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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants R. Allen Stanford, Laura Pendergest-Holt, Gilbert Lopez, Jr., and Mark Kuhrt (collectively hereinafter “Defendants”) and their attorneys, Lee Shidlofsky, Gregg Anderson, Kent Schaffer, George Secrest, James Ardoin, Chris Flood, Dan Cogdell, Jim Lavine, Jack Zimmermann, and Cole Ramey (collectively hereinafter “Defendants’ Attorneys”) file this Motion for Reconsideration (“Motion for Reconsideration”) in regard to the Court’s December 16, 2009 Order finding Defendants and Defendants’ Attorneys in Contempt of Court [Docket No. 926], and their brief in support, and would respectfully show the Court as follows:¹

I. INTRODUCTION

By Order dated December 16, 2009, this Court denied the Emergency Motion to Enforce Receivership Order and Injunction filed by Certain Underwriters at Lloyd’s of London and Arch Specialty Insurance Company (collectively, “Underwriters”), but granted Underwriters’ Motion for Contempt.² Underwriters sought an order from this Court requiring Defendants and Defendants’ Attorneys to dismiss claims brought by Defendants in the Southern District of Texas concerning Underwriters’ obligations to Defendants under insurance policies issued by Underwriters. Underwriters also sought an order from this Court finding Defendants and Defendants’ Attorneys guilty of contempt for seeking relief in the Southern District. With this Motion for Reconsideration Defendants and Defendants’ Attorneys seek reconsideration of the

¹ It is important to note that Gilbert Lopez and Mark Kuhrt only were recently joined as Defendants in this proceeding when Plaintiff filed its Second Amended Complaint on January 8, 2010 [Docket No. 952]. At the time of the Order that is the basis of this Motion for Reconsideration, neither Mr. Lopez nor Mr. Kuhrt had made formal appearances in this case. Additionally, Defendants’ Attorneys are neither parties to this proceeding nor are Defendants’ Attorneys counsel of record herein. With this Motion for Reconsideration, Mr. Lopez, Mr. Kuhrt and Defendants’ Attorneys are neither waiving service nor making formal appearances in this case.

² See Underwriters’ Emergency Motion to Enforce Receivership Order and Injunction and Motion for Contempt (“Underwriters’ Motion”) [Docket No. 898]; Order [Docket No. 926].

portion of the Court's December 16, 2009 Order finding them in contempt of the Court's September 28, 2009 Order.³

Reconsideration of the portion of the Court's Order finding Defendants and Defendants' Attorneys guilty of contempt is warranted for the following reasons:

- a. Most importantly, by proceeding in the Southern District, Defendants and Defendants' Attorneys did not believe that they were acting in violation of any orders of this Court and they certainly did not intend an affront to this Court's authority. As this Court noted in its December 16, 2009 Order, Defendants "were anything but covert in their actions," and "Underwriters did not object to proceeding before Judge Hittner until recently."⁴ It is now clear that Defendants and Defendants' Attorneys misinterpreted the Court's September 28, 2009 Order.
- b. In their Response in Opposition to Underwriters' Motion, Defendants and Defendants' Attorneys advised this Court of their willingness to comply with any orders of the Court concerning jurisdiction over the coverage dispute.⁵ Had this Court ordered Defendants to dismiss the claims brought by them in the Southern District against Underwriters, Defendants and Defendants' Attorneys would have complied immediately. Because this Court ultimately agreed with Defendants that the coverage dispute belongs in the Southern District, Defendants and Defendants' Attorneys were never afforded an opportunity to purge themselves of their contempt. While the purpose of this Court's Order may have been to discourage any other actions that

³ Order of September 28, 2009 [Docket No. 810]. Movants do not seek reconsideration of the portion of the Court's December 16, 2009 Order denying the request by Underwriters for Injunctive Relief.

⁴ Order [Docket No. 926] at 5.

⁵ See Response of Defendants in Opposition to Underwriters' Motion ("Response in Opposition") [Docket No. 913] at 13.

might interfere with this Court's exclusive jurisdiction, insofar as the contemptible conduct is concerned, the Order is punitive as opposed to coercive, and under the circumstances, Defendants and Defendants' Attorneys should not have been adjudged guilty of contempt without proper notice and an adversary hearing. In a contempt proceeding, due process requires (at a minimum) that a party is entitled to both notice and the opportunity to be heard.⁶

- c. Though it may not have been this Court's intention to punish Defendants and Defendants' Attorneys, the impact of this Court's finding of contempt is punitive. As a result of the finding of contempt, Defendants' Attorneys must now advise their malpractice carriers that they each have been found guilty of contempt. Additionally, Defendants' Attorneys, whose practices often take them to courts in other states, must advise other courts in which they seek to be admitted to practice that they have been found in contempt by this Court. Though Defendants' Attorneys are grateful that this Court declined to impose sanctions, the finding of contempt alone amounts to a sanction, which under the circumstances is excessive.

II. SUMMARY OF RELEVANT FACTS

1. Procedural History

The history of the dispute between Underwriters and Defendants is discussed at length in Defendants' Response in Opposition to Underwriters' Motion and it is significant for purposes of this Motion for Reconsideration because it demonstrates that Defendants were not alone in

⁶ *Int'l. Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 827 (1994). Indeed, in *Securities and Exchange Commission v. W Financial Group, LLC*, No. 3:08-CV-0499-N (N.D. Tex. Jan. 14, 2010) (Order, Docket No. 336), this Court recently held that an alleged contemnor is entitled to adequate notice and a hearing, and the Court held that it would grant a 60(b) motion as to a contempt order granted prior to service of a show cause order.

believing that their dispute with Underwriters could be decided by another court.⁷ Underwriters consistently acted as though its coverage dispute with Defendants could be decided in other courts.

After the appointment of the Receiver by this Court, Underwriters noticed Ms. Pendergest-Holt's deposition for August 25, 2009 in the matter of *Laura Pendergest-Holt v. Lloyd's of London Underwriting Members in Syndicates 2987, 2488, 1886, 2623, and 623, and Arch Specialty Insurance Company*, Cause No. 09-3133-E, in the 101st Judicial District Court of Dallas County, Texas.⁸ Underwriters never objected to the Dallas County District Court's authority to decide the coverage dispute despite the fact that a Receiver already had been appointed.⁹

On August 24, 2009, Defendants Laura Pendergest-Holt and Gilbert Lopez sought a determination in *United States v. Robert Allen Stanford, Laura Pendergest-Holt, Gilbert Lopez, Mark Kuhrt and Leroy King*, Criminal No. H-09-342 (the "Criminal Action") concerning Underwriters' obligations to fund their defenses with a Motion for Payment of Fees or in the Alternative, Stay of Criminal Proceedings.¹⁰ On September 14, 2009, Underwriters promptly responded to Ms. Pendergest-Holt's and Mr. Lopez's motions to compel payment of fees.¹¹ Nowhere in Underwriters' response was there any objection to Judge Hittner's exercise of jurisdiction over the policies issued by Underwriters. Then, by letter dated October 12, 2009—after this Court's September 28, 2009 Order—counsel for Underwriters threatened to "seek

⁷ Defendants' Response in Opposition to Underwriters' Motion [Docket No. 913]. Movants hereby adopt and incorporate by reference their Response in Opposition to Underwriters' Motion in this Motion for Reconsideration.

⁸ See Appendix Exhibit 1 to Defendants' Response in Opposition [Docket No. 913-3].

⁹ Ms. Pendergest-Holt ultimately non-suited the proceeding filed by her in Dallas County District Court.

¹⁰ See Appendix Exhibits 2 and 3 to Defendants' Response in Opposition [Docket No. 913-4 and 913-5].

¹¹ See Appendix Exhibit 4 to Defendants' Response in Opposition [Docket No. 913-6].

assistance” from Judge Hittner concerning Underwriters’ payment obligations.¹² Counsel for Underwriters attended a hearing in Judge Hittner’s courtroom on November 17, 2009 for oral argument on the motions to compel payment of fees.¹³ At the hearing, Judge Hittner mentioned that it might be more appropriate to resolve the coverage dispute in a declaratory judgment action, rather than in the Criminal Action.¹⁴ On that same day, Ms. Pendergest-Holt commenced the matter of *Laura Pendergest-Holt v. Certain Underwriters at Lloyd’s of London*, No. 4:09-cv-03712 in the United States District Court for the Southern District of Texas, Houston Division (the “Declaratory Judgment Action”).¹⁵ The Declaratory Judgment Action was filed in the Southern District because the Criminal Action is proceeding at a fast pace in the Southern District and Defendants’ abilities to defend themselves in the Criminal Action is directly dependent on resolution of the dispute between Underwriters and Defendants.¹⁶

Despite the fact that Underwriters were aware since even before this Court’s September 28, 2009 Order that at least some of the Defendants were seeking a determination from Judge Hittner of Underwriters’ obligations under the relevant policies of insurance, it was not until after Judge Hittner ordered the parties to appear for a December 17, 2009 hearing on Defendants’ Motion for Preliminary Injunction in the Declaratory Judgment Action that Underwriters

¹² See Letter from Daniel McNeel Lane, Jr. dated October 12, 2009, a true and correct copy of which is attached as **Exhibit 1-A** to the affidavit of Kent Schaffer attached hereto as Appendix **Exhibit 1**.

¹³ See Appendix Exhibit 5 to Defendants’ Response in Opposition [Docket No. 913-7].

¹⁴ See *id.* at App.000119, 000124 and 000136.

¹⁵ On November 20, 2009, Mr. Stanford, Mr. Lopez, and Mark Kuhrt joined the declaratory judgment action by way of a First Amended Complaint. A copy of the live pleading in the Declaratory Judgment Action, which is the Second Amended Complaint, was attached to Underwriters’ Motion as Exhibit B [Docket No. 898-5].

¹⁶ The trial of the Criminal Action is scheduled to begin in January 2011. On January 26, 2010, Judge Hittner granted Defendants’ Motion for Preliminary Injunction filed in the Declaratory Judgment finding that Defendants are likely to prevail in the Declaratory Judgment Action and that Defendants will suffer “real, immediate, and irreparable harm” if injunctive relief is not granted. See January 26, 2010 Order in the Declaratory Judgment Action [Docket No. 40], a copy of which is attached hereto as **Exhibit 2** at App. 000036. As discussed in Defendants’ Response in Opposition to Underwriters’ Motion, the Southern District is a proper venue for the coverage dispute. See Defendants’ Response in Opposition to Underwriters’ Motion [Docket No. 913] at 5.

objected by filing their Motion in this proceeding.¹⁷ Underwriters sought an order of contempt from this Court before ever making a formal demand on Defendants and Defendants' Attorneys and before asking for any other relief from any court concerning the alleged contemptible conduct.¹⁸

2. Defendants' Response to Underwriters' Motion

When Underwriters filed its Motion, only two of the four Defendants were parties in this proceeding.¹⁹ None of the attorneys named in Underwriters' Motion were counsel of record in this proceeding.²⁰ Ms. Pendergest-Holt and Mr. Stanford received electronic notice of Underwriters' Motion, but neither Mr. Lopez, Mr. Kuhrt, nor any of Defendants' Attorneys were formally served with Underwriters' Motion or joined as parties in this proceeding. Without waiving service or making appearances, Defendants and Defendants' Attorneys responded to Underwriters' Motion because of the extraordinary relief sought by Underwriters and because the Motion was filed as an "Emergency Motion."

In their Response in Opposition to Underwriters' Motion, Defendants explained at length the reasons that they did not interpret this Court's prior Orders as prohibiting their conduct in the

¹⁷ See Exhibit C to Underwriters' Motion [Docket No. 898-6]. This Court even noted in its December 16, 2009 Order that "Underwriters did not object to proceeding before Judge Hittner until recently." Order dated December 16, 2009 [Docket No. 926] at 5.

¹⁸ As to Defendants' Attorneys, Underwriters requested that they be held in contempt if they failed to dismiss or withdraw all claims for relief in the Southern District on or before *December 7, 2009*, a mere 4 days after they filed their Motion. Underwriters' Motion [Docket No. 898] at 5.

¹⁹ It was not until the SEC's Second Amended Complaint was filed on January 8, 2010 that Gilbert Lopez and Mark Kuhrt were added as Defendants in this proceeding [Docket No. 952].

²⁰ Lee Shidlofsky was retained on November 19, 2009, after the Declaratory Judgment Action was filed, to represent Ms. Pendergest-Holt, Mr. Stanford and Mr. Lopez solely in the Declaratory Judgment Action. See Affidavit of Lee H. Shidlofsky, attached hereto as Appendix **Exhibit 3**. Gregg Anderson represents Mr. Kuhrt in the Declaratory Judgment Action. Kent Schaffer and George Secrest represent Mr. Stanford solely in the Criminal Action. James Ardoin, Chris Flood and Dan Cogdell represent Ms. Pendergest-Holt solely in the Criminal Action. Jim Lavine and Jack Zimmermann represent Mr. Lopez solely in the Criminal Action. Cole Ramey is providing legal assistance to Mr. Lopez in connection with this proceeding; however, he is not counsel of record.

Southern District.²¹ Defendants' and Defendants' Attorneys' interpretations may have been incorrect, but Defendants' Response in Opposition indicates that there was no intent to violate this Court's prior Orders and further show that Defendants and Defendants' Attorneys would have dismissed the declaratory judgment action in the Southern District had this Court ruled that it had exclusive jurisdiction.²² Underwriters' Motion was not scheduled for hearing before the Court ruled on December 16, 2009.

3. Order Granting Underwriters Motion for Contempt

On December 16, 2009, this Court denied Underwriters' Motion for Injunctive Relief finding that "Judge Hittner is better situated than this Court to determine whether Underwriters are obligated to pay Defendants' legal fees in connection with the criminal case."²³ In the same Order, the Court granted Underwriters' Motion for Contempt finding that "by seeking relief related to the Policies in another forum, Defendants acted in contempt of this Court's direct order."²⁴ This Court, however, declined "to coerce Defendants into compliance with its order because the Court finds it appropriate for Judge Hittner to decide whether Underwriters must pay defense fees in the criminal proceeding."²⁵ This Court further advised that "had Defendants requested leave to seek defense costs before Judge Hittner, as they surely should have, this Court would have granted leave."²⁶ This Court noted that "it would exalt form over substance to require them to proceed in a less suitable forum because they did not seek leave in the first

²¹ See Movants' Response in Opposition to Underwriters' Motion [Docket No. 913] at 11-13.

²² *Id.* at 13 ("If in fact, this Court intended to preclude the Southern District from deciding whether Underwriters are obligated to fund a defense of the Criminal Action and the SEC Action, then Defendants and Defendants' Attorneys seek both a clarification *and* reconsideration of those orders. Subject to their right of appeal, Defendants and Defendants' Attorneys will comply with this Court's ultimate ruling as to whether Defendants have the right to seek relief in the Southern District with respect to the insurance coverage issues.")

²³ Order [Docket No. 926] at 2.

²⁴ *Id.* at 4.

²⁵ *Id.* at 5.

²⁶ *Id.*

instance.”²⁷ Also weighing in Defendants’ favor, according to this Court, was the fact that Defendants were “anything but covert in their actions,” and that “Underwriters did not object to proceeding before Judge Hittner until recently.”²⁸

Because the Court declined to coerce Movants into compliance, there was no way for Movants to purge themselves of their contempt. Moreover, because no hearing was scheduled, Defendants and Defendants’ Attorneys were not provided with an opportunity to explain their actions and to demonstrate that there absolutely was no intent to violate this Court’s prior Orders.

III. ARGUMENT

1. Standard of Review of Motion for Reconsideration

Rule 60(b) of the Federal Rules of Civil Procedure provides in pertinent part:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.

On Motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

The Court must balance between two competing imperatives in evaluating a motion under Rule 60(b): (1) finality and (2) the need to render just decisions on the basis of all the facts.²⁹ Several factors shape the framework of the court’s consideration of a 60(b) motion:

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Edward H. Bohlin Co., Inc. v. Banning Co., Inc.*, 6 F.3d 350, 355–56 (5th Cir. 1993).

- (1) that final judgment should not be lightly disturbed;
- (2) that the Rule 60(b) motion is not to be used as a substitute for appeal;
- (3) that the rule should be liberally construed in order to do substantial justice;
- (4) whether the motion was made within a reasonable period of time;
- (5) whether—if the judgment was a default or a dismissal in which there was no consideration of the merits—the interest in deciding cases on the merits outweighs, in the particular case, the interest in the finality of judgments, and there is merit in the movant’s claim or defense;
- (6) whether there are any intervening equities that would make it inequitable to grant relief; and
- (7) any other factors relevant to the justice of the judgment under attack.³⁰

The decision to grant or deny relief under Rule 60(b) lies within the sound discretion of the district court.³¹

2. Standard Applicable to a Finding of Contempt of Court and Due Process Requirements.

“Contempt is committed when a person violates an order of a court requiring in specific and definite language that a person do or refrain from doing an act.”³² The judicial contempt power is a potent weapon which should not be used if the court’s order upon which the contempt was founded is vague or ambiguous.³³ Thus, the court’s order “must set forth in specific detail an unequivocal command.”³⁴

A contempt order or judgment is characterized as either civil or criminal depending upon its primary purpose.³⁵ The conclusive, most important factor in distinguishing between civil and criminal contempt is the purpose of the contempt judgment.³⁶ If its purpose is to coerce the contemnor into compliance with the court’s order or to compensate the complainant for losses

³⁰ *Id.*

³¹ *Lindy Investments III v. Shakertown 1992, Inc.*, 2010 WL 10921, *2 (5th Cir. 2010).

³² *Baum v. Villard*, 606 F.2d 592, 593 (5th Cir. 1979).

³³ *Id.*

³⁴ *Id.*

³⁵ *Lamar Fin. Corp. v. Adams*, 918 F.2d 564, 566 (5th Cir. 1990).

³⁶ *Dinnan v. Board of Regents of Univ. Sys. of Ga.*, 625 F.2d 1146, 1149 (5th Cir. 1980).

sustained, then the proceeding is civil.³⁷ On the other hand, if its purpose is to punish or to vindicate the authority of the court, then the proceeding is criminal.³⁸ A key determinant in this inquiry is whether the penalty imposed is absolute or conditional on the contemnor's conduct.³⁹ When contemnors "carry the keys of their prison in their own pockets" the contempt proceedings are almost always civil.⁴⁰

Congress has limited the summary contempt power vested in courts to the least possible power adequate to prevent actual obstruction of justice.⁴¹ In a contempt proceeding, due process requires (at a minimum) that a party is entitled to both notice and the opportunity to be heard.⁴² Rule 42 of the Federal Rules of Criminal Procedure requires notice and a hearing before an individual can be adjudged guilty of criminal contempt unless the contempt is committed in the presence of the Court.⁴³ This Court and at least three Courts of Appeals have held that due process requires that a potential contemnor be given notice and a hearing regardless of whether the contempt is civil or criminal in nature.⁴⁴ These customary safeguards ensure that the parties

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Lamar Financial*, 918 F.2d at 566.

⁴⁰ *Dinnan*, 625 F.2d at 1149.

⁴¹ *In re McConnell*, 370 U.S. 230, 236 (1962).

⁴² *Int'l. Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994).

⁴³ FED. R. CIV. P. 42.

⁴⁴ *See Newton v. A.C. & S., Inc.*, 918 F.2d 1121, 1127 (3rd Cir. 1990); *In Re Grand Jury Proceedings*, 795 F.2d 226, 234 (1st Cir. 1986), *cert. denied*, *Caucus Distributors v. United States*, 479 U.S. 1064 (1987); *In re Frank Kitchen*, 706 F.2d 1266, 1272–73 (2d Cir. 1983); *Securities & Exch. Comm'n v. W Fin. Group, LLC*, No. 3:08-CV-0499-N (N.D. Tex. Jan. 14, 2010) (Order, Docket No. 336). In *W Financial Group, LLC*, this Court recently held that it would grant a Rule 60(b) motion filed by an individual held in contempt who was given notice of a "status and motions hearing," as opposed to a show cause order. The same rationale for granting a 60(b) motion in *W Financial Group, LLC* exists in this case, but to an even greater extent because no hearing was scheduled before Defendants and Defendants' Attorneys were held in contempt of court.

or their attorneys have an opportunity to explain the conduct deemed deficient before the fine is imposed and that a record will be available to facilitate appellate review.⁴⁵

3. This Court's Order of Contempt Should be Vacated

Defendants and Defendants' Attorneys did not receive the minimum requirements of due process before they were held in contempt, and this fact, perhaps more than any other, justifies reconsideration.⁴⁶ This Court found Defendants and Defendants' Attorneys in contempt of its September 28, 2009 Order. This Court, however, declined to coerce Defendants into compliance with its September 28, 2009 Order.⁴⁷ Although this Court declined to impose sanctions, the finding of contempt alone amounts to an "absolute" rather than a "conditional" penalty. Because this Court ultimately agreed with Defendants and Defendants' Attorneys that the Southern District is a more suitable forum for the dispute with Underwriters, there is no way for Defendants and Defendants' Attorneys to purge themselves of their contempt. For this reason, applying the Order of contempt prospectively is inequitable and reconsideration is warranted.⁴⁸

Further, the mere finding of contempt has serious implications for Defendants' Attorneys justifying reconsideration under the circumstances.⁴⁹ As officers of this Court, Defendants' Attorneys take this Court's finding of contempt very seriously. Defendants' Attorneys have the utmost respect for this Court and the judicial system. While this Court concluded that Defendants and Defendants' Attorneys violated a prior order of this Court, a finding that is not challenged in this Motion for Reconsideration, it is important to stress that Defendants and Defendants' Attorneys did not believe that their actions in the Southern District violated any orders of this

⁴⁵ *Newton*, 918 F.2d at 1127.

⁴⁶ *Id.*

⁴⁷ Order [Docket No. 926] at 5.

⁴⁸ FED. R. CIV. P. 60(b)(5).

⁴⁹ FED. R. CIV. P. 60(b)(6).

Court, and they never challenged this Court's authority to decide the dispute with Underwriters.⁵⁰ The finding of contempt is troubling not only because Defendants and Defendants' Attorneys never intended to slight this Court or to challenge its authority, but also because of the implications of the finding of contempt on the reputations of Defendants and Defendants' Attorneys. In particular, Defendants' Attorneys, whose practices sometimes take them to courts in other states, must advise other courts in which they seek to be admitted to practice, as well as their malpractice carriers, that they have been judged guilty of contempt by this Court. And, even if Defendants' Attorneys did not have to report this Court's finding of contempt, it is a finding that Defendants' Attorneys take very seriously.

In its Order, this Court clarified that it is exercising exclusive jurisdiction over Underwriters' Policies and their proceeds, except as set forth in the Order.⁵¹ This clarification should resolve any lingering confusion and discourage others from engaging in conduct in violation of this Court's Order. Movants, therefore, respectfully suggest that the purpose of this Court's order will not be frustrated if this Court vacates the portion of its Order finding Movants in contempt.

⁵⁰ Defendants first sought relief related to their dispute with Underwriters in the Criminal Action prior to this Court's September 28, 2009 Order, yet the Order made no mention of the Motions for Payment of Fees pending in the Southern District. *See* September 28, 2009 Order [Docket No. 810]. The September 28, 2009 Order was issued in response to a motion by the Receiver to enjoin Mr. Stanford's London lawyer from taking actions in a London court because the issue of whether the policies were part of the Receivership Estate was pending before this Court. *See* Emergency Motion for Clarification that Receivership Order does not Apply to D&O Proceeds, or, Alternatively, for Authorization of Disbursement of D&O Policy Proceeds [Docket No. 538]. Underwriters did not participate in the hearing that led to the Order and none of the participants requested that this Court assume exclusive jurisdiction over the policies. *See* Movants' Response in Opposition to Underwriters' Motion at App. Exhibit 10 [Docket No. 913-18]. The Receiver simply wanted the Court to enjoin Mr. Stanford from moving forward with a hearing the next day in London. *Id.* at 9. And, subsequent to this Court's Order of September 28, 2009, this Court specifically declined to rule whether the insurance policy proceeds were part of the receivership estate, and denied Underwriters' motion to intervene in this proceeding. *See* Underwriters' Motion to Intervene [Docket No. 774]; October 9, 2009 Order [Docket No. 831]; November 19, 2009 Order [Docket No. 883]. Furthermore, Judge Hittner's Order granting Defendants' Motion for Preliminary Injunction confirms that the interim injunctive relief sought by Defendants in the Declaratory Judgment Action is necessary to prevent "real, immediate, and irreparable harm" to Defendants. *See* **Exhibit 2** at App. 000036.

⁵¹ Order [Docket No. 926] at 5

IV. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendants and Defendants' Attorneys respectfully request that this Court reconsider solely the portion of its December 16, 2009 Order [Docket No. 926] finding Defendants and Defendants' Attorneys in contempt of court, and that this Court vacate said finding, and for such other and further relief to which they might be justly entitled. In the alternative, to the extent this Court is not inclined to vacate the contempt finding, Defendants and Defendants' Attorneys request a hearing pursuant to this Court's recent ruling in *Securities and Exchange Commission v. W Financial Group, LLC*, No. 3:08-CV-0499-N [Docket No. 336].

Respectfully submitted,

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ATTORNEYS FOR MARK KUHRT

CERTIFICATE OF CONFERENCE

I hereby certify that on the 21st day of January, 2010, I conferred with Daniel McNeel Lane, Jr., counsel for Underwriters in this proceeding, who advised that his clients oppose this Motion for Reconsideration.

/s/ Lee H. Shidlofsky
Lee H. Shidlofsky

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to each counsel of record. To the extent any such counsel is not registered for such electronic delivery, the foregoing document will be served in accordance with the Federal Rules of Civil Procedure.

/s/ Lee H. Shidlofsky
Lee H. Shidlofsky