when Trustee insisted, and Phoenix agreed, that the proposed Supplemental Indenture should eliminate Trustee's duty to review any future financial disclosures made by Phoenix.

103. Trustee also violated its fiduciary duty by permitting the Company's use of a false and misleading Consent Solicitation to solicit Bondholders' consent to this amendment that benefitted Trustee and harmed the interests and rights of the Bondholders

104. Trustee's misconduct has harmed Bondholders' right and interests and the value of the Bonds themselves in an amount to be proven at trial.

RELIEF REQUESTED

WHEREFORE, for the reasons set forth above, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor on all counts and:

a. Temporarily restrain, and preliminarily and permanently enjoin the Consent Solicitation; or,

b. in the alternative, if the Supplemental Indenture is approved by way of an materially misleading and false Consent Solicitation, declare that the Supplemental Indenture has no force and effect and that the Indenture dated

December 27, 2001 (as amended by the Third Supplemental Indenture, dated February 21, 2014) continues to control the rights and obligations of all parties;

c. Award damages in an amount to be determined at trial;

d. Award Plaintiff his costs of litigation including reasonable attorneys' fees; and

d. Grant any further relief that this Court deems proper and just.

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

Dated: February 8, 2016

Respectfully submitted,

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