EFiled: Apr 26 2024 12:35PM EDT
Transaction ID 72839912
Case No. 2024-0447-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ESTATE OF MARTHA BAROTZ, by its Executor Nathan Barotz, Plaintiff, v. WILMINGTON SAVINGS FUND SOCIETY FSB; WELLS FARGO DELAWARE TRUST COMPANY, N.A.; WELLS FARGO BANK, N.A.; APOLLO GLOBAL MANAGEMENT, INC.; APOLLO ASSET MANAGEMENT, INC.; APOLLO CAPITAL MANAGEMENT, L.P.; and FINANCIAL CREDIT INVESTMENT I MANAGER, LLC, Defendants,	C.A. No. 2024-

Plaintiff Estate of Martha Barotz, by its Executor Nathan Barotz (the "Estate"), files this Verified Complaint against Defendants Wilmington Savings Fund Society FSB ("WSFS"); Wells Fargo Delaware Trust Company N.A. ("WF Trust"); Wells Fargo Bank, N.A. ("WF Bank"); Apollo Global Management, Inc. ("Apollo Global"); Apollo Asset Management, Inc. ("Apollo Asset"); and Apollo Capital Management, L.P. ("Apollo Capital"); and Financial Credit Investment I Manager, LLC ("FCI I Manager") (collectively, "Defendants"), and in support thereof, alleges and says:

NATURE OF THE ACTION

1. This action stems from a fraudulent and illegal human life wagering scheme perpetrated by Defendants in violation of Delaware's Constitution, public policy, and insurable interest laws. The Estate seeks equitable and other relief against Defendants in order to enforce and uphold Delaware law and to prevent Defendants from illegally retaining the fruits of their human life wager.

2. By way of background, in 2006, a group of stranger-originated life insurance ("STOLI") investors—who prey on the lives of senior citizens—procured a $5 million life insurance policy (the "Policy") on the life of Martha Barotz for the purported benefit of a sham entity called the Martha Barotz 2006-1 Insurance Trust (the "Barotz Trust"). Despite its name, the Barotz Trust did not benefit either Mrs. Barotz or her family. Rather, the Barotz Trust was merely smoke and mirrors to conceal the fact that stranger investors who lacked insurable interest in Mrs. Barotz's life had procured the Policy and were wagering on when she would die.

3. Following Mrs. Barotz's death, Defendants illegally and fraudulently collected the Policy's death benefit. Worse, Defendants then went to great lengths to move those proceeds through a complex maze of purported trusts and other entities in an effort to thwart Delaware law and hinder the Estate's ability to recover those proceeds. All of these efforts were fraudulent and illegal—and Defendants were well aware they were violating Delaware law. Indeed, Defendants have been

regular actors in the STOLI space for years and knew, or should have known, that STOLI policies are void *ab initio* under Delaware law and that any proceeds received from a STOLI policy are not the property of a person or entity lacking insurable interest in the life of the insured and must, instead, be paid over to the insured's loved ones.

4. Despite what was and always has been clear under Delaware law, Defendants cashed in on their illegal wager on Mrs. Barotz's life and then fraudulently and illegally moved the proceeds through various bank accounts, statutory trusts, and shell entities—all in a concerted effort to violate Delaware law.

5. The initial shell entity used to perpetrate Defendants' illegal wager was the Barotz Trust, which was the named beneficiary and owner of the Policy when Mrs. Barotz passed away.

6. On January 8, 2024, following years of litigation between the Estate and the Barotz Trust—which actually began when the Barotz Trust sued the Estate—the Superior Court of Delaware entered final judgment for the Estate and against the Barotz Trust for $6,922,036.86 in connection with the Policy. E*state of Martha Barotz v. Martha Barotz 2006-1 Insurance Trust, et al.*, C.A. No. N20C-04-126 EMD, ECF No. 132 (Del. Super. Ct.) (the "Delaware Superior Court Action"). The Barotz Trust did not appeal the judgment, but has since failed to satisfy the judgment on the basis of alleged insolvency.

7. During the litigation, the Estate went to substantial lengths to assess the solvency of the Barotz Trust and to identify potential other entities to hold liable for the return of the Policy's death proceeds. The Estate has also conducted substantial post-judgment discovery in aid of execution. However, the Defendants and their cohorts continue to employ delay tactics and gamesmanship to avoid satisfaction of the judgment against the Barotz Trust.

8. Left with no other choice, the Estate brings claims against Defendants for equitable and monetary relief, as follows: (i) imposition of a constructive trust against Wilmington Savings Fund Society FSB, Wells Fargo Delaware Trust Company, and Wells Fargo Bank, N.A.; (ii) declaration that the Barotz Trust and other purported Delaware trusts are and were void *ab initio* such that their purported trustees, Wilmington Savings Fund Society FSB, Wells Fargo Delaware Trust Company, and Wells Fargo Bank, N.A. are directly liable for the judgment against the Barotz Trust, along with other damages; (iii) declaration that other purported statutory trusts called Financial Credit Investment I Trust C-2 and its beneficiary, Financial Credit Investment I Trust C-3, were void *ab initio* such that all transfers of the Policy's death benefit are void *ab initio* in violation of Delaware's Constitution, public policy, and insurable interest laws; (iv) improper dissolution of purported Delaware statutory trusts under 12 Del. C. § 3808(e) against Wilmington Savings Fund Society FSB, Wells Fargo Delaware Trust Company, and Wells Fargo Bank,

N.A; (v) recovery of the insurance proceeds under common law and 18 Del. C. § 2704(b) against Wilmington Savings Fund Society FSB, Wells Fargo Delaware Trust Company, and Wells Fargo Bank, N.A.; (vi) recovery of the insurance proceeds under common law and 18 Del. C. § 2704(b) against Apollo Global Management, Inc., Apollo Asset Management, Inc., and Apollo Capital Management, L.P.; (vii) declaratory relief in the form of alter ego/pierce the veil against Apollo Global Management, Inc., Apollo Asset Management, Inc., and Apollo Capital Management, L.P., rendering those entities liable for the judgment against the Barotz Trust that they controlled, dominated, and used for illegal and fraudulent purposes; and (viii) recission of fraudulent transfers made in violation of 6 Del. C. § 1304(a) against all Defendants.

PARTIES

9. The Estate of Martha Barotz is a citizen of the State of New York. Nathan Barotz, the Executor of the Estate, is a resident of Westchester County, New York and is a citizen of New York.

10. Upon information and belief, Wilmington Savings Fund Society FSB is a national banking association organized and existing under the laws of the State of Delaware, with its registered office at 500 Delaware Avenue, 11th Floor, Wilmington, Delaware 19801. WSFS is being sued in its capacity as the trustee of the Barotz Trust.

11. Upon information and belief, Wells Fargo Bank, N.A. ("WF Bank"), is a national banking association organized and existing under the laws of the State of South Dakota, with its registered office at 101 North Phillips Avenue, Sioux Falls, South Dakota 57104. Wells Fargo Bank, N.A. is being sued in its capacity as trustee and securities intermediary of Financial Credit Investment I Trust C-3 ("Trust C-3").

12. Upon information and belief, Wells Fargo Delaware Trust Company ("WF Trust") is a national banking association organized and existing under the laws of the State of Delaware, with its registered office at 919 N. Market Street, Suite 1600, Wilmington, Delaware 19801. Wells Fargo Delaware Trust Company is being sued in its capacity as trustee for Financial Credit Investment I Trust C-2 ("Trust C-2), and Trust C-3.

13. Upon information and belief, Apollo Global Management, Inc., is a publicly traded global asset management firm—with over $500 billion dollars under its management—organized and existing under the laws of the State of Delaware with its registered agent located at 251 Little Falls Drive, Wilmington, Delaware 19808. Apollo Global's principal place of business is located at 9 West 57th Street, New York, New York 10019.

14. Upon information and belief, Apollo Asset Management, Inc. is a wholly owned subsidiary of Apollo Global organized and existing under the laws of the State of Delaware with its registered agent located at 251 Little Falls Drive,

Wilmington, Delaware 19808. Apollo Asset's principal place of business is located at 9 West 57th Street, New York, New York 10019.

15. Upon information and belief, Apollo Capital Management, L.P. is organized and existing under the laws of the State of Delaware. The name and address of the General Partner of Apollo Capital is c/o Apollo Capital Management GP, LLC, 9 West 57th Street, New York, New York 10019. The address of the registered office of Apollo Capital in the State of Delaware is c/o Corporate Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

16. Upon information and belief, Financial Credit Investment I Manager, LLC is organized and existing under the laws of the State of Delaware with its registered agent located at 251 Little Falls Drive, Wilmington, Delaware 19808. FCI I Manager's sole member is Apollo Capital and James C. Zelter, the Co-President of Apollo Asset is listed as a "Control Person." FCI I Manager's principal place of business is located at 9 West 57th Street, New York, New York 10019.

JURISDICTION AND VENUE

17. This Court has subject-matter jurisdiction over this action pursuant to 10 Del. C. § 341, because, among other things, the Estate seeks equitable remedies.

18. This Court has personal jurisdiction over Defendants Apollo Global, Apollo Asset, WF Trust, and WSFS under 10 Del. C. § 3111 as corporate entities formed under the laws of Delaware.

19. This Court has jurisdiction over Defendant Apollo Capital under 6 Del. C. § 17-105 as a limited partnership formed under the laws of Delaware.

20. This Court has personal jurisdiction over Defendant FCI I Manager under 6 Del. C. § 18-105 as a limited liability company formed under the laws of Delaware.

21. This Court has jurisdiction over Defendant WF Bank under 10 Del. C. §§ 3104 and 3114 based on the substantial business and tortious acts committed by Defendants while acting as the agent for citizens of Delaware (Trust C-2 and Trust C-3) in connection with a Delaware-based insurance transaction, which is described in more detail below.

22. Venue is appropriate in this Court because the Estate seeks equitable remedies. Moreover, as set forth in further detail below, this litigation concerns the issuance of a Delaware life insurance policy that was applied for via an application that was signed in Delaware, the policy was delivered to the Barotz Trust in Delaware, and the judgment sought to be enforced was issued by the Superior Court of Delaware. Furthermore, Defendants' conduct was directly targeted at the State of Delaware.

FACTS COMMON TO ALL CLAIMS

23. STOLI policies are *sui generis* under Delaware "in that they are not simply void *ab initio*, anathema to hundreds of years of public policy, or violative

of the Delaware Constitution, but they boast all three of these unenviable qualities." *Wells Fargo Bank, N.A. v. Est. of Malkin*, 278 A.3d 53, 65 n.48 (Del. 2022).

24. Accordingly, a court applying Delaware law may never enforce a STOLI policy or allow a stranger investor to retain the proceeds of a STOLI policy. *Geronta Funding v. Brighthouse Life Ins. Co.*, 284 A.3d 47, 61 (Del. 2022).

25. As iterated by the Supreme Court of Delaware, it is well-recognized that "[s]ince the initial creation of life insurance during the sixteenth century, speculators have sought to use insurance to wager on the lives of strangers." *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Trust*, 28 A.3d 1059, 1069 (Del. 2011).

26. The early 2000s saw an evolution and explosion in the STOLI market when institutional investors and hedge funds started securitizing large blocks of STOLI policies. The investors' appetite for STOLI policies quickly outstripped the supply of existing life insurance policies due to "a limited number of seniors who had unwanted policies of sufficiently high value." *Price Dawe*, 28 A.3d at 1070. "As a result, STOLI promoters sought to solve the supply side shortage by generating new, high value policies." *Id*.

27. In the mid-2000s, Mrs. Martha Barotz, a retiree in her early-seventies living in New Rochelle, New York, was induced to allow Life Accumulation Trust III ("LATIII"), a Delaware statutory trust operating out of Wilmington, Delaware, to procure the Policy on her life for the benefit of LATIII through an egregious

STOLI scheme that LATIII carried out in the State of Delaware on the lives of senior citizens like Mrs. Barotz.[1]

The Barotz Trust and the Policy

28. By its own admission, LATIII's STOLI scheme—coined the "Life Accumulation Program"—operated as follows:[2]

- LATIII directed senior citizens, like Mrs. Barotz, to sign trust documents to create Delaware statutory trusts, which would be used purely as vehicles for LATIII to "apply for, purchase, hold, and/or transfer" large life insurance policies on the lives of such senior citizens.

- LATIII—and not the seniors who would be the eventual insureds, nor the families of those seniors/insureds—paid the initial and subsequent premiums to procure and maintain the policies to be owned and held in LATIII's Delaware statutory trusts.

- In exchange for LATIII's "capital investment" in the various Delaware statutory trusts it created, LATIII received "the sole beneficial interest in each Delaware statutory trust it created and, thus, the interest in every policy owned by such trusts.

- To induce participation in the program by senior citizens like Mrs. Barotz, LATIII paid insureds "3% of the aggregate stated death benefit" of any policy LATIII procured on the respective insured's life.

---

[1] In and around this time, Mrs. Barotz was similarly induced to establish the Martha Barotz 2006 Family Trust ("Barotz Family Trust") to act as the beneficiary of a separate $8 million STOLI policy on her life. This $8 million STOLI policy was declared a void *ab initio* human life wager on summary judgment, but is not at issue in this action. *Estate of Martha Barotz v. Vida Longevity Fund, L.P.*, C.A. No. N20C-05-144 EMD CCLD, 2022 WL 16833545, at *7 (Del. Super. Nov. 9, 2022).

[2] *See* Disclosure Statement, attached as Exhibit A.

29. The LATIII program was, as a matter of law and undisputed fact, an illegal STOLI scheme that created life insurance policies lacking insurable interest and that were nothing more than wagers on the lives of senior citizens, including on the life of Mrs. Barotz. *See*, *e.g.*, *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Trust*, 28 A.3d 1059 (Del. 2011).

30. The illegal STOLI scheme carried out by LATIII was executed in Delaware and targeted Mrs. Barotz. Specifically, at the control and direction of LATIII and its agents, Mrs. Barotz was caused to execute an August 18, 2006 trust agreement purportedly establishing the Martha Barotz 2006-1 Insurance Trust (the "Barotz Trust").

31. The Barotz Trust purported to be established as a Delaware statutory trust, pursuant to the Delaware Statutory Trust Act, 12 Del. C. §§ 3801, *et seq.*, with a trustee having its principal place of business in Greenville, Delaware. Specifically, the initial trustee of the Barotz Trust was Christiana Bank & Trust Company ("Christiana Bank"), which was acquired by WSFS, as successor in interest to Christiana Bank. However, on information and belief, WSFS (and its predecessor in interest, Christiana Bank) failed to substantially comply with the formation requirements of the Statutory Trust Act, which required the filing of a certificate of trust with the Office of the Secretary of State. 12 Del. C. § 3810(a)(2). Despite the fact that WSFS has held out the Barotz Trust as a statutory trust under Delaware law,

to date, there is no evidence that WSFS submitted the requisite formation documents to the Secretary of State.

32. Relatedly, upon information and belief, as of March 18, 2021, the Barotz Trust purportedly "converted" from a statutory trust to a common law trust, though nothing was filed with the Delaware Secretary of State pursuant to 12 Del. C. § 3810(d), which controls the proper dissolution and winding up of a Delaware statutory trust.

33. Compounding its impropriety, the Barotz Trust had the superficial appearance that it was formed to conduct lawful business activities. Behind the smoke and mirrors of this purported legitimacy, however, the Barotz Trust was created and funded by LATIII as a mere cover for an illegal wager on the life of Mrs. Barotz. And, as detailed below, WSFS (and its predecessor in interest, Christiana Bank) knew—and has admitted that it knew—that the Barotz Trust was created as a sham to conceal an illegal human life wagering transaction.

34. In fact, the Barotz Trust, through WSFS, applied for the Policy on August 23, 2006, and the Policy was issued to the Barotz Trust, care of WSFS, on September 3, 2006 in the amount of $5 million—even though the beneficial interest in the Barotz Trust was owned by LATIII from the start.

35. By using the Barotz Trust to apply for and own the Policy, LATIII and HCF were able to effectively conceal their involvement from the insurance carrier,

which likely would not have issued the Policy had WSFS not fraudulently and illegally applied for the Policy through a sham trust.

36. Indeed, with the assistance of WSFS, LATIII was made the "holder" of the entire beneficial interest in the Barotz Trust prior to issuance of the Policy, and the only purported asset of the Barotz Trust was the Policy. In this way, the Barotz Trust—operated by WSFS—served as a conduit for a STOLI transaction that inured at its inception to the sole benefit of LATIII as a stranger investor, not Mrs. Barotz or her family.

37. WSFS (and its predecessor in interest, Christiana Bank) was fully aware of these facts and that it was facilitating a fraudulent and illegal human life wager, yet WSFS concealed the truth, acted to mislead the insurance carrier that issued the Policy, worked secretly on behalf of stranger investors to perpetuate the wager and ultimately collect the death benefit, and then concealed from the Estate—including throughout the pendency of the litigation in the Delaware Superior Court—who it was acting for, to whom it transferred the Policy's death benefit, and who ultimately received the Policy's death benefit.

38. Unbeknownst to the Estate until well after Mrs. Barotz passed away, in April 2011, LATIII sold the beneficial interest in the Policy to a shell Delaware statutory trust called Financial Credit Investment I Trust C-3 ("Trust C-3").

39. Unbeknownst to the Estate until March 22, 2024, Trust C-3 was beneficially owned by another Delaware statutory trust called Financial Credit Investment I Trust C-2 ("Trust C-2"), which itself was beneficially owned by an Irish entity called Financial Credit Investment I Limited ("FCIL").

40. In turn, FCIL was managed and controlled exclusively by yet another shell, namely Defendant FCI I Manager, which purported to operate as a Delaware limited liability company.

41. As detailed below, Trust C-3, Trust C-2, FCIL, and FCI I Manager were shams. They had no property, no offices, no employees, and were instead owned and controlled at all relevant times by Apollo Global, Apollo Asset, and Apollo Capital (collectively, "Apollo"), who used these entities to carry out fraudulent and illegal human life wagers in and under Delaware law on the life of Mrs. Barotz and on likely hundreds of other similarly situated senior citizens.

42. WF Bank, as trustee of Trust C-3, and WF Trust (together, "Wells Fargo") as trustee of both Trust C-3 and Trust C-2, at all times acted at the direction of and for the benefit of Apollo in order to aid and abet Apollo's fraudulent and illegal human life wagers.

43. On December 22, 2018, Mrs. Barotz passed away.

44. Following Mrs. Barotz's death, in February 2019, Apollo, acting through Trust C-3 and WF Bank, directed WSFS, as Trustee of the Barotz Trust, to

submit a death benefit claim to PHL Variable Life Insurance Company, which claim was paid to WSFS in the amount of $5,042,328.77 on April 4, 2019.

The Litigation and Defendants' Concealment of the Policy's Proceeds

45. As the Delaware Supreme Court has recognized, STOLI policies were created by investors for resale to other investors who would often securitize large portfolios of human life wagering policies. *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Trust*, 28 A.3d 1059, 1070 (Del. 2011).

46. Because of this, STOLI policies are routinely traded in transactions which are not only non-public, but which are hidden from the very senior citizens on whose lives these policies were procured. In this way, the senior citizens have no idea who owns a policy on their life, and who wants them dead. This is precisely what happened with the Policy here.

47. As of January 2020, the Estate and its counsel were unaware of what happened with the Policy or its death benefit. At most, the Estate was aware that the Barotz Trust—which was the initial owner and beneficiary of the Policy—was still purportedly in existence. The Estate did not know, however, whether the Barotz Trust retained any interest in the Policy at the time of Mrs. Barotz's death, and if so, who held any interest in the Barotz Trust.

48. In an effort to investigate whether it had any claim under Delaware law to the Policy's proceeds, the Estate's counsel sent letters on January 7 and 24, 2020, to a number of known STOLI players, including WF Bank.

49. Those letters indicated that the Estate of Martha Barotz intended to commence litigation in connection with life insurance policies that were issued on the life of Mrs. Barotz.

50. None of the recipients of these letters ever responded. Instead, on March 10, 2020, out of nowhere, the Estate was served with a lawsuit commenced by the Barotz Trust against the Estate in New York State court, captioned *Martha Barotz 2006-1 Insurance Trust v. Peter Barotz, as Executor of the Estate of Martha Barotz*, Index No. 53912/2020 (N.Y. Sup. Ct.), seeking a declaration of ownership concerning the Policy's proceeds (the "New York Action").

51. On information and belief, Apollo directed and controlled the New York Action, hired counsel to represent the Barotz Trust, and was directly involved and interested in the outcome of that litigation.

52. The law firm of Friedman Kaplan Seiler & Adelman, LLP ("FK"), which regularly represents Apollo in various STOLI lawsuits around the country, represented the Barotz Trust in the New York Action. The summons (which was later followed with a detailed complaint, described below) affirmed that the Barotz Trust remained the owner of the Policy at the time of Mrs. Barotz's death and that

the Barotz Trust "received" the Policy's death benefit. The Barotz Trust (which the Estate now knows was really just Apollo in disguise) stated that it was seeking a judgment that the Estate "cannot maintain an action to recover . . . the proceeds of the Policy" from the Barotz Trust, and that the Estate supposedly owed damages to the Barotz Trust.

53. The New York Action was the first time the Estate learned that the Barotz Trust had received the Policy's proceeds. The initial summons in the New York Action did not identify the Barotz Trust's beneficial owner, nor did it reveal that the Barotz Trust no longer possessed the Policy's proceeds (which the Estate did not learn until much later), nor did it reveal Apollo's involvement.

54. Based on the allegations in the summons and the representations made by FK on behalf of the Barotz Trust, the Estate had no reason to believe the Barotz Trust had no assets or that it, or its beneficial owner, would not satisfy a judgment against the Barotz Trust. Indeed, if the Barotz Trust and its beneficial owner were effectively judgment proof at the time, then there would have been no good faith ethical basis for FK to have commenced the New York Action.

55. Because, *inter alia*, the Policy was procured through a STOLI scheme operating out of Delaware, because the Barotz Trust held itself out as a Delaware statutory trust, and because WSFS as its Trustee maintains its place of business in Greenville, Delaware, the proper place to litigate the dispute between the Estate and

the Barotz Trust was in Delaware. Accordingly, the Estate initiated the Delaware Superior Court Action against the Barotz Trust related to the Policy in the Superior Court of Delaware on April 15, 2020.

56. FK and K&L Gates LLP ("K&L") have represented the Barotz Trust in the Delaware Superior Action since November 24, 2020.

57. Because the New York Action was commenced with a non-detailed summons, on June 22, 2020, the Barotz Trust (through FK) filed a complaint against the Estate in that action, alleging the details of the dispute between the Barotz Trust and the Estate, and alleging that there was a justiciable controversy over whether the Estate can "recover the Policy proceeds" from the Barotz Trust. Like the summons, the complaint made no mention of the Barotz Trust's beneficial owner(s) or Apollo, nor did the complaint hint at the notion that the Barotz Trust was insolvent and that its beneficial owners would otherwise not satisfy a judgment in favor of the Estate.

58. On July 22, 2020, the Estate moved to dismiss the New York Action, and made clear that it did not know the identity of the beneficial owner of the Barotz Trust.

59. That same day, the Barotz Trust filed a motion to dismiss and stay the Delaware Superior Court Action, representing that the Barotz Trust paid the premiums on the Policy and received the resultant death benefit; again, the Barotz Trust did not mention or allude to its beneficial owners or contend that the Policy

proceeds had been transferred to any person or entity leaving the Barotz Trust with no assets. Further, the Barotz Trust's motion represented that the relief sought by the Estate (recovery of the Policy's proceeds) could be accomplished through the New York Action. Indeed, the Barotz Trust, through FK, told the Delaware Superior Court that the dispute should proceed in the New York Action because "the New York Court is capable of rendering prompt and complete relief," and stated that the Trust is the "entity that ultimately received the life insurance death benefit proceeds that are at issue in this action." *Estate of Martha Barotz*, C.A. No. N20C-04-126 EMD, ECF No. 11. For this representation by FK to have been true and ethical, the Barotz Trust or its beneficial owners must have had assets available to satisfy any judgment in favor of the Estate for a recovery of the Policy' proceeds.

60. The Barotz Trust opposed the Estate's motion to dismiss in the New York Action and, in doing so, acknowledged the Estate's January 24, 2020 attempt to learn the identity of "the final recipient of the death benefit" to the extent it was not the Barotz Trust. In response, the Barotz Trust's opposition maintained and reinforced that this information was not needed because a "justiciable controversy" existed between the Barotz Trust and the Estate.

61. In other words, through multiple pleadings and motions filed in the New York Action and the Delaware Superior Court Action, the Barotz Trust—through FK, K&L, and through its Trustee, WSFS—represented that the Estate's

dispute was with the Barotz Trust, and that resolution of that dispute would be "complete" and would include, in the event of a judgment for the Estate, the payment of the Policy's proceeds to the Estate.

62. Indeed, making this even more clear, on August 18, 2020, in response to discovery issued by the Estate in the Delaware Superior Court Action, the Barotz Trust lodged a relevance objection to the Estate's request for "documents sufficient to identify any and all of the persons or entities that were, at any time, the ultimate beneficiary(ies) of the Policy and/or of the Trust," and refused to substantively respond.

63. In September 2020, the Barotz Trust made its first document production in the Delaware Superior Court Action, which included a Beneficial Interest Transfer Agreement dated April 14, 2011, indicating that LATIII sold and assigned the beneficial interest in the Barotz Trust to Trust C-3. This was the first time the Estate learned of Trust C-3's involvement or that Trust C-3 was the beneficial owner of the Barotz Trust, and thus the Policy, at the time WSFS collected the death benefit. Despite this, little to no further information was produced about Trust C-3.

64. On October 22, 2020, the Barotz Trust, through WSFS, responded to the Estate's first set of requests for admission and made critical admissions, including that the Barotz Trust—and, thus, its Trustee, WSFS—knew from the start

that the Policy was STOLI and that the Barotz Trust was a sham that was created solely to conceal an illegal human life wager.

65. Following briefing on the Estate's motion to dismiss the New York Action, that action was dismissed on December 2, 2020 in favor of the Delaware Superior Court Action. On December 4, 2020, the Barotz Trust's motion to dismiss the Delaware Superior Court Action was similarly denied in favor of the Estate.

66. On December 18, 2020, the Barotz Trust, through WSFS as Trustee and FK and K&L as its counsel, responded to the Estate's first set of interrogatories. As Trustee of the Barotz Trust, WSFS had a fiduciary obligation to provide complete and accurate information on the Barotz Trust's behalf. Instead, WSFS and its lawyers at FK and K&L actively and fraudulently concealed pertinent information. As one example, in response to the Estate's request for information identifying "any person or entity who received all or part of the death benefit of the $5 million dollar policy," WSFS merely identified "the [Barotz] Trust." WSFS and its counsel, therefore, caused the Estate to again believe that the Barotz Trust still had the Policy's proceeds and that the Barotz Trust would satisfy a judgment in favor of the Estate. However, the Estate later learned that this response was materially incomplete and fraudulent in that WSFS, FK, and K&L all knew at the time that the Policy's proceeds had been transferred from the Barotz Trust—by WSFS itself—to various other entities controlled by Apollo, and even worse, that certain of these

Apollo-controlled entities were in the process of being dissolved in order to make themselves judgment proof, to deny the Estate an eventual recovery, and to get away with illegal human life wagering in violation of Delaware's Constitution, insurable interest laws, and public policy.

67. Despite this December 18, 2020 discovery response, the Estate suspected that the Barotz Trust had transferred the Policy's death benefit to Trust C-3, and that Trust C-3, as the beneficiary of the Barotz Trust, was in possession of the proceeds and would be the entity that would ultimately satisfy any judgment in favor of the Estate. Thus, on January 27, 2021, the Estate reached out to counsel for the Barotz Trust to obtain their consent to add Trust C-3 as a defendant to the Delaware Superior Court Action.

68. In response, counsel for the Barotz Trust revealed, for the first time, that Trust C-3 was no longer in existence and had actually dissolved in late January 2020—after the Barotz Trust, WSFS, FK, and K&G became aware of the Estate's claim, and just prior to when the Barotz Trust commenced the New York Action in March 2020 claiming that the New York Action could afford complete relief.

69. Notably, counsel for the Barotz Trust did not inform the Estate of what Trust C-3 did with the Policy's proceeds or of Trust C-2's involvement with the Policy (which, as explained below, the Estate only learned weeks ago in connection with post-judgment discovery). Nor did counsel for the Barotz Trust inform the

Estate of the fact that Trust C-2 had been dissolved and that Trust C-2's beneficial owner, FCIL, was in the process of dissolution. Instead, these key facts were fraudulently concealed in order to evade Delaware law and to create the very issues that now exist in connection with the Estate's efforts to collect on the Superior Court's judgment.

70. On February 2, 2021, the Estate served non-party subpoenas on Trust C-3, FCI I Manager, and Apollo for documents and depositions related to the Policy, including, but not limited to: (i) documents pertaining the receipt and distribution of the Policy's death benefit proceeds, including documents sufficient to identify the current holder of the proceeds; and (ii) documents pertaining to the dissolution of Trust C-3 and the distribution of its assets.

71. FK, on behalf of Apollo, and Potter Anderson and Corroon ("PA") on behalf of FCI I Manager, objected to the subpoenas on the basis of relevancy and burden, claiming the information the Estate was seeking was not material to the dispute. Once again, therefore, FK and others acting on behalf of Apollo and its various shell entities, including the Barotz Trust, led the Estate to believe that it did not need to learn the identity of any other person or entity to whom the Policy's proceeds had been transferred. FK and PA claimed this information was not relevant, and because FK had commenced the New York Action and alleged a justiciable controversy only as between the Estate and the Barotz Trust, and represented in court

that resolution of that controversy would afford complete relief—which necessarily would include collection on any judgment—the Estate was led to believe that the Barotz Trust would and could satisfy any judgment against it. Indeed, if this were otherwise, then FK's and PA's objections on behalf of Apollo and FCI I Manager were materially false and meant to actively and fraudulently conceal necessary information from the Estate, including information that would allow the Estate to identify additional liable parties that could be added to the Delaware Superior Court Action, and against whom a judgment could have been sought in the first instance.

72. Indeed, the Estate's principal claim in the Delaware Superior Court Action was for recovery of the STOLI proceeds under 18 Del. C. § 2704(b), which codified longstanding common law and provides that any recipient of STOLI proceeds is liable to the insured's estate. Thus, but for the actions of Defendants and their lawyers to fraudulently conceal relevant and material information from the Estate, the Estate would have added all potentially liable parties to the Delaware Superior Court Action, and those additional parties would now be named directly in the judgment the Estate ultimately obtained, making this action unnecessary.

73. Making matters worse, on February 16, 2021, the Barotz Trust opposed the Estate's motion to compel and (through WSFS, FK, and K&L) claimed that it did not know the person or entity(ies) that received the Policy's proceeds following Trust C-3's dissolution. This, however, was a knowingly false representation

because WSFS and its counsel at FK and K&L knew exactly what happened with the Policy's proceeds, and WSFS had a fiduciary obligation to provide this information on behalf of the Barotz Trust.

74. Indeed, the Barotz Trust, WSFS, FK, K&L, and PA each knew—but fraudulently concealed from the Estate—that the Policy's death benefit was paid at some point to Apollo through Trust C-3, Apollo Capital, and/or FCIL—all of which were being dominated and controlled by, and acting for the benefit of, Apollo.

75. Worse still, the Barotz Trust, WSFS, FK, K&L, and PA (as well as Wells Fargo and Apollo) knew that actions were underway as of February 2021 to dissolve FCIL and make it judgment proof. And they knew the recipients of the Policy's proceeds, but they concealed this information in order to hinder the Estate's ability to name the correct entities as defendants in the Delaware Superior Court Action.

76. By actively withholding this information from the Estate, WSFS, Apollo, FCI I Manager, and Wells Fargo—and their lawyers—also effectively and deliberately prevented the Estate from objecting to FCIL's dissolution.

77. Meanwhile, for several months, the Estate had been seeking the Rule 30(b)(6) deposition of WSFS, as Trustee of the Barotz Trust. WSFS and its counsel continually delayed that deposition, but finally agreed to produce a witness for deposition on April 29, 2021.

78. Without any explanation, and just two days prior to that deposition, on April 27, 2021, WSFS and its lawyers produced a document to the Estate titled "Removal, Appointment and Succession Agreement" between FCIL, a previously unidentified entity called 66 LLC, a Delaware limited liability company ("66 LLC"), and WSFS. That document purported to be specifically related to the Barotz Trust and the ongoing Delaware Superior Court Action, and stated that FCIL was in the "final stage" of "voluntary liquidation in Ireland" and that, as part of this liquidation, FCIL—which at no point was the actual beneficiary of the Barotz Trust—"desires to provide for the removal of WSFS as Trustee" of the Barotz Trust and to replace WSFS with 66 LLC as the new trustee.

79. Under Section 3.9 of the agreement for the Barotz Trust, only the actual beneficiary of the Barotz Trust had the power and authority to remove and replace the trustee. As of the April 27, 2021, Trust C-3 remained the beneficiary of the Barotz Trust and, to the Estate's knowledge, no other person or entity had been named as the beneficiary. To the Estate's knowledge, FCIL was never the beneficiary of the Barotz Trust at any time, so FCIL had no power or authority to remove WSFS or to appoint a new trustee. As such, the "Removal, Appointment and Succession Agreement" was a nullity and had no legal force or effect.

80. The "Removal, Appointment and Succession Agreement" further provided that FCIL—which again had no power or authority in connection with the

Barotz Trust—"desires to convert [the Barotz Trust] into a Delaware common law trust."

81. Despite the fact that FCIL was not the beneficiary of the Barotz Trust and had no power or authority to either remove the trustee or to convert the Barotz Trust, WSFS appears to have abided by FCIL's instructions.

82. To be clear, the document production by WSFS on April 27, 2021 was the first time the Estate learned that FCIL was being liquidated. Moreover, as of that date, the Estate was only informed that FCIL had been an "indirect beneficiary" of Trust C-3, and the Estate was still in the dark about whether FCIL had received any or all of the Policy's death benefit, and if so, what FCIL did with that money. Further, and as detailed below, it was not until March 2024 that Defendants provided the Estate with additional documents showing that FCIL itself was a shell company dominated and controlled by Apollo.

83. On April 29, 2021, the Estate deposed Shaheen Mohajer as a Rule 30(b)(6) corporate designee for WSFS. The Estate's notice of deposition required WSFS to produce a witness knowledgeable on a host of topics, including the involvement and relationship between Apollo Global and various FCI entities, and the Barotz Trust's allegations in pleadings and discovery responses in the Delaware Superior Court Action. WSFS's designee was woefully—and intentionally—unprepared. For example, despite WSFS's production just two days prior of a

document purporting to show that WSFS was stepping down as Trustee of the Barotz Trust and being replaced by 66 LLC, WSFS's witness was unable or unwilling to provide any information about 66 LLC, the new purported trustee of the Barotz Trust, or 68 LLC, the new purported beneficiary of the Barotz Trust.

84. Likewise, WSFS's witness claimed to know next to nothing about Apollo's involvement with the Policy or the Barotz Trust, and as to FCIL, he merely claimed that FCIL had been indemnifying WSFS in the litigation. Beyond that, WSFS claimed it had no knowledge about FCIL.

85. Having been stonewalled by Defendants and their counsel in efforts to learn the identities of other potentially liable parties under the Estate's Section 2704(b) claim, on May 4, 2021, the Estate filed a motion for summary judgment seeking to recover the insurance proceeds of the Policy as void *ab initio* under Delaware's insurable interest laws.

86. By June 6, 2021, the dissolution of FCIL became effective. The Estate is now aware that by the time it first learned on April 27, 2021 that FCIL was in the process of liquidating (at which point the Estate was still being kept in the dark about FCIL's role with the Policy), FCIL had diluted its assets to approximately $400,000, which was, on information and belief, part of Apollo's plan to hinder the Estate's eventual recovery and to retain illegal human life wagering proceeds in violation of Delaware's Constitution, insurable interest laws, and public policy.

Final Judgment and Discovery in Aid of Execution

87. Over the aggressive and strenuous objections of the Barotz Trust in briefing that was, on information and belief, funded by Apollo, the Superior Court ultimately concluded on summary judgment that the Policy was procured as a result of an illegal STOLI scheme. On January 8, 2024, the Superior Court entered final judgment and an award of prejudgment interest in favor of the Estate for a total amount of $6,922,036.86 against the Barotz Trust, plus post-judgment interest.

88. The Barotz Trust did not appeal the final judgment entered against it in the Delaware Superior Court Action, but has since refused to satisfy the judgment, claiming it has no assets. Accordingly, the Estate sought the following discovery in aid of execution as of February 5, 2024:

- Subpoenas for documents and depositions to Apollo Management, LP; Apollo Management, GP, LLC; Apollo Global Management, Inc.; FCI I Manager, LLC; Financial Credit Investment I Trust C-4; WF Trust; WF Bank; WSFS; 66, LLC; 68; LLC; Shaheen Mohajer; Stuart Degg; Potter Anderson & Corroon, LLP; William Sullivan; Jamshid Ehsani; K&L; and FK (together, the "Subpoenaed Entities"); and

- Interrogatories and requests for production of documents to the Barotz Trust.

89. On February 21, 2024, FK identified itself as counsel for a majority of the Subpoenaed Entities, all of whom failed to timely produce any responsive documents or appear for noticed depositions. The Estate subsequently filed motions to compel compliance with a large proportion of the aforementioned discovery; it

was not until days following the Estate's first motion that FK and PA produced a small subset of documents that not only were insufficient to respond to the propounded discovery, but failed to even identify on whose behalf the documents were produced.

90. FK and K&L, as counsel for the Barotz Trust, also wholly failed to respond to, or even acknowledge, the Estate's propounded discovery in aid of execution direct to the Barotz Trust. The Estate moved to compel on March 15, 2024.

91. In the same vein, FK and K&L withheld adequate substantive responses to the Estate's subpoenas in their individual capacities and refused to sit for depositions.

92. Despite the layers of unsatisfied discovery in aid of execution (and after allowing the Estate to incur expenses related to the discovery), both FK and K&L filed a motion to withdraw as counsel for the Barotz Trust on March 25, 2024, citing that counsel has not communicated "with the Trustee or any authorized representative" of the Barotz Trust "concerning the Trust's response to any document or motion, any potential appeal in this Action, or any other legal services on behalf of the Trust."

93. The Estate opposed such a transparent attempt by the Barotz Trust—and those operating behind the scenes—to further hamstring the Estate's ability to collect its judgment in the Delaware Superior Court Action.

94. On April 15, 2024, Judge Davis, presiding over the Delaware Superior Court Action, ordered the Barotz Trust to provide sufficient responses to the respective discovery through its purported new trustee, 66 LLC, ordered K&L to identify who they sent their legal bills to, and ordered certain of the Subpoenaed Entities to meet and confer on several of the subpoenaed topics and sit for depositions.

Apollo Exercises Complete Domination and Control In Order to Perpetrate Fraud and Violate Delaware's Constitution, Public Policy, and Insurable Interest Laws.

95. Apollo Global is "a large global asset manager for institutional investors, such as pension funds, charitable foundations, university endowments, and even insurance companies." Sullivan Trial Tr. (Exhibit B) at 377:21-24.

96. Upon information and belief, at all relevant times, Apollo Asset operated as a wholly owned subsidiary of Apollo Global

97. Upon information and belief, at all relevant times Apollo Capital operated as a wholly owned subsidiary of Apollo Asset and Apollo Global.

98. Apollo sponsors, manages, and controls a suite of funds under the umbrella name, Financial Credit Investment, or colloquially referred to as "FCI."

99. William Sullivan, an Apollo employee who served as the managing director of the FCI suite of funds between 2010 and at least 2019, indicated in trial testimony that "FCI is mainly focused on longevity mortality risk assets," which are

"most sensitive to the risk of people living longer or not . . . by buying life insurance policies that people no longer need anymore and would otherwise surrender back to the carrier."[3] Sullivan Trial Tr., Exhibit B at 378:13-22.

100. The "mortality risk assets" which FCI sources and "isolate[s]," are simply Wall Street jargon for STOLI policies, such as the illegal human life wager taken on Mrs. Barotz life. Sullivan Trial Tr., Exhibit B at 378:13-15.

101. Because "FCI has a lot of capital put to work," the suite of funds does not dabble in the individual policy market but, instead, "only purchase[s] portfolios of policies from existing investors . . . that have already aggregated a portfolio," otherwise referred to as the "tertiary market." *Id*. at 382:1-15.

102. FCI's managing director estimated that, as of 2019, the tertiary life settlement market generated "between 80 and 90 billion policy face." Within that figure, "FCI's presence is . . . probably the largest investor in this special asset," with an estimated $20 billion aggregate investments as of 2019. *Id.* at 380:12-20.

[3] In *Sun Life Assurance Co. v. U.S. Bank, N.A.*, the District of Delaware held that a life insurance policy obtained by an FCI trust lacked an insurable interest at inception and, thus, constituted an illegal human life wagering contract that was void *ab initio* under Delaware law. 369 F.Supp.3d 601, 616 (D. Del. 2019). At trial on the issue of U.S. Bank's promissory estoppel claim, William Sullivan—an Apollo employee—testified on behalf of that FCI entity, on whose behalf U.S. Bank acted as securities intermediary with respect to the STOLI policy. *See Sun Life Assurance Co. v. U.S. Bank, N.A.*, 2019 WL 8353393, at *4 (D. Del. Dec. 30, 2019).

103. It was not until March 22, 2024, following the Estate's relentless—and unsuccessful—efforts to identify any person or entity other than the Barotz Trust who ultimately received all or part of the Policy's proceeds, that FK and PA produced a small subset of documents responsive to the Estate's discovery in aid of execution against the Subpoenaed Entities (including Apollo Global and FCI I Manager). Those documents, first produced to the Estate only weeks ago, now reveal that despite its purported corporate legitimacy, FCI and the various trusts it purportedly owned were, in reality, a conglomerate of shell entities and empty statutory trusts that served as puppets for the ultimate director and financial beneficiary who sits behind the curtain pulling the strings: Apollo.

104. Among other documents first produced to the Estate on March 22, 2024 is a Management Agreement that was not publicly available.

105. That Management Agreement reveals that as of January 5, 2011, FCIL—operating as a private limited company under the laws of Ireland—delegated to FCI I Manager "the management of [FCIL] to the fullest extent permitted by law, including the right to execute and deliver agreements and other documents and to take other actions in the name and on behalf of [FCIL] (including exercising the rights of [FCIL] as a beneficial owner of Financial Credit Investment I Trust or any other trust with respect to which [FCIL] is a beneficiary)."

106. According to the Management Agreement, Apollo Capital is the sole member of FCI I Manager, and James Zelter, the Co-President of Apollo Asset is a registered "Control Person" of FCI I Manager.

107. The Management Agreement provided that FCI I Manager could not assign its rights and obligations unless that assignment was made "to an[] entity that is controlled by Apollo Global Management, LLC."[4]

108. On February 15, 2011, FCIL and FCI I Manager amended the Management Agreement (a document which was also first provided to the Estate on March 22, 2024) to expand the control FCI I Manager (and, thus, Apollo) could contractually exert over FCIL, including, now, with respect to "any purchase, sale or financing transaction involving [FCIL] or any asset with respect to which [FCIL] has a direct or indirect interest."

109. The Amended Management Agreement further designated and appointed FCI I Manager as FCIL's "agent and attorney-in-fact, with full power and authority and without the need for further approval of [FCIL] . . . to complete all such documents and to take any and all actions that [FCI I Manager], in its discretion, shall deem advisable to carry out the foregoing with respect to [FCIL] or any asset with respect to which [FCIL] has a direct or indirect interest."

---

[4] Apollo Global Management, LLC was later converted into Apollo Global Management, Inc., and which is referred to herein as Defendant Apollo Global *See* Exhibit C.

110. The Amended Management Agreement also explicitly acknowledged that Apollo Capital, and thus Apollo Asset and Apollo Global, were in total control of FCI I Manager, and thus FCIL:

> (i) [FCI I Manager] is a special purpose vehicle formed for the principal purpose of serving as the investment manager of [FCIL], the Fund, and certain related entities, (ii) [FCI I Manager] is an affiliate of Apollo Capital Management, L.P. . . ., (iii) [FCI I Manager] performs its services for [FCIL] through the personnel and facilities of Apollo Capital Management, (iv) [FCI I Manager] has no, and will have no, employees or other Person's acting on its behalf other than (A) officers, partners and employees of Apollo Capital Management, or (B) other Persons who are subject to the supervision and control of Apollo Capital Management . . ., and (vi) [FCI I Manager] relies upon Apollo Capital Management's registration under the Advisers Act in not registering itself.

111. The Amended Management Agreement makes abundantly clear that it is under name ***only*** that FCIL and FCI I Manager operated independently from Apollo. Indeed, both entities were formed by Apollo to operate under the direct (yet secret) control of Apollo, for the sole benefit of Apollo, and as mere conduits for Apollo's dominion over the STOLI policies it was procuring for its benefit through these shell entities.

112. Given Apollo's prior knowledge that, by the time Apollo, through FCI, started investing in life insurance policies, illegal STOLI policies were being sold

on the tertiary market,[5] it is axiomatic that Apollo would want to create as much "distance" between the Apollo name and the STOLI victims on whose lives it was wagering. In fact, Apollo did just that.

113. Unbeknownst to the Estate until the March 22, 2024 document production, which included a copy of the trust agreement for Trust C-2, FCIL (and, thus, Apollo) established and nominally funded the Financial Credit Investment I Trust C-2 (that is, "Trust C-2"), appointing FCIL as the beneficiary and WF Trust as the trustee.

114. The sole intended purpose of Trust C-2 was "to exercise the rights, privileges and benefits of the beneficiary of Financial Credit Investment I Trust C-3," which, as described in greater detail above, acted as the beneficial owner of the Barotz Trust at all relevant times.

115. The agreement establishing and nominally funding Trust C-3, also effective as of March 14, 2011 (and also produced to the Estate for the first time on March 22, 2024), confirmed that Trust C-2 was the sole beneficiary of Trust C-3 and WF Bank and WF Trust, together, were the trustees of Trust C-3.

116. The sole purpose of Trust C-3, as identified in the Trust Agreement, was to "administer, service and collect proceeds payable on life insurance policies

[5] *See* Sullivan Trial Tr., Exhibit B at 508:7-23.

and to exercise other rights of ownership in connection with such life insurance policies."

117. The Estate did not learn of the involvement of Trust C-2, nor its status as the beneficial owner of Trust C-3, until the Subpoenaed Entities' March 22, 2024 document production.

118. Nor did the Estate learn until March 22, 2024 that pursuant to the Trust C-3 Agreement, Wells Fargo was directed by Apollo to "distribute all or such portion of the Trust estate to [Trust C-2] in accordance with its written directions from time to time."

119. Further, the Trust C-3 Agreement confirmed that Trust C-3 and Trust C-2 were to be treated as a single legal entity for all intents and purposes.

120. Similarly, the Trust C-2 Agreement detailed that Wells Fargo had "exclusive and complete authority to carry out the purposes of Trust C-2, but only to the extent directed by [FCIL]," including "distribut[ing] all or such portion of the Trust estate to [FCIL] in accordance with its written direction."

121. In virtually identical language to the Trust C-3 Agreement, the Trust C-2 Agreement "intended that [Trust C-2] shall be . . . disregarded as an entity separate from [FCIL]."

122. FCIL's status as the sole "initial beneficial Owner" of Trust C-2 was certified on March 22, 2011 through a Certificate of Beneficial Interest in Trust C-2.

123. Of course, the only "estate" of Trust C-2 was the beneficial interest in Trust C-3, the sham entity that beneficially owned the sham Barotz Trust, the only asset of which was the Policy. In other words, both Trust C-2 and Trust C-3 served as a mere pipeline to transfer the Policy's proceeds out of the Barotz Trust into the hands of entities controlled by Apollo.

124. According to the March 22, 2011 Amended Trust C-3 Agreement, FCIL (and, thus, FCI I Manager and Apollo) agreed to indemnify Wells Fargo for all liabilities arising from activities related to Trust C-3.

125. Agents of Apollo, including William Sullivan—as managing director of the FCI entities—signed the Amended Trust C-3 Agreement on behalf of Trust C-2 and FCIL.

126. April 2019 bank records (produced to the Estate for the first time on March 22, 2024) confirm that the Policy's proceeds were diverted by out of a bank account associated with Apollo and Trust C-3 and maintained by WF Bank to a bank account associated with FCIL and "Apollo LS."

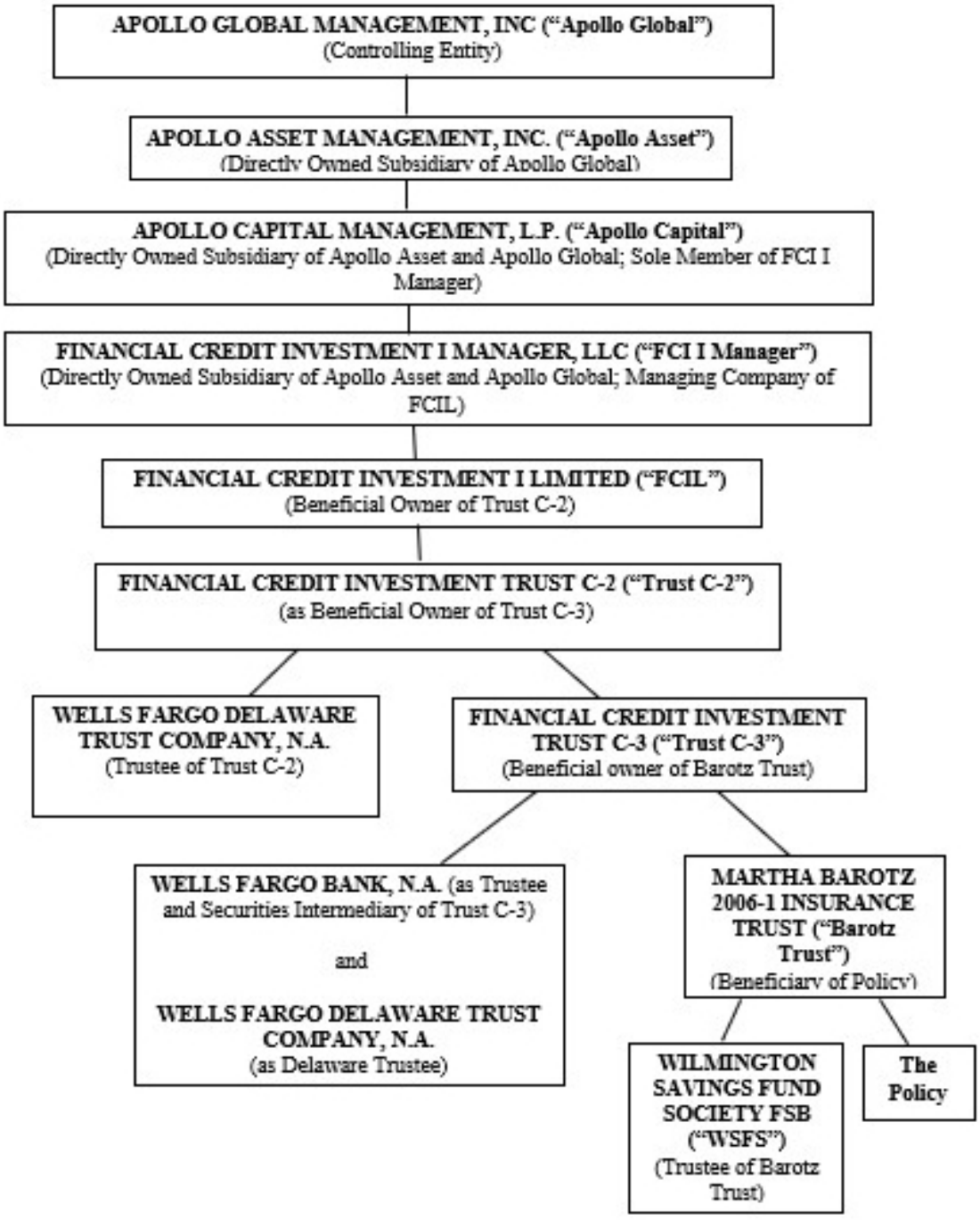
127. Based on the foregoing documents that were concealed from the Estate during discovery in the Delaware Superior Court Action and only eventually

produced on March 22, 2024, it is clear that Apollo was in exclusive control and domination of Trust C-3, Trust C-2, FCIL, and FCI I Manager—and that Apollo was fraudulently and illegally using these shell entities to perpetuate human life wagers not only on the life of Mrs. Barotz, but on the lives of hundreds (if not thousands) of other senior citizens.

128. Indeed, when Trust C-3 became the purported sole beneficial owner of the Barotz Trust, Apollo—through its other shell entities—was in sole and direct control of the Barotz Trust, the Policy and, later, its proceeds.

129. And, on information and belief, Apollo used its shell entities—Trust C-3, Trust C-2, FCIL, and FCI I Manager (as well as other similar FCI entities and trusts)—to procure and collect the proceeds of hundreds (if not thousands) of other STOLI policies under Delaware law. Indeed, based on its publicly-filed annual reports by Apollo Global, Apollo's interests in STOLI policies are material. In 2019—the year Apollo used its shell entities and agents to collect the Policy's death benefit—Apollo reported $24.2 million in revenue from its "FCI I" funds, which, on information and belief, included the $5 million death benefit Apollo received from the Policy.

130. Upon information and belief, the hierarchy of control amongst the Defendants and other affiliated entities, related to the Policy, is as follows:



131. In short, Apollo has been carrying out a widespread fraudulent human life wagering conspiracy designed to not only hide its involvement, but to create the false appearance that the policies it owns are somehow legitimate. Apollo then fraudulently uses its various shell entities to collect STOLI proceeds—even though it knows full well that it is doing so in violation of Delaware law—and then secrets those proceeds through these same shell entities in order to evade detection, and ultimately to avoid liability and allow itself to profit from illegal human life wagering.

132. Worse still, when Apollo senses a claim is going to be brought, it attempts to dissolve its shell entities to give itself yet another layer of protection.

133. Indeed, unbeknownst to the Estate until an Omnibus Termination Agreement and Direction was recently produced on March 22, 2024, Wells Fargo, FCIL, Trust C-2, Trust C-3, and two additional Delaware statutory trusts whose participation in the foregoing is not clear at this point, resolved to "dissolve and wind up each such Trust, terminate the related Trust Agreement[s] and close any accounts maintained under each such Trust Agreement."

134. In so doing within the Omnibus Termination Agreement and Direction, Wells Fargo acting for FCIL, as the beneficial owner of Trust C-2, and Trust C-2, as the beneficial owner of Trust C-3, "certifie[d] and agree[d] that [] all claims and obligations of the Trusts, if any, have been paid in full as of the date hereof or

reasonable provision has been made by the Beneficial Owner for the payment of such claims and obligations as required by Section 3808(e) of the Act, and (b) as of the date hereof . . . the winding up of the affairs of the Trusts and the Trust Agreements will have been completed."

135. However, with the benefit of hindsight, it is clear that the representations made by Wells Fargo concerning the proper dissolution and winding up of Trust C-2, Trust C-3, and FCIL were materially false or, at the very least, misleading.

136. Rather, upon information and belief, Apollo and the FCI entities (inclusive of FCIL, FCI I Manager, Trust C-2 and Trust C-3) operated as a single economic entity to divert funds away from the Barotz Trust to avoid the claims of potential creditors, namely the Estate.

137. Upon information and belief, FCIL, FCI I Manager, Trust C-3 and Trust C-2 are or were all holding entities with no direct operating assets. In fact, the only asset that each entity held was a membership interest in one or more of its insolvent subsidiaries. Besides the membership interest and, upon information and belief, the Policy's proceeds (or other STOLI policy proceeds), none of the above referenced entities held a bank account or other assets.

138. Upon information and belief, the Barotz Trust, Trust C-3, Trust C-2, and FCIL are either completely dissolved or insolvent, at least in part as a result of Apollo's undercapitalization of these sham entities.

139. Upon information and belief, this arrangement was put in place and executed by Apollo and others with the knowledge that the Barotz Trust would likely face a substantial judgment for return of the death benefit proceeds received from the illegal wager on the life of Mrs. Barotz.

140. In other words, Apollo was aware of the Barotz Trust's potential liability well before the initiation of the Delaware Superior Court Action, before the creation and subsequent dissolution of FCIL, Trust C-3 and Trust C-2, and before the final judgment rendered against the Barotz Trust, yet made a deliberate decision to undercapitalize every cog in the machine.

141. Beyond the deliberate effort to starve all potentially liable entities of cash, Apollo failed to observe corporate formalities. Upon information and belief, Apollo received all legal documents directed to Trust C-2, Trust C-3, FCIL, and FCI I Manager to its corporate headquarters located at 9 West 57th Street, 43rd Floor, New York, New York 10019. The FCI entities also maintained significant overlapping personnel with each other, the directors of which were Apollo employees and agents, such as William Sullivan. Further, all relevant trust agreements required prior consent to act from an Apollo-controlled FCI entity.

142. Upon information and belief, the insolvency, undercapitalization, and corporate informality of the FCI Entities and, thus, the Barotz Trust, Trust C-3, and Trust C-2 were a deliberate attempt by Apollo to divert sufficient funds to pay a judgment as the exposure of liability became all too clear.

143. In fact, the Delaware Superior Court Action was not Apollo and FCI's first attempt at subverting liability for a litigated STOLI policy. In September 2022, the Estate of Mechling filed a complaint in Ohio state court against U.S. Bank related to an illegal life wager. Through the Ohio state court action, the Estate of Mechling sought the identity of the customer for which U.S. Bank served as securities intermediary. *Estate of Mechling v. U.S. Bank, N.A.*, Case No. A2203413 (Ohio Ct. C.P., Hamilton Cty). Despite layers of propounded discovery to this effect, U.S. Bank delayed identification, likely at the direction of the customer, so that the undisclosed customer could assert the statute of limitations as a defense to impending litigation. For this reason, the Estate of Mechling filed several separate litigations, both in federal and state court, seeking to hold the customer of U.S. Bank liable as the ultimate holder of the policy's proceeds. It was not until U.S. Bank was compelled by the District of Connecticut that it finally informed the Estate of Mechling that the entity it was seeking to identify was another shell FCI entity called Financial Credit Investment III SPV-A (Cayman), L.P. *See Estate of Mechling v. U.S. Bank, N.A., et al.*, Case No. 3:23-cv-00025-VAB (D. Conn.).

144. Notwithstanding the above, the Omnibus Termination Agreement represents that "FCIL (or one of its affiliates) has established an account with Wells Fargo for the purposes of funding any Indemnity Obligation Event."

145. As further detailed below, Apollo's undercapitalization of its subsidiaries and wholly owned shell entities, the lack of corporate separateness, and Apollo's directed subsequent attempts to divert funds away from such entities to avoid the claims of creditors, provide ample bases under Delaware law to hold Apollo liable as an alter ego of (i) the Barotz Trust; (ii) Trust C-3; (iii) Trust C-2; (iv) FCIL; and (v) FCI I Manager.

FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT (CREATION OF CONSTRUCTIVE TRUST)
(against WSFS and Wells Fargo)

146. The Estate hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth herein at length.

147. Under longstanding common law, when a person or entity receives the proceeds of an illegal human life wagering policy, that person or entity is deemed to hold such proceeds in constructive trust for the insured's estate. *See generally Couch on Insurance* 3d, § 41:9 ("If a person to whom the proceeds of a [life] insurance policy are paid lacks an insurable interest and is therefore not entitled to the proceeds, he or she holds them as a trustee for the person lawfully entitled to them.").

148. A constructive trust "is not designed to effectuate the presumed intent of the parties, but to redress a wrong. When one party, by virtue of fraudulent, unfair, or unconscionable conduct, is enriched at the expense of another to whom he or she owes some duty, a constructive trust will be imposed." *Hogg v. Walker*, 622 A.2d 648, 652 (Del. 1993).

149. WSFS and Wells Fargo each received and possessed the Policy's proceeds, but then illegally transferred those proceeds to others, in violation of Delaware's Constitution, insurable interest laws, and public policy.

150. Indeed, because the Policy's death benefit was the product of an illegal human life wager, no person or entity had any property or other rights in those proceeds, and any transfer of such proceeds was null and void. *See Wells Fargo Bank, N.A., v. Estate of Malkin*, 278 A.3d 53, 56, 59-61, 65 (Del. 2022); *PHL Var. Ins. Co. v. Price Dawe Ins. Tr.*, 28 A.3d 1059, 1065-68, 1076-79 (Del. 2011); *see also Grigsby v. Russell*, 222 U.S. 149 (1911); *Warnock v. Davis*, 104 U.S. 775 (1881).

151. The Estate thus requests a judgment and declaration that: (i) WSFS and Wells Fargo are constructive trustees of the Policy's proceeds for the benefit of the Estate; (ii) any transfers of the Policy's proceeds are null and void *ab initio* as a violation of Delaware's Constitution, insurable interest statutes, and public policy; and (iii) WSFS and Wells Fargo are jointly and severally liable to the Estate in the

amount of the final judgment entered by the Superior Court against the Barotz Trust, plus additional damages caused by WSFS's and Wells Fargo's illegal and inequitable conduct which has deprived the Estate of its common law and statutory remedies.

SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT THAT THE BAROTZ TRUST IS VOID *AB INITIO* AND THAT ALL TRANSFERS OF THE POLICY'S DEATH BENEFIT ARE VOID *AB INITIO* IN VIOLATION OF DELAWARE'S CONSTITUTION, PUBLIC POLICY, AND INSURABLE INTEREST LAWS (against WSFS)

152. The Estate hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth herein at length.

153. According to WSFS, the Barotz Trust was a Delaware statutory trust controlled by 12 Del. C. § 3801, et seq.

154. To form a statutory trust, a certificate of trust must be filed with the Delaware Secretary of State. 12 Del. C. § 3801(i)(2) (requiring the filing of a certificate of trust); *id*. at § 3810 (a)(1) ("Every statutory trust shall file a certificate of trust in the office of the Secretary of State.").

155. Statutory trusts must be organized solely for the purpose of conducting "lawful" activities. 12 Del. C. § 3801(i)(2) ("A statutory trust may be organized to carry on any lawful business or activity.").

156. Under Delaware law, trusts cannot be used to facilitate STOLI schemes, and any such action by trusts or their trustees are null and void. *PHL Var. Ins. Co. v. Price Dawe Ins. Tr.*, 28 A.3d 1059, 1065-68, 1076-79 (Del. 2011).

157. Here, the Barotz Trust should be declared null and void *ab initio* for several independent reasons.

158. First, WSFS failed to file the required certificate of trust, so the Barotz Trust was never actually formed. Accordingly, the Barotz Trust is null and void *ab initio* under 12 Del. C. § 3801(i)(2) and § 3810(a)(1).

159. Second, as established by the Superior Court's summary judgment ruling against the Barotz Trust, even if it was properly formed, it had no lawful purpose. Rather, as detailed above, the Barotz Trust's purpose was to create and conceal a STOLI wager on Mrs. Barotz's life. Accordingly, the Barotz Trust is null and void *ab initio* under 12 Del. C. § 3801(i)(2).

160. Third, even if it was properly formed and had a lawful purpose, the Barotz Trust held no property at any time. Rather, as detailed above, the Barotz Trust's only supposed asset was the Policy, but the Policy has been declared void *ab initio*, and because the Policy was a STOLI policy, neither the Barotz Trust nor any other person or entity ever had a property interest the Policy or its proceeds. *Wells Fargo Bank, N.A., v. Estate of Malkin*, 278 A.3d 53, 65 (Del. 2022). Accordingly, the Barotz Trust is null and void *ab initio* under 12 Del. C. § 3801(i)(1) because, per

the agreement for the Barotz Trust, its purported purpose was to hold property, but because the Policy is void *ab initio*, the Barotz Trust never held any actual property.

161. Fourth, because the purpose of the Barotz Trust was to create and conceal a human life wager, it is void *ab initio* under Delaware's Constitution, insurable interest laws, and public policy even if the Barotz Trust otherwise satisfied the requirements of a valid statutory trust under 12 Del. C. § 3801, et seq., which it most certainly did not.

162. Accordingly, the Estate seeks a judgment and declaration against WSFS that: (i) the Barotz Trust is and was null and void *ab initio*; (ii) all actions taken by WSFS as trustee of the Barotz Trust are null and void *ab initio*; (iii) because the Barotz Trust never existed, WSFS is directly and personally liable for its actions as a purported trustee and has no protections under 12 Del. C. § 3801, et seq. or other applicable law; (iv) the purported transfer of the Policy's death benefit from the Barotz Trust is null and void *ab initio*, and as such, WSFS is deemed to be in possession of the Policy's death benefit; and (v) as purported trustee of the Barotz Trust at the time the death benefit was received, WSFS is liable for the debts of the Barotz Trust and must, therefore, satisfy the final judgment entered by the Superior Court and pay the Estate additional damages caused by WSFS's illegal and inequitable conduct which has deprived the Estate of its common law and statutory remedies.

THIRD CAUSE OF ACTION: DECLARATORY JUDGMENT THAT TRUST C-2 AND ITS BENEFICIARY, TRUST C-3, WERE VOID *AB INITIO* AND THAT ALL TRANSFERS OF THE POLICY'S DEATH BENEFIT ARE VOID *AB INITIO* IN VIOLATION OF DELAWARE'S CONSTITUTION, PUBLIC POLICY, AND INSURABLE INTEREST LAWS
(against Wells Fargo)

163. The Estate hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth herein at length.

164. Wells Fargo was the purported trustee of Trust C-3, which was the purported sole owner of the beneficial interest in the Barotz Trust. In turn, the purported sole owner of the beneficial interest in Trust C-3 was Trust C-2. Both Trust C-3 and its purported beneficial owner, Trust C-2, were allegedly created as statutory trusts under 12 Del. C. § 3801, et seq.

165. The Estate seeks a declaration that Trust C-3 and its purported beneficial owner, Trust C-2, should be declared null and void *ab initio* for several independent reasons.

166. First, Trust C-3 and Trust C-2 had no lawful purpose. Rather, these trusts were created to foster and conceal a STOLI wager on Mrs. Barotz's life, and on the lives of other senior citizens. Accordingly, Trust C-3 and Trust C-2 are null and void *ab initio* under 12 Del. C. § 3801(i)(2).

167. Second, even if they had a lawful purpose, Trust C-3 and Trust C-2 held no property at any time. Rather, Trust C-3's and Trust C-2's purpose was to hold the

supposed beneficial interest in the Barotz Trust and in other similar void *ab initio* trusts that were created to manufacture STOLI policies. Indeed, on information and belief, the only supposed assets of Trust C-3 and Trust C-2 were interests in STOLI policies and their proceeds. But because the Policy and the other policies Trust C-3 and Trust C-2 supposedly owned were STOLI policies, neither Trust C-3, Trust C-2, nor any other person or entity ever had a property interest the Policy, its proceeds, or in any other policy or STOLI proceeds. *Wells Fargo Bank, N.A., v. Estate of Malkin*, 278 A.3d 53, 65 (Del. 2022). Accordingly, Trust C-3 and Trust C-2 are null and void *ab initio* because, per the agreements for these trusts, their purported purpose was to hold property, but because the Policy and other policies they held are void *ab initio*, Trust C-3 and Trust C-2 never held any actual property.

168. Third, because the purpose of Trust C-3 and Trust C-2 was to own STOLI policies and conceal human life wagers, those trusts were void *ab initio* under Delaware's Constitution, insurable interest laws, and public policy.

169. Accordingly, the Estate seeks a judgment and declaration against Wells Fargo that: (i) Trust C-3 and Trust C-2 were null and void *ab initio*; (ii) all actions taken by Wells Fargo as trustee of Trust C-3 and Trust C-2 are null and void *ab initio*; (iii) because Trust C-3 and Trust C-2 never existed, Wells Fargo is directly and personally liable for its actions as a purported trustee (and WF Bank as securities intermediary of Trust C-3) as no protections under 12 Del. C. § 3801, *et seq*. or other

applicable law; (iv) the purported transfer of the Policy's death benefit from Trust C-3 and Trust C-2 is null and void *ab initio*, and as such, Wells Fargo is deemed to be in possession of the Policy's death benefit; and (v) as purported trustee of the Trust C-3 and Trust C-2, which were the purported direct and indirect beneficiaries of the void *ab initio* Barotz Trust at the time the death benefit was received, Wells Fargo is liable for the debts of the Barotz Trust and must, therefore, satisfy the final judgment entered by the Superior Court and pay the Estate additional damages caused by Wells Fargo's illegal and inequitable conduct which has deprived the Estate of its common law and statutory remedies.

FOURTH CAUSE OF ACTION: IMPROPER DISSOLUTION OF TRUSTS UNDER 12 Del C. § 3808(e), AND IN VIOLATION OF DELAWARE'S CONSTITUTION, PUBLIC POLICY, AND INSURABLE INTEREST LAWS
(against WSFS and Wells Fargo)

170. The Estate hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth herein at length.

171. Under Delaware law, trusts cannot be used to facilitate STOLI schemes, and any such action by trusts or their trustees are null and void. *PHL Var. Ins. Co. v. Price Dawe Ins. Tr.*, 28 A.3d 1059, 1065-68, 1076-79 (Del. 2011).

172. Personal liability attaches for a trustee of a statutory trust who fails to "pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the statutory

trust and all claims and obligations which are known to the statutory trust but for which the identity of the claimant is unknown and claims and obligations that have not been made known to the statutory trust or that have not arisen but that, based on the facts known to the statutory trust, are likely to arise or to become known to the statutory trust within 10 years after the date of dissolution." 12 Del. C. § 3808(e).

173. Here, WSFS, as trustee of the Barotz Trust, effectively dissolved the Barotz Trust by depleting it of all assets.

174. WSFS did this despite WSFS's knowledge that the Barotz Trust (which was not even properly formed) was a sham trust that was nominally funded, whose beneficial interest was transferred to LATIII before the Policy was issued, and whose purpose was to create and foster an illegal human life wager. In short, WSFS knew or should have known that the Policy was STOLI.

175. WSFS, as a purported Delaware statutory trustee, also knew or should have known of Delaware's insurable interest laws, including Section 2704(b) which codified the common law and provides that the estate of an insured has a cause of for the recovery of any STOLI proceeds.

176. Indeed, the Delaware Supreme Court issued its seminal anti-STOLI decision in *Price Dawe* in 2011, finding among other things that STOLI policies violate Delaware's Constitution, that the trustees of nominally funded trusts lack insurable interest, and that trustees of such trusts are themselves in violation of

Delaware's Constitution, insurable interest laws, and public policy against human life wagering.

177. WSFS claimed and received the Policy's death benefit in April 2019, and by that time WSFS had itself been a party in *Price Dawe* and in multiple other STOLI lawsuits in Delaware, controlled by Delaware law. *Price Dawe*, 28 A.3d 1059 (Del. 2011) (Christiana Bank and Trust Company, WSFS's predecessor, as trustee); *Principal Life Ins. Co. v. Lawrence Rucker 2007 Ins. Trust*, 869 F.Supp.2d 556, 559 n.30 (D. Del. 2012) (Christiana Bank and Trust Company, WSFS's predecessor, as trustee); *Wilmington Savings Fund Society, FSB v. PHL Variable Ins. Co.*, 2014 WL 1389974 (D. Del. Apr. 9, 2014).

178. WSFS, therefore, knew or should have known of the Estate's cause of action when WSFS claimed and received the Policy's death benefit.

179. WSFS, however, effectively dissolved the Barotz Trust by depleting it of all assets without paying or make reasonable provision to pay the Estate's claim, and thus caused direct harm to the Estate.

180. The same is true of WF Bank, which served as the statutory trustee and securities intermediary of Trust C-3, and WF Trust, which served as the statutory trustee of Trust C-2 and Trust C-3, both of which purported to be Delaware statutory trusts subject to, *inter alia*, Section 3808(e).

181. Like WSFS, Wells Fargo knew or should have known of the law concerning insurable interest and the receipt of illegal STOLI proceeds, and of the manner in which the Policy was procured.

182. Indeed, by the time Wells Fargo received the Policy's STOLI proceeds in April 2019, Wells Fargo knew or should have known of the Estate's claim because Wells Fargo had itself been a party to multiple STOLI lawsuits controlled by Delaware law, including the *Estate of Malkin* matter which was commenced against Wells Fargo in August 2017, and which alleged that Wells Fargo was itself liable under Section 2704(b) and Delaware's common law for substantially the same acts it took in connection with another Delaware STOLI policy.

183. Moreover, by early January 2020 at the latest, Wells Fargo was in receipt of correspondence from the Estate's counsel concerning the Policy, and thus was put on express notice of the Estate's Section 2704(b) claim.

184. Wells Fargo and its counsel flagrantly refused to respond to the Estate or provide it with any information, and on information and belief, instead turned to its master, Apollo, informed Apollo of the Estate's correspondence, and Apollo then commenced the New York Action.

185. Despite this, Wells Fargo facilitated the dissolution of Trust C-3, and its beneficial owner, Trust C-2, in late January 2020—after Wells Fargo was on express notice of the Estate's claim under Section 2704(b)—without bothering to

pay the Estate's claim in this case, and without making any provision to pay the Estate's claim. Thus causing direct harm to the Estate.

186. Not only did WSFS and Wells Fargo each violate Section 3808(e), but their actions violated Delaware's Constitution, insurable interest laws, and public policy because they effectuated illegal human life wagers.

187. Accordingly, the Estate seeks judgments and declarations against WSFS and Wells Fargo that: (i) WSFS and Wells Fargo violated Section 3808(e) by dissolving the Barotz Trust, Trust C-3, and Trust C-2; (ii) WSFS and Wells Fargo violated Delaware's Constitution, insurable interest laws, and public policy by dissolving these trusts and transferring their assets; and (iii) WSFS and Wells Fargo are each jointly and severally liable for the final judgment entered by the Superior Court, plus additional damages caused by WSFS's and Wells Fargo's illegal and inequitable conduct which has deprived the Estate of its common law and statutory remedies.

FIFTH CAUSE OF ACTION: RECOVERY OF INSURANCE PROCEEDS UNDER 18 Del. C. § 2704(b) AND DELAWARE COMMON LAW
(against WSFS and Wells Fargo)

188. The Estate hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth herein at length.

189. As already established by the Superior Court, the Policy is controlled by and subject to Delaware law because, among other things, it was issued and

delivered to a Delaware statutory trust with the trustee operating in Greenville, Delaware. The Policy was, therefore, a Delaware "trust-owned life insurance policy" as defined by Delaware's Insurance Code, 18 Del. C. § 2704(e)(4).

190. The Delaware Insurance Code provides, among other things, that "no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his or her personal representatives or to a person having, at the time when such contract was made, an insurable interest in the individual insured." 18 Del. C. § 2704.

191. The Delaware Supreme Court has clarified that this insurable interest requirement is not satisfied where a third party without insurable interest uses an insured as an instrumentality to procure a policy for itself as a wager on the insured's life. *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Trust*, 28 A.3d 1059 (Del. 2011).

192. As such, under Delaware law—and as the Superior Court held—the Policy lacked insurable interest at its inception. *See Estate of Martha Barotz v. Martha Barotz 2006-1 Insurance Trust*, C.A. No. N20C-04-126 EMD CCLD, 2023 WL 8714990, at * (Del. Super. Dec. 18, 2023).

193. Delaware's insurable interest statute codified longstanding common law and provides: "If the ***beneficiary, assignee or other payee*** under any contract made in violation of this section ***receives*** from the insurer any benefits thereunder

accruing upon the death, disablement, or injury of the individual insured, the individual insured or his or her executor or administrator, as the case may be, may maintain an action to ***recover such benefits from the person so receiving them***." 18 Del. C. § 2704(b) (emphasis added).

194. The Delaware Supreme Court has recently held that agents, such as banks, trustees, or securities intermediaries who receive STOLI proceeds on behalf of their principals, are not entitled to any protection and are themselves jointly and severally liable to the insured's estate under Section 2704(b). *Wells Fargo Bank, N.A., v. Estate of Malkin*, 278 A.3d 53 (Del. 2022).

195. As the Superior Court correctly held, because the Policy lacked insurable interest, the Estate is entitled to collect the Policy's entire death benefit plus applicable pre- and post-judgment interest under Section 2704(b) and Delaware's longstanding common law.

196. WSFS and Wells Fargo are each jointly and severally liable to the Estate, and thus responsible for paying the judgment.

197. To that end, WSFS, as the successor in interest to Christiana Bank, was itself the original trustee of the Barotz Trust.

198. For the reasons set forth above, the Barotz Trust is void *ab initio*. But even if it is not, WSFS was the recipient of the Policy's death benefit as it was WSFS that submitted a death claim on the Policy, the proceeds of the Policy were sent to

WSFS through a check that WSFS negotiated, and the proceeds were deposited into an account maintained by WSFS. Accordingly, under Delaware Supreme Court precedent, the Estate is entitled to a declaration that WSFS is itself jointly and severally liable on the judgment entered by the Superior Court in favor of the Estate. *Estate of Malkin*, 278 A.3d at 56-57, 60-67.

199. WSFS, however, purported to transfer the Policy's proceeds in violation of Delaware's Constitution, insurable interest statute and common law, and public policy to Wells Fargo, acting for Trust C-3 and Trust C-2—which were ultimately acting for and controlled and dominated by Apollo.

200. Specifically, on April 12, 2019, WSFS sent the proceed to Wells Fargo, which received and deposited the Policy's illegal STOLI proceeds in a Wells Fargo Bank, N.A. bank account entitled the "Wells Fargo Longevity Clearing Account." The proceeds then went to another Wells Fargo Bank account associated with Apollo Capital Management and FCI I Trust C-3. Wells Fargo had possession of these proceeds until at least April 24, 2019, when it transferred the proceeds in violation of Delaware's Constitution, insurable interest statutes, and public policy to a JP Morgan Bank Account associated with FCIL.

201. For the reasons set forth above, Trust C-3 and its purported beneficial owner, Trust C-2, are void *ab initio*. But even if they are not, Wells Fargo was the recipient of the transfer of the Policy's proceeds.

202. Accordingly, under Section 2704(b), Delaware Supreme Court precedent, and in keeping with Delaware's Constitution, public policy, and insurable interest statute and common law, the Estate seeks a judgment and declaration: (i) that WSFS and Wells Fargo are each jointly and severally liable for the final judgment entered by the Superior Court; (ii) that the transfers of the Policy's proceeds were illegal a void *ab initio*; and (iii) awarding the Estate additional damages caused by WSFS's and Wells Fargo's illegal and inequitable conduct which has deprived the Estate of its common law and statutory remedies.

SIXTH CAUSE OF ACTION: RECOVERY OF INSURANCE PROCEEDS UNDER 18 Del. C. § 2704(b) AND DELAWARE COMMON LAW
(against Apollo)

203. The Estate hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth herein at length.

204. Like WSFS and Wells Fargo, Apollo was, on information and belief, a recipient of the Policy's STOLI proceeds and is, therefore, jointly and severally liable to the Estate under Section 2704(b).

205. To that end, documents produced to the Estate on March 22, 2024 reveal that the Policy proceeds (in the amount of $5,042,328.77) were, at one point, paid into a Wells Fargo account designated for "Apollo Capital Management."

206. Those same documents also reveal that the proceeds were transferred to another Apollo account at J.P. Morgan associated with FCIL and referred to as the "Apollo LS" account.

207. On information and belief, and based on the fact that no additional documents have been provided to the Estate to show what, if anything, happened to the Policy's proceeds after being transferred into these Apollo bank accounts, the Estate believes the proceeds remain in one of more of these Apollo accounts or in another account ultimately owned and controlled by Apollo.

208. Regardless of whether Apollo transferred those proceeds further, however, Apollo was a recipient of the Policy's proceeds and is, therefore, jointly and severally liable to the Estate under Section 2704(b).

209. Accordingly, under Section 2704(b), Delaware Supreme Court precedent, and in keeping with Delaware's Constitution, public policy, and insurable interest statute and common law, the Estate seeks a judgment and declaration: (i) that Apollo is jointly and severally liable for the final judgment entered by the Superior Court; (ii) that any subsequent transfers of the Policy's proceeds by Apollo were illegal a void *ab initio*; and (iii) awarding the Estate additional damages caused by Apollo's illegal and inequitable conduct which has deprived the Estate of its common law and statutory remedies.

SEVENTH CAUSE OF ACTION: DECLARATORY JUDGMENT (ALTER EGO/VEIL PIERCING)
(against Apollo)

210. The Estate hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth herein at length.

211. Delaware law will disregard the form of a corporation, trust, or other entity where such entity was a sham that was dominated and controlled by another person or entity, in which case that third person or entity is liable for the debts and judgments against the entity it controlled.

212. A plaintiff seeking to execute on a money judgment can disregard the defendant corporation's separate corporate existence where "it is shown that the corporate form has been used to perpetuate a fraud or similar injustice" or "where the interests of justice make it appropriate" through exercising "the equitable right to pierce the screen and 'skewer' the corporate owner." *Gadsden v. Home Pres. Co.*, 2004 WL 485468, at *4 (Del. Ch. Feb. 20, 2004, revised Mar. 12, 2004) (piercing the corporate veil where the defendant corporation's business practices "amounted to a fraud, contravention of a contract, or public wrong sufficient to justify this Court ignoring the corporate form" to hold the owner/stockholder personally responsible); *see also Manichaean Cap., LLC v. Exela Techs., Inc.*, 251 A.3d 694, 706–07 (Del. Ch. 2021) (piercing the corporate veil due to the "close interrelationship between the

defendants and as to the corporate assets which have purportedly been fraudulently conveyed").

213. Here, as already detailed above, the Barotz Trust, Trust C-3, and its beneficiary, Trust C-2, were all sham entities that are themselves void *ab initio*, including because they were created for the purpose of carrying out illegal and fraudulent human life wagers.

214. From at least April 2011, Apollo exercised complete control and domination over the Barotz Trust and, therefore, was the alter ego of the Barotz Trust and is directly liable for the Barotz Trust's debts and obligations, including the judgment entered by the Superior Court in favor of the Estate.

215. To that end, unbeknownst to the Estate until recently, in March 2011, Apollo directed and controlled the creation of Trust C-3, and made Wells Fargo the purported trustee of Trust C-3. Trust C-3 was purportedly established with $1.00.

216. Unbeknownst to the Estate until recently, on the same date in March 2011, Apollo directed and controlled the creation of Trust C-2, and made Wells Fargo the purported trustee of Trust C-2. Trust C-3 was purportedly established with $1.00.

217. Trust C-2 and Trust C-3 were nominally funded sham trusts created solely and exclusively by Apollo for the purpose of conducting fraudulent and

unlawful activities related to STOLI policies. Indeed, Trust C-2 and Trust C-3 had no property or other assets, no office, and no employees.

218. Unbeknownst to the Estate until recently, as of the purported creation of Trust C-3 and Trust C-2 on the same date in March 2011, Trust C-2 became the purported sole beneficial owner of Trust C-3.

219. Unbeknownst to the Estate until recently, the sole and exclusive purpose of Trust C-3 and Trust C-2 was to "administer, service and collect proceed payable on life insurance policies and to exercise other rights of ownership in connection with such life insurance policies."

220. Unbeknownst to the Estate until recently, the purported sole beneficiary of Trust C-2 was FCIL, an Irish entity.

221. Unbeknownst to the Estate until recently and upon information and belief, FCIL itself was a sham entity. FCIL had no legitimate office location, no assets or property (other than purported interests in void *ab initio* STOLI policies), and no employees.

222. The fact that Trust C-3, Trust C-2, and FCIL were shell entities was documented in a January 5, 2011 "Amended and Restated Management Agreement" through which FCIL purportedly engaged FCI I Manager to "manage" the assets of FCIL. Despite any outward appearance that FCIL was a legitimate entity, that agreement gave FCI I Manager "full power and authority" to not only act on behalf

of FCIL, but also to expressly exercise all of FCIL's purported rights as a beneficial owner of any "Financial Credit Investment I Trust or any other trust or entity with respect to which [FCIL] is a beneficiary." Under this agreement, FCI I Manager was expressly given the power and authority to decide on the "portfolio" of STOLI policies FCIL would own an indirect beneficial interest in, and to "monitor" those STOLI policies. FCI I Manager was further given full power and authority as FCIL's attorney-in-fact to take all actions it deemed necessary "without the need for further approval by [FCIL]."

223. The January 5, 2011 "Amended and Restated Management Agreement" further provides, however, that FCI I Manager itself was another shell entity with no offices, no employees, and no assets. That agreement documents that FCI I Manager was formed as a special purpose vehicle for the sole purpose of managing FCIL—and thus for the purpose of managing the STOLI policies FCIL would indirectly own through sham trusts like the Barotz Trust—and that FCI I Manager was wholly owned and controlled by Apollo, through Apollo Capital; all of the services supposedly being provided by FCI I Manager were actually being provided and performed by Apollo Capital; and all such services were being performed "through the personnel and facilities of Apollo Capital Management."

224. In April 2011, Trust C-3, acting through Wells Fargo, purported to purchase the beneficial interest in the Barotz Trust directly from LATIII, the initial creator of the STOLI scheme through which the Policy was procured.

225. By April 2011, however, Apollo, through Apollo Capital, was in sole and exclusive control of Trust C-3, Trust C-2, FCIL, and FCI I Manager. Thus, when Trust C-3 purportedly became the sole beneficial owner of the Barotz Trust, Apollo was in sole and exclusive control of the Barotz Trust, and thus the Policy and, later, its proceeds.

226. Apollo not only exercised exclusive control and domination over the Barotz Trust, but over FCI I Manager, FCIL, Trust C-3, and Trust C-2 as well and created these entities as mere shells in order to cover-up its fraudulent and illegal STOLI practices, and ultimately to collect the proceeds of STOLI policies and then conceal and misappropriate those proceeds from the Estate and from other similarly situated estates and heirs of insureds on whose lives Apollo has wagered.

227. Indeed, to date, the Estate is unaware of any person or entity other than Apollo who had the ability to direct the Barotz Trust since April 2011, or FCI I Manager, FCIL, Trust C-3, or Trust C-2 since the creation of those entities in or around January-March, 2011.

228. In fact, discovery in this case will undoubtedly reveal that Apollo directed the commencement of and otherwise controlled the New York Action

against the Estate, and that Apollo has been paying for and otherwise funding the litigation between the Barotz Trust and the Estate from the start.

229. Because of this, the Estate seeks a declaration that Apollo was and is the alter ego of (i) the Barotz Trust; (ii) Trust C-3; (iii) Trust C-2; (iv) FCIL; and (v) FCI I Manager. Accordingly, the Estate seeks a declaration and judgment that Apollo is directly and jointly and severally liable to the Estate for the judgment entered against the Barotz Trust by the Superior Court, in addition to other damages caused by Apollo's fraudulent and illegal conduct, as described above.

EIGHTH CAUSE OF ACTION: FRAUDULENT TRANSFERS IN VIOLATION OF 6 Del. C. § 1304(a) AND IN VIOLATION OF DELAWARE'S CONSTITUTION, PUBLIC POLICY, AND INSURABLE INTEREST LAWS
(all Defendants)

230. The Estate hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth herein at length.

231. Under Delaware law, "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made . . . if the debtor made the transfer . . . [w]ith actual intent to hinder, delay or defraud any creditor of the debtor." 6 Del. C. § 1304(a)(1).

232. Additionally, "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made . . . if the debtor made the transfer . . . [w]ithout receiving a

reasonably equivalent value in exchange for the transfer or obligation, and the debtor: a. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or b. Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due." 6 Del. C. § 1304(a)(2).

233. WSFS—serving as Trustee of the Barotz Trust—fraudulently transferred the Policy's proceeds to Trust C-3, knowing, or with reason to believe, that Trust C-3 operated as a shell entity that, ultimately, would dissolve only nine months later.

234. WSFS—at the direction and control of Apollo—fraudulently transferred the Policy's proceeds to Trust C-3 knowing that the Policy was not lawfully procured but, instead, was a STOLI policy and that the proceeds were ill-gotten proceeds from an illegal STOLI scheme.

235. WSFS knew that the transfer of the Policy proceeds constituted all, or substantially all, of the Barotz Trust's assets.

236. WSFS intended to hinder, delay, or defraud the Estate as a future creditor by transferring all, or substantially all, of the Barotz Trust's assets out of the entity, thereby making the Barotz Trust effectively judgment proof.

237. Moreover, no value whatsoever was paid to the Barotz Trust in exchange for transferring the Policy's death benefit. This was the case even though the transaction the Barotz Trust was entering—the transfer of the death benefit—would leave it insolvent.

238. The reluctance of WSFS to disclose the identity of relevant entities in receipt of the Policy's proceeds—both in legal filings as well as discovery—constitutes a breach of fiduciary duty to the Barotz Trust and further evinces an actual intent to hinder, delay or defraud the Estate's ability to collect on the judgment.

239. Wells Fargo—serving as trustee of Trust C-3 and acting under the control and direction of Apollo—fraudulently transferred the Policy's proceeds out of Trust C-3, knowing, or with reason to believe, that Trust C-3 operated as a shell entity that, ultimately, would dissolve only nine months later.

240. Wells Fargo fraudulently transferred the Policy's proceeds from Trust C-3 to Apollo knowing that the Policy was not lawfully procured but, instead, was a STOLI policy and that the proceeds were ill-gotten proceeds from an illegal STOLI scheme.

241. Wells Fargo knew, or reasonably should have known, that the transfer of the Policy proceeds constituted all, or substantially all, of Trust C-3's assets.

242. Wells Fargo intended to hinder, delay, or defraud the Estate as a future creditor by transferring all, or substantially all, of Trust C-3's assets out of the entity, thereby making Trust C-3 effectively judgment proof.

243. Moreover, no value whatsoever was paid to Trust C-3 in exchange for transferring the Policy's death benefit. This was the case even though the transaction Trust C-3 was entering—the transfer of the death benefit—would, on information and belief, leave it insolvent.

244. The above actions of WSFS and Wells Fargo were controlled and directed by Apollo, using its other shell entities, including Trust C-2 and FCI I Manager, to perpetuate an illegal human life wager and to hide illegal STOLI proceeds through purported transfers that were fraudulent and intended to delay, hinder, and defraud the Estate, and which were made without receiving any value—let alone reasonably equivalent value.

245. On information and belief, the Policy proceeds ultimately ended up in bank accounts owned and controlled by Apollo. But to the extent Apollo further transferred the proceeds, it did so with knowledge not only that it was engaged in illegal human life wagering, that the Policy was void *ab initio*, and that the proceeds were owed to the Estate, but with the intent to delay, hinder, and defraud the Estate.

246. "The Delaware Supreme Court has recognized the 'broad latitude' a court in equity has to craft a remedy appropriate to the circumstances of a fraudulent

transfer." *Duffield Assocs. v. Lockwood Bros., LLC*, Civil Action No. 9067-VCMR, 2017 Del. Ch. LEXIS 121, at *9 (Del. Ch. July 11, 2017) ("Under UFTA, the 'remedies are broad and leave considerable space for the exercise of equitable discretion.' The remedies are "cumulative and non-exclusive.'").

247. "The overarching goal in applying these remedies is to put a creditor in the position she would have been in had the fraudulent transfer not occurred. This principle stems from the concept that the recipient of a fraudulent transfer holds the asset in constructive trust for creditors. . . ." *August v. August*, No. 3180-VCS, 2009 Del. Ch. LEXIS 21, at *32 (Del. Ch. Feb. 20, 2009).

248. Accordingly, the Estate seeks a declaration and judgment in its favor that: (i) Defendants' purported transfers of the Policy's proceeds are null and void; (ii) Defendants are deemed to be holding the Policy's proceeds in constructive trust for the Estate; and (iii) Defendants are jointly and severally liable to the Estate for the judgment entered against the Barotz Trust by the Superior Court, in addition to other damages caused by Defendants' fraudulent and illegal conduct, as described above.

DONALD L. GOUGE, JR., LLC

/s/ Donald L. Gouge, Jr.
Donald L. Gouge, Jr. (No. 2234)
800 N. King Street, Suite 303
Wilmington, DE 19801
Phone: (302) 658-1800
dgouge@gougelaw.com

Counsel for Estate of Martha Barotz

COZEN O'CONNOR

Gregory J. Star, Esq.*
Michael J. Miller*
Victoria Mazzola*
Carlynne Wagner*
1650 Market Street, Suite 2800
Philadelphia, PA 19103

Additional Counsel for Estate of Martha Barotz

(* *Pro hac vice* applications forthcoming)

WORDS: 16,685

Dated: April 26, 2024