

NO. D-1-GN-13-000761

ACCEPTANCE INSURANCE
COMPANY, Plaintiff

v.

LANCE ARMSTRONG and
TAILWIND SPORTS CORP., Defendants

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IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

126TH JUDICIAL DISTRICT

PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION

TO THE HONORABLE COURT:

Plaintiff Acceptance Insurance Company files this suit for fraud, breach of contract, conspiracy, and unjust enrichment against Defendants Lance Armstrong and Tailwind Sports Corp. and would respectfully show the following:

I. Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of Rule 190.3.

II. Parties

2. Plaintiff, Acceptance Insurance Company ("Acceptance") is a Nebraska domestic insurance company. Acceptance has a management services agreement authorizing it to administer policies for Redland Insurance Company and perform all necessary services for Redland's business, including filing this lawsuit.

3. Defendant Lance Armstrong ("Armstrong") is a citizen of the State of Texas and resides in Austin, Travis County, Texas. He has appeared and answered.

4. Defendant Tailwind Sports Corp. ("TSC") is a foreign corporation doing business in Texas and has appeared and answered.

III. Factual Background

A. Nature of the case

5. Lance Armstrong has been considered the greatest cyclist in the history of the sport. He won the most grueling sporting event, the Tour de France, a record seven times from 1999 to 2005. He did that after surviving cancer. His heroic fight with cancer inspired millions. His unprecedented athletic success brought fame, admiration, and vast wealth.

6. But Lance Armstrong cheated. He cheated in each of those seven races. He cheated by taking performance enhancing drugs – “doping.” To cover up his cheating, for years Armstrong lied, had others lie for him, and attacked anyone who told the truth about his cheating.

7. Armstrong finally got caught when the United States Anti-Doping Agency found him guilty of doping and cheating in its October 10, 2012, decision. After further adamant denials and attacks on his accusers, Armstrong gave an interview televised on January 18, 2013, and admitted that he cheated by taking banned substances in all seven of his Tour de France victories.

8. By his cheating and deception, Armstrong committed fraud. This suit seeks repayment of \$3 million in undeserved and unearned pay Lance Armstrong obtained by fraud.

B. Armstrong and Tailwind cheat to win, and defraud the insurer

9. In 1999, Lance Armstrong rode for the U.S. Postal Service team. The team was managed by Disson Furst & Partners, which later became Tailwind Sports Corp. TSC paid Armstrong a salary, but his greatest compensation came from performance bonuses if he won stages or races, including the Tour de France.

10. TSC's predecessor bought an insurance policy from Redland Insurance Co. to cover \$3 million of those contract bonuses. The policy term went from July 2, 1999, to December 31, 2001. It covered the Tour de France for 1999, 2000, and 2001, which Armstrong won each year. In 2000 and 2001, Acceptance paid out the full \$3 million policy limit to Lance Armstrong for those wins and a stage win in the 2000 Dauphine Libere. Acceptance paid those funds directly to Lance Armstrong, and to Armstrong through TSC and TSC's predecessor.

11. TSC's predecessor was the named insured, and Lance Armstrong was named as a "Covered Person" and the insured "Participant." The policy covered bonuses TSC contracted to pay Armstrong for winning, if he "compl[ie]d with the terms and conditions of this policy and the rules and regulations of the Cycling bodies governing the covered events[.]"

12. At all relevant times, the Tour de France rules and regulations prohibited the use of performance enhancing drugs. Armstrong was never entitled to receive any of the payments, because he cheated in each race and violated the rules and regulations of the events.

13. Under the express terms, "This policy is void if you knowingly concealed or misrepresented any material fact or circumstances concerning this insurance, or in the case of any fraud or false swearing by you before or after a loss."¹ The policy further says: "If you make any false or fraudulent claim as to amount or otherwise, this policy is void as to that specific claim and we have the right to terminate this policy at that time and any subsequent claims by you are forfeited." By concealing the fact that Armstrong was doping and would cheat in each race, Armstrong and TSC committed fraud that voids the policy.

14. The policy excludes any loss caused by any "dishonest" or "fraudulent" act, and excludes any claim "arising out of fraud, misrepresentation, collusion or dishonesty." Because

¹ In insurance jargon, Armstrong's wins were called "losses," because they obliged the insurer to pay.

of Armstrong's and TSC's dishonesty, fraud, misrepresentations, and collusion, all losses are excluded.

15. When Redland issued the policy, Armstrong and TSC knew that Armstrong would cheat to win the 1999 Tour de France. They knew he would use blood doping and performance enhancing drugs, all prohibited by the rules and regulations of the contest. Armstrong and TSC cheated during the 1999 Tour de France by using EPO and corticosteroids, back-dating a prescription to conceal a positive test for steroids, and instructing others to illegally obtain, transport, and dispose of drugs and blood doping products. Armstrong and TSC knew they fully intended to engage in the same prohibited conduct in the future.

16. The representations by Armstrong and TSC that Armstrong would not cheat, but would comply with the Tour de France rules were material to the issuance of the coverage, were false at the time they were made, were made by Armstrong and TSC with the intent to deceive Redland, and Redland relied upon these false representations in issuing the policy. The fraud committed by Armstrong and TSC voids the policy and excludes the claims.

17. Further, in order to recover on each claim TSC and Armstrong had to certify that "all aspects of the competition were in accordance with the terms and conditions of this policy and the rules and regulations of the competition." Those certifications were lies. Armstrong's doping-enhanced wins violated the rules of the competition, and of course they knew it. TSC and Armstrong intended that Acceptance rely on these false statements in paying the claims, and Redland reasonably relied upon these false statements in paying \$3 million to Armstrong.

18. The parties agreed that the rules and regulations of the Tour de France "are material to this policy and any breach shall void any claims under this policy." Armstrong's cheating voids his claims.

19. Further, the insured warranted that they had truthfully declared all material facts likely to influence a prudent underwriter in determining whether or not to accept the risk; the premium; and conditions, exclusions and limitations having diligently made all necessary inquiries to establish those facts. The insured warranted that they had no knowledge or information of facts or circumstances likely to give rise to a loss. Failure to fulfill either warranty would release the insurer from all obligations. TSC and Armstrong breached these warranties. They knew Armstrong was cheating and would cheat in each and every race. That cheating was certainly material, because it was what allowed Armstrong to win and collect the bonuses.

C. Fraudulent concealment

20. From 1999 until January 2013, Armstrong, TSC, and their agents fraudulently and aggressively concealed the falsity of their claims to Acceptance, and further actively conspired with their agents and representatives to conceal their actions. The purposes of this conspiracy were clear: to prevent Acceptance and others from discovering their fraud; and to let Armstrong exploit his fame to benefit himself and his benefactors. The actions taken by Armstrong and TSC – both directly and through their agents and representatives – included making false statements, filing fraudulent civil complaints, tampering with and intimidating witnesses, falsifying documents, and committing and suborning perjury.

21. The following is only a partial list of Armstrong's and TSC's acts of fraudulent concealment:

1999 - Emma O'Reilly

22. Emma O'Reilly was a soigneur for the U.S. Postal team from 1996-2000. She witnessed and overheard evidence of doping by Armstrong and others. She said that Armstrong

asked her to dispose of syringes and asked for makeup to cover his needle tracks. She said the team backdated a prescription to cover up Armstrong's use of a banned substance. When she truthfully disclosed that information Armstrong, TSC, and their agents retaliated and told additional lies to dispute and discredit her. After her story came out in a 2004 book, Armstrong publically called her an "alcoholic" and a "whore." In 2005, an agent of TSC falsely told a reporter there was "no substance to any of this." In sworn testimony of November 30, 2005, Armstrong denied her story, said she was paid for her testimony, and again called her a "whore." In an interview on ESPN in 2006, Armstrong again denied the truth of her story that she had carried pills for the team and repeated that she was not credible because she was paid.

23. In his January 2013 interview with Oprah Winfrey, Armstrong admitted Ms. O'Reilly was telling the truth.

2000 – Medical waste allegations

24. In 2000, French journalists reported finding medical waste discarded by Armstrong's team, which led to a doping inquiry. Armstrong responded by making a false claim he would repeat year after year: "We are absolutely innocent. Our team will stand on its morals and record of being an anti-doping team." The team general manager made a false public statement that the team "follows all of the strict guidelines" of the Tour de France and the governing agencies.

2001 – Willy Voet

25. Willy Voet, a former soigneur for another team, made allegations regarding doping. Armstrong made threats and public statements to discredit him, saying: "Willy Voet is completely full of sh**. ... But he should watch out, because as soon as he accuses people

publicly and directly, he has to be brought before court. ... But as soon as he calls me by name, I would start proceedings against him.”

26. Armstrong continued with his false denials. He now admits doping in all the tours from 1999 to 2005. In a press conference during the 2001 tour, even as he continued to cheat, he said: “I think this is a clean Tour.” Asking about himself, “Will he pass every test because he does not take EPO? Yes he will.” When asked, “You present yourself as the cleanest of clean riders ...,” he responded, “And I have proof.” He added that if the team was investigated, they would prove themselves “innocent.” He lied, “I’ve lived by the rules.” He falsely said, “I know they’re clean because I know what I do and what the team takes.” He now admits taking banned substances including human growth hormone. Then, he lied: “I can tell you, speaking of a substance like human growth hormone, why would somebody in my position, with my health history, take something like that? There’s no way, no way.”

2003 – Non-disclosure agreement

27. In late 2003, Armstrong and TSC instructed their Austin attorneys to negotiate a high dollar non-disclosure agreement with Armstrong’s then wife, Kristin Armstrong, to prevent her from discussing her knowledge of, or participation in Armstrong’s cheating. On information and belief, the former Mrs. Armstrong was paid over \$10 million not to disclose Armstrong’s cheating, and the non-disclosure agreement contains economic penalties for her if she breaches its terms.

2004 – L.A. Confidential

28. In 2004, Armstrong and TSC instructed their London barristers to file a false slander case against the Sunday Times of London, David Walsh, and Emma O’Reilly. The suit falsely claimed that the truthful statements of fact contained in the Pierre Ballester / David Walsh

book, *L.A. Confidential: Les Secrets de Lance Armstrong*, were untruthful, and the Sunday Times of London had slandered Armstrong by reprinting portions of the book. The fraudulent slander suit was ultimately settled when Armstrong's Austin counsel met with lawyers for the Sunday Times, and again claimed that the truthful reporting by Ballester and Walsh was false and slanderous.

29. Also in 2004, Armstrong and TSC instructed their Austin attorneys to meet with Frankie and Betsy Andreu for the purpose of obtaining false statements or affidavits discrediting David Walsh and his book with Pierre Ballester.

30. In his 2005 sworn testimony in an arbitration, Armstrong falsely testified the "juiciest stuff" in Walsh's book was not true.

31. In 2013, Armstrong admitted that he owed Walsh an apology.

2004 – Fillippo Simeoni

32. An Italian rider, Fillippo Simeoni, told authorities that a doctor who was also used by Armstrong had helped Simeoni dope. Armstrong called Simeoni a "liar" and succeeded in defeating Simeoni's defamation suit. Armstrong also retaliated against Simeoni in the 2004 Tour and threatened to "destroy" him for speaking out.

2004 – Betsy Andreu

33. Betsy Andreu, wife of Armstrong's former teammate, Frankie Andreu, testified that while Armstrong was hospitalized with cancer in 1996 she overheard him tell the doctors that he had used performance-enhancing drugs. Armstrong denied this truthful testimony in public statements vilifying and attempting to discredit her. Armstrong falsely denied this in his sworn testimony in 2005. In his 2006 ESPN interview, he again denied it. In his 2013 interview, Armstrong admitted Mrs. Andreu was right.

2005 – Mike Anderson

34. In 2005, Armstrong and TSC instructed their Austin attorneys to file a false claim and fraudulently seek sanctions against Mike Anderson, Armstrong's former assistant and mechanic. Mr. Anderson had asserted a claim about Armstrong's cheating, prompting Armstrong's Austin attorneys to falsely claim that Mr. Anderson had made "an egregious character assassination [against Armstrong] founded upon a demonstrably false string of sensational, untrue and fabricated allegations." The allegations were subsequently resolved by a confidential settlement agreement.

2005 – l'Equipe

35. The French newspaper, *l'Equipe*, alleged that samples from the 1999 Tour showed that Armstrong used banned substances. Armstrong responded with his consistent falsehoods, calling it a "witch hunt" and saying, "I have never taken performance enhancing drugs."

36. Armstrong appeared on Larry King Live, and falsely claimed:

I have never doped. I can say it again. But I've said it for seven years. It doesn't help. But the fact of the matter is I haven't. And if you consider my situation: A guy who comes back from arguably, you know, a death sentence, why would I then enter into a sport and dope myself up and risk my life again? That's crazy. I would never do that. No. No way.

2005 – Arbitration and lying under oath

37. Again in 2005, Armstrong and TSC instructed their Austin attorneys to file false claims to defend the arbitration action by SCA Promotions, Inc. SCA agreed to pay performance bonuses for the years after Acceptance paid. SCA sought to avoid paying, based on allegations that Armstrong cheated by doping.

38. Armstrong and his agents also engaged in perjury and suborned perjury to conceal the scope and extent of their prior cheating.² Armstrong's perjury included the following statements under oath:

Q. You have never taken any performance-enhancing drug in connection with your cycling career?

A. Correct.

Q. And that would include any substance that's ever been banned. Is that fair to say?

A. Correct.

39. As a result of that perjury, Armstrong and his attorneys received a settlement of over \$5 million.

2006 – Greg LeMond

40. Former cycling champ, Greg LeMond, stated publicly that Armstrong admitted to him that they all doped. Armstrong responded in an interview by denying the allegation and saying that LeMond "has serious drinking and drug problems."

2006 – ESPN Interview

41. Armstrong boasts that, "We've instigated a lot of action here. Every accusation that's come – every case that's come – we've sued people ... our batting average in all of this is 1,000. We've never lost." He added, "So far, we've won every round."

² Following the settlement of the SCA Arbitration, Armstrong and TSC immediately violated the confidentiality terms of the settlement, claiming to the press that they had been completely vindicated by the arbitration panel, but failed to disclose that the ruling had been requested by the terms of the settlement agreement.

2009 – Grand jury investigation

42. In 2009, while he was the subject of a grand jury investigation, Armstrong confronted Tyler Hamilton, a witness subpoenaed before the grand jury, and threatened: "I'm going to make your life a living, f***ing hell."

43. In 2010, Armstrong's lawyer issued a statement calling the investigation "un-American" and falsely said the other riders who implicated Armstrong were not telling the truth.

2010 – Floyd Landis and the Qui tam lawsuit

44. Ex-teammate and now-admitted doper, Floyd Landis, publically alleged that Armstrong also doped. Armstrong responded, falsely stating: "We have nothing to hide. We have nothing to run from. ... It's all a bunch of bulls***."

45. Landis filed a "qui tam" suit against Armstrong under the Federal False Claims Act, alleging fraudulent conduct in the sponsorship of the Postal team. The federal government recently joined that suit, apparently disagreeing with Armstrong's denial.

2011 – Sports Illustrated

46. Armstrong repeats in an interview that he has "nothing to worry about."

D. Discovery of the fraud

47. On October 10, 2012, at Armstrong's attorneys' public urging (but private objection), USADA issued its Reasoned Decision concerning their investigation of Armstrong and TSC. USADA concluded that Armstrong and TSC had "participated in a sophisticated scheme and conspiracy to dope, encourage and assist others to dope and cover up rule violation[.]"

48. Two weeks later, on October 22, 2012, the UCI stripped Armstrong of all his Tour de France titles, conclusively establishing that Armstrong was not legally entitled to retain

the \$3 million winner's bonus he received from Acceptance. In announcing their decision, UCI's President proclaimed that Armstrong "has no place in cycling, and he deserves to be forgotten in cycling." On October 26, 2012, UCI announced that it would not award the 2000 and 2001 Tour titles to any rider, and called on Armstrong to "return all prize money [he] has received."

49. In January of 2013, Armstrong appeared for a paid interview with Oprah Winfrey.

Within the first few minutes of the interview, Armstrong admitted the following:

Q. Did you ever take banned substances to enhance your cycling performance?

A. Yes.

Q. Was one of those banned substances EPO?

A. Yes.

Q. Did you ever blood dope or use blood transfusions to enhance your cycling performance?

A. Yes.

Q. Did you ever use any other banned substances such as testosterone, cortisone or Human Growth Hormone?

A. Yes.

Q. In all seven of your Tour de France victories, did you ever take banned substances or blood drugs?

A. Yes.

50. From 2000, when Acceptance made the first payment to Armstrong, until October 22, 2012, when Armstrong was officially stripped of his Tour de France titles, Acceptance exercising reasonable diligence could not have discovered Armstrong's and TSC's fraud. Furthermore, Armstrong and TSC actively, maliciously, and illegally conspired among themselves and with others to conceal their fraud.

IV. Causes of Action

51. The factual allegations above are incorporated in the following statements of the causes of action as if set forth verbatim.

A. First Cause of Action: Fraud by Armstrong, TSC, and their Agents

52. The elements of fraud are: (1) the defendant made a representation to the plaintiff; (2) the representation was material; (3) the representation was false; (4) the defendant either knew the representation was false or made it recklessly as a positive assertion without knowledge of its truth; (5) the defendant made the representation with the intent that the plaintiff act on it; (6) the plaintiff relied on the representation; and (7) the representation caused injury. *Aquaplex, Inc. v. Rancho La Valencia, Inc.*, 297 S.W.3d 768, 774 (Tex. 2009).

53. As described above, Armstrong, TSC, and their agents made material, false representations, with knowledge that the statements were false or recklessly, with the intent that the insurer rely on those representations in issuing the policy and making payments under the policy. Acceptance relied on those misrepresentations and suffered injury by paying Armstrong \$3 million he was not entitled to receive. Armstrong, TSC, and their agents procured the insurance policy through fraud, and then falsely claiming that Armstrong honestly won the Tour de France in 1999-2001 and 2000 Dauphine Libere stage, while simultaneously engaging in a continuous and pervasive program of cheating.

B. Second Cause of Action: Fraudulent Failure to Disclose

54. As described above, Armstrong, TSC, and their agents also defrauded Acceptance by failing to disclose material facts, when they knew Acceptance was ignorant of those facts and did not have the opportunity to discover the truth, and by failing to disclose those facts they intended to induce the insurer to issue the policy and make payments. Specifically, Armstrong,

TSC, and their agents knew that Armstrong had doped and would continue to dope, in order to win races that would qualify him for bonuses to be paid by Acceptance.

55. Acceptance suffered injury as a result of these nondisclosures, by issuing the policy and paying \$3 million in claims to Armstrong.

56. Armstrong, TSC, and their agents had a duty to disclose the truth to Acceptance because they voluntarily disclosed the fact that Armstrong won qualifying races and sought payment, but they did not disclose the whole truth that he won by cheating, which meant that no bonuses were owed.

57. Further, Armstrong, TSC, and their agents had a duty to disclose new information – that Armstrong won by cheating – because their earlier warranty that they knew of no facts material to the risk and representation that Armstrong would comply with the rules were now misleading and untrue.

58. In addition, one who makes a partial disclosure and conveys a false impression has a duty to correct it. The partial disclosure by Armstrong, TSC, and their agents that Armstrong won, along with claiming and accepting payment, conveyed the false impression that he won in compliance with the rules, as required by the policy. Armstrong, TSC, and their agents had a duty to disclose that he cheated and was not entitled to payment.

59. Finally, Armstrong, TSC, and their agents had a duty to disclose material facts to Acceptance because those facts were not discoverable by the exercise of ordinary care and diligence, and a reasonable investigation would not uncover the facts. Armstrong, TSC, and their agents also had a duty to disclose because they knew that Acceptance was ignorant of the true facts and did not have an equal opportunity to discover the truth. Armstrong's doping was not discoverable by ordinary care and diligence, and a reasonable investigation would not

uncover the facts. Armstrong, TSC, and their agents knew Acceptance was ignorant of the facts, because they were striving mightily to conceal Armstrong's doping from everyone. Certainly Acceptance's opportunity to discover the truth was not equal to the knowledge of the person who was actually doping.

C. Third Cause of Action: Conspiracy to Defraud

60. Armstrong, TSC, and their agents conspired to defraud Acceptance. Armstrong, TSC, and their agents had knowledge of, agreed to, and intended a common objective or course of action that resulted in the damages to Acceptance. Armstrong, TSC, and their agents performed acts to further the conspiracy. As a result of this conspiracy, Acceptance suffered \$3 million in damages paid to Armstrong.

D. Fourth Cause of Action: Benefitting from Fraud

61. TSC and its agents, and its predecessor Disson Furst & Partners, defrauded Acceptance, as set forth above. Armstrong benefitted from that fraud by receiving \$3 million from Acceptance. Having reaped the benefit of the fraud, Armstrong is equally liable.

62. TSC and its agents, and its predecessor Disson Furst & Partners, defrauded Acceptance, as set forth above. TSC and Disson Furst benefitted from that fraud by causing Acceptance to pay \$3 million in bonuses they owed to Armstrong. TSC is therefore liable for the fraud.

E. Fifth Cause of Action: Breach of Contract

63. Under the terms of the Acceptance policy, Armstrong and TSC were obligated not to conceal or misrepresent any material fact, and to comply with all rules and regulations of the Tour de France. Because Armstrong cheated, no payments were due under the contract.

64. Armstrong and TSC breached the terms of the policy by demanding and accepting payments that were not owed, by concealing Armstrong's cheating, and breaching the warranties they made. These breaches have caused Acceptance damages of \$3 million.

F. Sixth Cause of Action: Third Party Beneficiary

65. Alternatively, Armstrong is an intended third party beneficiary of the insurance contract, because the policy satisfied his employer's obligation to pay him \$3 million in bonuses. As beneficiary, Armstrong had no greater rights under then contract than TSC. Because no benefits were owed under the contract, Armstrong is liable to Acceptance to repay the \$3 million.

G. Seventh Cause of Action: Unjust Enrichment

66. Acceptance is entitled to equitable relief for money had and received by Armstrong and TSC. The Defendants hold money that belongs to Plaintiff in equity and good conscience.

V. Liability of TSC and owners

67. TSC contends that it is not subject to suit, because it has been dissolved. However, a dissolving corporation cannot avoid liability, unless it gives the notice required by Tex. Bus. Corp. Act art. 6.04 to each known creditor and claimant. Because TSC defrauded Acceptance and breached its contract by taking \$3 million in unearned benefits, Acceptance was a known creditor and claimant of TSC. TSC did not give Acceptance the required notice.

68. To the extent that TSC is dissolved, then each stockholder of the dissolved corporation is liable for claims against the dissolved corporation to the extent of the amount distributed to such stockholder in dissolution. *See* Del. Code Ann. tit. 8, § 282 (West). Suit shall may be brought against an officer, director, or stockholder for any debt of a corporation of which

such person is an officer, director or stockholder, once a judgment is obtained against the corporation and execution returned unsatisfied. Del. Code Ann. tit. 8, § 325 (West).

69. To the extent that TSC is liable but unable to pay, Acceptance is entitled to recover from TSC's officers, directors, and stockholders, including Armstrong, John Bucksbaum, John Burke, Barton Knaggs, Terry G. Lee, Harvey Schiller, William Stapleton, Thomas Weisel, and Ward W. Woods.

70. TSC relies on Texas Business Organizations Code section 11.359 and Delaware Code title 8, section 278 to assert that Acceptance's claim are barred because they were not brought within three years of TSC's dissolution. TSC is not entitled to the protection of these statutes. Texas law required that TSC give notice of its dissolution to Acceptance as a "known claimant." Tex. Bus. Org. Code § 11.052. TSC knew that Acceptance was a claimant because TSC knew that it had defrauded Acceptance in 1999 when the policy was obtained, and knew that it defrauded Acceptance and breached its contract by claiming in 1999, 2000, and 2001 benefits that were not owed. TSC further knew of its liability to Acceptance prior to its dissolution on December 31, 2007, because Tailwind and Armstrong sued another insurer of bonuses in September 2004 for failing to pay bonuses because of Armstrong's alleged doping. Tailwind and Armstrong settled in February 2006 and were paid. They were put on notice and had actual knowledge that if it could be shown that Armstrong doped they would be liable to repay any bonuses. Acceptance never received any notice of TSC's dissolution and was not aware of the dissolution, until after suit was filed.

71. Similarly, under Delaware law TSC had to give notice to all potential claimants, 8 Del. C. § 280(a), (b)(1), or had to make provisions for payment of claims that, based on facts known to the corporation, was likely to arise. *Id.* § 281(b)(1).

72. TSC did not comply with either statutory scheme and therefore cannot avoid liability.

VI. Conditions Precedent

73. All conditions precedent have occurred or been performed.

VII. Discovery Rule / Fraudulent Concealment

74. To the extent Armstrong or TSC attempt to assert the statute of limitations or any equitable defense to Acceptance's claims, Acceptance asserts that it did not discover and could not have reasonably discovered Defendants' fraudulent actions through reasonable diligence, prior to October 10, 2012.

75. Further, Armstrong and TSC engaged in a continued and ruthless program of fraudulent concealment, which tolls limitations.

VIII. Damages

76. Each and every act or omission of Armstrong and TSC described in the preceding causes of action is a producing and proximate cause of damages that Acceptance has suffered.

77. Acceptance has been damaged by its payment of \$3 million to Armstrong, and interest as damages for the loss of its use of the funds. Acceptance therefore seeks pre-judgment interest at the maximum allowable rate, and its court costs.

IX. Attorneys' Fees

78. Acceptance has also been forced to retain the undersigned counsel to pursue these claims and seeks to recover its reasonable and necessary attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code § 38.001.

X. Exemplary Damages

79. Acceptance seeks exemplary damages because its injury resulted from fraud by Armstrong and TSC. Tex. Civ. Prac. & Rem. Code § 41.003(a). Plaintiff seeks exemplary damages in an amount to be determined by the jury, considering the following factors: (1) the nature of the wrong; (2) the character of the conduct involved; (3) the degree of culpability of the Defendants; (4) the situation and sensibilities of the parties concerned; (5) the extent to which such conduct offends a public sense of justice and propriety; and (6) the net worth of the Defendants.

80. Because Defendants are guilty of violating Penal Code section 32.46, which makes it unlawful to secure execution of a document by deception, Acceptance seeks exemplary damages in excess of two times the economic damages, as allowed by Tex. Civ. Prac. & Rem. Code § 41.008(c)(11).

81. Acceptance seeks exemplary damages in excess of two times the economic damages, as allowed by Tex. Civ. Prac. & Rem. Code § 41.008(c)(11).

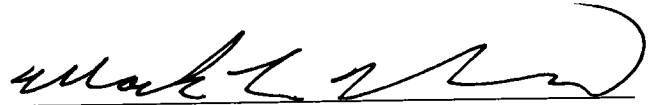
WHEREFORE, Acceptance respectfully asks the Court to render judgment against Armstrong and TSC for:

- (1) actual damages resulting from the fraud and wrongful acts of Armstrong and TSC;
- (2) equitable relief in the form of disgorgement of funds obtained by Armstrong and TSC as a result of their fraud;
- (3) equitable relief in the form of voiding the contract that was obtained by fraud;
- (4) attorneys' fees;
- (5) exemplary damages;
- (6) pre-judgment and post-judgment interest at the highest lawful level;

- (7) costs of court; and,
- (8) such other relief, general or special, at law or in equity, to which Acceptance may be entitled.

Respectfully submitted,

GEORGE, BROTHERS, KINCAID & HORTON LLP



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CERTIFICATE OF SERVICE

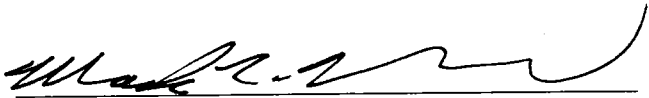
I hereby certify that on the 13th day of August, 2013, the foregoing document was served on the following counsel and parties as indicated below.

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