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SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK

GENESIS MERCHANT PARTNERS, LP AND GENESIS MERCHANT PARTNERS II, LP, Plaintiffs, -against- GILBRIDE, TUSA, LAST & SPELLANE LLC, JONATHAN M. WELLS, KENNETH M. GAMMILL, JR., AND CHARLES S. TUSA, Defendants.	Index No. Date summons filed: October 15, 2014 SUMMONS

To the above named Defendant(s):

GILBRIDE, TUSA, LAST & SPELLANE LLC
708 Third Avenue, 26th Floor
New York, New York 10017

JONATHAN M. WELLS
Gilbride Tusa Last & Spellane LLC
31 Brookside Drive
Greenwich, Connecticut 06830

KENNETH M. GAMMILL, JR.
Gilbride Tusa Last & Spellane LLC
31 Brookside Drive
Greenwich, Connecticut 06830

CHARLES S. TUSA
Gilbride Tusa Last & Spellane LLC
31 Brookside Drive
Greenwich, Connecticut 06830

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is defendants' place of business and/or residence, which is in New York County, New York.

Dated: October 15, 2014
New York, New York

LAW OFFICE OF WALLACE NEEL P.C.

Wallace Neel, Esq.
235 West 48th Street
Suite 28A
New York, NY 10036
(917) 374-8515
wallace@wallaceneel.com
Attorney for Plaintiffs

SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK

GENESIS MERCHANT PARTNERS, LP AND GENESIS MERCHANT PARTNERS II, LP, Plaintiffs, -against- GILBRIDE, TUSA, LAST & SPELLANE LLC, JONATHAN M. WELLS, KENNETH M. GAMMILL, JR., AND CHARLES S. TUSA, Defendants.	Index No. **COMPLAINT**

Plaintiffs Genesis Merchant Partners, LP ("GMP I") and Genesis Merchant Partners II, LP ("GMP II" and together with GMP I, "Genesis" or "Plaintiffs" and each a "Plaintiff"), as and for their Complaint against Genesis's former attorneys, Gilbride, Tusa, Last & Spellane LLC (the "GTLS Firm"); Jonathan Wells, Esq. ("Wells"), Kenneth M. Gammill, Jr., Esq. ("Gammill"), Charles S. Tusa, Esq. ("Tusa" and, collectively with the GTLS Firm, Gammill, and Wells, "Gilbride Tusa" or "Defendants" and each a "Defendant"), allege as follows upon information and belief:

SUMMARY OF THE CASE

1. This is an open-and-shut case of legal malpractice and gross incompetence by Gilbride Tusa, which served as Genesis' lawyers in the creation of $4.425 million in secured loans that Genesis was shocked to learn had been drafted as unsecured loans.

2. Genesis hired Gilbride Tusa to be its champion and protector. Instead, Gilbride Tusa played the part of the "sucker" and "patsy" in the deal, and unwittingly structured the loans in a way that left Genesis completely exposed and without recovery.

3. To put it colloquially, Gilbride Tusa "didn't know they didn't know." They were completely oblivious to the critical issues that Genesis trusted them to handle.

4. Specifically, Gilbride Tusa does not know how to (i) perfect security interests in life insurance policies; or (ii) structure secured loans in a manner that ensures that the lender—Gilbride Tusa's client—will hold a perfected security interest. Gilbride Tusa also deems it acceptable to take a mortgage as security, and then fail to record it for a year and a half.

5. Genesis paid Gilbride Tusa approximately $60,000 in legal fees to draft secured loan documents regarding certain loans to Progressive Capital Solutions, LLC ("Progressive") totaling $4.425 million in principal. The secured loan documents, if structured correctly, would have given Genesis perfected security interests in:

(i) a portfolio of 23 life insurance policies (the "Policies" and each a "Policy") with face value of **$84,292,819.00** (EIGHTY-FOUR MILLION, TWO HUNDRED NINETY-TWO THOUSAND EIGHT HUNDRED NINETEEN DOLLARS AND ZERO CENTS); and

(ii) a **$1,000,000.00** (ONE MILLION DOLLARS AND ZERO CENTS) mortgage on a parcel of Pennsylvania real estate (the "Mortgage," and together with the Policies, the "Collateral").

6. However, a result of Gilbride Tusa's malpractice on elementary tasks, Gilbride Tusa failed to perfect Genesis's security interests in any of those items. When the borrower defaulted, Genesis discovered that the encumbrances on the Collateral that Gilbride Tusa was paid handsomely to create and perfect had never actually been perfected.

7. Regarding the insurance Policies, Gilbride Tusa failed to simply read Article 9 of the Uniform Commercial Code ("UCC"). Had Gilbride Tusa read Article 9, they would have learned that it expressly excludes insurance policies from the universe of the types of property in which a security interest can be perfected by filing a UCC Financing Statement.

8. However, because they did not consult Article 9, Gilbride Tusa attempted to perfect Genesis' security interests in $84 million worth of Policies by (in Wells' own words in an email to Genesis) "immediately fil[ing] the UCC" Financing Statement "[w]hen the wire goes out" to the borrower. Gilbride Tusa even listed 17 of the Policies one-by-one on the final UCC Financing Statements it filed, as if that notation could overcome the fact that Article 9 of the UCC excludes insurance policies from its scope.

9. This fundamental failure of diligence led Gilbride Tusa to structure what should have been secured loans in a manner that put their client's money at risk without ensuring that the client would receive a perfected security interest in return—the epitome of malpractice in structuring a secured loan.

10. Gilbride Tusa's malpractice regarding the $1 million Mortgage on Pennsylvania real estate is equally inexplicable and embarrassing. Gilbride Tusa allowed eighteen (18) months—a year and a half— to pass before they recorded the Mortgage with the pertinent Pennsylvania authority. During that year-and-a-half period, $1.2 million in *subsequently-created* mortgages were recorded ahead of Genesis' Mortgage. When the land was foreclosed upon, Genesis took nothing.

11. Genesis' damages based upon the loss of principal and interest alone are approximately $10 million (with interest still accruing pursuant to the documents that Gilbride Tusa drafted).

12. Moreover, Genesis' total damages are far greater than merely principal-plus-interest. Gilbride Tusa's failure to perfect Genesis' interest in the life insurance Policies has deprived Genesis of the entire $84.292 million portfolio, which Genesis is entitled to own pursuant to a Wells-drafted absolute assignment of 100% of the membership interest in the debtor, Progressive.

13. Any surplus value of the Collateral above Genesis' principal-plus-interest damages must be returned to the debtor by operation of law. Because Genesis now owns the debtor via an absolute assignment drafted by Gilbride Tusa, that surplus belongs to Genesis. However, that surplus—along with the rest of the Collateral—is unrecoverable, because Gilbride Tusa negligently failed to encumber it with Genesis' perfected security interest.

14. Genesis' damages therefore do not consist of merely the lost principal-plus-interest. Genesis's damages are (i) the value of the $1 million Mortgage; and (ii) the entire value of the Policies, which now may be at or near the full $84,292,819 face value of those life insurance Policies. The death benefits under those Policies may have already been paid or may be payable. However, Genesis has no way of knowing that, because the respective insurers have refused to discuss the respective Policies with Genesis on the basis that the insurers have no record of Genesis' security interests in those Policies. That, too, is Gilbride Tusa's fault.

15. Despite all of that, Gilbride Tusa now denies liability and seeks to avoid accountability to its clients for the tens millions of dollars in damages that its malpractice caused.

16. Genesis therefore seeks monetary judgment in an amount up to $85,292,819, along with its costs, disbursements, and legal fees.

PARTIES, VENUE, JURISDICTION

17. Genesis Merchant Partners, LP ("GMP I") is a Delaware limited partnership with its principal place of business in Connecticut.

18. Genesis Merchant Partners II, LP ("GMP II") is a Delaware limited partnership with its principal place of business in Connecticut.

19. Gilbride, Tusa, Last & Spellane LLC (the "GTLS Firm") is a Connecticut limited liability company with an office in Manhattan, New York.

20. Jonathan Wells, Esq. ("Wells") is a member of the GTLS Firm who billed substantial time to the Progressive matter.

21. Charles S. Tusa ("Tusa") is a member of the GTLS Firm who billed substantial time to the Progressive matter.

22. Kenneth M. Gammill, Jr. ("Gammill") is a member of the GTLS Firm who billed substantial time to the Progressive matter.

23. A substantial portion of the conversations and meetings concerning the loans at issue in this matter occurred in New York County.

FACTUAL BACKGROUND

I. Genesis Retains Gilbride Tusa to Create Secured Loans

24. Progressive (the borrower on all loans at issue in this case) was a direct purchaser of "life settlement" policies, which are life insurance policies that have been sold by their initial owners (who are usually over 65 years of age), and are traded on a secondary market.

25. That secondary market has cropped up as a result of the fact approximately $100 billion worth of American life insurance policies are "impaired," meaning that the insured would realize more money by selling the policy on the secondary market than by surrendering the policy to the insurance company.

26. In early 2008, Progressive sought a loan from Genesis for working capital and other purposes.

27. Genesis agreed to loan funds to Progressive, provided that the loan would be secured.

28. Genesis retained GTLS and Wells to perform the legal work related to the loan, including the perfection of Genesis' security interest in all assets of Progressive and a certain life insurance policies.

29. The May 22, 2008 loan ("Loan 1 ") in the amount of $950,000 was paid and is not part of this dispute.

30. The only aspect of that loan that informs the dispute is the fact that a UCC Financing Statement was filed on May 27, 2008, and listed Progressive as the Debtor and Genesis Merchant Partners, LP as the Secured Party.

31. The Loan 1 UCC Financing Statement declared a security interest in all assets in a boilerplate paragraph.

II. Gilbride Tusa Structures
Loans 2, 3, and 4

32. Three additional loans (collectively, the "Loans") were made by Genesis to Progressive on, respectively, December 22, 2008 ("Loan 2"), July 31, 2009 ("Loan 3"), and February 3, 2011 ("Loan 4" and together with Loan 2 and Loan 3, the "Loans" and each a "Loan").

33. Genesis retained Gilbride Tusa and Wells to advise on the Loans and multiple amendments, and to ensure that the Genesis's security interests in the Collateral were secured and perfected under applicable law.

34. Had these Loans not been secured by the items of Collateral pledged under each, Genesis would not have made them.

a. Loan 2 in December 2008

35. Loan 2 was a loan from GMP I (not GMP II) in the amount of $925,000, with a transaction date of December 22, 2008.

36. Gilbride Tusa prepared the following documents for Loan 2:

- A **Note Purchase Agreement** (Exhibit A hereto) which sets forth the parameters of the Loan. The Note Purchase Agreement also provided that Progressive "shall reimburse the Purchaser for any reasonable legal fees and disbursements incurred by the Purchaser in enforcement of or protection of any of its rights under any of the Transaction Agreements."

- A **Secured Promissory Note** (Exhibit B hereto) naming Genesis Merchant Partners, LP as Holder in the $925,000.00, which noted in part that "[i]n the case of any Event of Default under this Note, the Company shall pay to the Holder such amounts as shall be sufficient to cover the costs and expenses of such Holder due to

such Event of Default, including all reasonable attorneys fees and expenses and all reasonable costs of collection and enforcement."

- A **Security Agreement** (Exhibit C hereto) creating a security interest in all assets of Progressive in favor of Genesis Merchant Partners, LP "to secure payment and performance of the following obligations (the 'Obligations'): All obligations of Debtor [Progressive] to Secured Party [Genesis Merchant Partners LP] under any Agreement of even date herewith, all costs incurred by the Secured Party to obtain, preserve, perfect and enforce the Note Purchase Agreement or any Security Document, collect the Obligations, and maintain, preserve, collect and enforce the Collateral, including, without limitation, taxes, assessments, attorney fees and reasonable legal expenses and expenses of sale[.]"

- A **Collateral Assignment of Contracts** (Exhibit D hereto) listing five (5) of the Policies and assigning them to Genesis Merchant Partners, LP "to secure the Obligations as defined in the Security Agreement of even date herewith."

- A **Form UCC Financing Statement** (Exhibit E hereto) which Wells filed with the New York Secretary of State on December 23, 2008—immediately after the closing.

b. Wells Misses The Critical Issue On Loan 2

37. At no point did Gilbride Tusa ask for, or receive, proof of the recording by any insurer of the collateral assignments of any of the five Policies collaterally assigned to GMP I under Loan 2.

38. At no point did Gilbride Tusa warn GMP I that GMP I needed the respective insurer on each of the five Policies to record the collateral assignment to perfect GMP I's security interests in the Policies assigned under Loan 2.

39. At no point did Gilbride Tusa advise GMP I to demand documents from the insurer on each Policy under Loan 2 which indicated that those respective insurers had accepted the collateral assignments of those respective Policies.

40. Gilbride Tusa's job was to spot and prevent such fatal issues from occurring.

41. Instead, Gilbride Tusa was oblivious to the existence of those issues.

c. <u>Loan 2 is Amended</u>

42. In November 2010, GMP I and Progressive amended Loan 2 to extend the Maturity Date of the Note in exchange for additional payment.

43. Gilbride Tusa represented GMP I, and prepared the documentation, including:

- Amendment to Secured Promissory Note dated November 11, 2010, which changed the Maturity Date and included an additional payment schedule. (Exhibit F hereto).

- Amendment to Security Agreement dated November 11, 2010, which provides in part that "[t]he term 'Obligations' as defined under the Security Agreement shall, for all purposes under the Security Agreement mean and include all obligations of Debtor to Secured Party now existing or hereinafter arising[.]"(Exhibit G hereto).

- Amendment to Collateral Assignment of Contracts dated November 11, 2010, which provides in part that "[t]he term 'Security Agreement' as defined in the Original Collateral Assignment of Contracts shall, for all purposes under the Original Collateral Assignment of Contracts, include the Original Security Agreement and the Amendment to Security Agreement[.]"(Exhibit H hereto)

- Amendment to Secured Promissory Note dated January 31, 2011. (Exhibit I hereto).

- Amendment to Security Agreement dated January 31, 2011, which provides in part that "The term 'Obligations' as defined under the Security Agreement shall, for all purposes under the Security Agreement mean and include all obligations of Debtor to Secured Party now existing or hereinafter arising[.]"(Exhibit J hereto)

- Amendment to Collateral Assignment of Contracts dated January 31, 2011. (Exhibit K hereto).

44. Those forms of document amendments (the "GTLS Amendment Forms" would be used and updated repeatedly throughout the course of Gilbride Tusa's representation of Genesis in the Progressive matter.

45. Thus, with each round of amendment of prior Loans, Gilbride Tusa renewed its assurance to Genesis that the loan being amended was properly structured and that all security interests thereunder were perfected.

46. At no point did Gilbride to set ever inform Genesis that Genesis' security interests in the Policies which were collaterally assigned to Genesis under prior Loans were not perfected.

d. <u>Loan 3 is Extended in July 2009</u>

47. Loan 3, dated July 31, 2009, was for $1 million in the aggregate, and consisted of two separate loans: $800,000 from GMP I, and $200,000 from GMP II.

48. For each of the two Loan 3 loans, Gilbride Tusa prepared identical documents to the documents prepared for Loan 2, *mutatis mutandis,* including a Note Purchase Agreement, a Security Agreement identifying all assets, and a Collateral Assignment of Contracts assigning one particular Policy in favor of both GMP I and GMP II.

49. As with Loan 2, Gilbride Tusa immediately filed a UCC Financing Statement, this time listing both GMP I and GMP II as Secured Parties.

50. As in Loan 2, the assets listed on this UCC Financing Statement were the commercial-standard paragraphs granting a security interest in essentially all assets of the debtor, Progressive.

51. As part of the Loan 3, Gilbride Tusa drafted amendments of Loan 2 using the GTLS Amendment Forms.

52. At no point did Gilbride Tusa warn GMP I that despite the amendments to Loan 2, GMP I did not possess a perfected security interest in any of the Policies assigned under Loan 2.

e. <u>Wells Misses The Critical Issue Again On Loan 3</u>

53. Not only did Gilbride Tusa fail to structure Loan 3 correctly by making the perfection of the security interests a condition precedent to the Loan, but it also missed the opportunity to correct its error.

54. On September 16, 2009—more than a month after closing of Loan 3—the borrower sent Wells a document purporting to be the "Assignment of Life Insurance Policy as Collateral" related to a $5,675,000 face value policy that was the only Policy collaterally assigned under Loan 3.

55. The "Home Office Acknowledgement" section on page 2 of that document is completely blank.

56. Wells accepted this document without question.

57. At no point did Wells warn Genesis that this document did not constitute proof of perfection of Genesis' security interests in the Policy assigned under Loan 3.

58. At no point did Gilbride Tusa warn Genesis that what Genesis actually needed to perfect its security interests in that Policy was a document with the Home Office Acknowledgement validly executed.

59. At no point did Gilbride Tusa advise Genesis to demand the Home Office Acknowledgement or any other proof of acceptance of the collateral assignment by the insurer.

60. In this manner, Gilbride Tusa demonstrated yet again that "they didn't know they didn't know."

61. Gilbride Tusa's job was to spot and prevent such fatal issues from occurring.

62. Instead, Gilbride Tusa remained oblivious to the existence of those issues.

63. Gilbride Tusa believed that none of that mattered, because Gilbride Tusa had filed a UCC Financing Statement at the time of the loan. Gilbride Tusa believed that Genesis' security interests were perfected.

f. The Pennsylvania Real Estate Is Added as Collateral in Loan 3

64. Furthermore in Loan 3, an additional item of Collateral from an external source was included: the $1 million Mortgage on the real estate in Pennsylvania owned by Strategic Capital Holdings, LLC.

65. Strategic Capital Holdings itself was wholly-owned by Progressive principal Paul Biko.

66. The parties provided in each of the Notes executed as part of Loan 3 that "Failure of Strategic Capital Holdings, LLC to deliver within thirty (30) days of the date

hereof to Holder (i) the Mortgage, (ii) a title search evidencing unencumbered title, and (iii) a title insurance policy in favor of Holder" would constitute an event of default.

67. Gilbride Tusa, and particularly Wells and Gammill, committed malpractice when they failed to declare a default after such delivery failed to occur.

68. Gilbride Tusa committed malpractice by failing to record the Mortgage was until February 1, 2011—18 months after Loan 3.

69. Notably, the February 1, 2011 recording date falls in the midst of Gilbride Tusa's work concerning Loan 4, which closed on February 3, 2011.

70. It thus appears that the $1 million Mortgage sat on a shelf or a hard drive at the GTLS Firm for 18 months while $1.2 million in subsequently-created mortgages were recorded ahead of it.

71. The Mortgage did not register on Gilbride Tusa's radar again until the work on Loan 4 forced it to the fore.

g. Loan 3 is Amended

72. In January 2011, Loan 3 was amended in the same manner that Loan 2 was amended.

73. Gilbride Tusa again prepared a set of January 2011 Amendments that were substantively cut-and-pasted from the GTLS Amendment Forms.

h. Loan 4 is Extended on February 3, 2011

74. Loan 4, dated February 3, 2011, was for $2.5 million in the aggregate and constituted of two separate loans: $2.25 million from GMP I, and $250,000 from GMP II.

75. Again, Gilbride Tusa simply used updated versions of the Loan 2 and Loan 3 documents, *mutatis mutandis*.

76. And again, Gilbride Tusa immediately filed a boilerplate "all assets" UCC Financing Statement regarding Loan 4.

77. To prove how far off-base Wells was, in the Loan 4 UCC Financing Statement Wells listed each of the 17 Policies set forth in the Collateral Assignment of Contracts for Loan 4, and identified them by Insurer and Policy Number.

78. Wells was also insistent that his UCC Financing Statement had to be filed immediately upon the wiring of the Loan 4 funds.

79. On February 3, 2011 at 5:28 PM, Wells emailed to Genesis, "Let me know when the wire goes out, I will immediately file the UCC."

80. Thus, Wells was waiting with bated breath to file a document that accomplished nothing.

81. Indeed, the Loan 4 UCC Financing Statement added nothing to Genesis' security: Genesis' interests in any other non-Policy, non-Mortgage Collateral were already perfected by his Loan 3 UCC filing (and in the case of GMP I, by the Loan 2 filing).

82. The only reason that Gilbride Tusa filed this UCC Financing Statement was that Gilbride Tusa held the mistaken belief that it could perfect Genesis' security interest in the Policies assigned under Loan 4 by filing a UCC Financing Statement.

83. The fact that Gilbride Tusa thought that it would make a difference to (i) file the UCC Financing Statement, and (ii) list-out the collateralized insurance policies on the UCC Financing Statement despite Article 9's express exclusion of insurance policies

from its scope, is indicative of how far off-base and how utterly oblivious Gilbride Tusa was.

84. Gilbride Tusa drafted amendments to Loans 2 and 3 as part of Loan 4, using the GTLS Amendment Forms to amend Loans 2 and 3.

85. At no time did Gilbride Tusa inform Genesis that the security interests from Loans 2 or 3 it purported to be updating with those amendments were not perfected.

i. <u>Wells Misses The Critical Issue Again On Loan 4</u>

86. On February 8, 2011, Wells asked for, and received by email, forms of collateral assignments in the format required by the various insurers for the Policies assigned under Loan 4.

87. As he had done regarding the Policy transferred under Loan 3, Wells completely missed the key issue: none of the insurer-approved forms indicated that the insurers had recorded the respective collateral assignments.

88. Many of them indicated on their face that they were two-page documents, and yet only one page was provided. Others plainly showed pre-printed sections for the insurer to sign-off on the collateral assignment, but those sections were blank.

89. Wells accepted these documents without question.

90. At no point did Wells warn Genesis that these documents did not constitute proof of perfection of Genesis' security interests in the Policies collaterally assigned to Genesis under Loan 4.

91. At no point did Wells advise Genesis to demand proof of recording of the collateral assignment at, or other acknowledgement by, the home office of each respective insurer.

92. At no point did Wells warn Genesis that the security interests in the Policies collaterally assigned under Loan 4 were not perfected.

j. The Consolidation of the Loans 2, 3, and 4

93. On August 1, 2011, all three Loans were consolidated at the fund level using the GTLS Amendment Forms.

94. Wells received and reviewed these consolidations without objection.

III. Borrower's Default Leads to the Connecticut Lawsuit & Settlement

95. When Progressive failed to timely pay the amounts due under the Loans, Genesis sued filed suit in Connecticut state court.

96. The case quickly reached a conditional settlement (the "Connecticut Settlement"), pursuant to which the aggregate outstanding loan value was placed at $6 million plus interest, due on or before June 20, 2012, plus interim monthly payments of $300,000 until June 2012.

97. To induce Genesis to enter into the conditional Connecticut Settlement, Progressive contributed another item of Collateral: an absolute assignment to Genesis of 100% of the membership interest in Progressive. (Exhibit L hereto).

98. That assignment was to be held in escrow by the GTLS Firm as escrow agent.

99. Wells drafted that assignment, Progressive executed it, and the GTLS Firm accepted it into escrow.

IV. Gilbride Tusa Breaks Escrow Upon Progressive's Default

100. Under the Connecticut Settlement, the first $300,000 interim monthly payment was due on January 26, 2012.

101. When that payment was not timely made, GTLS performed its duties as escrow agent and released the assignment from escrow.

102. Pursuant to Section 2 of the Wells-drafted Connecticut Settlement, "[i]f the Notes are timely paid, the equity of Progressive shall be returned by [Genesis] to Progressive."

103. The Connecticut Settlement as drafted by Wells includes no contingency under which Genesis is required to return any of its 100% membership interest in Progressive.

104. The Notes have never been paid, and at this point cannot ever be timely paid.

105. Thus, Genesis owns Progressive.

V. GENESIS DISCOVERS THAT GILBRIDE TUSA COMMITTED MALPRACTICE

106. In March 2008, Genesis moved to foreclose on the life insurance Policy portion of the Collateral.

107. The underwriting insurers refused to even discuss the Policies with Genesis on the grounds that the insurers had no record of Genesis ever holding a security interest in the Policies.

108. Similarly, Genesis found that its $1 million Mortgage on the Pennsylvania real estate was junior to $1.2 million in liens that were created long after the Mortgage.

109. Those two subsequent liens were recorded during the 18-month period in which Defendants failed to record Genesis' lien.

VI. Gilbride Tusa Refuses to Make Its Clients Whole

110. Upon realizing the breadth and depth of Gilbride Tusa's malpractice, Genesis (through counsel) demanded in October 2012 that Gilbride Tusa notify its malpractice insurer of Genesis' forthcoming claims against it under all three loans, unless Gilbride Tusa wanted to pay in advance of litigation.

111. Regarding Gilbride Tusa's malpractice concerning the Policies, Genesis' counsel wrote in part:

> As you are aware, the primary assets securitizing the loans were the life insurance policies owned by Progressive. As counsel for Genesis you sought to secure these assets by the filing of a Uniform Commercial Code ("UCC") lien. For instance, enclosed herein is a copy of the UCC Financing Statement, which you caused to be filed on February 4, 2011, enumerating various life insurance policies pledged as "additional collateral." This lien, however, was a nullity. Indeed, Article 9 of the UCC specifically exempts "A transfer of an interest in or an assignment of a claim under a policy of insurance .... " Connecticut Code-Sec. 42a-9-l09(d)(8); New York Uniform Commercial Code Section 9-109(d)(8).

112. Regarding Gilbride Tusa's malpractice concerning Loan 3 and the Mortgage, Genesis' counsel wrote in part:

> An additional asset securing the loans was the personal guarantee of Paul M. Biko, which included property located on Prospect Road in Lancaster County, Pennsylvania. As the attorney for Genesis, you allowed the August, 2009 Progressive loan to close without clear title, allowing the borrower a period of 30 days to, in your words, "clear the issues up, to deliver 'clean title' and mortgage in the first position." When Progressive failed to "clear the issues up" you failed to invoke the 30 day default provision in the agreement. Finally, you waited until 2011 to file the August, 2009 Biko/Lancaster County mortgage, defective though title might have been, by which time Genesis slipped from first position to fourth position in line.

113. Gilbride Tusa has refused to pay Genesis' damages voluntarily.

114. Plainly, Gilbride Tusa committed malpractice, and plainly Genesis was damages as a direct and proximate result of that malpractice.

115. Genesis' injury was complete when Progressive defaulted on the Connecticut Settlement, and Genesis could not collect. At that date, the amount owed was $6 million. The then-cash value of the $74 million in face-value Policies alone (to say nothing of the $1 million Mortgage) was far more than $6 million.

116. Based on conservative estimates, the $84.292 million worth of Policies had present cash value of between 11% and 22% of their face value at the time of either default.

117. Indeed, it may be the case that more than $6 million in death benefits under the Policies were due at that time, or have become due since. Absent of the subpoena power of this Court, Genesis has no way of knowing that, because the insurers

under each respective Policy will not discuss the Policies with Genesis due to the absence of any indication in their respective records that Genesis holds any security interests in the Policies.

118. Furthermore, Genesis may have elected to retain the Policies, pay the premia, and profit on the death benefits when the insureds passed away. They were deprived of the opportunity to do so by Gilbride Tusa's malpractice.

119. Alternatively, Genesis' injury was complete when Progressive defaulted on the Loans, and Genesis could not collect. Again, the Policies alone (to say nothing of the $1 million interest in real estate) would have been sufficient to make Genesis whole as of that date.

120. Gilbride Tusa and its malpractice insurer are well aware of these facts.

121. By the end of the trial in this matter, the pay-out of death benefits may likely cause the present value of the Polices to be at or near their aggregate face value of $84.292 million.

122. Gilbride Tusa's liability is not subject to credible dispute.

123. An attorney is required to advise his or her clients of the legal consequences of their actions.

124. An attorney must provide his or her client with all information material to the client's decision to pursue a given course of action, or to abstain therefrom.

125. It is malpractice to fail to draft an agreement accurately reflecting the client's understanding of the transaction.

126. Gilbride Tusa failed all of those tests and many more.

127. Gilbride Tusa told Genesis that Genesis had perfected security interests in the Policies.

128. At no point did Gilbride Tusa ever warn Genesis that Genesis did not have perfected security interests in the Policies.

129. For the reasons set forth in this pleading, Gilbride Tusa's liability is clear: Genesis retained it to write secured loans, yet the Collateral they were supposed to secure is gone.

130. Gilbride Tusa let Genesis place its $4.425 million at risk while leaving perfection of the bulk of the Collateral up to chance, with no provision for default or any other consequence in the event that perfection did not occur.

131. The risk was realized when Progressive re-sold many of the Policies less than two months after Progressive made the Loan 4 Collateral Assignments to Genesis.

132. Today, all of the Policies have been transferred out of Progressive.

133. Genesis has never received repayment of its Loans, and it cannot collect on the Collateral.

134. It was the responsibility of Gilbride Tusa to structure a deal that made that impossible.

135. Gilbride Tusa failed miserably to meet that responsibility.

136. It is the fault of Gilbride Tusa that none of the Policies are subject to a perfected security interest held by either Genesis entity.

137. There is no defensible excuse for Gilbride Tusa’s errors.

138. As a result of Gilbride Tusa's malpractice in structuring the Loans, Genesis lost the value of a $1 million Mortgage and not less than 23 life insurance policies with face value in excess of $84.292 million.

TOLLING OF LIMITATIONS

139. The statute of limitations on Genesis' claims against its fiduciary attorneys did not begin to run until, at the earliest, when those attorney-client relationships ended.

140. Gilbride Tusa Firm never formally terminated those relationships. No termination letter or other terminating communication was ever sent to Genesis by Gilbride Tusa.

141. Gilbride Tusa continuously represented Genesis beginning in 2008 through 2012 on the Progressive matter.

142. Throughout the period from 2008 through 2012, the GTLS Firm represented Genesis on multiple other matters as well.

143. It was the reasonable impression of Genesis that Gilbride Tusa was actively addressing Genesis' legal needs throughout that period.

144. Alternatively, no statutes of limitations applicable to Genesis' claims against Gilbride Tusa began to run until March of 2012 at the earliest, at which time Genesis was informed by the insurers that its claims of collateral assignments of the Policies were being rejected.

145. Until that point, Genesis was blamelessly unaware that there were any issues arising out of the legal malpractice of Gilbride Tusa.

146. Furthermore, it was in early 2012 that Gilbride Tusa rendered its final bills for work performed on the Progressive matter, using the same internal accounting client-matter number throughout the period from 2008 through 2012.

147. Gilbride Tusa retained Genesis' continuing trust and confidence throughout that period of representation.

148. Genesis was required to continue to rely upon Gilbride Tusa until such time as it became clear that despite Gilbride Tusa's duty to perfect Genesis' security interests in the Policies, the insurers had no record of Genesis' security interests.

149. Thus, the statutes of limitations for Genesis' claims against each Defendant were tolled by the continuous representation doctrine, the continuous course of dealing doctrine, the discovery rule, and multiple other legal and equitable doctrines.

150. Furthermore, because Gilbride Tusa never ended the attorney-client relationship, Gilbride Tusa is equitably estopped from arguing that limitations began to run prior to the October 31, 2012 demand letter that Genesis' counsel sent to Gilbride Tusa.

151. Furthermore, at all times between October 31, 2012 and June 30, 2014, the running of all statutes of limitations and/or repose was tolled by written agreement among the parties.

AS AND FOR A FIRST CAUSE OF ACTION
Legal Malpractice

152. Genesis incorporates by reference all of the allegations in each of the paragraphs above as if fully set forth herein.

153. At all times between 2008 and early 2012, an attorney-client relationship existed between Genesis and each Defendant.

154. At all times between 2008 and early 2012, Wells, Tusa, Gammill, and the GTLS Firm were the only attorneys representing Genesis in connection with the Loans.

155. At all times between late 2008 and early 2012, Wells, Tusa, and Gammill, as well as other Gilbride Tusa attorneys, provided legal services to Genesis.

156. Each Defendant failed to exercise the reasonable skill and knowledge commonly possessed by a member of the legal profession by failing to structure the Loans in a manner that ensured that Genesis' money was not placed at risk prior to the perfection of Genesis' security interests in the Policies.

157. Each Defendant failed to exercise the reasonable skill and knowledge commonly possessed by a member of the legal profession by attempting to perfect one or more security interests in a life insurance policy or policies by filing a UCC Financing Statement.

158. Each Defendant failed to exercise the reasonable skill and knowledge commonly possessed by a member of the legal profession by failing to advise Genesis that proof of recording or other acknowledgment by the insurer which underwrote each respective Policy of Collateral was necessary to perfect Genesis' security interest in that the Policies.

159. Each Defendant failed to exercise the reasonable skill and knowledge commonly possessed and exercised by a member of the legal profession by failing to invoke the default provisions of the Loan 3 documents, which should have been triggered when, *inter alia*, the Mortgage had not been delivered within 30 days of closing.

160. Each defendant failed to exercise the reasonable skill and knowledge commonly possessed by a member of the legal profession by failing to record the Mortgage for 18 months after its creation.

161. Were it not for the failures by each Defendant, the Plaintiffs would have had a priority position in certain Pennsylvania real estate, and would have recovered value therefrom.

162. Were it not for the failures by each Defendant, the Plaintiffs would have had perfected security interests in the Policies and would have recovered all of the value thereof.

163. As a direct and proximate result of the failures by each Defendant, Plaintiffs suffered damages in an amount to be proved at trial, up to and including $85,292,819 plus interest, costs, and disbursements.

AS AND FOR A SECOND CAUSE OF ACTION
Breach of Contract

164. Genesis incorporates by reference all of the allegations in each of the paragraphs above as if fully set forth herein.

165. Plaintiffs and Defendants are parties to an executed agreement.

166. The agreement is supported by adequate consideration.

167. Plaintiffs have fulfilled all of their obligations under the agreement.

168. Defendants have breached the agreement.

169. As a direct and proximate result of Defendants' breach of the agreement, Plaintiffs have suffered direct and consequential damages in an amount to be proven at trial, up to and including $85,292,819 plus interest, costs, and disbursements.

AS AND FOR A THIRD CAUSE OF ACTION
Negligence

170. Genesis incorporates by reference all of the allegations in each of the paragraphs above as if fully set forth herein.

171. Defendants owed a duty of care to Plaintiffs

172. Defendants breached that duty.

173. As a direct and proximate result of that breach of duty of care, Plaintiffs have suffered direct and consequential damages in an amount to be proven at trial, up to and including $85,292,819 plus interest, costs, and disbursements.

AS AND FOR A FOURTH CAUSE OF ACTION
Disgorgement of Fees

174. Genesis incorporates by reference all of the allegations in each of the paragraphs above as if fully set forth herein.

175. In view of the gross incompetence and malpractice of Defendants, it would be inequitable for the Defendants to retain the legal fees that Genesis paid to them on the Progressive matter.

JURY DEMAND

176. Genesis hereby demands trial by jury of all issues triable by jury.

WHEREFORE, Genesis respectfully requests that judgment be entered in its favor and against the Defendants jointly and severally as follows:

(a) awarding compensatory, consequential, and/or monetary damages in an amount to be determined at trial, up to $85,292,819;

(b) disgorging all fees and other monies paid to Gilbride Tusa on the Progressive matters, and awarding such fees and other monies to Genesis;

(c) awarding pre-judgment interest at the rate set forth in the documents drafted by Gilbride Tusa, and post-judgment interest at the maximum rate permitted by law or equity;

(d) awarding Genesis its reasonable and necessary attorney's fees and expenses in all matters occasioned by Defendants' malpractice, including this litigation, together with all disbursements and costs of Court in this action; and

(f) granting such other and further relief, at law or in equity, as this Court deems just, proper, and equitable.

Dated: October 14, 2014
New York, New York

LAW OFFICE OF WALLACE NEEL, P.C.

Wallace Neel, Esq.
235 West 48th Street, Suite 28A
New York, NY 10036
646-524-6502
wallace@wallaceneel.com