

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Allied World Insurance Company
 199 Water Street, New York, NY 10038

(b) County of Residence of First Listed Plaintiff New York
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Kleinbard LLC, One Liberty Place, 46th Floor,
 1650 Market St., Phila., PA 19103
 215-568-2000

DEFENDANTS
 Lamb McErlane, P.C.
 24 E. Market Street, West Chester, PA 19382

County of Residence of First Listed Defendant Chester
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332
 Brief description of cause:
Declaratory Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
 JUDGE _____ DOCKET NUMBER _____
 DATE 6-27-17 SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY
 RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 199 Water Street, New York, NY 10038

Address of Defendant: 24 W. Market Street, West Chester, PA 19382

Place of Accident, Incident or Transaction: West Chester, Pennsylvania (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes [] No [X]

Does this case involve multidistrict litigation possibilities? Yes [] No [X]

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [] No [X]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [] No [X]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [] No [X]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [] No [X]

CIVIL: (Place [X] in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. [] Indemnity Contract, Marine Contract, and All Other Contracts
2. [] FELA
3. [] Jones Act-Personal Injury
4. [] Antitrust
5. [] Patent
6. [] Labor-Management Relations
7. [] Civil Rights
8. [] Habeas Corpus
9. [] Securities Act(s) Cases
10. [] Social Security Review Cases
11. [] All other Federal Question Cases (Please specify)

B. Diversity Jurisdiction Cases:

- 1. [X] Insurance Contract and Other Contracts
2. [] Airplane Personal Injury
3. [] Assault, Defamation
4. [] Marine Personal Injury
5. [] Motor Vehicle Personal Injury
6. [] Other Personal Injury (Please specify)
7. [] Products Liability
8. [] Products Liability — Asbestos
9. [] All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Robert B. Bodzin, counsel of record do hereby certify:

- [] Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
[X] Relief other than monetary damages is sought.

DATE: 6-27-17

[Signature]

Attorney-at-Law

31323 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6-27-17

[Signature]

Attorney-at-Law

31323 Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALLIED WORLD INSURANCE COMPANY	:	
	:	Civil Action
Plaintiff,	:	
	:	
v.	:	
	:	No.
LAMB MCERLANE, P.C.	:	
	:	
Defendant.	:	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Allied World Insurance Company (“Allied World”), for its Complaint against Defendant Lamb McErlane, P.C. (“Lamb McErlane”), hereby alleges as follows:

Nature Of The Action

1. This is an action pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201, and Federal Rule of Civil Procedure 57, to determine whether Allied World has a duty to defend or to indemnify Lamb McErlane under a legal malpractice policy (the “Policy”) for claims against Lamb McErlane in *Estate of John R.H. Thouron*, No. 1507-0230, and *Estate of John J. Thouron*, No. 1506-0305, pending in the Court of Common Pleas of Chester County, Pa., Orphans’ Court Division and appeals therefrom (the “Estate Proceedings”).

2. In this action, Allied World seeks a judicial declaration that the Policy does not cover claims against Lamb McErlane made in the Estate Proceedings. Specifically, Allied World seeks a declaratory judgment that there is no coverage because: (1) to the extent the Estate Proceedings assert a “**Claim**”,¹ it was first made before the June 20, 2016 inception date of the Policy, (2) the **Insureds** cannot satisfy the prior knowledge condition in the Insuring Agreement, which requires as a condition precedent to coverage that no **Insured** had a basis, before June 20,

¹ Words appearing in bold are defined terms in the Policy.

2016, to believe that any **Insured** had breached a professional duty, or to foresee that any fact, circumstance, situation, transaction, event or **Wrongful Act** might reasonably be expected to be the basis of a **Claim** against any **Insured**; (3) the prior knowledge exclusion in the **Application** for the Policy bars coverage; (4) the Estate Proceedings do not seek covered **Damages** as defined in the Policy; and (5) material misrepresentations in the **Application** for the Policy bar coverage.

Parties

3. Plaintiff Allied World is a Delaware corporation with its principal place of business in New York, New York. Allied World's address is 199 Water Street, New York, New York 10038.

4. Defendant Lamb McErlane is a law firm incorporated in Pennsylvania as a professional corporation with its principal place of business in West Chester, Pennsylvania. Lamb McErlane's address is 24 E. Market Street, West Chester, Pennsylvania 19382.

Jurisdiction And Venue

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332, 2201 and 2202. There is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. There exists a justiciable controversy capable of resolution by this Court.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. The named insured under the Policy, Lamb McErlane, maintains its principal place of business in this District, and a substantial part of the events giving rise to the claims at issue occurred in this District.

Factual Allegations

A. The Underlying Estate Proceedings

8. From 2006 through 2017, Lamb McErlane represented Charles Norris, the Executor of the Estate of John J. ("Tiger") Thouron.

9. From 2007 through 2017, Lamb McErlane represented Charles Norris, the Executor of the Estate of Sir John R.H. Thouron (“Sir John”).

10. In April 2013, the beneficiaries of Tiger and Sir John (collectively, the “Estates”) filed Objections to the first Accounts filed in the Estates, including that the fees and expenses paid to Charles Norris (the “Executor”) and to the law firms and accounting firm he had hired (including Lamb McErlane) were excessive, and based on alleged mishandling, improprieties and errors made by the Executor and the professional firms. The Objections asserted that the Executor should be “surcharged” for all amounts exceeding reasonable fees. The Objections filed in Sir John’s Estate also alleged that the Executor should be surcharged in connection with a \$1 million penalty assessed by the Internal Revenue Service (“IRS”) based on the failure to timely request an extension of time to pay the federal estate tax for Sir John’s Estate, plus interest and all costs and fees incurred in seeking to reverse the penalty and to pursue third parties for recovery of the damages caused to the Estate. A copy of the April 2013 Objections is attached hereto and designated Exhibit “A”.

11. By a six-page letter dated May 4, 2015 to the Orphans’ Court, counsel for the beneficiaries summarized the principal issues to be addressed at the hearing on the account Objections. Among other things, the May 4 letter asserted that the fees charged by the Executor and Lamb McErlane were excessive and the work done by the firm was “flawed and inadequate.” A copy of the May 4, 2015 letter is attached hereto and designated Exhibit “B”.

12. The May 4, 2015 letter accused Lamb McErlane of committing multiple acts of negligence, including negligence that contributed to the IRS tax penalty assessed against Sir John’s Estate for having failed properly to seek an extension of time to pay taxes. Because of Lamb McErlane’s negligence, according to the beneficiaries, the firm should not be permitted to

charge Sir John's Estate for the efforts to "remedy the results of the tax fiasco." The letter claims that Lamb McErlane charged the Estate approximately \$1 million to litigate efforts to reverse the penalty and that the "ultimate net loss" to the Estate exceeded \$500,000 which should be charged to the Executor and Lamb McErlane. A copy of the May 4, 2015 letter is attached hereto and designated Exhibit "B".

13. The May 4, 2015 letter further states that Lamb McErlane was to some extent responsible for creating, allowing the creation or failing to rectify irregularities in certain transactions relevant to Tiger's Estate and should not be permitted to make charges to the Estate to deal with such irregularities in the context of estate administration. The letter also objected to the fees that Lamb McErlane charged to both Estates to oppose the beneficiaries' Objections and to defend its own fees, and alleged that the Executor and Lamb McErlane had refused to produce certain information concerning their work done for the Estates. Finally, the letter alleged that the accounts filed in the Estates were a "shambles" and that their condition was attributable in part to Lamb McErlane's failure to require the accounting firm to keep suitable records.

14. On November 13, 2015, the beneficiaries of the two Estates filed a Motion for Sanctions in the Estate Proceedings. By the Proposed Order submitted with the Motion for Sanctions, the beneficiaries asked the Orphans' Court (among other things) to deem it established for purposes of the hearing on the Objections that the Executor and Lamb McErlane "were and are jointly and severally liable for the IRS penalty imposed upon the Estate as a result of its failure to file timely a request for extension of time to pay taxes, and that they shall be jointly and severally responsible for reimbursing the Estate for any ultimate net loss it has suffered as a result of that penalty." The Proposed Order further sought a ruling to preclude the Executor and Lamb McErlane from seeking approval of certain of their fees on the basis of their

failure to produce unredacted invoices for a two-year period and for an award of the beneficiaries' attorneys' fees in connection with a prior discovery motion and the motion for sanctions against the Executor and Lamb McErlane jointly and severally. A copy of the Motion and Proposed Order is attached hereto and designated Exhibit "C".

15. At no time before June 20, 2016, did the beneficiaries withdraw their Objections to the fees paid to Lamb McErlane or the Motion for Sanctions filed on November 13, 2015.

16. The Orphans' Court held fourteen days of hearings on the beneficiaries' Objections and Motion for Sanctions

17. On March 7, 2017, the Orphans' Court issued a 211-page Adjudication. A copy of the Adjudication is attached hereto and designated Exhibit "D".

18. The Adjudication addressed the beneficiaries' Objections to the First and Final Accounts in both Estates, the beneficiaries' challenge to post-Objections legal fees that the Executor paid to Lamb McErlane; the beneficiaries' Motion for Sanctions; and the Amended and Restated Accounts filed by the Executor in response to the court's April 29, 2016 orders.

19. Among other things, the Adjudication first concluded that Lamb McErlane breached its fiduciary duties of loyalty and due care in reviewing the initial accounts and disallowed \$41,368 in fees charged by Lamb McErlane.

20. Second, the Orphans' Court held that Lamb McErlane breached its obligations to Sir John's Estate and the beneficiaries, and that the firm breached its fiduciary duties, resulting in the \$1 million tax penalty assessed by the IRS. The court further held that the firm's fees incurred to remedy the effects of the penalty were not properly chargeable to the Estate. The Adjudication surcharged the Executor and Lamb McErlane \$557,001, for which they were held jointly and severally liable.

21. Third, the Orphans' Court held that Lamb McErlane's fees billed to Tiger's Estate were excessive. The court disallowed \$135,882 and directed Lamb McErlane to pay that amount back to the Estate.

22. Fourth, the Orphans' Court found that Lamb McErlane's fees billed to Sir John's Estate were excessive. It disallowed \$1,861,585 and directed Lamb McErlane to disgorge and to pay that amount to Sir John's Estate.

23. Fifth, the court addressed Lamb McErlane's claim for post-objections fees. The court stated that the bulk of these fees were incurred in connection with: (a) efforts to justify pre-objections executor and counsel fees charged to the estates; (b) efforts to defend against objections to the adequacy of the original accounts submitted for the estates; (c) efforts to resist surcharge claims; and (d) efforts to defeat the beneficiaries' opposition to the award of post-objections fees because of Lamb McErlane's conduct during the discovery phase of the proceedings, and to resist the beneficiaries' Motion for Sanctions. The court concluded that: (i) fees incurred to justify fees were not for the benefit of the estate; (ii) because the initial accounts were fundamentally deficient, "no executor or counsel could reasonably have believed that attempting to defend the Initial Accounts was justified" and efforts to do so did not benefit the estate; (iii) while fees incurred to resist a surcharge claim may be proper if the beneficiary is unsuccessful, here, it would be inequitable to allow such fees where the beneficiaries met their burden of proof such that the fees did not benefit the estate; and (iv) Lamb McErlane's conduct in discovery warranted sanctions. The court ordered Lamb McErlane to disgorge all post-objections fees already paid to it and to release to the Estate all funds held in escrow pursuant to the court's April 2, 2015 order, with the exception of fees incurred in connection with a dispute over the proper domicile for Sir John's Estate.

24. Sixth, the Orphans' Court sanctioned Lamb McErlane and the Executor for "repeatedly and willfully" failing to comply with the court's orders regarding production of documents and privilege logs. The court awarded to the beneficiaries their reasonable attorneys' fees incurred in: (i) all motions filed in an effort to obtain compliance with the court's October 17, 2013 order following the initial motion to compel and subsequent orders relating to the production of documents, and (ii) prosecution of their Motion for Sanctions, including reasonable fees paid for two days' trial time devoted to that motion and for preparation.

25. Lamb McErlane has appealed the Adjudication to the Superior Court of Pennsylvania and subsequent decree, which appeal is now pending.

B. The Allied World Policy

26. Allied World issued LPL Assure Lawyers Professional Liability Insurance Policy No. 0310-1999 (the "Policy") to Lamb McErlane for the claims made period June 20, 2016 to June 20, 2017. A copy of the Policy is attached hereto and designed Exhibit "E".

27. This was the first policy issued by Allied World to Lamb McErlane.

28. The Policy's Insuring Agreement I states, in relevant part, that Allied World will pay on behalf of an **Insured**, subject to the applicable limit of liability, all amounts in excess of the retention that an **Insured** becomes legally obligated to pay as **Damages** and **Claim Expenses** because of a **Claim** arising out of any of the following **Wrongful Acts** by an **Insured** first made during the **Policy Period**: (A) **Legal Services Wrongful Act**. The Insuring Agreement further specifies:

[i]t is a condition precedent to coverage under this Policy that any **Wrongful Act** upon which a **Claim** is based occurred:

1. during the **Policy Period**; or
2. on or after the **Retroactive Date** and prior to the **Policy Period**, provided that all of the following conditions are met:

- (a) the **Insured** did not notify any prior insurer of such **Wrongful Act** or **Related Act or Omission**; and
- (b) prior to the inception date of the first policy issued by the **Insurer** if continuously renewed, no **Insured** had any basis (1) to believe that any **Insured** had breached a professional duty; or (2) to foresee that any fact, circumstance, situation, transaction, event or **Wrongful Act** might reasonably be expected to be the basis of a **Claim** against any **Insured**; and
- (c) there is no policy that provides insurance to the **Insured** for such liability or **Claim**.

Policy Section I.

29. Lamb McErlane is the **Named Insured** and an **Insured** under the Policy. Other **Insureds** under the Policy include individual lawyers of the firm who were involved in the Estate Proceedings. *See* Policy Declarations Item 1, Section III(N), (T).

30. The Policy defines **Claim** to include, in relevant part:
- (1) any written notice or demand for monetary relief or **Legal Services**, [or]
 - (2) any civil proceeding in a court of law; . . .
- made to or against any **Insured** seeking to hold such **Insured** responsible for any **Wrongful Act**.

See Policy Section III(C).

31. Pursuant to Policy Section V(E)(5), all **Claims** based upon or arising out of the same **Wrongful Act** or **Related Act or Omission** shall be considered a single **Claim** and shall be considered first made at the time the earliest **Claim** arising out of such **Related Act or Omission** was first made.

32. **Wrongful Act includes**, in relevant part, a **Legal Services Wrongful Act**. *See* Policy Section III(HH).

33. **Legal Services Wrongful Act** includes, in relevant part, any actual or alleged act, error or omission committed by any **Insured**, solely in the performance of or failure to perform **Legal Services**. *See* Policy Section III(Q). **Legal Services** includes those services performed on behalf of the **Named Insured** for others by an **Insured**, whether or not performed for a fee or other consideration, as a licensed lawyer in good standing. *See* Policy Section III(P).

34. **Related Act or Omission** means “all acts or omissions based on, arising out of, directly or indirectly resulting from, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.” *See* Policy Section III(DD).

35. The Policy defines **Damages** to mean the monetary portion of any judgment, award or settlement, including pre- and post-judgment interest. However, **Damages** shall not include (among other things): (1) criminal or civil fines, taxes, penalties (statutory or otherwise), fees or sanctions; (3) amounts deemed uninsurable by law; and (4) the return or restitution of legal fees, costs and expenses, no matter how claimed. *See* Policy Section III(G), as amended by Endorsement No. 1 ¶1.

36. **Application** means: “(a) the application, including any competitor’s application, submitted to the **Insurer**, or any affiliate thereof, for this Policy or any other policy; (b) any attachments and other materials provided with any such application or incorporated into any such application; and (c) any other materials or information submitted by the **Insured** to the **Insurer** in connection with the underwriting of this Policy.” *See* Policy Section III(A).

37. Policy Section V(O) states:

By acceptance of this Policy, all **Insureds** affirm or reaffirm as of the Inception Date of this Policy that:

1. the statements in the **Application** are true and accurate and are specifically incorporated herein, and are all **Insureds'** agreements, personal representations and warranties;
2. all such communicated information shall be deemed material to the **Insurer's** issuance of this Policy;
3. this Policy is issued in reliance upon the truth and accuracy of such representations;
4. this Policy embodies all agreements existing between the **Insureds** and the **Insurer**, or any of its agents, relating to this insurance; and
5. if any representation is false or misleading, this Policy shall be void from the inception.

38. Lamb McErlane completed a form application for the Policy and signed it on June 14, 2016. The form application included representations by and on behalf of the **Insureds** about their knowledge of claims and potential claims against them, as well as representations regarding areas of practice by the firm, all of which were represented to be true as of June 20, 2016 pursuant to the Policy Section V(O). A copy of the Application is attached hereto and designated Exhibit "F".

39. Question 11(d) on the **Application** asked "Is any attorney or non-attorney staff aware of any claims against the law firm or its attorneys within the past 5 years?"

40. The **Insureds** responded to Question 11(d) by stating that there was one such claim. By way of further disclosure, they submitted a supplemental Claims Statement that referenced a claim against Lamb McErlane that was unrelated to the Estate Proceedings. The Claims Statement submitted by the firm also represented: "There are no other claims, nor potential claims of which we are aware."

41. The **Insureds** responded "no" to Question 11(e) on the **Application**, which inquired as follows:

Does any attorney or non-attorney staff know of any acts, circumstances, errors or omissions that: (i) with respect to an attorney, a reasonable person engaged in the practice of law; or (ii) with respect to non-attorney staff a reasonable person employed in the legal profession; would recognize might be expected to be the basis of a professional liability claim against the law firm, its attorneys or any predecessor law firm or attorney?

42. Question 11 in the **Application** further states:

All such claims or incidents which may give rise to a claim must be disclosed in response to this Question regardless of whether the attorney or non-attorney staff believes that such a professional liability claim is likely to be made or would have any merit.

Without limiting the rights of the Insurer, any claim arising from a matter disclosed or which should have been disclosed in response to Question 11(d) or Question 11(e) is excluded from any proposed insurance.

43. In responding to Questions 11(d) and 11(e) on the **Application**, the **Insureds** did not disclose any information concerning the Estate Proceedings.

44. The **Insureds** additionally completed an “Area of Practice Supplement” as part of their **Application** for the Policy. Section III of the Area of Practice Supplement asked for additional information concerning the firm’s practice relating to “Estates/Probate/Trust/Wills”.

45. Question 1 in Section III of the Area of Practice Supplement asked for the names of all attorneys handling estate/probate/trusts/wills cases. In their response, the **Insureds** listed a single attorney. The response did not identify any of the other firm attorneys who had provided legal services in connection with the Thouron Estate Proceedings.

46. Question 2 in Section III of the Area of Practice Supplement asked the **Insureds** to provide the name of the client, estate or trust for “the largest Estate and/or Trust Accounts handled in the past two (2) years.” The **Insureds** responded by disclosing that Lamb McErlane had provided “estate administration” services for two estates, each of which had values of less than \$10 million. The **Insureds** did not disclose that Lamb McErlane as of June 2016 was

continuing to represent the Executor in the ongoing Estate Proceedings for Sir John and Tiger's Estates.

47. Question 9 in Section III of the Area of Practice Supplement asked the **Insureds** "How does the firm handle tax advice given in connection with estate and trust work?" The firm responded by checking the box stating: "Firm outsources or refers all tax work to outside entities." However, according to the Adjudication, Lamb McErlane had been involved in certain tax matters for both Sir John's Estate and Tiger's Estate.

C. Lamb McErlane's Notice Under the Allied World Policy and Demand for Payment

48. By letter dated March 28, 2017, Lamb McErlane forwarded the Adjudication to Allied World and requested coverage under the Policy in connection with the claims against the firm, "the nature and extent of which are set forth" in the Adjudication.

49. After requesting and reviewing additional information and documents concerning the Estate Proceedings, Allied World denied coverage under the Policy on several grounds. Lamb McErlane has disputed the denial of coverage.

50. This matter is ripe for adjudication based on Lamb McErlane's demand that Allied World defend and indemnify it in connection with the Adjudication and its appeal. In these circumstances, a judicial declaration of Allied World's duty to defend and duty to indemnify Lamb McErlane is needed to establish the parties' respective rights and obligations under the Policy.

COUNT I

Request For Declaratory Judgment That The Claim Was First Made Against The Insureds Before The Policy Period

51. Allied World incorporates by reference each of the allegations alleged above.

52. As a “claims made” policy—and as stated in the Insuring Agreement—the Policy provides coverage only for **Claims** first made or deemed first made during the policy period.

53. Under the Policy, **Claim** includes (1) “any written notice or demand for monetary relief or **Legal Services;**” or (2) “any civil proceeding in a court of law;” provided that such notice, demand or proceeding is “made to or against any **Insured** seeking to hold such **Insured** responsible for any **Wrongful Act.**”

54. Under the Policy, more than one **Claim** based upon or arising out of the same **Wrongful Act** or **Related Act** or **Omission** is considered a single **Claim** first made at the time of the earliest **Claim** arising out of such **Related Act** or **Omission.**

55. The May 4, 2015 letter from the beneficiaries’ counsel to the Orphans’ Court, and on which three Lamb McErlane partners were copied, is a **Claim** against **Insureds** because it is a written notice or demand for monetary relief, and/or it was sent in in a civil proceeding in a court of law; and the letter was “made to or against any **Insured**” and sought “to hold such **Insured** responsible for any **Wrongful Act.**”

56. The November 13, 2015 Motion for Sanctions and accompanying Proposed Order filed by the beneficiaries with the Orphans’ Court is a **Claim** against **Insureds** because it is a written notice or demand for monetary relief, and/or it was filed in a civil proceeding in a court of law; and the motion was “made to or against any **Insured**” and sought “to hold such **Insured** responsible for any **Wrongful Act.**”

57. The alleged **Wrongful Acts** by Lamb McErlane asserted in the May 4, 2015 letter and November 13, 2015 Motion for Sanctions are the same **Wrongful Acts** and/or **Related Acts** or **Omissions** as those addressed in the Adjudication for which Lamb McErlane now is seeking coverage under the Policy.

58. As a result, pursuant to Policy Section V(E)(5), the **Claim** for which Lamb McErlane is seeking coverage under the Policy is considered to have been first made at the time of the May 4, 2015 letter and/or the November 13, 2015 Motion for Sanctions, both of which are **Claims** made against Lamb McErlane before the Policy incepted on June 20, 2016.

59. Allied World respectfully requests a judicial declaration from this Court holding that it has no duty to defend Lamb McErlane in connection with the Adjudication, the appeal or related proceedings, or to pay any associated indemnity owed as a result of the Adjudication, the appeal or related proceedings, because the **Claim** was not first made during the **Policy Period** and therefore is outside the scope of the Policy's Insuring Agreement.

COUNT II

Request For Declaratory Judgment That Lamb McErlane Cannot Satisfy The "Prior Knowledge" Condition In The Policy's Insuring Agreement

60. Allied World incorporates by reference each of the allegations alleged above.

61. Before June 20, 2016, one or more of the Lamb McErlane attorneys who are **Insureds** under the Policy had received the beneficiaries' Objections to the First Accounts filed in the Estate Proceedings on or about April 3, 2013.

62. Before June 20, 2016, one or more Lamb McErlane attorneys who are **Insureds** under the Policy had received the May 4, 2015 letter from counsel for the Estates' beneficiaries to the Orphans' Court.

63. Before June 20, 2016, one or more Lamb McErlane attorneys who are **Insureds** under the Policy had received the Motion for Sanctions and attached Proposed Order filed by the beneficiaries on November 13, 2015.

64. On or before June 20, 2016, one or more Lamb McErlane attorneys who are **Insureds** under the Policy knew that the beneficiaries had alleged that Lamb McErlane had

charged unreasonable and excessive fees in connection with the Estates and had asked the Orphans' Court to order repayment of such fees to the Estates.

65. On or before June 20, 2016, one or more Lamb McErlane attorneys who are **Insureds** under the Policy knew that the beneficiaries had alleged that Lamb McErlane had been negligent in its work for the Estates and had asked the Orphans' Court to hold Lamb McErlane jointly and severally liable with the Executor for damages allegedly incurred by Sir John's Estate in connection with the IRS penalty.

66. As such, before June 20, 2016, Lamb McErlane and/or its individual attorneys who are **Insureds** under the Policy had a basis to believe that an **Insured** had breached a professional duty in connection with the Estate Proceedings.

67. Before June 20, 2016, no objectively reasonable attorney with knowledge of the parties' filings and orders entered in the Estate Proceedings could fail to foresee that the beneficiaries' allegations against Lamb McErlane might reasonably be expected to be the basis of a **Claim** against an **Insured**.

68. Because of the knowledge possessed by one or more of its attorneys who are **Insureds** under the Policy, Lamb McErlane cannot satisfy the express condition precedent to coverage set forth in the Policy, Insuring Agreement § I.A., that, prior to June 20, 2016, no **Insured** had a basis (1) to believe that any **Insured** had breached a professional duty, or (2) to foresee that any such **Wrongful Act** or **Related Act or Omission** might reasonably be expected to be the basis of a claim against any **Insured**.

69. Allied World respectfully requests a judicial declaration from this Court holding that it has no duty to defend Lamb McErlane in connection with the Estate Proceedings, including but not limited to the Adjudication, related appeal and any subsequent proceeding, or

to pay any associated indemnity, because the **Insureds** cannot satisfy the prior knowledge condition in the Insuring Agreement.

COUNT III

Request For Declaratory Judgment That The Prior Knowledge of Claims or Incidents Is Precluded By The Application

70. Allied World incorporates by reference each of the allegations alleged above.

71. On or before June 20, 2016, one or more Lamb McErlane attorneys was aware of the May 4, 2015 letter from counsel for the beneficiaries to the Orphans' Court.

72. On or before June 20, 2016, one or more Lamb McErlane attorneys was aware of the November 13, 2015 Motion for Sanctions and attached Proposed Order filed by the beneficiaries.

73. On or before June 20, 2016, one or more Lamb McErlane attorneys knew of acts, circumstances, errors or omissions that a reasonable attorney would have recognized might be expected to be the basis of a professional liability claim against Lamb McErlane and/or its attorneys.

74. As a result of the failure of Lamb McErlane to disclose the claims or incidents concerning the Estate Proceedings in the Application, any claim is excluded under the express terms of the Application.

75. Allied World respectfully requests a judicial declaration from this Court holding that it has no duty to defend Lamb McErlane in connection with the Estate Proceedings, including but not limited to the Adjudication, related appeal and any subsequent proceeding, or to pay any associated indemnity, because the **Claim** is barred from coverage by the exclusion in Question 11 of the Application.

COUNT IV

**Request For Declaratory Judgment That The
Return Of Fees And Sanctions Are Not Covered “Damages”**

76. Allied World incorporates by reference each of the allegations alleged above.

77. Under Insuring Agreement A, covered **Damages** shall not include (1) civil fines, taxes or penalties (statutory or otherwise), fees or sanctions; . . . (3) amounts deemed uninsurable by law; or (4) the return or restitution of legal fees, costs and expenses, no matter how claimed.

78. In the Adjudication, the Orphans’ Court ordered Lamb McErlane to pay back and/or to disgorge to the Estates legal fees that it had received and which the court determined to be excessive and unreasonable.

79. With respect to the IRS penalty matter involving Sir John’s Estate, the court held Lamb McErlane and the Executor jointly and severally liable for \$557,001, which amount represents the alleged damages to the estate resulting from the IRS penalty and the legal fees charged by Lamb McErlane in subsequent litigation relating to the IRS penalty.

80. The court further sanctioned Lamb McErlane for discovery abuses and ordered it to pay to the beneficiaries their attorneys’ fees incurred in connection with certain motions.

81. All fees that the court ordered Lamb McErlane to repay to the Estates are outside of the scope of **Damages**, as that term is defined by the Policy, and not covered.

82. Further, amounts awarded to the beneficiaries as sanctions are not covered **Damages** under the Policy.

83. Allied World has no duty to indemnify Lamb McErlane for the return of fees or sanctions imposed against the firm because such amounts are not **Damages** as defined in the Policy.

84. Thus, Allied World respectfully requests a judicial declaration from this Court holding that it has no duty to indemnify Lamb McErlane for amounts it has been or may be ordered to pay which constitute the return of legal fees, disgorgement or sanctions because such amounts are not covered **Damages** as defined in the Policy.

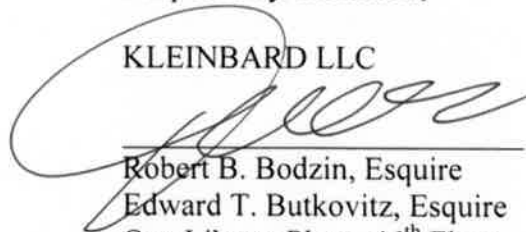
Prayer For Relief

FOR ALL OF THE ABOVE REASONS, Allied World respectfully requests that the Court enter a judgment in its favor as follows:

- A. Declaring that (i) Allied World has no obligation under the Policy to provide a defense to Lamb McErlane, or any of its individual attorneys, in connection with the Estate Proceedings, including but not limited to the Adjudication, related appeal and any subsequent proceeding; and (ii) Allied World has no obligation to pay any amounts Lamb McErlane may become liable to pay in arising out of the Adjudication, related appeal and any subsequent proceedings;
- B. Awarding Allied World attorney's fees and costs incurred in prosecuting this action; and
- C. Such other relief as the Court deems just, necessary and proper.

Respectfully submitted,

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Dated: June 27, 2017