IN THE CIRCUIT COURT FOR BALTIMORE CITY

CYNTHIA M. CLARK as successor personal representative of THE ESTATES OF WALTER F. KACALA and HELEN M. KACALA, *et al.*,	*	
Individually and on Behalf of All Others Similarly Situated,	*	
Plaintiffs	*	
v.	*	**Case No. 24-C-21-000847**
PETER G. ANGELOS, ESQ., *et al.*,	*	**JURY TRIAL DEMANDED**
Defendants	*	

* * * * * * * * * * * * *

THIRD AMENDED CLASS ACTION COMPLAINT[1]

Plaintiffs Cynthia M. Clark, as successor personal representative of the Estates of Walter F. Kacala and Helen M. Kacala; Norman J. Loverde, as successor personal representative of the Estates of Stephen J. Loverde, Sr. and Mary Anna Loverde; and Maria M. McCarthy and William J. McCarthy, Jr., as personal representatives of the Estate of Anne Major and successor personal representatives of the Estate of Bernard L. Major, on their own behalves and on behalf of all others similarly situated (together, "Plaintiffs"), bring this Third Amended Class Action Complaint against Peter G.

[1] A comparison copy tracking edits to Plaintiffs' Second Amended Class Action Complaint is appended as **Exhibit 1**.

Angelos, Esq. ("Attorney Angelos"); Gary J. Ignatowski, Esq. ("Attorney Ignatowski"); Armand J. Volta, Jr., Esq. ("Attorney Volta"); and The Law Offices of Peter G. Angelos, P.C. (the "Angelos Firm," and together with the individual attorney Defendants, "Angelos"), and allege as follows based on personal knowledge as to Plaintiffs' own acts and on information and belief as to all other matters:

INTRODUCTION

1. This case concerns multiple failures of the Angelos Firm; its founder, Attorney Angelos; Angelos Attorneys Ignatowski and Volta; and other Angelos attorneys acting in concert with them or under their supervision to pursue timely the claims of their clients, thousands of victims of asbestos-related diseases.

2. Angelos's clients trusted the firm to pursue timely their contract claims arising out of a settlement agreement with MCIC, Inc. ("MCIC"), a former asbestos insulation installer, and certain of its insurers. By failing to bring this meritorious claim on time, Angelos cost its clients millions of dollars in insurance proceeds that they likely would have recovered in litigation.

3. Later, Angelos's clients trusted the firm to pursue timely their tort claims against MCIC. By also failing to bring this meritorious claim on time, Angelos cost its clients millions of dollars in tort damages that they likely would have recovered in litigation.

4. Angelos's clients also trusted the firm to pursue timely all viable claims

against any of MCIC's insurers that provided liability coverage to MCIC that would or could apply to their asbestos injuries. By failing to pursue all available insurance, including from Reliance Insurance Co., Angelos again cost its clients millions of dollars.

5. Angelos's mass malpractice has its origins in 1994, when Angelos and six other law firms executed a global/block settlement agreement with MCIC and its insurers on behalf of thousands of asbestos injury claimants whose rights had been established in a consolidated trial. Under settlements structured in this manner, asbestos companies and their insurers settle all claims brought by a large number of plaintiffs without individualized proof of damages.

6. Pursuant to the 1994 agreement (the "MCIC Settlement Agreement"), MCIC and its insurers agreed to pay the settling parties approximately $12.4 million.

7. In the MCIC Settlement Agreement, MCIC promised that, if any additional insurance coverage were discovered, MCIC would promptly notify Angelos and the other law firm parties to the settlement and arrange for *pro rata* distribution of the additional insurance proceeds.

8. In 1997, the court now known as the Appellate Court of Maryland decided Commercial Union Insurance Co. v. Porter Hayden Co., 116 Md. App. 605 (1997). In that case, the court explained that bodily injuries sustained during the installation of asbestos products are distinct from bodily injuries sustained as a result of exposure to

completed products and that, accordingly, liability insurance policies providing operations coverage could apply to claims arising from injuries caused by exposure during installation.

9. Historically, liability insurance policies, such as the policies that funded the MCIC Settlement Agreement, imposed aggregate limits only for those bodily injury claims arising from exposure to asbestos-containing products after operations are completed (i.e., products claims).

10. Porter Hayden thus opened the door to additional or augmented insurance coverage not subject to aggregate limits to pay the claims of plaintiffs who were injured during the installation or removal of asbestos products.

11. Angelos learned about Porter Hayden soon after it was decided and contacted MCIC to inquire about additional coverage in light of: (i) the distinction drawn in Porter Hayden between bodily injuries arising from exposure after operations are completed versus bodily injuries arising from exposure during operations; (ii) the fact that liability insurance policies included aggregate limits for products/completed operations coverage but not for operations coverage; and (iii) MCIC's promise in the MCIC Settlement Agreement to arrange for *pro rata* distributions of additional insurance proceeds identified.

12. In 1998, Angelos engaged an insurance industry expert in a separate

asbestos litigation matter. In that separate matter, Angelos's expert distinguished between products coverage subject to aggregate limits, and operations coverage not subject to such limits.

13. Angelos knew as early as 1997 and no later than 1998 that, in light of the decision in Porter Hayden, additional insurance coverage was available to pay claims against MCIC based on the MCIC insurance policies disclosed prior to the 1994 settlement. In fact, the participants in the MCIC settlement likely were entitled to tens if not hundreds of millions of dollars of additional insurance proceeds.

a. Despite Angelos's knowledge about that additional insurance coverage, Angelos waited until October 2002—more than five years after Porter Hayden was decided—to file a Motion to Enforce [the] Settlement Agreement ("Motion to Enforce").

b. The Circuit Court for Baltimore City granted summary judgment to MCIC and its insurers, ruling that the Motion to Enforce was untimely, as it had been filed more than three years after the cause of action accrued. The Appellate Court of Maryland affirmed, and the court now known as the Supreme Court of Maryland denied certiorari.

c. At no time did Angelos inform its clients that its effort in 2002 to enforce the MCIC Settlement Agreement had been unsuccessful.

To this day, Angelos has not informed its clients about the untimely Motion to Enforce.

14. Angelos also knew as early as 1997 and no later than 1998 that MCIC's insurers were aware, prior to 1994, that additional insurance had been available, and their representations that the MCIC Settlement Agreement was based on the full amount of remaining insurance coverage available to MCIC under its liability insurance policies (under oath in affidavits attached to the MCIC Settlement Agreement) had been false.

a. Despite Angelos's knowledge about the false representations of MCIC and its insurers, Angelos brought a new action against the insurers in 2005, nearly eight years after Porter Hayden was decided. Angelos alleged fraud and other tort claims relating to the nondisclosure during the 1994 settlement negotiations of operations coverage not subject to aggregate limits (the "Tort Action").

b. Once again, the Circuit Court for Baltimore City granted summary judgment to the insurers, finding the new tort claims untimely as filed outside the three-year limitations period. Once again, the Appellate Court of Maryland affirmed, and the Supreme Court of Maryland denied certiorari.

c. In March 2018, Angelos informed its clients for the first time that the "lawsuit commenced by the Firm on your behalf in 2005 against MCIC … has come to an end" and advised them to "seek separate legal counsel concerning any further options [they] may have as to … a potential claim against the Firm by reason of its late filing."

15. Angelos also knew at the time of the MCIC Settlement Agreement in 1994 that Reliance had repurchased over a decade of policies from MCIC for a fraction of the policies' value, even before Porter Hayden opened the door to operations coverage without aggregate limits for asbestos claims.

a. Despite that knowledge, and despite that Angelos knew or should have known that Maryland law protects tort claimants from collusive efforts by insurers and insureds to abrogate coverage, Angelos took no action to challenge or even investigate the Reliance buy-back.

a. At no time has Angelos informed its clients about its failure to pursue additional coverage from Reliance.

16. Angelos's mismanagement of its clients' claims against MCIC and its insurers could have lasting, generational effects on asbestos victims and their surviving relatives if that mismanagement is not corrected in this litigation.

17. Thousands of Maryland's laborers, tradesmen, and asbestos installers

were denied the full compensation they deserve due to Angelos's repeated failures to prosecute their claims within the three-year limitations period familiar to all Maryland attorneys.

18. Attorneys that maintain a high-volume, plaintiff-side practice owe no less a duty of care to their clients than do in-house attorneys or attorneys who represent a small number of institutional clients. All attorneys owe their clients a duty to exercise reasonable care in the course of the representation. Angelos repeatedly breached its duty of reasonable care.

19. Plaintiffs are similarly situated to the thousands of Angelos clients who were deprived of additional compensation due to the untimely Motion to Enforce, the untimely Tort Action, and Angelos's failure to obtain additional insurance proceeds from Reliance.

20. Plaintiffs seek through this litigation to vindicate their own rights and the rights of thousands of similarly situated Angelos clients, who entrusted Angelos with multiple claims against MCIC and suffered damages due to Angelos's abdication of its duty of reasonable care.

21. Because the MCIC Settlement Agreement requires a *pro rata* distribution of additional insurance proceeds, and for other reasons described herein, litigating these claims as a class action is superior to other available methods for the fair and efficient

adjudication of this dispute.

PARTIES

22. Cynthia M. Clark resides in Dahlonega, Georgia, and is the duly appointed successor personal representative of the Estates of Walter F. Kacala and Helen M. Kacala, her parents.

23. Walter and Helen Kacala first engaged Angelos to represent them in or around 1989, and Angelos continuously represented the Kacalas and/or their estates from that time until Angelos terminated its representation of them in 2021.

24. Walter Kacala was employed as a crane operator at American Smelting & Refining Co. ("ASARCO") in the Canton neighborhood of Baltimore, Maryland from before World War II until the mid-1970s. While employed by ASARCO, Mr. Kacala was exposed to asbestos fibers that were released during MCIC's asbestos installation operations. Mr. Kacala suffered asbestos-related injuries as a result of his exposure to those fibers.

25. Norman J. Loverde resides in Towson, Maryland, and is the duly appointed successor personal representative of the Estates of Stephen J. Loverde, Sr., and Mary Anna Loverde, his parents.

26. Stephen and Mary Anna Loverde first engaged Angelos to represent them in or around 1985, and Angelos continuously represented the Loverdes and/or their estates from that time until Angelos terminated its representation of them in 2021.

27. Stephen Loverde was employed as a plumber for over four decades and spent much of his career at the Poole & Kent Co. in Baltimore, Maryland. While working on job sites in the Baltimore area, Mr. Loverde was exposed to asbestos fibers that were released during MCIC's asbestos installation operations. Mr. Loverde suffered asbestos-related injuries as a result of his exposure to those fibers.

28. Maria M. McCarthy and William J. McCarthy, Jr. reside in Lutherville Timonium, Maryland, and are the duly appointed personal representatives of the Estate of Anne Major and successor personal representatives of the Estate of Bernard L. Major, Mrs. McCarthy's aunt and uncle.

29. Bernard and Anne Major first engaged Angelos to represent them in the mid-to-late 1970s, and Angelos continuously represented the Majors and/or their estates from that time until Angelos terminated its representation of them in 2021.

30. Bernard Major was employed as a plumber for decades and spent much of his career at the Poole & Kent Co. in Baltimore, Maryland. While working on job sites in the Baltimore area, Mr. Major was exposed to asbestos fibers that were released during MCIC's asbestos installation operations. Mr. Major suffered asbestos-related injuries as a result of his exposure to those fibers.

31. Attorney Angelos resides in Monkton, Maryland, and is the founding shareholder of the Angelos Firm.

32. Attorney Ignatowski resides in Lutherville Timonium, Maryland, and is employed by the Angelos Firm.

33. Attorney Volta resides in Catonsville, Maryland, and is employed by the Angelos Firm.

34. The Angelos Firm is a professional corporation organized under the laws of the State of Maryland, with its principal place of business located at 100 North Charles St. in Baltimore City, Maryland. The Angelos Firm and its counsel have provided legal services to Plaintiffs and all other members of the proposed Class, as further alleged herein.

JURISDICTION AND VENUE

35. This Court has subject-matter jurisdiction over this action pursuant to Md. Code Ann., Cts. & Jud. Proc. §§ 1-501 & 4-401, because the amount in controversy exceeds $30,000.

36. This Court has personal jurisdiction over Angelos pursuant to Md. Code Ann., Cts. & Jud. Proc. §§ 6-102 & 6-103, because the Angelos Firm is a Maryland professional corporation; Attorneys Angelos, Ignatowski, and Volta are domiciled in Maryland; and the events complained of herein transpired in Maryland.

37. Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-201, venue is proper in Baltimore City as to the Angelos Firm because it maintains its principal offices in the City. Venue is proper as to Attorneys Angelos, Ignatowski, and Volta because they are

employed, carry on their regular business, and/or habitually engage in their vocation in the City. Alternatively, venue is proper pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-202(8), as Plaintiffs' cause of action in this legal malpractice case arose in Baltimore City.

38. Pursuant to 28 U.S.C. § 1332(d)(2), the aggregate value of the claims of Plaintiffs and the Class exceeds $5,000,000, exclusive of interest and costs; the Class consists of over 100 members; and Plaintiffs have identified one or more class members who are citizens of a state other than Maryland.

FACTUAL ALLEGATIONS

Angelos and the Asbestos Litigation Boom

39. For much of the twentieth century, asbestos was a heat-resistant construction material of choice and was particularly favored for insulation and fireproofing systems.

40. Early in the twentieth century, even as asbestos was widely deployed in new construction, public health experts became concerned about the risks of respiratory disease caused by exposure to asbestos fibers and dust.

41. By the 1970s, public health concerns prompted a transition from asbestos to other, safer building materials in the United States and countries worldwide, though certain asbestos materials remain legal in the United States to this day.

42. At least 27.5 million people are estimated to have had significant

occupational exposure in industries traditionally associated with asbestos, such as shipbuilding and construction, while tens of millions of others have been exposed while working in other industries.[2]

43. As the health risks of asbestos exposure became more widely known, law firms specializing in representation of plaintiffs in personal injury actions began aggressively pursuing compensation from asbestos manufacturers and installers on behalf of injured victims suffering from mesothelioma, cancer, and other asbestos-related diseases.

44. Baltimore has long been a locus for asbestos litigation, due in significant part to Angelos's high-volume litigation practice.

45. Since the 1970s, Angelos has represented thousands of laborers, tradesmen, and asbestos installers who, like Plaintiffs here, were exposed to asbestos fibers during operations.

46. A 1990 article in the Baltimore Sun observed that Angelos then represented "almost 8,500 union members, primarily from the building and construction trades and the steel workers' unions, in Maryland and the District of

[2] Am. Acad. of Actuaries, Current Issues in Asbestos Litigation 1 (2006), https://www.actuary.org/sites/default/files/files/asbestos_feb06.4.pdf/asbestos_feb06.4.pdf.

Columbia."[3]

47. In 2016, Angelos ranked first in the nation by number of asbestos filings. In 2018, it ranked fourth in the nation.[4]

48. More than two-thirds of the roughly 30,000 asbestos cases pending in the Circuit Court for Baltimore City as of April 2019 had been filed by Angelos.[5]

49. While payments received from asbestos manufacturers, installers, and insurers by Angelos's individual clients may be modest, the firm has reaped massive revenues from its litigation strategy.

50. In 1992 alone, Angelos generated around $300 million in legal fees through mass asbestos claim settlements.

51. The firm's founder, Attorney Angelos, personally became so wealthy from asbestos litigation and settlements that he was able to acquire a controlling interest in

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[3] Graeme Browning, Mass Tort Cases: A Legal Nightmare; Lawyer Angelos Reigns as 'King of Asbestos', Balt. Sun (Oct. 7, 1990), https://www.baltimoresun.com/news/bs-xpm-1990-10-07-1990280152-story.html.

[4] KCIC, Asbestos Litigation: 2018 Year in Review (2019), https://www.kcic.com/media/1918/kcic-2018-asbestos-report.pdf.

[5] Pamela Wood, Late Push in Maryland General Assembly Would Move Thousands of Asbestos Lawsuits into Mediation, Balt. Sun (Apr. 3, 2019, 5:40 p.m.), https://www.baltimoresun.com/politics/bs-md-asbestos-late-bill-20190402-story.html.

the Baltimore Orioles.[6]

Angelos Fails to Timely File the Motion to Enforce

The MCIC Settlement Agreement

52. MCIC, a contractor that installed asbestos-containing insulation materials at industrial and construction sites throughout Maryland, has been a defendant in thousands of lawsuits alleging harm suffered by plaintiffs who were exposed to asbestos dust released during MCIC's asbestos installation operations.

53. In 1992, the cases of over 8,500 plaintiffs with asbestos claims against MCIC and other defendants—including thousands of plaintiffs represented by Angelos—were consolidated for a common-issues trial in the Circuit Court for Baltimore City. That trial has been described in subsequent litigation as Abate I.

54. The jury in Abate I found MCIC and five other defendants strictly liable for asbestos-related injuries suffered by foreseeable users and bystanders.

55. In post-trial negotiations, Angelos informed MCIC that it was agreeable to a global/block settlement for the total amount of MCIC's insurance coverage.

56. Unlike in ordinary civil litigation, where a party may participate actively

[6] Harold Kim, Commentary, Law Firm Looking to Change the Way Asbestos Cases Are Handled in Baltimore Courts, Balt. Sun (Feb. 25, 2020, 1:02 p.m.), https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0226-angelos-asbestos-20200225-xdz6oxhpw5gcrlm437zmqbvvpi-story.html.

in all phases of the case, in asbestos litigation parties often have little to no role while their counsel pursue mass claims and global/block settlements (i.e., asbestos-related settlements involving more than one settlement beneficiary in which the amount received by each beneficiary is determined with reference to a schedule that allocates different payment amounts to different injury categories).

57. In fact, Angelos's standard engagement letter authorized Angelos to "investigate … claims[] against any entities who may be liable for [asbestos] injuries" and to "take all steps in said matter deemed by [the Angelos Firm] to be advisable including … filing [of] any legal action necessary." The letter acknowledged that each Plaintiff's "suit may be part of a large[r] number of cases which may be handled as an aggregate for trial preparation" and authorized Angelos to "enter into any multiple settlement negotiations."

58. In October 1993, MCIC's counsel produced a set of documents, later described in litigation as the "Nagle Documents," which contained declaration sheets and other evidence of the insurance policies that provided liability coverage to MCIC.

59. MCIC and its insurers alleged that the full policies themselves were unavailable and could not be reviewed by Angelos.

60. As a practical matter, the per-claim and per-occurrence limits of the policies as identified in the Nagle Documents quickly would be displaced by any

applicable aggregate limits.

61. By way of example only, a liability insurance policy with a $300,000 per-occurrence limit but also a $300,000 aggregate limit for completed operations or products claims would pay out a maximum of $300,000 for claims arising from injuries caused by exposure to finished asbestos products, irrespective of the number or dollar value of those claims.

62. During settlement negotiations, certain of MCIC's insurers (Continental, Hartford, Lumbermens, Royal, USF&G, and Liberty Mutual) executed affidavits attesting to the remaining balance of all available insurance policies, an amount that added up (per the affidavits) to $12,369,005.89.

63. Acting in reliance on the information contained in the affidavits, Angelos and six other firms executed the MCIC Settlement Agreement on behalf of their clients. A copy of the MCIC Settlement Agreement is attached to this Third Amended Class Action Complaint as **Exhibit 2**.

64. Pursuant to the MCIC Settlement Agreement, MCIC and its insurers agreed to pay a total of just over $12 million to settle 8,633 claims, with settlement proceeds to be distributed to settlement participants in four tranches depending on disease category (*i.e.*, mesotheliomas, lung cancers, other cancers, and non-malignancies) without any determination by MCIC as to the facts or merits of

individual actions.

65. Payments would range from $1,000 for plaintiffs with non-malignant conditions up to $9,500 for plaintiffs with mesothelioma. The overwhelming majority of settlement participants received $1,000 payments.

66. Because the settlement was predicated on the insurer affidavits attesting to insurance limits, Angelos insisted that MCIC and the insurers contractually covenant to pay over any undisclosed insurance funds.

67. Section 2.2 of the MCIC Settlement Agreement provides that "if in addition to the insurance disclosed by the Insurers and confirmed by their affidavits … other insurance is discovered which would be applicable to claims made, the Defendant will promptly notify Participating Plaintiffs' Counsel and arrange for a *pro rata* distribution to them for payment to the Plaintiffs."

Angelos Uncovers Additional Insurance

68. In August 1997, roughly three years after the MCIC Settlement Agreement was finalized, the Appellate Court of Maryland decided Commercial Union Insurance Co. v. Porter Hayden Co., 116 Md. App. 605 (1997), cert. denied, 348 Md. 205 (1997).

69. In Porter Hayden, the Appellate Court distinguished between bodily injuries caused by exposure to asbestos-containing products after operations are completed versus bodily injuries caused during the installation of asbestos products.

70. The Porter Hayden court rejected an insurer's argument that "asbestos-related claims … are all, in essence, products liability claims because they deal with the hazards posed by a product." Instead, injuries caused by the emission of asbestos dust during an installation process could be covered under a liability insurance policy that provided for operations coverage.

71. Most of the liability insurance policies that provided coverage for MCIC imposed aggregate limits for bodily injury claims arising from exposure to products after operations are completed. Conversely, ***none*** of the policies imposed aggregate limits for bodily injury claims arising from exposure during operations.

72. Angelos became aware of Porter Hayden and, as a leader in the asbestos litigation industry, discerned that the logic of that case could extend to thousands of clients who contracted asbestos-related diseases while working in or around asbestos installation or removal operations.

73. The MCIC Settlement Agreement, which predated Porter Hayden, did not distinguish between products and operations coverage but instead broadly covered claims "alleging bodily injury and/or wrongful death allegedly as a result of exposure to asbestos containing products sold, distributed, ***and/or applied***" by MCIC (emphasis added).

74. The agreement naturally encompassed thousands of claims arising from

operations injuries, since the typical Angelos client was a laborer or tradesman whose exposure to asbestos occurred while asbestos insulation materials were installed at construction sites and in industrial settings.

75. Soon after Porter Hayden was decided, Attorney Angelos contacted MCIC, contending that additional insurance funds may be available for distribution pursuant to Section 2.2 of the MCIC Settlement Agreement.

76. Angelos and MCIC thereafter entered a protracted series of discussions about the potential for additional coverage.

77. In February 1998, Attorney Angelos informed counsel for MCIC that it was "absolutely necessary" that Angelos "independently verify whether or not additional coverage exists for MCIC," and asked MCIC to "cooperate fully in providing … copies of the insurance policies."

78. In April 1998, Attorneys Volta and Ignatowski met with counsel for MCIC to discuss Angelos's contention that additional insurance coverage may be available and to obtain copies of relevant documents.

79. In January 2001, Attorneys Volta and Ignatowski again met with counsel for MCIC to discuss Angelos's contention that additional insurance coverage may be available. At that meeting, counsel for MCIC offered to assign to Angelos whatever rights Angelos contended were available under the applicable insurance policies.

80. During this same general period, Angelos was separately involved with a bankruptcy case involving Wallace & Gale, an insulation contractor. The bankruptcy case is captioned In re Wallace & Gale Co., Bankruptcy No. 85-A-0092, CIV.PJM No. 94-2327 (D. Md.).

81. In May 1998, Scott Gilbert, an insurance law expert retained by Angelos, submitted an expert report (the "Gilbert Report") in the Wallace & Gale litigation that opined about the difference between products and operations coverage.

82. The Gilbert Report stated:

> The Maryland courts have adopted the view that asbestos installation claims are nonproducts claims not subject to aggregate limits. In a case directly on point, the Maryland Court of Special Appeals has held that, for purposes of assessing the duty to defend, asbestos bodily injury claims arising from asbestos installation activities are nonproducts claims. See Commercial Union Ins. Co. v. Porter Hayden Co.

83. Thus, by August 1997, and indisputably by May 1998, Angelos knew, in light of the decision in Porter Hayden, that additional insurance coverage was available to pay out the claims against MCIC.

84. Without aggregate limits, the insurers' liability, subject only to per-claim and per-occurrence limits, likely would have added up to tens if not hundreds of millions of dollars.

85. For instance, one representative policy identified among the Nagle

Documents, issued by Lumbermens, contained a per-occurrence limit of $1 million and an aggregate limit of $1 million for claims arising out of "products-completed operations liability."

86. Given Porter Hayden's recognition that an asbestos installer "could be held liable for the manner in which it conducted its operations in installing the asbestos containing products," such that "it is not solely covered by the 'Products Hazard' insurance" to which aggregate limits apply, see Porter Hayden, 116 Md. App. at 692 (emphasis omitted), separate occurrences arising from exposure during asbestos installation could pay out under the representative Lumbermens policy at up to $1 million apiece.

The Time-Barred Motion to Enforce

87. Angelos made a demand on MCIC and its insurers in June 2002, more than four years after the Gilbert Report was submitted in the Wallace & Gale litigation, contending that additional insurance was available.

88. Subsequently, on October 17, 2002, Angelos filed a Motion to Enforce in the Circuit Court for Baltimore City, in Case No. 24-X-89-236705.

89. The Motion to Enforce was premised on a theory that MCIC and its insurers had breached their contractual obligation to identify and pay over any additional insurance proceeds that might be discovered following execution of the MCIC Settlement

Agreement.

90. On October 30, 2002, at a meeting among counsel at the outset of proceedings on the Motion to Enforce, counsel for two of MCIC's insurers, Hartford and Royal, admitted that their clients' asbestos operations coverage was not subject to aggregate limits. At that same meeting, Angelos demanded $400 million in settlement of its clients' claims.

91. On August 5, 2004, the circuit court entered summary judgment in favor of MCIC and its insurers, applying the doctrine of laches to hold that the Motion to Enforce had not been timely filed.

92. The Appellate Court of Maryland affirmed that decision in an unpublished 2006 opinion captioned Anderson v. Royal Indemnity Co., No. 1962, Sept. Term 2004. The Appellate Court reasoned:

> When we filed the reported opinion in the Porter Hayden case in August of 1997, and that case became part of the public domain, any Maryland attorney whose practice involved asbestos litigation and insurance coverage for such cases was on notice that there might be nonproducts liability, and correspondingly, insurance coverage for such nonproducts liability, that exceeded the liability and coverage previously assumed to be applicable. The Gilbert [R]eport makes [] clear that by May of 1998, this development in the asbestos field was widely known, and that the prospect of insurance coverage that was not subject to aggregate limits was not ignored by asbestos plaintiffs' attorneys.

93. In September 2006, the Supreme Court of Maryland denied Angelos's

petition for a writ of certiorari.

Angelos Neglects to Inform Its Clients of the Untimely Motion to Enforce

94. At all relevant times, Angelos represented Plaintiffs; and a continuous, confidential relationship existed between them.

95. At no time were Plaintiffs on notice of any circumstances that would have caused them, or a reasonable person in their position, to undertake an investigation that, if pursued with reasonable diligence, would have led them to discover Angelos's untimely prosecution of their rights and claims as set forth in the Motion to Enforce.

96. To this day, Angelos has not informed its clients about the final, non-appealable adverse determination on the Motion to Enforce, in violation of the Maryland Attorneys' Rules of Professional Conduct and governing case law.

97. Plaintiffs were among thousands of settlement beneficiaries whose rights were at stake in the Motion to Enforce.

98. The litigation against MCIC was one of many matters handled by Angelos on behalf of Plaintiffs.

99. Plaintiffs, who are untrained in the law, reasonably relied on their relationship with Angelos, a veteran asbestos firm, to timely prosecute their claims in the Motion to Enforce.

100. As a direct and proximate result of Angelos's failure to timely file the

Motion to Enforce, Plaintiffs and all other Angelos clients similarly situated to them were denied the benefit of their bargain under the MCIC Settlement Agreement and deprived of insurance proceeds reflecting the undisclosed coverage not subject to aggregate insurance coverage limits.

Angelos Fails to Timely File the Tort Action

Misrepresentations During the MCIC Settlement Negotiations

101. MCIC ceased its asbestos operations in the mid-1980s. In 1992, MCIC and other defendants were found strictly liable at the Abate I trial for asbestos-related injuries suffered by thousands of plaintiffs—most of whom were represented by Angelos—who were exposed to asbestos dust released during MCIC's asbestos installation operations.

102. In later settlement negotiations, certain of MCIC's insurers executed affidavits misrepresenting the amount of insurance coverage available and the tendering of all known and applicable limits.

103. Neither MCIC nor its insurers disclosed to Angelos or its clients the availability of any insurance coverage not subject to aggregate limits.

104. Angelos and six other firms executed the MCIC Settlement Agreement on behalf of their clients, and MCIC and its insurers agreed to pay a total of $12,351,000 to settle 8,633 claims.

Porter-Hayden Exposes MCIC's Fraud

105. The Appellate Court of Maryland's 1997 decision in Porter Hayden established that a liability insurance policy providing operations coverage could cover bodily injuries caused by the emission of asbestos dust during asbestos installation or removal.

106. As a leader in the asbestos litigation industry, Angelos knew that the reasoning in Porter Hayden would apply to thousands of clients who contracted asbestos-related diseases while working in or around asbestos installation or removal operations.

107. The liability insurance policies that provided coverage for MCIC imposed aggregate limits for asbestos injury claims arising from exposure to asbestos products after operations are completed but not for claims arising from exposure during operations.

108. Soon after Porter Hayden was decided, Attorney Angelos contacted MCIC, contending that information MCIC's insurers had provided during the 1994 settlement negotiations may not have been accurate.

109. By that time, and indisputably by May 1998 (when Angelos's expert in the Wallace & Gale litigation opined about operations coverage), Angelos knew that MCIC's insurers had falsely represented during settlement negotiations that the

maximum available coverage for the MCIC Settlement Agreement had been $12,351,000.

110. Later, through discovery in connection with the Motion to Enforce, Angelos obtained documents and communications showing that MCIC and its insurers may have been aware as of the time of the MCIC Settlement Agreement (long before the Porter Hayden decision), and potentially in the mid-eighties or earlier, that the liability insurance policies issued to MCIC provided operations coverage for asbestos claims not subject to aggregate limits.

111. These newly produced documents and communications were described in litigation as the "Chapper Documents," a reference to Bruce Chapper, an attorney for MCIC. Examples of the Chapper Documents include the following:

a. In a letter from Royal Insurance to Mr. Chapper dated April 8, 1986, a representative for Royal remarked that Mr. Chapper had previously expressed that "most of the claims were operational in nature." The Royal representative also stated that "Royal could only participate in the defense of suits that made claim in an operational nature," since "Royal's policies and coverages for [MCIC] is [*sic*] for 'Manufactures [*sic*] and Contractors' only. Our underwriting investigation of said policy material revealed that coverage for 'Products and Completed Operations'

did not exist."

b. Royal made a similar representation at a November 29, 1989 meeting that involved MCIC and multiple insurance carriers.

c. A memo prepared by Mr. Chapper regarding a March 20, 1986 meeting between MCIC and certain of its insurers similarly reflected MCIC's knowledge of operations coverage. According to the memo, Chapper acknowledged that MCIC was "perfectly satisfied" with operations coverage as represented by one insurer, since MCIC's employees "had actually been on the job site in 99% of the cases and only once or twice supplied material without actually doing the installation."

The Time-Barred Tort Action

112. On May 10, 2005, Angelos filed a new Tort Action in the Circuit Court for Baltimore City, No. 24-C-05-005067, against MCIC (through its director-trustees) and six insurers: Continental, Hartford, Liberty Mutual, Lumbermens, Royal, and USF&G.[7] The Tort Action included counts for negligent misrepresentation, fraudulent misrepresentation, and fraud by concealment, together with other counts not germane to this action.

[7] Lumbermens was later dismissed from the Tort Action and was not named as a defendant in the operative third amended complaint.

113. The Tort Action centered on evidence acquired by Angelos through the Chapper Documents. It concentrated on misrepresentations made by MCIC's insurers in the affidavits in 1994.

114. On November 20, 2012, the circuit court granted summary judgment to the defendants on the tort claims, finding that the claims were time barred.

115. The circuit court determined that "facts of which plaintiffs had knowledge in 1997 were sufficient to place them on inquiry notice that defendants' representations were false." More specifically, the court found that "at the time that Porter Hayden was decided plaintiffs did have policy material from which a reasonable person could determine that defendants' representations were untrue."

116. Citing the Nagle Documents, the court observed that "[a]ggregate limits … explicitly apply only to liability for bodily injuries arising out of products-completed operations hazards," and that a mere "glance" at these documents following the Porter Hayden ruling would have revealed that "two different kinds of limits—occurrence versus aggregate—applied to MCIC's coverage, that per occurrence limits applied generally to personal injury damages, but that aggregate limits applied only to personal injury arising from products-completed operations injuries."

117. The circuit court held that "limitations began to run at the time of the Porter Hayden decision," and thus the 2005 Tort Action was "barred by the statute of

limitations."

118. The Appellate Court of Maryland affirmed the judgment of the circuit court in Estate of Adams v. Continental Insurance Co., 233 Md. App. 1 (2017), reasoning as follows:

> When Porter Hayden became part of the public domain, and the controlling law in Maryland, all appellants knew that they had been wronged—they had settled a case based on the misrepresentation that only products coverage was available—and then learned that operations coverage had been available all along. The publication of Porter Hayden combined with possession of the Nagle Documents put all appellants on inquiry notice that the assurances in the affidavits and the settlement agreement were false. All appellants were on inquiry notice, at the very least, that the statements may have been made negligently.

119. The Appellate Court added that by "May of 1998, [Angelos] was arguing for nonaggregated limits from operations coverage in other court cases," specifically the Wallace & Gale litigation, "but not this case."

120. The Appellate Court thus concluded for a second time that limitations began to run for Angelos "no later than May 4, 1998 when Gilbert filed his report." The Tort Action, therefore, was filed more than four years outside the applicable limitations period.

121. The Supreme Court of Maryland denied Angelos's petition for a writ of certiorari in the Estate of Adams case on September 22, 2017.

Angelos Comes (Partially) Clean to Its Clients About the Tort Action

122. At all relevant times, Angelos represented Plaintiffs; and a continuous, confidential relationship existed between them.

123. In March 2018, Angelos sent a letter through its co-counsel, Rifkin Weiner Livingston LLC, to its clients, informing them that "the lawsuit commenced by the Firm on your behalf in 2005 against MCIC … and five of its insurance companies[] has come to an end." A copy of the March 2018 letter is attached to this Third Amended Class Action Complaint as **Exhibit 3**.

124. The March 2018 letter acknowledged that because "this 2005 MCIC Complaint filed on your behalf by the Firm was not filed in a timely fashion … additional funds sought from MCIC and/or its insurers cannot be obtained."

125. The March 2018 letter also stated that

> in light of the decision by the Maryland courts … the Firm may not advise you further about the action relating to the MCIC settlement except to advise you to seek separate legal counsel concerning any further options you may have as to potential claims against MCIC or its insurers, or as to a potential claim against the Firm by reason of its late filing.

126. The March 2018 letter added: "If, after you have had the opportunity to consult separate counsel, the Firm does not hear from you, the Firm will assume that you wish the Firm to continue to represent you and advise you with regard to your other asbestos claims against different asbestos defendant companies and their

insurers."

127. At no time prior to receiving the March 2018 letter were Plaintiffs on notice of any circumstances that would have caused them, or a reasonable person in their position, to undertake an investigation that, if pursued with reasonable diligence, would have led them to discover Angelos's untimely prosecution of their rights and claims in the Tort Action.

128. Prior to receiving the March 2018 letter, Plaintiffs were unaware of the adverse outcome of the Tort Action.

129. Plaintiffs were among thousands of parties to the Tort Action.

130. The litigation against MCIC was one of many matters handled by Angelos on behalf of Plaintiffs.

131. Plaintiffs, who are untrained in the law, reasonably relied on their relationship with Angelos, a veteran asbestos firm, to timely prosecute their claims in the Tort Action.

132. As a direct and proximate result of Angelos's failure to timely file the Tort Action, Plaintiffs and all other Angelos clients similarly situated to them were deprived of tort damages reflecting the value of an honest settlement with MCIC had MCIC's insurers accurately disclosed the amount of available insurance.

Angelos Fails to Pursue Coverage from Reliance Insurance Co. Timely

The Reliance Buyout

133. In 1992, MCIC and other defendants were found strictly liable in the Abate I litigation for asbestos-related injuries suffered by thousands of common-issues plaintiffs. As a result, a verdict as to liability was entered in favor of the Abate I common issues plaintiffs against MCIC.

134. Reliance and its predecessor in interest, Standard Accident, had issued liability policies to MCIC, providing primary coverage from 1959 through 1971.

135. Although the policies themselves apparently have been lost or destroyed, in March 1990, Reliance provided information about the policies, based on secondary evidence it had uncovered, to USF&G, which led the joint defense of MCIC and its insurers.

136. According to Reliance, this secondary evidence revealed that six of its policies included per-claim limits of $100,000 and per-occurrence limits of $300,000, while at least one of the policies issued by Standard Accident included per-claim limits of $100,000 and per-occurrence limits of $500,000.

137. Based on that information, and even without allowing for operations coverage not subject to aggregate limits, as Porter Hayden requires, the Standard/Reliance policies included indemnification obligations totaling at least $4.6

million.

138. As set forth in an October 1991 pleading in United States Fidelity & Guaranty Co. v. Reliance Insurance Co., No. 91140074/CL131385 (Balt. City Cir. Ct.), at a December 1990 meeting, Reliance had "confirmed 9.3 years of coverage for McCormick, and agreed to pay 25% of the defense costs expended by USF&G on behalf of McCormick."

139. Months later, Reliance later withdrew its offer to contribute to MCIC's defense.

140. In a March 22, 1991 letter, USF&G warned Reliance that its "sudden about-face … indicates that it is no longer dealing in good faith," and Reliance's "attempts to renege on a commitment which is firmly established by documentary evidence" would result in litigation.

141. USF&G and MCIC followed through on that threat, and sued Reliance in April 1991 for breach of contract and bad faith, among other claims.

142. Reliance countersued in August 1991, seeking a declaratory judgment to determine MCIC's rights under the Standard/Reliance policies.

143. Reliance predicated its refusal to participate in MCIC's defense on a "lost policy" defense, which was frivolous, as Reliance itself had acknowledged that its policies provided coverage for MCIC.

144. In settlement negotiations among MCIC, USF&G, and Reliance, shortly before the jury announced its verdict in Abate I, Reliance offered to contribute $750,000 toward resolution of the asbestos plaintiffs' claims and $750,000 toward defense costs.

145. In other words, Reliance was willing to put on the table for indemnity just one-sixth of the aggregate limits of its policies (aside from any operations coverage that greatly expand its indemnification obligations to MCIC)—but only on condition that (i) MCIC were to grant Reliance a policy release for any and all policies provided by Reliance, and (ii) USF&G were to release Reliance from any and all claims.

146. Given Reliance's recalcitrance, MCIC and USF&G discussed assigning MCIC's rights as against Reliance to the Abate I asbestos plaintiffs.

147. In October 1992, after the Abate I verdict resulted in a determination of MCIC's liability as to thousands of asbestos plaintiffs, counsel for Reliance reached out to Judge Kaplan, the judge who would later supervise the MCIC Settlement Agreement, to request his assistance in "break[ing] the log jam" between Reliance and USF&G.

148. In advance of the conference before Judge Kaplan, counsel for MCIC and USF&G discussed that, while USF&G's figures were based on "real numbers," Reliance was "acting from the nuisance point of view" and not negotiating in good faith.

149. Judge Kaplan hosted a settlement conference between and among MCIC, USF&G, and Reliance on November 30, 1992.

150. During the settlement conference, while Judge Kaplan was absent from the room, MCIC took the position that since Reliance would be "selling the policies back," the indemnity portion of Reliance's settlement payment should be paid to MCIC directly, and MCIC would then contribute to USF&G's costs to date.

151. MCIC further took the position that a consent judgment should be entered "to protect MCIC against any future claims which may be made by claimants who might allege that MCIC had dissipated a corporate asset for less than its fair value." Reliance concurred with this proposal, believing it would "protect Reliance against claims filed directly against the insurer by asbestos claimants."

152. The parties then discussed how best to achieve their collusive consent judgment without a hearing, so as to "avoid having Judge Kaplan delve too deeply into the matter and thus possibly upset any compromise," and to "avoid having notice given to various potential claimants and thus having either the asbestos plaintiffs or their counsel present at the hearing."

153. As the conference proceeded, Judge Kaplan suggested posting notice of settlement in the *Daily Record*. The parties were opposed to that suggestion, as they wished to keep the collusive buyout confidential.

154. Following the conference, with settlement not yet consummated, counsel for Reliance informed counsel for MCIC that Reliance would be looking for a "release to

be signed in addition to the order," since Reliance's "potential indemnity obligation extended beyond" the amount MCIC would be receiving, "and Reliance was essentially buying back the policies, including buying back their obligation to further defend MCIC."

155. Following the conference, MCIC understood that it likely would "retain approximately $750,000.00 for later use" following final settlement with Reliance. MCIC considered the monetary terms of settlement to be "extremely favorable."

156. On December 15, 2022, as settlement negotiations continued, counsel for Reliance phoned counsel for MCIC to inform him that "continuing research of Maryland law had been done on behalf of Reliance in that Reliance wanted to assure, as much as possible, that any settlement reached between the parties could not be re-opened by any of the plaintiffs of the personal injury litigation. He stated that Reliance viewed that there is some risk to Reliance under the Maryland Direct Action Statute."

157. Counsel for Reliance also was "searching for some way to resolve this matter by having an actual judgment entered in the case rather than by simply having the Court approve a settlement." This was important to Reliance because "Judge Kaplan had indicated that notice would be published and Reliance was fearful that this notice might bring forth any number of personal injury plaintiffs to challenge the

proposed settlement."

158. MCIC and Reliance then conspired about "some type of consent judgment or actual motion for summary judgment ruled upon by the Court which would determine that there is, in fact, no coverage of MCIC by Reliance." Any such judgment would be entered notwithstanding that Reliance's "lost policy" defense was frivolous and that all parties had acknowledged, at various times, that Reliance provided coverage to MCIC.

159. Ultimately, settlement was consummated between and among MCIC, USF&G, and Reliance in late December 1992.

160. On the eve of settlement, a dispute arose over whether MCIC would receive a check at the settlement table. MCIC insisted that, while a portion of Reliance's payment was "in concept" for indemnification, "in actuality it was in payment to MCIC for surrender of the policies," and "due to the financial condition of the Corporation it may be necessary to use the funds in order to maintain the corporate existence."

161. The parties reached an agreement whereby MCIC would receive payment and hold a portion in reserve, with the right to access those funds if necessary to maintain MCIC's operations.

162. In early January 1993, MCIC informed Judge Kaplan's chambers that settlement had been achieved. When chambers inquired as to the amount of settlement

"so that it could be placed on the record," MCIC advised that "the stipulations of dismissal did not have a dollar amount to be placed on the record although consideration had passed," as "the parties wanted to keep this matter confidential."

163. The parties wanted to keep this matter confidential because they recognized that Reliance had repurchased a decade of coverage for a small fraction of its true value.

164. As would later be disclosed in the MCIC settlement negotiations spearheaded by Angelos, Reliance repurchased its policies for $1.2 million paid to MCIC, of which MCIC paid $443,950 to USF&G and held the remaining $756,050 in reserve.

165. That $756,050 was included in the MCIC Settlement Agreement, which purported to be an agreement for payment of all available insurance.

Angelos Knows the Reliance Buyout Was Collusive and Unfair but Fails to Challenge It

166. Even before Porter Hayden was decided in 1997, Angelos knew that the Reliance buyout had been collusive and unfair, as Reliance repurchased its policies for a small fraction of their true value, even assuming Reliance's exposure was capped by the aggregate limits of the policies.

167. Based on information provided by Reliance, which indicated that Reliance's policies provided at least $4.6 million in aggregated coverage, the $756,050

portion of the settlement allocated to the MCIC settlement beneficiaries represented just 16% of that coverage.

168. Angelos was aware of these dollars amounts, having received that information from USF&G in connection with the MCIC settlement negotiations.

169. Angelos was on notice of the public filings in connection with the dueling lawsuits between MCIC and USF&G, on the one hand, and Reliance, on the other hand.

170. A December 29, 1992 letter from John Nagle, counsel for USF&G, to Angelos attorney Thomas Friedman referenced "a declaratory judgment action … filed by Reliance against USF&G in the Circuit Court for Baltimore City," and stated that Angelos had been previously informed of that litigation. By the time of that December 29 letter, the dueling lawsuits between MCIC/USF&G and Reliance had been consolidated.

171. Angelos knew or should have known, through those public filings, that Reliance had acknowledged that its policies provided coverage to MCIC, and that Reliance initially had agreed to participate in MCIC's defense, before rescinding that agreement in bad faith.

172. Angelos knew or should have known, as Reliance itself appears to have recognized during the 1992 buyout negotiations, that Maryland public policy, as reflected in Maryland's direct action statute, Md .Code Ann., Ins. § 19-102(b), prohibits

insurers from altering coverage to the detriment of tort claimants with vested rights.

173. Angelos knew or should have known that Maryland law prohibits collusive, bad faith schemes between insurers and insureds to unwind insurance otherwise available to tort claimants.

174. Had Angelos acted with reasonable prudence and either sought discovery as a condition of settlement and/or filed litigation to challenge the patently inadequate Reliance buyout, Angelos would have learned detailed information about the collusion between and among MCIC, USF&G, and Reliance, which would have clearly established that the buyout was unlawful and subject to rescission.

175. Indeed, while each of the participants in the Reliance buyout negotiations—MCIC, USF&G, and Reliance—had a financial incentive to reach an agreement, none of the participants made any effort to advocate for the interests of the Abate I asbestos plaintiffs, who by that time had jury verdicts of liability in their favor.

176. MCIC simply wanted cash to keep its operations afloat.

177. USF&G wanted some contribution toward defense costs and a forthcoming global settlement.

178. Reliance wanted to minimize its liability and avoid a scenario where the Abate I claimants could pursue it directly for coverage.

179. MCIC, USF&G, and Reliance each wanted to avoid, and conspired to

avoid, public disclosure of the terms of their collusive settlement.

180. Had Angelos challenged the unlawful Reliance buyout, the buyout would have been rescinded, and Reliance would have contributed millions of dollars of additional insurance in advance of or as part of the MCIC settlement.

181. Had Angelos challenged the unlawful Reliance buyout, Reliance would have participated in the MCIC settlement, either as a party to the MCIC Settlement Agreement or (like Liberty Mutual) as an affiant attesting to policy limits.

182. After the Appellate Court of Maryland decided in Porter Hayden that bodily injuries caused during the installation of asbestos products could be covered under insurance policies providing operations coverage, Angelos would have had a basis to seek additional insurance from Reliance and/or to sue Reliance (like the other insurers) for fraud, since the $4.6 million figure quoted by Reliance was predicated on aggregate limits that do not apply to the Abate I claimants.

183. Reliance entered liquidation in October 2001.

184. In its operative third amended complaint in the Tort Action, Angelos wrote: "Reliance Insurance Company also sold insurance to MCIC, but said insurance company has been liquidated and cannot be sued on the basis of the policies it sold to MCIC."

185. Notwithstanding Angelos's knowledge of the buyout, Angelos took no

action to unwind the buyout or otherwise assert its clients' rights as against Reliance, either before or after Reliance entered liquidation.

186. In 2022, long after limitations expired on all claims available to Angelos as against MCIC and its insurers, the Supreme Court of Maryland decided CX Reinsurance Co. v. Johnson, 481 Md. 472 (2022).

187. In CX Reinsurance, the Supreme Court reversed the judgment of both the Circuit Court for Baltimore City and the Appellate Court of Maryland, which courts had held that injured tort claimants are the intended third-party beneficiaries of liability insurance policies with vested right to enforce those policies as of the time of injury.

188. The Supreme Court held instead that such tort claimants would "not have the right to enforce the terms of Policies as they existed prior to the rescission case settlements, ***provided that those settlements were the product of good-faith, non-collusive negotiations***." Id. at 478 (emphasis added).

189. Even if CX Reinsurance could be relevant to a determination of the state of the law, and Angelos's duty of reasonable care, as of the early 1990s, CX Reinsurance does not address the rights of tort claimants with a jury finding of liability in their favor, as the Abate I claimants had.

190. Even if CX Reinsurance could be relevant to a determination of the state of the law, and Angelos's duty of reasonable care, as of the early 1990s, CX Reinsurance

recognizes that Maryland law prohibits the type of bad faith, collusive negotiations between insurers and insureds in which MCIC, USF&G, and Reliance engaged.

191. Angelos had all the information necessary to challenge timely the Reliance buyout on behalf of its clients.

192. Had Angelos challenged timely the Reliance buyout on behalf of its clients, it would have recovered, in judgment or settlement, additional insurance proceeds to enhance the value of the MCIC settlement.

193. Angelos took no action to vindicate its clients' rights as against Reliance.

Angelos Neglects to Inform Its Clients of Its Failure to Pursue Additional Claims

194. At all relevant times, Angelos represented Plaintiffs, and a continuous, confidential relationship existed between them.

195. At no time were Plaintiffs on notice of any circumstances that would have caused them, or a reasonable person in their position, to undertake an investigation that, if pursued with reasonable diligence, would have led them to discover Angelos's untimely prosecution of their rights and claims as against Reliance.

196. Plaintiffs never have been informed by Angelos about the failure by Angelos to pursue timely additional insurance from Reliance, which bought back its policies issued to MCIC for a fraction of their true value.

197. Plaintiffs were among thousands of Abate I common-issues plaintiffs.

198. Abate I was one of many matters handled by Angelos on behalf of Plaintiffs.

199. Plaintiffs, who are untrained in the law, reasonably relied on their relationship with Angelos, a veteran asbestos firm, to timely prosecute their claims against Reliance.

200. As a direct and proximate result of Angelos's failure to pursue timely a claim against Reliance, Plaintiffs were deprived of additional proceeds to which they would have been entitled had Reliance not collusively repurchased its policies for a small fraction of their true value.

201. On or about August 18, 2009, in connection with the third amended complaint in the Tort Action, the Angelos Firm, acting by and through the individual attorney Defendants and other employees and agents of the Firm, filed two lists on the public docket of the Circuit Court for Baltimore City. Those lists, identified as Exhibits 1 and 4B to the third amended complaint, identify all those individuals and/or their estate representatives who brought claims against MCIC and its insurers in the Tort Action (a list of approximately 9,593 such individuals, the "Tort Action Plaintiff List") and/or participated in the 1994 MCIC Settlement Agreement (a list of approximately 7,185 individuals, the "MCIC Settlement List").

202. Both the Tort Action Plaintiff List and the MCIC Settlement List included

the names of all such individuals. The Tort Action Plaintiff List included then-current mailing addresses, and the MCIC Settlement List included social security numbers.

203. Together, the Tort Action Plaintiff List and the MCIC Settlement List identify, in detail, the victims of Angelos's mass malpractice that Plaintiffs seek to remedy in this case.

PROPOSED CLASS

204. Pursuant to Md. Rule 2-231, Plaintiffs propose a Class of all MCIC settlement beneficiaries (or their estate representatives) represented by Angelos in connection with the MCIC Settlement Agreement, to include those settlement beneficiaries who participated in Abate I and/or the Tort Action, including but not limited to each of the individuals identified on the Tort Action Plaintiff List and the MCIC Settlement List. Excluded from the Class are:

a. All directors, officers, employees, and shareholders of the Angelos Firm, and their immediate family members;

b. All attorneys for Angelos in the current matter, and their immediate family members; and

c. Each and every judge assigned to this action and members of those judges' staffs, and their immediate family members.

205. Plaintiffs propose the following three Subclasses:

a. **Proposed Subclass A:** The 7,185 MCIC settlement beneficiaries (or their estate representatives) included on the MCIC Settlement List, and any other MCIC settlement beneficiaries (or their estate representatives) represented by Angelos in connection with the Motion

to Enforce.

b. **Proposed Subclass B:** The 9,593 Tort Action plaintiffs (or their estate representatives) included on the Tort Action Plaintiff List.

c. **Proposed Subclass C:** The 7,185 MCIC settlement beneficiaries (or their estate representatives) included on the MCIC Settlement List, and any other MCIC settlement beneficiaries (or their estate representatives) represented by Angelos as common-issues plaintiffs in the Abate I consolidated trial.

CLASS ALLEGATIONS

206. This action is properly maintained as a class action under Md. Rule 2-231(c)(1)(A) in that the prosecution of separate actions by individual members of the Class would create a risk of establishing incompatible standards of conduct by Angelos.

207. This action is properly maintained as a class action under Md. Rule 2-231(c)(1)(B) in that adjudications by individual class members would as a practical matter be dispositive of the interests of other members not parties to the adjudications or would substantially impede or impair their ability to protect their interests.

208. This action is properly maintained as a class action under Md. Rule 2-231(c)(2) in that Angelos's conduct is generally applicable to the Class as a whole, and Plaintiffs seek equitable remedies with respect to the Class as a whole.

209. This action is properly maintained as a class action under Md. Rule 2-231(c)(3) in that questions of law or fact common to members of the Class predominate over any questions affecting only individual members, and a class action

is superior to other available methods for the fair and efficient adjudication of this dispute between Angelos and members of the Class (including each Subclass).

Numerosity

210. Pursuant to Md. Rule 2-231(b)(1), the members of the Class are so numerous that joinder of all members is impracticable.

211. Over 8,500 plaintiffs participated in the MCIC settlement. The vast majority of those plaintiffs were represented by Angelos.

212. Over 9,000 plaintiffs were party to the third amended complaint brought by Angelos in the Tort Action.

213. Over 8,500 common-issues plaintiffs participated in the Abate I trial, of which the overwhelming majority were represented by Angelos, asserted claims against MCIC, and obtained verdicts as to liability against MCIC.

214. Because the identities of these thousands of potential class members are compiled in court filings and are known to Angelos, membership in the Class is readily ascertainable.

Commonality and Predominance

215. Pursuant to Md. Rule 2-231(b)(2) and 2-231(c)(3), there are questions of law and fact common to the Class, and these questions predominate over any questions

affecting individual class members.

216. Common questions of law and fact may relate to:

a. The scope of Angelos's duty of care to its clients;

b. Whether Angelos breached its duty of care;

c. Whether Angelos's breach of duty proximately caused loss to its clients;

d. Whether a reasonable lawyer in Angelos's position would have moved to enforce the MCIC Settlement Agreement no later than three years after Porter Hayden;

e. Whether a reasonable lawyer in Angelos's position would have filed tort claims against MCIC and its insurers no later than three years after Porter Hayden;

f. Whether a reasonable lawyer in Angelos's position would have investigated and challenged Reliance's buy-back of its insurance coverage for MCIC;

g. Whether the elements of an enforceable contract (offer, acceptance, consideration) were satisfied as to the MCIC Settlement Agreement;

h. The operations coverage available under the policies that

provided coverage to MCIC;

i. Any proof that may be required to establish whether settlement beneficiaries were injured while exposed to MCIC's asbestos operations;

j. The industry standard for establishing operations injuries, and how that standard corresponds to the stipulations in the MCIC Settlement Agreement;

k. The operation of Section 2.2 of the MCIC Settlement Agreement (the provision calling for *pro rata* distribution of additional insurance);

l. The determination of whether the MCIC Settlement Agreement can be enforced by its plain and unambiguous terms;

m. In the event the MCIC Settlement Agreement is deemed ambiguous, the extent to which parol evidence may be admissible to resolve the ambiguities;

n. The legal consequences of the parties' stipulations in the MCIC Settlement Agreement, including as to disease category and exposure window;

o. The class members' damages under Count I;

p. The application of the time-on-the-risk doctrine to the class members' damages;

q. The timing of accrual of interest on damages under Count I;

r. Whether, for purposes of the fraud theory, the insurers made false representations about the scope of coverage in 1994;

s. Whether, for purposes of the fraud theory, the insurers knowingly/recklessly made false representations;

t. Whether, for purposes of the fraud theory, Angelos reasonably relied on the insurers' representations;

u. Whether, for purposes of the fraud theory, Angelos's reliance passes through to its clients;

v. The class members' damages pursuant to the fraud theory;

w. The duty of care owed by counterparties (including insurers) to a settlement, for purposes of the negligence theory;

x. Whether, for purposes of the negligence theory, the insurers made false representations about the scope of coverage in 1994;

y. Whether, for purposes of the negligence theory, the insurers negligently made false representations about the scope of coverage in 1994;

z. Whether, for purposes of the negligence theory, the insurers intended to induce reliance, and whether Angelos reasonably relied on the insurers' representations;

aa. Whether, for purposes of the negligence theory, Angelos's reliance passes through to its clients;

bb. The class members' damages pursuant to the negligence theory;

cc. The extent to which punitive damages are recoverable as legal malpractice damages;

dd. The timing of accrual of interest on damages under Count II;

ee. What legal constraints apply to an insurer that seeks to alter a contract of insurance after claimants obtain a verdict as to the liability of its insured;

ff. What rights the Abate I common-issues plaintiffs may have as intended beneficiaries of the policies issued by Reliance as a result of the verdict they obtained as to the liability of the insured;

gg. Whether MCIC, USF&G, and Reliance colluded in bad faith in the MCIC buyout;

hh. The class members' damages under Count III;

ii. The timing of accrual of interest on damages under Count III;

jj. The evidentiary parameters and burdens of a "trial within a trial";

kk. The extent to which Angelos's advocacy positions in the underlying cases are binding judicial or evidentiary admissions in this case;

ll. The extent to which MCIC's and its insurers' statements in the underlying cases are binding judicial or evidentiary admissions in this case;

mm. The extent to which Angelos's numerous and continuing ethical violations are admissible to demonstrate its breach of duty to its clients; and

nn. Whether Plaintiffs' experts satisfy the threshold tests (including under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and Rochkind v. Stevenson, 471 Md. 1 (2020)) for admissibility of expert testimony.

217. Materially identical claims and injuries are implicated by this action. Individual questions, if any, pale by comparison in both quantity and substance to the

common questions that dominate this action.

218. Regardless whether any individual class member could have successfully litigated a claim against MCIC to judgment, and regardless whether one or more of MCIC's insurers would have owed a duty to indemnify MCIC with respect to any such individual claim, all members of Subclass A are beneficiaries of the MCIC Settlement Agreement that obligated MCIC and its insurers to arrange for a *pro rata* distribution of insurance proceeds not disclosed at the time of settlement.

219. All members of Subclass A therefore were entitled to a proportionate share, determined by their disease category as specified in the MCIC Settlement Agreement, of the additional insurance proceeds that indisputably would have been available in light of Porter Hayden had Angelos timely moved to enforce the MCIC Settlement Agreement.

220. Irrespective whether these claims move forward on a class or individual claim basis, the same analysis must occur: the fact finder must determine the entire amount of additional insurance under Section 2.2 of the MCIC Settlement Agreement, and then calculate each Subclass A member's *pro rata* share of that total amount.

221. Likewise, regardless whether any individual class member could have successfully litigated a claim against MCIC to judgment, and regardless whether one or more of MCIC's insurers would have owed a duty to indemnify MCIC with respect to

any such individual claim, all members of Subclass B were similarly harmed by the failure of MCIC and its insurers to acknowledge the operations coverage not subject to aggregate limits that the Chapper Documents reveal they concealed at the time of settlement.

222. All members of Subclass B therefore were deprived of their proportionate share, determined by their disease category as specified in the MCIC Settlement Agreement, of the larger settlement fund that would have been available had MCIC and its insurers candidly disclosed all insurance coverage. Damages corresponding to that larger settlement fund would have been recoverable had Angelos timely filed the Tort Action.

223. Irrespective whether these claims move forward on a class or individual claim basis, the same analysis must occur: the fact finder must determine the total value of an honest settlement with MCIC, and then calculate each Subclass B member's *pro rata* share of that total amount.

224. Additionally, Angelos's failure to pursue additional insurance proceeds from Reliance timely deprived all members of Subclass C of coverage that should have been available after their rights were confirmed by the jury's verdict in Abate I.

225. Had Angelos timely pursued coverage from Reliance, the collusive buyback would have been disregarded as against Maryland public policy, and

Plaintiffs' claims under the MCIC Settlement Agreement would not be subject to any time-on-the-risk adjustment for the period in which Reliance and its predecessor provided coverage.

Typicality

226. Pursuant to Md. Rule 2-231(b)(3), the claims of Plaintiffs as representative parties are typical of the claims of the Class.

227. Plaintiff Cynthia Clark's decedent parent, Walter F. Kacala, participated in the MCIC settlement and the Tort Action, such that his Estate (through Cynthia Clark as duly appointed successor personal representative) is a member of Subclass A and Subclass B. Mr. Kacala also was a common-issues plaintiff in Abate I and would have benefited from the additional insurance Angelos should have pursued from Reliance, such that his Estate (through Ms. Clark) is a member of Subclass C.

228. Mr. Kacala's underlying asbestos injury claims, like those of most class members, arise from exposure during MCIC's asbestos operations.

229. Angelos owed Mr. Kacala the same duty of care that Angelos owed other members of Subclasses A, B, and C; and Mr. Kacala's legal malpractice claims are materially identical to the legal malpractice claims of other members of those Subclasses.

230. Plaintiff Norman Loverde's decedent parents, Stephen J. Loverde, Sr. and

Mary Anna Loverde, were participants in both the MCIC settlement and the Tort Action, such that their Estates (through Norman Loverde as duly appointed successor personal representative) are members of Subclass A and Subclass B. One or both of the Loverdes also were common-issues plaintiffs in Abate I and would have benefited from the additional insurance Angelos should have pursued from Reliance, such that their Estates (through Mr. Loverde) are members of Subclass C.

231. The Loverdes' underlying asbestos injury claims, like those of most class members, arise from exposure during MCIC's asbestos operations.

232. Angelos owed the Loverdes the same duty of care that Angelos owed other members of Subclasses A, B, and C; and the Loverdes' legal malpractice claims are materially identical to the legal malpractice claims of other members of those Subclasses.

233. Plaintiffs Maria and William McCarthy's decedent relatives, Bernard L. Major and Anne Major, were participants in both the MCIC settlement and the Tort Action, such that their Estates (through Maria and William McCarthy as duly appointed successor personal representatives and personal representatives, respectively) are members of Subclass A and Subclass B. One or both of the Majors also were common-issues plaintiffs in Abate I and would have benefited from the additional insurance Angelos should have pursued from Reliance, such that their Estates (through

the McCarthys) are members of Subclass C.

234. The Majors' underlying asbestos injury claims, like those of most class members, arise from exposure during MCIC's asbestos operations.

235. Angelos owed the Majors the same duty of care that Angelos owed other members of Subclasses A, B, and C; and the Majors' legal malpractice claims are materially identical to the legal malpractice claims of other members of those Subclasses.

Adequacy

236. Pursuant to Md. Rule 2-231(b)(4), Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.

237. Plaintiffs seek the same recovery as that sought on behalf of each Subclass, predicated on the same breach of duty by Angelos and the same theories of damages.

238. Neither Plaintiffs nor their counsel have any interests that might cause them not to vigorously pursue these claims. Neither Plaintiffs nor their counsel have any conflict that could impair their representation of the broader Class.

239. Plaintiffs' counsel are seasoned civil litigators who frequently appear in state court in Maryland on a wide range of matters, including high-stakes commercial disputes and complex insurance coverage disputes.

240. Paul S. Caiola, Plaintiffs' lead counsel, is a first-chair commercial litigator

with extensive experience in insurance coverage disputes. Mr. Caiola serves as lead counsel in a case involving a contract dispute over whether an insurer could avoid its obligations to dozens of lead paint claimants in Baltimore. Mr. Caiola was counsel in Gorres v. Robinson, No. GLR-21-3029 (D. Md.), a case filed as a class action by recipients of unemployment insurance against the Maryland Secretary of Labor.

241. Brian T. Tucker, one of Plaintiffs' counsel, has extensive experience with liability insurance coverage claims and disputes on behalf of both insureds and insurers, along with providing advice on a wide range of insurance and contractual issues.

242. Joe Dugan, one of Plaintiffs' counsel, clerked for federal judges in the U.S. District Court for the District of Maryland and the U.S. Court of Appeals for the Seventh Circuit and served as a trial attorney with the U.S. Department of Justice, Civil Division, before joining Gallagher Evelius & Jones as a commercial litigator.

243. Plaintiffs' counsel and their colleagues, collectively, already have devoted many hundreds of hours to analyzing the facts and the law related to the claims in this case and are intimately familiar with the underlying procedural and legal issues. Plaintiffs' counsel will zealously advocate on behalf of Plaintiffs and the Class, as they have demonstrated time and again since this litigation was filed in February 2021.

Superiority

244. Pursuant to Md. Rule 2-231(c)(3), a class action would be superior to other available methods for the fair and efficient adjudication of this controversy.

245. The commonality of most if not all material issues of law and fact substantially diminishes the interest of members of the Class in individually controlling the prosecution of their claims. Should any such members desire to pursue their claims individually, they will have an opportunity to opt out of the Class at the class certification stage.

246. In March 2018, Angelos's co-counsel posted a letter to participants in the Tort Action, informing them about the adverse outcome of the Tort Action and apprising them of a "potential claim against the Firm by reason of its late filing." As of the date of this Third Amended Class Action Complaint, undersigned counsel are aware of just two actions against Angelos (one filed after this action was initiated) that refer or relate to the MCIC Settlement Agreement. Both actions have since resolved out of court. Neither action was styled as a class action. The lack of substantial litigation in response to the March 2018 letter suggests that members of the Class are not interested in controlling the prosecution of their claims, and/or are unable to afford the significant costs associated with individual litigation.

247. This Court is an appropriate forum for the proposed class action in that the Angelos Firm is a professional corporation organized under the laws of Maryland

with its principal place of business in Baltimore City; Attorneys Peter Angelos, Gary Ignatowski, and Armand Volta are employed, carry on their regular business, and/or habitually engage in their vocation in Baltimore City; and the untimely Motion to Enforce and Tort Action were filed and litigated in the Circuit Court for Baltimore City.

248. No difficulties are likely to be encountered in the management of the proposed class action.

249. However, considerable difficulty would arise if a large volume of participants in the MCIC settlement were to file separate legal malpractice actions and separately litigate those actions, exposing Angelos to overwhelming discovery obligations and this Court to a flood of lawsuits presenting materially identical legal and factual questions.

250. Moreover, because Angelos's malpractice insurance policies are "wasting" policies (meaning that defense costs reduce the total coverage), the costs Angelos would incur in defending against hundreds or thousands of duplicative cases quickly would erode Angelos's malpractice coverage, reducing the likelihood that the claimants could ultimately recover an amount commensurate with the damages they suffered due to Angelos's negligence.

251. The likely economic recovery in this class action would not justify individual litigation, given the cost to individual class members of hiring counsel,

conducting discovery, and retaining appropriate experts.

252. Absent class certification, it is highly unlikely that Angelos will ever be held accountable for the grave harm it has caused its clients, and it is equally unlikely that those clients will ever be made whole.

253. The class action procedure provides the further benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

COUNT I
Legal Malpractice in Untimely Filing of
Motion to Enforce

Alleged Individually and on Behalf of All Members of Subclass A

254. Plaintiffs allege and incorporate by reference the allegations contained in each of the foregoing paragraphs of this Third Amended Class Action Complaint.

255. Plaintiffs bring this count for legal malpractice on behalf of themselves and all members of Subclass A.

256. Angelos represented Plaintiffs and the other members of Subclass A in entering the 1994 MCIC Settlement Agreement.

257. Angelos knew as of the 1997 Porter Hayden decision, and no later than the 1998 Gilbert Report, that MCIC and its insurers had failed to disclose and pay over the additional proceeds of operations coverage not subject to aggregate limits.

258. Angelos knew or reasonably should have known that the limitations period for contract actions in Maryland generally is three years and that an equitable

action subject to the doctrine of laches is time-barred to the same extent as a corresponding legal action subject to a statute of limitations.

259. Notwithstanding that knowledge, Angelos filed the Motion to Enforce in October 2002, more than five years after Porter Hayden was decided and more than four years after the Gilbert Report was submitted in the Wallace & Gale litigation.

260. Angelos neglected its reasonable duty to timely move to enforce the MCIC Settlement Agreement.

261. As a direct and proximate result of Angelos's neglect of that reasonable duty, Angelos's clients who had participated in the MCIC settlement suffered financial losses equal to the amount of additional insurance proceeds and interest that would have been recovered but for Angelos's untimely filing of the Motion to Enforce.

262. The Angelos Firm is vicariously liable for the acts of its agents and employees performed in the scope of their agency and employment.

263. Plaintiffs and the members of Subclass A are entitled to damages equal to the amount of additional insurance proceeds and interest that would have been recovered but for Angelos's neglect of duty.

WHEREFORE, Plaintiffs, both individually and on behalf of the other class members, request that this Court enter an Order:

A. Certifying the Class and Subclass A, appointing Plaintiffs as

representatives of the Class and Subclass A, and appointing undersigned counsel as class counsel;

B. Finding that Angelos breached its duty of care to its clients in its untimely prosecution of the Motion to Enforce, proximately causing losses to them;

C. Awarding damages to Plaintiffs and to each member of Subclass A equal to the amount of additional insurance proceeds and interest that would have been recovered but for Angelos's untimely Motion to Enforce, in an amount to be proved at trial in excess of $75,000;

D. Awarding all loss of use, pre-judgment, and post-judgment interest to the maximum extent permitted by law;

E. Awarding the reasonable attorneys' fees, costs, and expenses incurred in the investigation, filing, and prosecution of this action to the maximum extent permitted by law; and

F. Granting such other relief as the Court deems just and appropriate.

COUNT II
Legal Malpractice in Untimely Filing of
Tort Action

Alleged Individually and on Behalf of All Members of Subclass B

264. Plaintiffs allege and incorporate by reference the allegations contained in each of the foregoing paragraphs of this Third Amended Class Action Complaint.

265. Plaintiffs bring this claim for legal malpractice on behalf of themselves

and all members of Subclass B.

266. Angelos represented Plaintiffs and the other members of Subclass B in the 2005 Tort Action.

267. Angelos knew as of the 1997 Porter Hayden decision, and no later than the 1998 Gilbert Report, that MCIC's insurers had deceived Angelos during the negotiations for the MCIC Settlement Agreement about the coverage available under their policies.

268. Angelos also knew that the statements contained in the MCIC insurers' affidavits—to the effect that all available insurance had been tendered—were false.

269. Angelos therefore had all the knowledge necessary to allege by 1997 or no later than 1998 that MCIC's insurers had made actionable misrepresentations about the available insurance coverage during settlement negotiations.

270. Angelos knew or reasonably should have known that the limitations period for tort actions in Maryland is generally three years.

271. Notwithstanding that knowledge, Angelos filed the Tort Action in May 2005, almost eight years after Porter Hayden was decided and seven years after the Gilbert Report was submitted in the Wallace & Gale litigation.

272. Angelos neglected its reasonable duty to timely prosecute its clients' tort claims.

273. As a direct and proximate result of Angelos's neglect of that reasonable duty, its clients who had participated in the MCIC settlement suffered financial losses equal to the amount of damages and interest that would have been recovered but for Angelos's untimely filing of the Tort Action.

274. The Angelos Firm is vicariously liable for the acts of its agents and employees performed in the scope of their agency and employment.

275. Plaintiffs and the members of Subclass B are entitled to tort damages equal to the damages that would have been recovered in a timely Tort Action but for Angelos's neglect of duty, *i.e.*, compensatory damages computed in consideration of the larger settlement fund that otherwise would have been available, punitive damages that would have been awarded as against MCIC's insurers, and interest.

WHEREFORE, Plaintiffs, both individually and on behalf of the other class members, request that this Court enter an Order:

A. Certifying the Class and Subclass B, appointing Plaintiffs as representatives of the Class and Subclass B, and appointing undersigned counsel as class counsel;

B. Finding that Angelos breached its duty of care to its clients in its untimely prosecution of Tort Action, proximately causing losses to them;

C. Awarding damages to Plaintiffs and to each member of Subclass B equal

to the amount of compensatory damages, punitive damages, and interest that would have been recovered but for Angelos's untimely Tort Action, in an amount to be proved at trial in excess of $75,000;

D. Awarding all loss of use, pre-judgment, and post-judgment interest to the maximum extent permitted by law;

E. Awarding the reasonable attorneys' fees, costs, and expenses incurred in the investigation, filing, and prosecution of this action to the maximum extent permitted by law; and

F. Granting such other relief as the Court deems just and appropriate.

COUNT III
Legal Malpractice in Failure to Pursue Insurance Coverage from Reliance Insurance Co.

Alleged Individually and on Behalf of All Members of Subclass C

276. Plaintiffs allege and incorporate by reference the allegations contained in each of the foregoing paragraphs of this Third Amended Class Action Complaint.

277. Plaintiffs bring this claim for legal malpractice on behalf of themselves and all members of Subclass C.

278. Angelos represented Plaintiffs and the other members of Subclass C at the Abate I trial.

279. Following the jury's common-issues verdict in Abate I, the common-issues plaintiffs—including Plaintiffs and the members of Subclass C—had vested rights in the

insurance policies issued to MCIC.

280. Maryland's longstanding public policy, as reflected in its direct action statute currently codified at Md. Code Ann., Ins. § 19-102(b), protects the vested rights of third-party beneficiaries of insurance agreements.

281. Maryland law, as discussed by the Supreme Court of Maryland in CX Reinsurance, prohibits collusive, bad faith arrangements between insurers and insureds to deprive tort claimants of access to insurance.

282. Notwithstanding those requirements of Maryland law, Reliance purported to repurchase its insurance coverage from MCIC in exchange for a lump sum payment.

283. That lump sum payment represented a small fraction of the value of Reliance's policies, even in the absence of unaggregated operations coverage.

284. Angelos was aware of the Reliance policy buyout, including the purported policy limits in the Reliance policies and the purchase price for a small fraction of the aggregate limits, and was on notice of litigation between USF&G and MCIC, on the one hand, and Reliance, on the other hand.

285. Angelos knew or should have known, from public filings, that Reliance had initially acknowledged that it provided coverage to MCIC but then rescinded that acknowledgment based on a frivolous "lost policy" defense that it asserted in bad faith.

286. Notwithstanding Angelos's knowledge about the deficient buyout and Reliance's bad faith conduct, Angelos took no action to unwind the buyout or otherwise assert its clients' rights as against Reliance.

287. Had Angelos promptly pursued its clients' rights as against Reliance, the buyout would have been rescinded, and Angelos would have recovered additional insurance for the Abate I common-issues plaintiffs.

288. Had Angelos promptly pursued its clients' rights as against Reliance, then Reliance would have participated in the MCIC settlement, as a party and/or as an affiant.

289. Had Angelos timely pursued Reliance for additional insurance coverage or tort damages following Porter Hayden, Angelos could have recovered additional insurance, not subject to aggregate limits, for its clients.

290. A reasonable lawyer in Angelos's position would have acted promptly to maximize the insurance available to pay the claims of that lawyer's clients.

291. Angelos neglected its reasonable duty to timely prosecute its clients' claims for additional coverage from Reliance.

292. As a direct and proximate result of Angelos's neglect of that reasonable duty, Angelos's clients who were common-issues plaintiffs in Abate I suffered financial losses equal to the millions of dollars of insurance and interest that would have been

recovered from Reliance but for Angelos's failure to challenge the buyout.

293. The Angelos Firm is vicariously liable for the acts of its agents and employees performed in the scope of their agency and employment.

294. Plaintiffs and the members of Subclass C are entitled to damages equal to the insurance proceeds and interest that would have been recovered from Reliance but for Angelos's neglect of duty.

WHEREFORE, Plaintiffs, both individually and on behalf of the other class members, request that this Court enter an Order:

A. Certifying the Class and Subclass C, appointing Plaintiffs as representatives of the Class and Subclass C, and appointing undersigned counsel as class counsel;

B. Finding that Angelos breached its duty of care to its clients in its failure to pursue their claims as against Reliance, proximately causing losses to them;

C. Awarding damages to Plaintiffs and to each member of Subclass C in an amount equal to any time-on-the-risk reduction otherwise applicable to Counts I and/or II, attributable to the period in which Reliance provided liability coverage to MCIC, together with any interest that Angelos would have recovered through a timely action;

D. Awarding all loss of use, pre-judgment, and post-judgment interest to the maximum extent permitted by law;

E. Awarding the reasonable attorneys' fees, costs, and expenses incurred in the investigation, filing, and prosecution of this action to the maximum extent permitted by law; and

F. Granting such other relief as the Court deems just and appropriate.

COUNT IV
Declaratory Judgment

Alleged Individually and on Behalf of All Members of Subclass A and Subclass C

295. Plaintiffs allege and incorporate by reference the allegations contained in each of the foregoing paragraphs of this Third Amended Class Action Complaint.

296. An actual controversy has arisen and now exists between Plaintiffs and the members of Subclasses A and C, on the one hand, and Angelos, on the other hand, concerning the scope and requirements of the MCIC Settlement Agreement.

297. Plaintiffs contend that all settlement beneficiaries are entitled to their *pro rata* share of any additional insurance proceeds that may be available, to include the proceeds of operations coverage not subject to aggregate limits.

298. To the extent that Plaintiffs establish the existence of ***any*** additional insurance with reference to ***any*** operations injuries within the Class, legal malpractice damages computed in consideration of that additional insurance must be distributed *pro rata* to all members of Subclass A or Subclass C, as applicable.

299. Plaintiffs maintain that the MCIC Settlement Agreement does not impose

any additional eligibility requirements for Plaintiffs, or the other members of Subclass A and Subclass C, to recover this additional insurance.

300. By contrast, Angelos contends, and has asserted in this litigation, that each class member, to recover malpractice damages in consideration of additional insurance proceeds, must establish that he or she (or his or her decedent) personally suffered an operations injury not subject to aggregate limits.

301. In moving to dismiss Plaintiffs' First Amended Class Action Complaint, Angelos asserted: "Each named plaintiff or class member must be able to show: (1) that they were regularly, frequently and proximately exposed to asbestos fibers emanating from asbestos containing products sold, supplied or installed by MCIC during a period of time MCIC was engaged in operations, (2) that there was an insurance policy in effect when they were exposed, (3) that they had an asbestos-related disease, (4) that the exposures attributed to MCIC were a substantial contributing factor in the development of their asbestos-related disease, (5) that they are entitled to damages, and (6) the amount of damages.

302. Angelos, in other words, would disregard the *pro rata* distribution framework in the MCIC Settlement Agreement and require the class members, in essence, to litigate individual asbestos claims as though there were no settlement agreement at all.

303. Angelos's position is contrary to the plain meaning of the MCIC Settlement Agreement.

304. Angelos's position is contrary to the position it took in litigation for fifteen years.

305. Nevertheless, in view of Angelos's position, a judicial declaration as to the correct construction of the MCIC Settlement Agreement is necessary and appropriate, so the parties can ascertain their respective rights and obligations under the agreement.

WHEREFORE, Plaintiffs, both individually and on behalf of the other class members, request that this Court enter an Order:

A. Finding and declaring that the MCIC Settlement Agreement requires all after-discovered insurance proceeds to be distributed to all settlement beneficiaries pursuant to the *pro rata* distribution framework set forth in the agreement;

B. Finding and declaring that a settlement beneficiary's individual exposure to MCIC's asbestos operations is not determinative of whether that beneficiary may be eligible to a *pro rata* share of additional insurance proceeds under the MCIC Settlement Agreement;

C. Awarding the reasonable attorneys' fees, costs, and expenses incurred in the investigation, filing, and prosecution of this action to the maximum

extent permitted by law; and

D. Granting such other relief as the Court deems just and appropriate.

Date: March 6, 2023

Respectfully submitted,

GALLAGHER EVELIUS & JONES LLP

Paul S. Caiola (AIS # 9512120109)
Brian T. Tucker (AIS # 0306180261)
Joseph C. Dugan (AIS #1812110109)
Sarah R. Simmons (AIS # 1912180151)
Elizabeth A. Caldera (AIS # 2111290020)
218 North Charles Street, Suite 400
Baltimore MD 21201
Telephone: 410-727-7702
Facsimile: 410-468-2786
pcaiola@gejlaw.com
btucker@gejlaw.com
jdugan@gejlaw.com
ssimmons@gejlaw.com
ecaldera@gejlaw.com

Attorneys for Plaintiffs