

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	4
A. The Parties	4
1. FIC	4
2. B,D&S.....	4
B. Nature of the Action.....	5
1. The Complaint	5
2. The Counterclaim.....	6
C. The Ongoing Rehabilitation Proceedings	6
ARGUMENT.....	7
POINT I.	
ABSTENTION IS WARRANTED GIVEN NEW YORK’S COMPREHENSIVE STATUTORY SCHEME RELATING TO THE REHABILITATION OF INSOLVENT INSURANCE COMPANIES	7
A. The <u>Burford</u> Abstention Doctrine.....	7
B. The Supremacy of State Law in Insurance Matters.....	8
C. New York’s Comprehensive Regulatory Scheme	9
1. The Comprehensive Nature of Article 74 Is Well Established.....	9
2. The Mechanics of Article 74.....	10
D. Staying the Counterclaim Is Warranted Under the Circumstances	14
E. Abstention Will Not Leave B,D&S Without Recourse.....	20

POINT II.

FATAL PLEADING DEFICIENCIES COMPEL THE PARTIAL DISMISSAL OF THE COUNTERCLAIM.....	22
A. Negligence Claim.....	23
B. Breach of Fiduciary Duty Claim.....	23
C. Unjust Enrichment Claim	24
D. Promissory Estoppel Claim.....	24
E. Fraud Claim	24
F. Defamation Claim.....	25
CONCLUSION.....	26

TABLE OF AUTHORITIES

Cases

<u>Ace Grain Co. v. Rhode Island Insurance Co.</u> , 107 F. Supp. 80 (S.D.N.Y.) <u>aff'd</u> , 199 F.2d 758 (2d Cir. 1952).....	13
<u>In re Allcity Insurance Co.</u> , 66 A.D.2d 531, 413 N.Y.S.2d 929 (1st Dep't), <u>appeal dismissed in part, denied in part</u> , 48 N.Y.2d 629, 396 N.E.2d 474, 421 N.Y.S.2d 192 (1979).....	11, 12
<u>Alliance of American Insurers v. Cuomo</u> , 854 F.2d 591 (2d Cir. 1988).....	7, 8
<u>Capitol Indemnity Corp. v. Curiale</u> , 871 F. Supp. 205 (S.D.N.Y. 1994)	8, 9, 13, 20
<u>American Centennial Insurance Co. v. Armco Inc.</u> , 746 F. Supp. 350 (S.D.N.Y. 1990)	20
<u>American Disposal Services, Inc. v. O'Brien</u> , 839 F.2d 84 (2d Cir. 1988).....	7
<u>Banco Espirito Santo de Investimento, S.A. v. Citibank, N.A.</u> , 2003 U.S. Dist. LEXIS 23062, (S.D.N.Y. Dec. 22, 2003), <u>aff'd</u> , 110 Fed. Appx. 191 (2d Cir. 2004).....	23, 24
<u>Barnhart v. Federated Department Stores</u> , 2005 U.S. Dist. LEXIS 3631 (S.D.N.Y. Mar. 8, 2005)	25
<u>Burford v. Sun Oil Co.</u> , 319 U.S. 315 (1943).....	passim
<u>Clark-Fitzpatrick, Inc. v. Long Island Rail Road Co.</u> , 70 N.Y.2d 382, 516 N.E.2d 190, 521 N.Y.S.2d 653 (1987).....	23
<u>Corcoran v. Ardra Insurance Co.</u> , 657 F. Supp. 1223 (S.D.N.Y. 1987), <u>appeal dismissed, mandamus denied</u> , 842 F.2d 31 (2d Cir. 1988).....	9, 10, 18, 19
<u>Corcoran v. Ardra Insurance Co.</u> , 77 N.Y.2d 225, 567 N.E.2d 969, 566 N.Y.S.2d 575 (1990), <u>cert. denied</u> , 500 U.S. 953 (1991).....	11
<u>Corcoran v. Universal Reinsurance Corp.</u> , 713 F. Supp. 77 (S.D.N.Y. 1989).....	19

<u>County of Suffolk v. Long Island Lighting Co.</u> , 907 F.2d 1295 (2d Cir. 1990).....	7
<u>Curiale v. AIG Multi-Line Syndicate, Inc.</u> , 204 A.D.2d 237, 613 N.Y.S.2d 360 (1st Dep’t 1994), <u>appeal dismissed</u> , 84 N.Y.2d 1026, 647 N.E.2d 454, 623 N.Y.S.2d 182 (1995).....	12
<u>Curiale v. Amberco Brokers Ltd.</u> , 766 F. Supp. 171 (S.D.N.Y. 1991).....	15
<u>DDCLAB Ltd. v. E.I. du Pont de Nemours & Co.</u> , 2005 U.S. Dist. LEXIS 2721 (S.D.N.Y. Feb. 18, 2005).....	24
<u>G.C. Murphy Co. v. Reserve Insurance Co.</u> , 54 N.Y.2d 69, 429 N.E.2d 111, 444 N.Y.S.2d 592 (1981).....	22
<u>Holmes v. Lorch</u> , 329 F. Supp.2d 516 (S.D.N.Y. 2004).....	24
<u>JP Morgan Chase Bank v. Winnick</u> , 350 F. Supp.2d 393 (S.D.N.Y. 2004).....	25
<u>In re Knickerbocker Agency, Inc.</u> , 4 A.D.2d 71, 162 N.Y.S.2d 822 (1st Dep’t 1957), <u>aff’d</u> , 4 N.Y.S.2d 245, 149 N.E.2d 885, 173 N.Y.S.2d 602 (1958).....	12
<u>In re Knickerbocker Agency, Inc.</u> , 4 N.Y.2d 245, 149 N.E.2d 885, 173 N.Y.S.2d 602 (1958).....	10
<u>Lac D’Amiante du Quebec, Ltee v. American Home Assurance Co.</u> , 864 F.2d 1033 (3d Cir. 1988).....	passim
<u>Law Enforcement Insurance Co. v. Corcoran</u> , 807 F.2d 38 (2d Cir. 1986), <u>cert. denied</u> , 481 U.S. 1017 (1987).....	15
<u>Levy v. Lewis</u> , 635 F.2d 960 (2d Cir. 1980).....	8, 10, 17, 22
<u>MacDraw, Inc. v. The CIT Group Equipment Financing, Inc.</u> , 157 F.3d 956 (2d Cir. 1998).....	24
<u>Mathias v. Lennon</u> , 474 F. Supp. 949 (S.D.N.Y. 1979)	19
<u>In re MetLife Demutualization Litigation</u> , 156 F. Supp.2d 254 (E.D.N.Y. 2001)	8

