SUPREME COURT OF STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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CARLYLE COMMODITY MANAGEMENT L.L.C. (f/k/a VERMILLION ASSET MANAGEMENT, LLC), CELADON COMMODITIES LTD., CARLYLE GLOBAL MARKET STRATEGIES COMMODITIES FUNDING 2014-1, LTD., CARLYLE GLOBAL MARKET STRATEGIES COMMODITIES FUNDING 2015-1, LTD., VMF SPECIAL PURPOSE VEHICLE SPC, VMF Q1 SEGREGATED PORTFOLIO, and ANY OTHER INSUREDS AS DEFINED HEREIN

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY WITH UNIQUE MARKET REFERENCE B0753PC1410840000, CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY WITH UNIQUE MARKET REFERENCE B1353DC1500748000, and CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY WITH UNIQUE MARKET REFERENCE B1353DC1500837000,

Defendants

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Index No.:

Plaintiffs CARLYLE COMMODITY MANAGEMENT L.L.C. (f/k/a VERMILLION ASSET MANAGEMENT, LLC) ("**CCM**"), CELADON COMMODITIES LTD. ("**Celadon**"), CARLYLE GLOBAL MARKET STRATEGIES COMMODITIES FUNDING 2014-1, LTD. ("**2014-1**"), CARLYLE GLOBAL MARKET STRATEGIES COMMODITIES FUNDING 2015-1, LTD. ("**2015-1**"), VMF SPECIAL PURPOSE VEHICLE SPC and VMF Q1 SEGREGATED PORTFOLIO (together, "**VMF**"), and any

other Insureds as defined herein (collectively, hereinafter "**Plaintiffs**"), by and through their attorneys, WEIL, GOTSHAL & MANGES LLP, state the following as their Complaint:

1. This is an action to compel payment by defendants CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY WITH UNIQUE MARKET REFERENCE B0753PC1410840000 (hereinafter "**Policy 1 Underwriters**")[1], CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY WITH UNIQUE MARKET REFERENCE B1353DC1500748000 (hereinafter "**Policy 2 Underwriters**")[2], CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY WITH UNIQUE MARKET REFERENCE B1353DC1500837000 (hereinafter "**Excess Policy Underwriters**")[3], (collectively, hereinafter "**Defendants**") under certain Marine insurance

[1] The underwriting syndicates subscribing to Marine Cargo Insurance Policy with Unique Market Reference B0753PC1410840000 and any endorsements thereto (hereinafter, "**Policy 1**") include: 3210 (MSIG), 1183 (Talbot Validus), 1861 (ANV Group), 4000 (Pembroke), 1274 (Antares), 2015 (Channel), 780 (Advent), 1084 (Chaucer) and 9975 (Apollo Specie & Cargo Consortium). For specific underwriting percentages, see Policy 1 attached as Exhibit A hereto.

[2] The underwriting syndicates subscribing to Marine Cargo Insurance Policy with Unique Market Reference B1353DC1500748000 and any endorsements thereto (hereinafter, "**Policy 2**") include: 3210 (MSIG), 1183 (Talbot Validus), 1861 (ANV Insurance), 4000 (Pembroke), 382 (CNA Hardy), 1969 (Apollo Consortium), 2007 (Novae), 1980 (Pioneer Underwriters), 2001 (Amlin), 780 (Advent), 1274 (Antares), and 1084 (Chaucer). For specific underwriting percentages, see Policy 2 attached as Exhibit B hereto.

[3] The underwriting syndicates subscribing to Marine Cargo Excess Insurance Policy with Unique Market Reference B1353DC1500837000 and any endorsements thereto (hereinafter, the "**Excess Policy**") include: 1414 (Ascot), 1686 (AXIS Capital), 2003 (XL Catlin), 1209 (XL Catlin), 2001 (Amlin), 1036 (QBE European Operations), 1084 (Chaucer), 5000 (Travelers), 609 (Atrium), 4020 (Ark Syndicate Management Ltd.), 3000 (Markel International), 2623 (Beazley), 623 (Beazley), and 3010 (Lancashire Group). For specific underwriting percentages, see Excess Policy attached as Exhibit C hereto.

and Excess insurance policies issued to Plaintiffs for losses Plaintiffs sustained due to the theft of Plaintiffs' crude oil and petroleum products including distillates, fuel oil and gasoline that were stored in Morocco.

THE PARTIES

2. At all relevant times hereinafter mentioned, plaintiff CCM was and is a Delaware Limited Liability Company with its principal place of business at 520 Madison Avenue, New York, New York 10022.

3. At all relevant times herein, plaintiff Celadon was and is an exempted company incorporated with limited liability under the laws of the Cayman Islands.

4. At all relevant times herein, plaintiff CCM acted as Celadon's investment adviser pursuant to investment management agreements dated as of (i) February 1, 2010 (as amended) and (ii) November 30, 2007.

5. At all relevant times herein, plaintiff 2014-1 was and is an exempted company incorporated with limited liability under the laws of the Cayman Islands.

6. At all relevant times herein, plaintiff CCM acted as the portfolio manager to 2014-1, and its associated, and/or affiliated and/or interrelated and/or subsidiary companies and/or corporations and/or its financially controlled or actively managed organizations or undertakings including partnerships and joint ventures, pursuant to a portfolio management agreement dated as of May 30, 2014, and under which CCM was authorized to act on behalf of 2014-1 and to exercise 2014-1's rights and remedies, including as

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Policy 1, Policy 2, the Excess Policy, and any endorsements thereto, collectively, hereinafter the "**Policies**."

relates to the crude oil and petroleum products that are the subject of the Plaintiffs' claim for which they seek recovery in this action.

7. At all relevant times herein, plaintiff 2015-1 was and is an exempted company incorporated with limited liability under the laws of the Cayman Islands.

8. At all relevant times herein, plaintiff CCM acted as the portfolio manager to 2015-1 and its associated, and/or affiliated and/or interrelated and/or subsidiary companies and/or corporations and/or its financially controlled or actively managed organizations or undertakings including partnerships and joint ventures, pursuant to a portfolio management agreement, dated as of June 30, 2015, and under which CCM was authorized to act on behalf of 2015-1 and to exercise 2015-1's rights and remedies, including as relates to the crude oil and petroleum products that are the subject of the Plaintiffs' claim for which they seek recovery in this action.

9. At all relevant times herein, plaintiff VMF was and is an exempted segregated portfolio company incorporated with limited liability under the laws of the Cayman Islands. VMF engaged in commodity transactions for the purchase of crude oil and petroleum products that are the subject of the Plaintiffs' claims in this action.

10. At all relevant times herein, plaintiff CCM acted as the investment adviser to plaintiff VMF pursuant to an investment management agreement dated as of November 8, 2011.

11. Upon information and belief, at all relevant times herein, defendants Policy 1 Underwriters: (a) are individuals, corporations and/or entities authorized to issue

insurance policies and conduct business in the State of New York and (b) regularly conduct business in the State of New York.

12. Upon information and belief, at all relevant times herein, defendants Policy 2 Underwriters: (a) are individuals, corporations and/or entities authorized to issue insurance policies and conduct business in the State of New York and (b) regularly conduct business in the State of New York.

13. Upon information and belief, at all relevant times herein, defendants Excess Policy Underwriters: (a) are individuals, corporations and/or entities authorized to underwrite and/or issue insurance policies and conduct business in the State of New York and (b) regularly conduct business in the State of New York.

14. Plaintiffs, including their associated and/or affiliated and/or interrelated and/or subsidiary companies and/or corporations and/or their financially controlled or actively managed organizations or undertakings including partnerships and joint ventures as defined in the Policies (collectively, hereinafter the "**Insureds**"), are Insureds under the Policies.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to CPLR § 3001 because an actual, present and justiciable controversy exists between the parties; pursuant to 22 NYCRR 202.70 because the breach of contract claims arise out of business dealings and the monetary threshold of $500,000 is satisfied; and because the Policies provide that they are subject to the exclusive jurisdiction of the courts of the State of New York.

16. This Court has jurisdiction over Defendants pursuant to CPLR §§ 301 and 302 because each defendant transacts business in the State of New York and because Defendants have submitted to this Court's jurisdiction pursuant to the terms of the Policies.

17. Venue is proper in this Court pursuant CPLR § 503 because at least one of the parties resides in this County at the time this action was commenced, and Defendants are all subject to personal jurisdiction here. Venue is also proper in this Court pursuant to CPLR § 501.

BACKGROUND FACTS

18. At all relevant times herein, plaintiff CCM was investment adviser to plaintiff Celadon.

19. At all relevant times herein, plaintiff CCM was portfolio manager to plaintiff 2014-1.

20. At all relevant times herein, plaintiff CCM was portfolio manager to plaintiff 2015-1.

21. At all relevant times herein, plaintiff CCM was investment manager to VMF.

22. At all relevant times herein, plaintiff Celadon received funds from Celadon Commodities Fund, LP and Celadon Commodities Fund, Ltd. for investment purposes.

23. At all relevant times herein, plaintiff VMF engaged in commodity transactions with Societé Anonyme Marocain de L'Industrie du Raffinage ("**SAMIR**") regarding, among other things, the crude oil and petroleum products that are the subject of this action.

24. CCM, in its capacity as investment adviser, caused Celadon to invest in funds through VMF.

25. In or about December 2014, plaintiff VMF entered into a Master Commodity Transaction Agreement with SAMIR ("**the December 2014 MCTA**").

26. In or about January 2015, plaintiff VMF entered into a revised Master Commodity Transaction Agreement with SAMIR (the "**January 2015 MCTA**").

27. In or about June 2015, plaintiff VMF entered into an Amended and Restated Master Commodity Transaction Agreement (the "**June 2015 MCTA**", and together with the December 2014 MCTA and the January 2015 MCTA, collectively, hereinafter the "**MCTA**").

28. On or about January 16, 2015, plaintiff 2014-1 executed a joinder agreement, making it a party to the MCTA.

29. On or about June 30, 2015, plaintiff 2015-1 executed a joinder agreement, making it a party to the MCTA.

30. The MCTA is an umbrella agreement setting forth the general terms and conditions through which VMF (as well as 2014-1 and 2015-1) acquired ownership of and title to, and/or an insurable interest in, crude oil and petroleum products purchased from SAMIR.

31. The MCTA contemplates the execution of confirmations to reflect each individual commodity purchase transaction between VMF and SAMIR ("**Confirmations**").

32. After VMF acquired the crude oil and petroleum products, 2014-1 and 2015-1 (through the actions of CCM as portfolio manager for 2014-1 and 2015-1) would purchase some of the crude oil and petroleum products from VMF.

33. On January 16, 2015, 2014-1 entered into a Commodities Storage Agreement with SAMIR which was later Amended and Restated on June 22, 2015 (together, hereinafter the "**Storage Agreement**").

34. 2015-1 and VMF are parties to the Storage Agreement pursuant to its terms and definitions.

35. The Storage Agreement sets forth the terms and conditions through which the crude oil and petroleum products acquired by VMF, 2014-1, and 2015-1 pursuant to the MCTA and the Confirmations would be stored at SAMIR's facility in Morocco.

36. The Storage Agreement explicitly proscribes SAMIR from using, removing, or otherwise disposing of the crude oil or petroleum products stored by VMF, 2014-1, and 2015-1 at SAMIR's facility in Morocco without the prior written consent of Plaintiffs.

37. Under the MCTA, from approximately March 2015 through August 2015, a total of sixteen (16) separate Confirmations with SAMIR were entered into by VMF, 2014-1, and 2015-1 for the purchase of crude oil and/or petroleum products that are the subject of Plaintiffs' claims under the Policies.

38. Pursuant to the MCTA and the sixteen Confirmations, Plaintiffs acquired in the aggregate 959,999 metric ton equivalents of crude oil and petroleum products, paying in the aggregate $429,295,212.29 for such crude oil and petroleum products.

39. At all relevant times herein, Plaintiffs had ownership of and title to, and/or an insurable interest in the crude oil and petroleum products that are the subject of the sixteen Confirmations.

40. At all relevant times herein, upon information and belief, all of the purchased crude oil and petroleum products that are the subject of the sixteen Confirmations was stored at SAMIR's facility in Morocco pursuant to the Storage Agreement.

41. From time to time, Plaintiffs received storage tank reports from SAMIR that had been certified and stamped by an international, third-party storage tank inspection company indicating the amount of Plaintiffs' crude oil and petroleum products stored at SAMIR.

42. At various times in 2015, CCM personnel learned that there were certain discrepancies in the amount of Plaintiffs' crude oil and petroleum products stored with SAMIR. When such issues were identified, SAMIR provided various explanations and responses, including but not limited to the fact that SAMIR was processing greater amounts of crude oil due to Morocco's busy driving season and the fact that the price of crude oil was declining. Representatives of SAMIR repeatedly assured CCM personnel that SAMIR was working to rectify the discrepancies.

43. At no time did Plaintiffs consent to SAMIR selling or disposing of Plaintiffs' crude oil and petroleum products stored at SAMIR that are the subject of this action.

44. In August and September 2015, CCM personnel traveled to Morocco to meet with members of SAMIR's management and board of directors, during which meetings the CCM personnel received reassurances that any discrepancies would be remedied.

45. CCM then followed up with letters dated September 8, 2015 and September 15, 2015 to SAMIR's General Manager demanding payments for crude oil and petroleum products belonging to Plaintiffs.

46. In late September 2015, SAMIR responded in writing to CCM's letters, acknowledging deficiencies in the amounts of Plaintiffs' crude oil and petroleum products, stating that the cash proceeds from SAMIR's dispositions thereof had been deposited into SAMIR's bank account for Plaintiffs' benefit, and stating further that such proceeds would be transferred to Plaintiffs as soon as practicable following the unfreezing of SAMIR's bank accounts, which the Moroccan government had frozen the prior month.

47. In late September 2015, representatives of Attijari Finances Corp., SAMIR's investment bank, assured CCM personnel on several occasions that the cash remained in SAMIR's bank accounts, Mohammed al-Amoudi, the controlling shareholder of SAMIR's corporate parent, intended to inject up to $1 billion of additional cash into SAMIR in the coming weeks, and that they expected the Moroccan government's freeze on SAMIR's bank accounts to be lifted shortly.

48. Thereafter, on October 1, 2015, SAMIR and CCM entered into a Forbearance Agreement (the "**Forbearance Agreement**") in which SAMIR agreed to make Plaintiffs whole for the entire amount of the deficiencies.

49. Specifically, in the Forbearance Agreement, SAMIR agreed to make a designated first payment upon execution of the agreement and additional payments to Plaintiffs on November 15, 2015 and 30, 60 and 90 days thereafter.

50. Mohammed al-Amoudi made the designated first payment on SAMIR's behalf upon execution of the Forbearance Agreement. Neither Mr. al-Amoudi nor SAMIR made any additional payments to Plaintiffs thereafter.

51. Plaintiffs diligently and repeatedly, through letters, emails, telephone calls and in-person meetings, urged SAMIR to make the promised payments to Plaintiffs.

52. In or about October 2015, Mohammed al-Amoudi publicly announced that he intended to inject approximately $670 million into SAMIR before November 15, 2015.

53. Over the next several weeks, SAMIR repeatedly and directly assured Plaintiffs that SAMIR was a) working to unfreeze its bank accounts and b) working with Mr. al-Amoudi on his $1 billion capital infusion into SAMIR (which included the $670 million capital injection as well as Mr. al-Amoudi's commitment to back-stop an additional $330 million equity rights offering).

54. Relying on the vows and representations of SAMIR's senior executives, board members, and investment bankers, Plaintiffs believed that SAMIR would pay Plaintiffs in full on account of the crude oil and petroleum product deficiencies.

55. During the week of December 14, 2015, CCM personnel again traveled to Morocco, this time meeting with the Moroccan Minister of Economy and Finance, the U.S. Ambassador to Morocco, and representatives of the financial advisory firm that SAMIR had engaged.

56. On December 21, 2015, SAMIR provided financial information to CCM personnel indicating that SAMIR had approximately 3.04 billion Moroccan Dirhams (or approximately 307 million U.S. Dollars) in account receivables recorded on its books due from its distributors and customers. At various points, representatives of SAMIR stated that these receivables related to the sale of Plaintiffs' crude oil and petroleum products and, therefore, constituted identifiable cash proceeds of Plaintiffs' crude oil and petroleum products. CCM personnel repeatedly attempted to verify these representations.

57. On December 21 2015, CCM sent a letter to SAMIR's board of directors stressing that Plaintiffs owned crude oil and petroleum products having an aggregate value of $429,295,212 that Plaintiffs stored at SAMIR, and underscoring that SAMIR had removed and disposed of a substantial portion of Plaintiffs' crude oil and petroleum products without Plaintiffs' authorization and over Plaintiffs' objections, and demanding immediate payment from SAMIR.

58. On December 22-25, 2015, CCM's Christopher Zuech traveled to Morocco to meet with representatives of SAMIR regarding the status of Plaintiffs' crude oil and petroleum products. On December 26, 2015, CCM sent another letter to SAMIR's board of directors, again demanding immediate payment for the crude oil and petroleum products that SAMIR had taken and disposed.

59. On December 28, 2015, SAMIR's General Manager responded to CCM's December 26, 2015 letter, wherein he asserted that SAMIR would willingly support a directive from the Moroccan Customs Administration and/or the Moroccan Commercial

Court to send the funds from its frozen bank account to CCM if such directive could be obtained.

60. On December 29-30, 2015, CCM's Christopher Zuech again traveled to Morocco in a further effort to ascertain the status of Plaintiffs' crude oil and petroleum products and the accounts receivable reflected in the financial information that SAMIR had provided to CCM.

61. CCM personnel continued to have meetings with representatives of SAMIR in January 2016.

62. In January 2016, CCM personnel concluded that, in fact, the bulk of the crude oil and petroleum products had been stolen and the represented accounts receivable were either fictitious or grossly insufficient to compensate Plaintiffs for SAMIR's theft of the crude oil and petroleum products (hereinafter, the "**SAMIR Theft**").

63. Accordingly, on January 26, 2016, Plaintiffs submitted a notice of claim to Defendants relating to the SAMIR Theft, stating that SAMIR, either on its own, or as SAMIR claimed at the direction of the representatives of the Kingdom of Morocco, unlawfully took, sold and/or otherwise disposed of Plaintiffs' crude oil and petroleum products stored at SAMIR's facility in Morocco. The notice of claim also requested that Defendants acknowledge coverage under Policy 2 and the Excess Policy for the losses sustained by Plaintiffs due to the SAMIR Theft.

64. The notice of claim was timely and complied with all aspects of Policy 2 and the Excess Policy.

65. On or about February 15, 2016, Plaintiffs submitted a supplemental notice of claim to Defendants reflecting that all or part of the claim may have occurred during the policy period for Policy 1 and reiterating their request that Defendants acknowledge coverage under the Policies.

66. The supplemental notice of claim was timely and complied with all aspects of Policy 1.

67. Based on inspections of SAMIR's storage tanks concluded in early March 2016 by experts engaged by CCM, it was determined that, in the aggregate, 118,633 metric ton equivalents of the Insureds' crude oil and petroleum products remained in SAMIR's storage tanks at that time.

68. SAMIR's court-appointed Liquidation Trustee subsequently acknowledged this assessment in a submission to the Moroccan Commercial Court. However, the Liquidation Trustee also asserted that he did not believe that the remaining portion of Plaintiffs' crude oil and petroleum products was capable of being released to Plaintiffs, and also stated, alternatively, that any of Plaintiffs' crude oil and petroleum products that had been remaining in SAMIR's storage tanks in early March 2015 had been disposed of by SAMIR thereafter, and/or that, even if any portion of Plaintiffs' crude oil and petroleum products remained in SAMIR's storage tanks, it would be infeasible to remove it due to the purported risk of fire and explosion.

69. Accordingly, on or about June 27, 2016, Plaintiffs supplemented their notice of claim to revise the amount of their claim to include the full amount of the loss.

70. This supplemental notice was timely and complied with all aspects of the Policies.

THE INSURANCE POLICIES

71. As discussed above, SAMIR, without obtaining Plaintiffs' consent and within the periods of the relevant Policies issued by Defendants, unlawfully took, sold and/or otherwise disposed of Plaintiffs' crude oil and petroleum products.

Policy 1

72. Defendants Policy 1 Underwriters issued Policy 1 with a policy period of August 1, 2014 to August 1, 2015. Policy 1's complete terms, conditions and endorsements are incorporated by reference herein. See Exhibit A.

73. Plaintiffs are insureds under Policy 1.

74. Policy 1 contains a limit of liability of USD 75,000,000 for any one land tank at SAMIR refinery Morocco, but subject to a maximum limit of USD 250,000,000 for any one loss or series of losses arising out of any one event.

75. SAMIR refinery in Morocco is specifically identified as an agreed storage location in Policy 1.

76. Policy 1 identifies crude oil and petroleum products as covered "Interest."

77. SAMIR refinery in Morocco falls squarely within the scope of the Situation/Geographical Areas covered by Policy 1.

78. Policy 1 provides coverage for all risks of physical loss, including from theft or willful misconduct.

79. Plaintiffs' losses incurred due to the SAMIR Theft are expressly covered under Policy 1.

Policy 2

80. Defendants Policy 2 Underwriters issued Policy 2 with a policy period of August 1, 2015 to August 1, 2016. Policy 2's complete terms, conditions and endorsements are incorporated by reference herein. See Exhibit B.

81. Plaintiffs are insureds under Policy 2.

82. Policy 2 contains a limit of liability of USD 75,000,000 for any one land tank at SAMIR refinery Morocco, but subject to a maximum limit of USD 250,000,000 for any one loss or series of losses arising out of any one event.

83. SAMIR refinery in Morocco is specifically identified as an agreed storage location in Policy 2.

84. Policy 2 identifies crude oil and petroleum products as covered "Interest."

85. SAMIR refinery in Morocco falls squarely within the scope of the Situation/Geographical Areas covered by Policy 2.

86. Policy 2 provides coverage for all risks of physical loss including from theft and willful misconduct.

87. Plaintiffs' losses incurred due to the SAMIR Theft are expressly covered under Policy 2.

Excess Policy

88. Defendants Excess Policy Underwriters issued Excess Policy with a policy period of June 16, 2015 to August 1, 2016. The Excess Policy's complete terms, conditions and endorsements are incorporated by reference herein. See Exhibit C.

89. Plaintiffs are insureds under the Excess Policy.

90. The Excess Policy has limits of liability of USD 75,000,000 for any one land tank but not exceeding USD 350,000,000 for any one loss or series of losses arising out of any one event *in excess* of USD 250,000,000 for any one loss or series of losses arising out of any one event.

91. SAMIR refinery in Morocco is specified in Situation/Geographical Areas covered by the Excess Policy.

92. The Excess Policy's conditions explicitly state that the conditions follow all terms and clauses in Policy 1 and its renewal, Policy 2.

93. As the Excess Policy follows the same terms and conditions as Policy 1 and Policy 2, and those terms include coverage for theft and willful misconduct, Plaintiffs' losses incurred due to the SAMIR Theft are expressly covered by the Excess Policy.

DEFENDANTS' RESPONSE TO NOTICES OF CLAIM AND PLAINTIFFS' COOPERATION

94. Following Plaintiffs' submission of the notice of claim and at all times thereafter, in accordance with the terms of the Policies, CCM personnel cooperated with Defendants' investigation of the SAMIR Theft.

95. On or about February 10, 2016, CCM's Christopher Zuech met with representatives from Gray Page, who had been retained by Defendants as their claims

investigator. During this meeting, Mr. Zuech provided Gray Page's representatives with answers and explanations to their questions regarding the SAMIR Theft.

96. On or about February 12, 2016, Gray Page provided Plaintiffs with a list of information and document requests.

97. Plaintiffs furnished to Gray Page information and documents on or about February 24, March 1, March 8, and March 16, of 2016, including certain information that the Defendants had previously received in connection with underwriting the Policies. This included, *inter alia*, (i) the MCTA, Storage Agreement, and related agreements; (ii) various correspondence between CCM personnel and (a) SAMIR, (b) SAMIR's distributors, (c) the Moroccan Minister of Economy and Finance, (d) the U.S. Ambassador to Morocco, and (e) representatives of Attijari Finances Corp.; (iii) a list of individuals with whom CCM personnel had been in contact in order to attempt to resolve the issues concerning SAMIR; (iv) tank reports stamped by an international, third-party storage tank inspection company; (v) numerous court filings made in Morocco in connection with Plaintiffs' efforts to recover the stolen crude oil and petroleum products or their equivalent dollar amount.

98. On or about March 14, 2016, counsel for Plaintiffs received a reservation of rights letter from Defendants Policy 1 Underwriters and Policy 2 Underwriters (the "**March 14 RoR Letter**"). See Exhibit D hereto.

99. The March 14 RoR Letter acknowledged receipt of Plaintiffs' January 26, and February 15, 2016 notices of claim and indicated Defendants Policy 1 Underwriters

and Policy 2 Underwriters had begun their investigation of the claims through the retention of Gray Page as their claims investigator.

100. The March 14 RoR Letter further stated that while the investigation was ongoing, Defendants Policy 1 Underwriters and Policy 2 Underwriters fully reserve all of their rights under Policy 1 and Policy 2.

101. On or about March 22, 2016, Plaintiffs provided Gray Page with additional documents and information concerning the claim, including, with respect to the sixteen Confirmations, a detailed breakdown of Plaintiffs' losses by product.

102. On or about March 30, 2016, Gray Page requested additional documents and information from Plaintiffs.

103. On or about March 31, 2016, Defendants Excess Policy Underwriters acknowledged receipt of Plaintiffs' claim, as well as the March 14 RoR Letter, and reserved their rights under the Excess Policy (the "**Excess Policy RoR Letter**"). See Exhibit E hereto.

104. The Excess Policy RoR Letter further indicated that Gray Page was jointly retained by Defendants Excess Policy Underwriters to investigate Plaintiffs' claims.

105. On or about April 28, 2016 and May 3, 2016, Plaintiffs provided additional documents and information in response to the March 30, 2016 requests of Gray Page. This included, *inter alia*, (i) Confirmations for Plaintiffs' purchase of crude oil and petroleum products; (ii) due diligence-related information; and (iii) and certain declarations.

106. Because of ongoing proceedings commenced in Morocco by Plaintiffs to try and recover the stolen crude oil and petroleum products or their equivalent dollar amount,

Defendants and Plaintiffs, by and through their respective counsel, entered into a Tolling Agreement on August 9, 2016 (the "**Tolling Agreement**") as related to the Policies. See Exhibit F hereto.

107. Among other things, the Tolling Agreement provided that, during the period from August 9, 2016 until December 31, 2016, no claim or defense would be waived.

108. During the period provided for in the Tolling Agreement, Defendants agreed not to issue any coverage decisions or other determinations with respect to Policy 1, Policy 2 and the Excess Policy; however Defendants were expressly authorized to continue their investigation.

109. During the period provided for in the Tolling Agreement, Plaintiffs provided monthly reports to Defendants regarding the status of proceedings against SAMIR in Morocco and other recovery activities in which Plaintiffs engaged.

110. The Tolling Agreement was set to expire on December 31, 2016, but was amended by the parties on December 29, 2016 so that it would not expire until January 31, 2017. The parties agreed to the extension for purposes of settlement discussions.

111. On or about January 3, 2017, Defendants asked for additional information and documents that they deemed necessary for the anticipated good faith settlement discussions.

112. Thereafter, on or about January 19, 2017, Plaintiffs provided Defendants with additional information and documents for the purpose of engaging in anticipated good faith settlement discussions. This included, *inter alia*, (i) email correspondence from

SAMIR representatives attaching the tank reports; (ii) additional documentation regarding specific Confirmations requested by Gray Page; and (iii) additional correspondence between SAMIR and CCM personnel.

113. Defendants, however, did not engage in good faith settlement discussions and the Tolling Agreement expired.

114. Plaintiffs have requested that Defendants pay the amounts owed under the Policies, in connection with the claims submitted by the Plaintiffs for coverage for losses sustained due to the SAMIR Theft.

115. To date, Defendants have not made any payments to Plaintiffs under any of the Policies for the Plaintiffs' losses sustained due to the SAMIR Theft.

116. Rather, instead of responding with any settlement proposal, on February 28, 2017, Defendants sent a lengthy lawyers' letter to Plaintiffs that, among other things, denied coverage under the Policies, sought to rescind one or more of the Policies, and stated their refusal to make any payment under Policies 1 and 2 for the SAMIR Theft.

THE PLAINTIFFS' EFFORTS TO MITIGATE THEIR LOSSES

117. In an effort to recover the crude oil and petroleum products lost due to the SAMIR Theft and mitigate the losses for which they seek coverage from Defendants, Plaintiffs retained Moroccan counsel and commenced six (6) different proceedings in Morocco.

118. These proceedings include: Claim Against Customs Administration proceeding in the Administrative Court of Casablanca; Claim for Priority Creditor Status pursuant to Article 104 of the Dahir, proceeding in the Commercial Court of Casablanca;

Claim to Recover Oil proceeding in the Commercial Court of Casablanca; Claim for Preventative Seizure of SAMIR's Going Concern proceeding in the Commercial Court of Casablanca; Injunction to Prevent Further Disposal of Oil proceeding in the Commercial Court of Casablanca; and Claim to Recover Oil proceeding in the Commercial Court of Casablanca.[4]

119. Plaintiffs filed debt declarations pursuant to Articles 678-688 of the Moroccan Commercial Code to establish their claims in connection with SAMIR's bankruptcy proceedings in Morocco.

120. Defendants have been on notice of these Moroccan proceedings for months, including during the negotiation of the Tolling Agreement, and have been kept apprised of the status of these proceedings.

121. Defendants have never expressed disapproval or dissatisfaction with Plaintiffs' mitigation efforts.

122. Plaintiffs have retained $33,335,408.29 in connection with the sixteen (16) Confirmations entered into with SAMIR by VMF, 2014-1, and 2015-1. This amount represents haircut payments made by SAMIR in connection with Plaintiffs' purchase of crude oil and/or petroleum products, which partly offsets the amount of this claim.

123. Pursuant to the terms and conditions of the Policies, Plaintiffs are entitled to recover costs and expenses from Defendants associated with Plaintiffs' efforts to reduce any potential losses under the Policies.

[4] Plaintiffs also participated in SAMIR's claim/Request for Judicial Redress proceeding in the Commercial Court of Casablanca.

124. To date, Defendants have not provided any compensation or reimbursement to Plaintiffs for these mitigation efforts.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS
(Breach of Contract)

125. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs 1 through 124 above, with the same force and effect as if set forth here in full.

126. The Policies provide insurance coverage for losses related to Crude Oil, Petroleum Products, Ethanol and other related liquid cargoes.

127. The SAMIR refinery falls squarely within the geographical area covered in the Policies.

128. The Policies are all-risk insurance contracts under which Defendants agreed to indemnify Plaintiffs for covered losses.

129. The Policies provide coverage for theft and willful misconduct.

130. The SAMIR Theft occurred during the policy period for the Policies.

131. The SAMIR Theft is a covered loss under the Policies.

132. Plaintiffs have sought payment and indemnification from Defendants under the terms of the Policies due to the losses incurred from the SAMIR Theft.

133. To date, Defendants have failed to make any payment to Plaintiffs for their losses due to the SAMIR Theft and Defendants are in breach of the terms of the Policies.

134. By reason of the foregoing, Defendants subscribing to Policy 1, Policy 2 and the Excess Policy are liable in whole or in part to Plaintiffs in the amount of $395,959,804.00 ($429,295,212.29 less $33,335,408.29), plus interest, representing Plaintiffs' claims under Policy 1, Policy 2 and the Excess Policy due to the SAMIR Theft.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS
(Declaratory Judgment)

135. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs 1 through 124 above, with the same force and effect as if set forth here in full.

136. The Policies provide insurance coverage for losses related to Crude Oil, Petroleum Products, Ethanol and other related liquid cargoes.

137. The SAMIR refinery falls squarely within the geographical area covered in the Policies.

138. The Policies are all-risk insurance contracts under which Defendants agreed to indemnify Plaintiffs for covered losses.

139. The Policies provide coverage for theft and willful misconduct.

140. The SAMIR Theft occurred during the policy period for the Policies.

141. The SAMIR Theft is a covered loss under the Policies.

142. Plaintiffs have sought payment and indemnification from Defendants under the terms of the Policies due to losses incurred from the SAMIR Theft.

143. To date, Defendants have failed to make any payment to Plaintiffs for their losses due to the SAMIR Theft and have failed to acknowledge coverage for Plaintiffs' losses due to the SAMIR Theft.

144. By reason of the foregoing, an actual case and controversy exists and Plaintiffs seek a declaration from the Court that: (a) the SAMIR Theft is a covered loss under Policy 1, Policy 2 and the Excess Policy; and (b) Defendants are responsible to make payment to Plaintiffs for losses due to the SAMIR Theft.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS
(Mitigation Expenses)

145. Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs 1 through 124 above, with the same force and effect as if set forth here in full.

146. Pursuant to the terms and conditions of the Policies, Plaintiffs are entitled to costs and expenses from Defendants associated with Plaintiffs' attempts to reduce any potential loss under the Policies.

147. Plaintiffs have commenced six (6) different proceedings in Morocco, in addition to filing debt declarations, in an effort to recover the crude oil and petroleum products or their equivalent dollar amount due to the SAMIR Theft.

148. The intent of Plaintiffs' proceedings in Morocco is to reduce the amount of losses owed by Defendants under the Policies.

149. To date, Defendants have not compensated or reimbursed Plaintiffs for any expenses associated with the proceedings commenced in Morocco and are in breach of the terms of the Policies.

150. By reason of the foregoing, Defendants subscribing to Policy 1, Policy 2 and the Excess Policy are liable in whole or in part to Plaintiffs for the costs and expenses associated with Plaintiffs' attempts to reduce potential losses under the Policies.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendants as follows:

a. For damages on Plaintiffs' breach of contract claim in the amount to be proven at trial but believed to be not less than $395,959,804.00 ($429,295,212.29 less $33,335,408.29);

b. Declaring that Plaintiffs' losses incurred due to the SAMIR Theft are covered under Policy 1, Policy 2 and the Excess Policy;

c. For all costs and expenses, including but not limited to legal fees, associated with Plaintiffs' attempts to mitigate the amount owed by Defendants under Policy 1, Policy 2, and the Excess Policy;

d. Interest, costs and disbursements of this action, and

e. Such other, further and different relief as this Court deems just and proper.

Dated: March 3, 2017

Respectfully submitted,

WEIL, GOTSHAL & MANGES LLP

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