SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. BARRY R. OSTRAGER** **PART** IAS 61EF

Justice

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GBIG HOLDINGS, INC., f/k/a SOUTHLAND NATIONAL HOLDINGS, INC. and SNH ACQUISITION, LLC,

Plaintiffs,

- v -

RESOLUTION LIFE L.P., RESOLUTION LIFE (PARALLEL) PARTNERSHIP,

Defendants.

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RESOLUTION LIFE L.P. and RESOLUTION LIFE (PARALLEL) PARTNERSHIP,

Counterclaim-Plaintiffs,

GBIG HOLDINGS, INC. f/k/a SOUTHLAND NATIONAL HOLDINGS, INC., SNH ACQUISITION, LLC and GREGORY E. LINDBERG,

Counterclaim-Defendants

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INDEX NO. 650575/2019

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RL LP, RL (PARALLEL) LP,

Plaintiff,

-v-

GREGORY LINDBERG,

Defendant.

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INDEX NO. 653258/2019

DECISION AFTER TRIAL

HON. BARRY R. OSTRAGER

The joint trial of these two actions took place on April 12, 13, 14, 15, 16, 19 and 20, 2021 via Microsoft Teams. A total of 16 witnesses testified by direct testimony affidavit and the Court had the opportunity to assess the credibility of all of the affiants on cross-examination, except for those witnesses that counsel declined to cross-examine. The Court also considered deposition testimony of multiple witnesses who were otherwise unavailable but whose deposition testimony included cross-designations of the party who did not sponsor the deponent.

The trial record thus includes testimony from 22 witnesses and well in excess of 200 exhibits consisting of thousands of pages.

The first action was initiated by GBIG Holdings, Inc. and SNH Acquisitions, LLC (together ,"GBIG") seeking declaratory relief relating to a Stock Purchase Agreement and Buyer Escrow Agreement dated October 1, 2017 (the "SPA") pursuant to which Resolution Life L.P. and Resolution Life (Parallel) Partnership (together, "Resolution") agreed to sell to GBIG Lincoln Benefit Life ("LBL"), a company owned by Resolution. LBL is domiciled in Nebraska and the acquisition required the approval of the Nebraska Department of Insurance (the "Nebraska DOI"). When GBIG's offer was accepted, GBIG deposited in escrow $29.25 million toward the purchase of LBL.[1] The transaction ultimately failed to close because GBIG was unable to secure approval of the transaction by the Nebraska DOI by September 27, 2018, the Extended Outside Date for the transaction to close. GBIG terminated the transaction on October 2, 2018. Resolution blocked the release of the escrowed funds (NYSCEF Doc. No. 666 at ¶¶ 60-61).

GBIG filed an amended complaint on May 2, 2019. GBIG sought a declaration that:

(a) all requirements under Section 6(b) of the Buyer Escrow Agreement for the release of all of the Escrowed Funds to Buyer Parent have been satisfied because:

1. the SPA has been terminated in accordance with its own terms and
2. the Sellers' Unresolved Claim is resolved against Sellers because Sellers are not "entitled to damages for breach of the [SPA] by Buyer"; and

(b) the Buyer Escrow Agreement requires Sellers' Representative to deliver, with Buyer Parent, a joint written instruction to the Escrow Agent instructing the Escrow Agent to release the Escrowed Funds to Buyer Parent;

[1] Nearly $5 million of the escrow was paid with the consent of GBIG to pay LBL executives retention bonuses during the pendency of the transaction before the Nebraska DOI .

The Resolution parties filed an Answer to the Amended Complaint with Counterclaims (NYSCEF Doc. No. 55). Defendants subsequently added Gregory E. Lindberg as a Counterclaim Defendant (NYSCEF Doc. No. 68). Defendants asserted five counterclaims.

(1) Breach of Contract Against Buyers and Mr. Lindberg, as Alter Ego of Buyers, as to Section 6.09 of the SPA

(2) Breach of Contract Against Buyers and Mr. Lindberg, as Alter Ego of Buyers, as to Sections 7.03 and 8.09 of the SPA

(3) Breach of Contract Against Buyers and Mr. Lindberg, as Alter Ego of Buyers, as to Buyers' Improper Termination and Repudiation of the SPA

(4) Fraudulent Misrepresentation Against Buyers and Mr. Lindberg and

(5) Fraudulent Concealment Against Buyers and Mr. Lindberg.

The Defendants sought (1) a judgment against Mr. Lindberg and Buyers; (2) damages in an amount to be determined at trial; (3) prejudgment interest; and (4) such other and further relief as this Court deems just and proper.

On August 6, 2019, Resolution filed a separate action, the "RL Complaint" against Gregory E. Lindberg ("Lindberg") under the Index No. 653258/2019 that was consolidated for all pre-trial purposes with this action by Order and Stipulation (NYSCEF Doc. No. 91). The RL Complaint asserts four claims against Mr. Lindberg: (1) Breach of Contract as to His Breach of the Guaranty and Commitment Letter; (2) Tortious Interference with Contract; (3) Fraudulent Misrepresentation; and (4) Fraudulent Concealment. The RL Complaint requests (1) a judgment against Mr. Lindberg; (2) damages in an amount to be determined at trial; (3) prejudgment interest; and (4) such other and further relief as this Court deems just and proper.

Lindberg answered the Counterclaims and asserted affirmative defenses (NYSCEF Doc. No. 156). On January 13, 2020 Mr. Lindberg filed an Amended Answer to the Counterclaims containing seven affirmative defenses: (1) that the claims against him did not state a claim upon which relief could be granted; (2) that he acted in good faith and without any wrongful knowledge, intent, or scienter; (3) that the SPA was properly terminated after the passage of the

Outside Date; (4) that the claims are barred by the assumption of risk doctrine; (5) that the claims are barred by estoppel; (6) that the claims are barred by laches; and (7) that he fulfilled all legal and contractual obligations he may have had with respect to the transaction that is the subject of this lawsuit. (NYSCEF Doc. No. 160).

On March 16, 2021 the Court heard motions for summary judgment in the two actions.

GBIG's motion for summary judgment (Mot. Seq. No. 011) in its favor on its sole cause of action declaring that it is entitled to the return of the escrow funds was denied (NYSCEF Doc. No. 614). GBIG and Counterclaim Defendant Mr. Lindberg moved for summary judgment dismissing the counterclaims asserted against them in the Amended Answer (Mot. Seq. No. 010). The motion was denied insofar as it sought dismissal of the First, Second, Third and Sixth Counterclaims as to the GBIG entities, all sounding in breach of contract. However, dismissal of the breach of contract counterclaims was granted to the extent the counterclaims sought relief against Mr. Lindberg based on an alter ego theory of liability. The motion for summary judgment on the Fourth and Fifth Counterclaims, sounding in fraudulent misrepresentation and fraudulent concealment, was granted to the extent of dismissing the claims as against the GBIG entities on the ground they are duplicative of the breach of contract claims. However, dismissal of those fraud claims against Mr. Lindberg directly was denied (NYSCEF Doc. No. 614).

Mr. Lindberg's motion for summary judgment (Mot. Seq. No. 006) to dismiss all claims against him in the RL Complaint (653258/2019) was granted in part and denied in part. The motion was granted to the extent of severing and dismissing the Second Cause of Action sounding in tortious interference with contract. The motion was denied as to the First, Third and Fourth Causes of Action sounding, respectively, in breach of the Guaranty and Commitment, fraudulent misrepresentation, and fraudulent concealment (NYSCEF Doc. No. 79).

For the reasons that follow, the Court grants judgment in favor of the Resolution parties against the GBIG parties in the sum of $50 million, plus prejudgment interest from October 1, 2017. Resolution is awarded an additional $7 million in out-of-pocket expenses with prejudgment interest from December 31, 2019.

The Court expressly finds that the Resolution parties failed to prove a claim against Mr. Lindberg in his individual capacity, either on an alter ego theory or by clear and convincing evidence of fraud. Curiously, on the issue of fraud, fraudulent inducement, fraudulent misrepresentation, and/or fraudulent concealment, Clive Cowdery, one of the senior-most Resolution executives, testified that the Resolution Board of Directors had approved GBIG's bid to purchase LBL before any meeting was had with Mr. Lindberg at which Mr. Lindberg would have made any representation on which Resolution could rely. (Tr. 680:9-682:13) Nor could Resolution rely on any allegedly false statements made by Mr. Lindberg given the extent of the reverse diligence Resolution conducted on GBIG described *infra*. On cross-examination, Resolution failed to elicit any evidence which demonstrated that Mr. Lindberg was acting in anything but his corporate capacity. The totality of the evidence established, as Mr. Lindberg testified, that "[a]ll statements made by [him] to RL or its agents were made in [his] capacity as Manager of GBIG." (NYSCEF Doc. No. 655, at ¶ 78). The Court observed Mr. Lindberg's cross-examination and carefully reviewed the transcript of Resolution's 100-page cross-examination of Mr. Lindberg. The Court also finds no basis to discredit that portion of Mr. Lindberg's direct testimony as it relates to Mr. Lindberg's assertion that he attempted to secure approval of the purchase by GBIG of LBL.

The Court also finds that Mr. Lindberg did not breach Section 1.03 of the Guaranty and Commitment letter that Mr. Lindberg executed at the signing of the SPA because GBIG and Mr. Lindberg made every effort to conclude the LBL transaction, including agreeing to a governance

structure which would have eliminated the control of GBIG's executives and its ultimate controlling person, Mr. Lindberg, and taking the unprecedented step of placing Resolutions' advisors and board members on its internal approval team. Justin Schrader, the Chief Financial Examiner of the Nebraska DOI testified that GBIG was responsive to the requests by the Nebraska DOI and provided all documents requested (Tr. 503:11-16).

Mr. Schrader testified multiple times that GBIG was willing to do whatever it needed to get the Nebraska DOI comfortable with approving the transaction. (Tr. 470:25-471:14; 488:2-490:14; 491:15-24; 492:19-23). Indeed, when Mr. Schrader was asked whether he could recall any times during the approval process when a document or information that the Department requested from Global Bankers was withheld, Mr. Schrader responded "No." (Tr. 503:5-10). And Resolution's CEO Wilson agreed that GBIG was responsive to the requests the Nebraska DOI made of GBIG (Tr. at 624). Indeed, Resolution's own witness, Mary Ellen Luning who was set to take over as CEO of LBL if the deal closed, testified that, as late as September 18, 2018, she understood that GBIG was working towards a closing and that she had no issues with the efforts which GBIG took to achieve approval of the LBL transaction (Tr. 1087:3-1088:10).

The totality of the evidence established that while there were delays in the Nebraska DOI approval process, for which neither GBIG nor Mr. Lindberg could be faulted, Mr. Lindberg took reasonable steps to obtain prompt approval of the LBL transaction. As such, all claims and counterclaims against Mr. Lindberg are dismissed. For this reason, the Court also dismisses Resolution's claim against GBIG for breach of Section 7.03 of the SPA which closely tracks Section 1.03 of the Guaranty Agreement.

The Court finds that GBIG beached Section 6.09 and 6.10 of the SPA, neither of which provisions implicate Mr. Lindberg.[2] The Resolution parties are granted judgment against GBIG on Resolution's claim that the "Knowledge Persons" identified in the SPA failed to fully disclose information in Section 6.09 of the SPA and failed to provide complete financial information as required by Section 6.10 of the SPA. Consequently, GBIG breach the warranties in Sections 6.09 and 6.10 of the SPA on October 1, 2017 the date the SPA was signed.[3]

Also, as discussed *infra* with respect to damages, the Court accepts much of what GBIG's damages experts Charles Lundelius and Allen Jacobs testified to about the measure of any damages Resolution is entitled to recover against GBIG. Resolution's damages expert Daniel R. Fischel measured the bulk of Resolution's damages by subtracting the amount Resolution received from the ultimate purchase of LBL by Kuvare on December 31, 2019 from the sum GBIG agreed to pay for LBL. In this connection, Mr. Fischel *assumed* that GBIG's breach was the sole cause of Resolution's damages (*i.e.* the difference between the adjusted GBIG contract price and what Resolution ultimately received from Kuvare for the sale of LBL). Fischel's testimony is of little, if any, evidentiary value.

It is entirely counter-intuitive that GBIG and Mr. Lindberg would advance $29.25 million in escrow for a transaction that they did not expect to close. The GBIG/Resolution transaction

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[2] Lindberg was expressly not included as a "Knowledge Person" under the SPA (Exhibit 1, Schedule 1.01©; NYSCEF No. 674 at 46).

[3] Section 6.09 Regulatory Matters. Within the past five (5) years, no Governmental Authority has revoked any license or status held by Buyer or any of its Affiliates to conduct insurance operations. To the Knowledge of Buyer, no fact or circumstance relating to Buyer or its Affiliates (including their plans for funding the purchase of the Shares or financing or operating the Company from and after the Closing) exists as of the date hereof that would render Buyer, its Affiliates or Lindberg, as applicable, unable to promptly obtain any approval, authorization or consent of any Governmental Authority required to be obtained to consummate the transactions contemplated by this Agreement.

Section 6.10 Financial Statements. * * * No material deficiency has been asserted with respect to any Buyer Financial Statements by any Governmental Authority that remains unresolved prior to the date hereof.

was called "Project Apple." After the GBIG/Resolution transaction failed to close, Resolution entered into a transaction with Kuvare, which was the underbidder to GBIG on the Project Apple transaction. The subsequent Kuvare transaction was called Project Falcon. Resolution seeks as damages – and Fischel opined that Resolution was entitled to recover -- among other things, the difference between the adjusted price GBIG agreed to pay for LBL as adjusted in accordance with the terms of the SPA and the price Kuvare ultimately paid to acquire LBL. Resolution ignores the fact that prior to Project Apple, Resolution apparently adopted a plan to restrict dividends that was not communicated to the Project Apple bidders or to the Milliman actuaries.[4] Resolution failed to satisfactorily rebut the testimony of GBIG's experts in this connection despite GBIG's presentation of both Messrs. Lundelius and Jacobs for cross-examination. Resolution declined to even cross-examine Mr. Jacobs. The restrictions Resolution imposed should have been incorporated into the actuarial projections prepared by Milliman and used by the bidders. By not incorporating those restrictions, the projections were materially inflated, leading to inflated bids.

As reflected in the below excerpt of a chart prepared by GBIG's expert Allen Jacobs, which was completely unrebutted by Resolution, the "but for" damages calculation sponsored by Resolution ignores the material issue of the necessary corrections to the Milliman Appraisal.

Value Indications from Apple and from Falcon ($million)	Apple (2017)	Falcon (2019)	Change	% Change
Milliman Appraisals	485	313	-172	-35.5%
Final Kuvare Bid	535	370	-165	-30.8%
Winning GBIG Bid	585	370	-215	-36.8%

[4] The bidders were provided with Appraisal reports prepared by Milliman, a gold standard actuarial firm.

The Milliman 2017 Appraisal of $485 million for Project Apple was available to all bidders and GBIG. The Milliman 2018 Appraisal (near in time to the ending of the SPA) was $350 million. The Milliman 2019 Appraisal was made available to bidders for project Falcon was $313 million, a 35.5% drop from that shown to Project Apple bidders. The value drop from Project Apple to Project Falcon was similar or less than the drop in appraisal value. Resolution's damages' expert failed to do any analysis of the drastic drop in value of LBL between Project Apple and Project Falcon.

Evidence in the record of the case shows that the lower appraisal value of LBL is not causally related to GBIG actions. As Lundelius noted without contradiction, a substantial amount of the lower value was already there, but not reflected in the 2017 appraisal or the Project Apple bids – thus, not caused by alleged GBIG breaches. Trial evidence established that the significant factors for the lower 2018 appraisal and then in the even lower 2019 appraisal were produced by LBL's operations, profitability, cash flow, capital situation, etc., and not the result of any alleged breaches by GBIG. Jacobs Affidavit at 10. The only evidence on causation that the Court found to be credible is that the decrease in the winning bids between Project Apple and Falcon corresponds directly with the decrease in the Milliman appraisals between each project. Thus, a fairer measure of any breach of damages is not the hundreds of millions of dollars Resolution seeks, but rather the $50 million differential between the GBIG and Kuvare Project Apple bids, excluding prejudgment interest and additional out of pocket damages to which Resolution is entitled. This conclusion is further buttressed by this Court's finding, further explicated *infra*, that Resolution was well aware of GBIG's breaches of Section 6.09 and 6.10 contemporaneous in time with the execution of the SPA and Resolution had a duty to mitigate its damages. *See Brushton-Moira Cent. Sch. Dist. v. Fred H. Thomas Assocs., P.C.*, 91 N.Y.2d 256, 263, 692 (1998) (noting the general principle that the injured party has a duty to mitigate damages); *U.S. Bank Nat. Ass'n v. Ables & Hall Builders*, 696 F. Supp. 2d 428

(S.D.N.Y. 2010) ([u]nder New York law, plaintiff in a breach of contract action ordinarily has a duty to mitigate the damages that he incurs, and if the plaintiff fails to mitigate his damages, the defendant cannot be charged with them"). Significantly, Mr. Fischel also did an "Alternate Measure of Harm" under Resolution Life's breach of contract claim based on the difference between the contract price and LBL's fair market value. Resolution and Mr. Fischel calculated those damages as of October 1, 2017 to be $65.9 million *including* prejudgment interest. (Resolution post-trial brief at 17; Fischel Aff. at 32).

As set forth in further detail *infra*, defendant Lindberg directly controlled and indirectly owned a number of insurance companies under the GBIG umbrella. Lindberg also owned a large number of non-insurance operating companies which were, as a result of their common ownership by Lindberg, affiliated with the insurance companies. The operational structure of the insurance companies within the holding company system controlled by Lindberg enabled the GBIG-owned insurers to lend insurance company assets to affiliated companies in order to fund Lindberg's non-insurance operating companies. The "Lindberg system" allowed Lindberg to have ultimate control of all of his insurance and non-insurance company assets and allowed Lindberg to utilize the insurance company assets as vehicles to provide capital to the non-insurer entities which were ostensibly interest-bearing loans secured by the assets of the non-insurers that received the loans. The non-insurer entities that received the loans were free to pay dividends to Lindberg.

In 2014 Lindberg, through his holding company GBIG, purchased Southland National Insurance Corporation ("SNIC"), an Alabama insurer. Lindberg thereafter moved SNIC to North Carolina where the North Carolina Department of Insurance "(NCDOI") agreed to allow SNIC to invest up to 40% of its assets in affiliated companies. In 2015 GBIG used special purpose vehicles ("SPVs") to restructure the affiliate investment program so that the loans would technically be disaffiliated. While these arrangements were - and should have - been suspect to

anyone knowledgeable about insurance regulation, including the senior executives of Resolution, it was fully sanctioned by the NCDOI until 2017. Lindberg purchased other insurance companies, including Bankers Life Insurance Company ("BLIC") and Colorado Bankers Life Insurance Company ("CBLIC") through his holding company system and thereafter relocated the domicile of these companies to North Carolina where he could then invest up to 40% of the assets of these insurers to provide capital to his non-insurance companies.

In January 2017 a new North Carolina Insurance Commissioner, Mike Causey ("Causey"), took office at the NCDOI after being elected in November of 2016. Soon after Mr. Causey took office, the NCDOI dramatically increased its regulatory scrutiny of GBIG and the insurers within the GBIG holding company system. GBIG and the NCDOI had multiple meetings and exchanges prior to the execution of the October 1, 2017 SPA between GBIG and Resolution. The most notable meetings between GBIG and the NCDOI took place in July and August 2017, after which GBIG agreed to hire Rector and Noble as consultants to investigate concerns that the NCDOI had about GBIG's affiliated transactions and Mr. Lindberg's personal finances.

Multiple GBIG witnesses (the GBIG-designated Knowledge Persons in the SPA) testified that it is common for insurers and insurance regulators to consensually resolve issues raised by regulators including where, as here, the NCDOI retained outside consultants to investigate perceived problems. The Court accepts that subsequent to the execution of the October 1, 2017 SPA for the purchase of LBL, GBIG's regulatory issues with NCDOI became intractable. In September 2017, GBIG and NCDOI agreed that GBIG should hire Rector and Noble as consultants to review the affiliation status of SPV investments as well as the valuation of Mr. Lindberg and the entities he owned. Those reports, which were disclosed to the Nebraska DOI, and to which GBIG responded, were critical of GBIG and Mr. Lindberg. The reports and GBIG's responses ultimately led GBIG to propose that the Nebraska DOI engage its own

consultant Risk & Regulatory Consulting ("RRC") to investigate the types of issues about which the NCDOI and the Nebraska DOI, derivatively, was concerned. The Court does not accept that GBIG's regulatory issues with the NCDOI necessarily precluded GBIG from successfully completing the LBL transaction with the Nebraska DOI. Indeed, as set forth *infra*, Resolution believed that the transaction could be successfully consummated. As described *infra*, GBIG completed the Pavonia transaction in December 2017 with equivalent obstacles. What the Court finds, as discussed, is that GBIG breached SPA Sections 6.09 and 6.10.

Prior to and during September 2017, GBIG and Lindberg also faced regulatory challenges in other jurisdictions, including serious delays in the Form A approval process for other transactions. Resolution's expert witness Gregorio Serio, a former Superintendent of Insurance in New York, testified that a Form A is a statement by a person or company that is used to request approval from the state's lead insurance regulator for the acquisition of a domestic insurer. Generally, the items covered by Form A include the determination of the financial condition of the acquiring entity/person; whether the transaction was done at arms-length; key persons or companies involved and any affiliations; if the price is fair and reasonable, the source of funds used and whether the acquisition is hazardous or prejudicial to the policyholders. Serio Aff. ¶ 39 (NYSCEF Doc. No. 660). This testimony is completely consistent with the testimony of GBIG's expert Lundelius that the National Association of Insurers ("NAIC") publishes a handbook detailing the checklist of items insurance regulators review in connection with Form A applications to approve the acquisition of an insurance company.

GBIG submitted a revised Form A on March 20, 2017 for the purchase of Pavonia Life Insurance Company of Michigan ("Pavonia") to the Michigan Department of Insurance and Financial Services ("MIDIFS"). The Pavonia transaction was questioned by MIDIFS for the same reasons the NCDOI was scrutinizing the North Carolina GBIG entities, but, significantly,

was ultimately approved by the Michigan regulators in December 2017. The Pavonia transaction was approved after GBIG and Lindberg agreed to place serious and concrete limitations on the use of affiliate investments by Pavonia. The totality of evidence submitted at trial, including most importantly, the testimony by the Chief Financial Examiner of the Nebraska DOI , Justin Schrader, established that GBIG offered concessions to the Nebraska DOI that were greater than the concessions GBIG offered to MIDIFS.[5]

In addition, in May and June 2017 GBIG acquired three insurers in the Netherlands (Conservatory (CSV) Netherlands, Omnia Ltd and Private Bankers Life & Annuity PBLA (Bermuda).

The record demonstrates that Resolution had the opportunity, and did in fact, perform reverse due diligence on GBIG prior to entering into the SPA. As Weldon Wilson, Vice Chairman of Resolution Life Group Holdings, testified, Morgan Stanley performed due diligence along with Resolution's CFO, Robin Wyatt. (NYSCEF Doc. No. 657, at ¶ 10). Mr. Wilson further testified that "[i]n August 2017, during the exclusivity and continuing due diligence phase with GBIG, Morgan Stanley noticed that GBIG's Blue Book financials included a high level of private investments in the affiliated entities." (*Id.*) In an August 28, 2017 email to Mr.

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[5] On April 10, 2017, BLI Holdings, Inc. ("BLI"), a Lindberg holding company, filed a Form A with the Ohio Department of Insurance ("ODOI") seeking authorization for the purchase of two domestic insurers, Cincinnati Equitable Insurance Company and Cincinnati Equitable Life Insurance Company. Again, questions were raised about the affiliate transactions, GBIG's Form A was put on hold in September 2017 to award the receipt of the Rector and Noble reports. Ultimately, the acquisition never closed.

On March 30, 2016 the Florida Office of Insurance Regulation ("FOIR") issued an initial order of suspension regarding SNIC's authority to write insurance based on the company's misreporting of its affiliate investment portfolio. On January 23, 2017, SNIC entered into a consent order with FOIR and surrendered its certificate of authority to operate in Florida and agreed to transfer its policies to the affiliated BLIC. GBIG's experience with the Florida Regulator was a matter of public record.

In September 2017, the Mississippi Insurance Department ("MSSDOI") informed GBIG that affiliate Colorado Benefits Administration, a frequent investment target for the GBIG group's affiliate investments, was financially impaired based on its 2016 annual statement filing.

Wilson and other Resolution executives, Morgan Stanley identified the affiliated investment program and reported that the affiliated investment program was "THE Issue" with the GBIG transaction. (Ex. 15). The same email chain noted that the "regulator will obviously dig into this (North Carolina already has)":

> As a quick post, we had a call with Global Bankers earlier today. Roughly 1/3 of the portfolios at Southland National and Colorado Bankers are, indeed, related party loans. They have a trust structure that passes oversight of those investments to a third party under certain circumstances and, as such allows the loans to be reported as unaffiliated.
>
> Regulators will obviously dig into this (North Carolina already has) and will be one of the focuses of tomorrow's discussion. GB did note that they've had some discussions regarding this in the past with Nebraska (pre-dating any conversations on Apple) and that they feel comfortable having Nebraska involved here.

Ex. 15.

The arresting irony in this case is that GBIG's affiliate investment issues and GBIG's regulatory issues were known by Resolution's most senior executives, and Resolution's investment banker, Michael Horey of Morgan Stanley, *before* the SPA was signed. *See e.g.* Trial Tr. 264; Tr. 629. In addition, as the Court noted during the trial, "both sides of this transaction and the advisors to both sides of this transaction fully understood that the insurance regulators in Nebraska would be in contact with the insurance regulators in North Carolina, which was the home regulator of GBIG." (Tr. 1283:21-25). On this issue, both Resolution's expert Serio and GBIG's expert Lundelius agree.

Moreover, Morgan Stanley and Resolution had been put on notice that GBIG had "a trust structure that passes oversight of [affiliated] investments to a third party under certain circumstances and, as such, allows the loans to be reported as unaffiliated. (Ex. 15). Indeed, not even Resolution disputes that, prior to the signing of the SPA, it was on notice that GBIG was "very *clearly* managing the portfolio in *an untraditional way*" to include investments in a SPV/trust structure. (Ex. 15 (emphasis added); see also Tr. 631:2-6; 633:26-634:6). It is also

undisputed that Resolution had access to publicly filed Annual Reports of SNIC as well as information about GBIG's insurers generated by the NCDOI. *See* Lundelius Affidavit at 41-44.

Resolution, as a Nebraska-regulated entity, had first-hand knowledge that Nebraska had a statutory cap of *three percent* for investment transactions with affiliates. Tr. 633 (Wilson). Mr. Wilson conceded that he understood at a pre-SPA meeting with GBIG and the Nebraska DOI on September 27, 2017 that the approach GBIG used with respect to affiliated investments "would not work in Nebraska." Tr. 642 (Wilson).

The SPA was a highly negotiated transaction between "supersophisticated" parties. (NYSCEF No. 658 at ¶¶ 6-7; Tr. 1080:23-1082:9). The negotiation of the SPA occurred over the course of several months, beginning in June 2017 and concluding with the execution of the SPA on October 1, 2017 (NYSCEF No. 658 at ¶¶ 6-7). The SPA is a 150-page document with respect to which Resolution was represented by, among others at Debevoise & Plimpton, two elite Debevoise & Plimpton transactional partners, both of whom testified at trial. Manifestly, Resolution has no greater rights than those afforded to it under the SPA.

GBIG made an offer for LBL that was $50 million higher than the next highest bidder for LBL, and the Court finds that the "$50 million kicker" operated to increase Resolution's appetite for risk. The LBL transaction had to be approved by the Nebraska DOI , and as late as September 12, 2018, Resolution's CEO, Weldon Wilson, was telling Resolution's staff that he was optimistic that the transaction could close and that GBIG "*is the best buyer for LBL*, especially with its new business and M&A growth plans" [Exhibit 51] (emphasis added). *See also* Tr. 617 (Wilson). The September 12, 2018 memo was distributed approximately a month after an August 17, 2018 memo (approved by Mr. Wilson) was sent to Resolution's investors in which the Resolution investors were told that "our contacts have not indicated issues with the

expected approval of the transaction" and that "the earliest closing date is 9/30/18, although further slippage is possible." (Exhibit 47).

There is more. At Mr. Wilson's suggestion, GBIG hired attorney Ann Frohman, a Resolution director and former Nebraska DOI director-regulator who, according to Mr. Schrader, is "a very professional individual" and highly regarded amongst other insurance directors and her peers. (Tr. at 499). Ms. Frohman represented Resolution in its acquisition of LBL. *Id*. On May 18 2018, Ms. Frohman wrote the Nebraska Insurance Commissioner that she and Global Bankers did not think any of the issues the Nebraska DOI had raised either separately or taken together as a whole would constitute material issues and that she was confident that any concerns Mr. Schrader had about Global Bankers' negative track record could be worked out.

Ultimately, the Nebraska DOI was unable to act on the GBIG acquisition before September 27, 2018 because the Nebraska DOI wanted to consider the final results of the financial scrutiny analyses performed by Rector and Noble as well as by RRC. This is not a case in which GBIG sabotaged a transaction for which GBIG advanced $29.25 million in escrow to consummate. This is a case in which the Nebraska DOI was unable to get comfortable with the accommodations GBIG was willing to make to close the transaction. Other regulators might well have approved the transaction as was the case in Michigan with the Pavonia transaction.

For all the foregoing reasons, the Court finds that Resolution is entitled to recover $50 million in breach of contract damages with prejudgment interest from October 1, 2017, together with out-of-pocket/cover damages of totaling $7 million, with prejudgment interest from December 31, 2019. The Court finds Resolution's claim for $9.6 million of out-of-pocket/cover damages to be inflated and insufficiently substantiated and the Court therefore awards $7 million

of such damages, together with prejudgment interest from December 31, 2019, the date the Kuvare transaction closed.

The Court commends all counsel for the parties for the conduct of a highly-professional trial and for the respect counsel exhibited toward the Court and opposing counsel.

Accordingly, is it hereby,

ORDERED in the action captioned *GBIG Holdings, Inc. f/k/a Southland National Holdings, Inc. and SNH Acquisition, LLC v Resolution Life L.P and Resolution Life (Parallel) Partnership,* Index No. 650575/2019 plaintiffs GBIG Holdings Inc. and SNH Acquisition LLC's first cause of action for a declaratory judgment it is ADJUDGED and DECLARED as follows:

1. All requirements under Section 6(b) of the Buyer Escrow Agreement for the release of all of the Escrowed Funds to Buyer Parent have not been satisfied.
2. The Buyer Escrow Agreement does not require Sellers' Representative to deliver, with Buyer Parent, a joint written instruction to the Escrow Agent instructing the Escrow Agent to release the Escrowed Funds to Buyer Parent; and it is further

ORDERED that in the action captioned *GBIG Holdings, Inc. f/k/a Southland National Holdings, Inc. and SNH Acquisition, LLC v Resolution Life L.P and Resolution Life (Parallel) Partnership,* Index No. 650575/2019 counterclaim defendants GBIG Holdings, Inc. and SNH Acquisition, LLC are liable, jointly and severally, to counterclaim plaintiffs Resolution Life L.P and Resolution Life (Parallel) Partnership for breach of contract for breach of Sections 6.09 and 6.10 of the SPA and for misrepresentation in the amount of $50 million for breach of contract damages and $7 million for out of pocket /cover damages; and it is further

ORDERED that the Clerk is directed to enter judgment in the action captioned G*BIG Holdings, Inc. f/k/a Southland National Holdings, Inc. And SNH Acquisition, LLC v Resolution Life L.P and Resolution Life (Parallel) Partnership,* Index No. 650575/2019 in favor of

counterclaim plaintiffs Resolution Life L.P and Resolution Life (Parallel) Partnership and against counterclaim defendants GBIG Holdings, Inc. and SNH Acquisition, LLC, jointly and severally, in the amount of $50 million plus prejudgment interest at the statutory rate of 9% per annum from October 1, 2017 through the entry of judgment, with post judgment interest at the statutory rate of 9% per annum thereafter; and it is further

ORDERED that the Clerk is directed to enter judgment in the action captioned G*BIG Holdings, Inc. f/k/a Southland National Holdings, Inc. and SNH Acquisition, LLC v Resolution Life L.P and Resolution Life (Parallel) Partnership*, Index No. 650575/2019 in favor of counterclaim plaintiffs Resolution Life L.P and Resolution Life (Parallel) Partnership and against counterclaim defendants GBIG Holdings, Inc. and SNH Acquisition, LLC, jointly and severally, in the amount of $7 million, with prejudgment interest from December 31, 2019 through the entry of judgment at the statutory rate of 9% per annum, with post judgment interest at the statutory rate thereafter; and it is further

ORDERED that plaintiffs GBIG Holdings, Inc. and SNH Acquisition, LLC are not liable to defendants Resolution Life L.P and Resolution Life (Parallel) Partnership for improper termination and repudiation of the SPA, and those counterclaims are dismissed; and it is further

ORDERED that plaintiffs GBIG Holdings, Inc. and SNH Acquisition, LLC are not liable to defendants Resolution Life LP and Resolution Life (Parallel) Partnership for fraudulent concealment and that counterclaim is dismissed; and it is further

ORDERED that counterclaim defendant Gregory E. Lindberg is not liable to defendants, either directly or as an alter ego on any of defendants' counterclaims for breach of contract, improper termination and repudiation of the SPA, fraudulent misrepresentation or fraudulent concealment; and it is further

ORDERED that in the action captioned *RL LP et al v. Gregory E Lindberg* Index No. 653258/2019 defendant Gregory E. Lindberg is not liable to plaintiffs RL LP, and RL (Parallel)

LP on any of the remaining causes of action for breach of contract under the Guaranty and Commitment Letter (count one), fraudulent misrepresentations (count three) and fraudulent concealment (count four) and the action is dismissed in its entirety; and it is further

ORDERED that any relief not specifically granted herein is denied.

Dated: May 12, 2021