

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

THE PENN MUTUAL LIFE INSURANCE  
COMPANY

Plaintiff

vs

2010-cv-00625-TON

BNC NATIONAL BANK, as trustee  
of the GERALD CARNAGO 2007  
IRREVOCABLE TRUST; GERALD  
CARNAGO; and STEPHEN D. SCHUTTE

Defendants

and

GERALD CARNAGO and STEPHEN D. SCHUTTE,

Third Party Plaintiffs

vs

VISIONARY MARKETING GROUP, INC.,  
TED BERNSTEIN,  
CFC DELAWARE II, LLC,  
CFC COLLATERAL HOLDINGS, LLC,  
CAMBRIDGE FINANCING COMPANY,  
GLOBAL SECURED CAPITAL, LLC,  
GSCF LOAN TRUST, and  
PREMIUM FINANCE COLLATERAL TRUST

Third Party Defendants

**DEFENDANTS GERALD CARNAGO, AND STEPHEN D. SCHUTTE'S**  
**THIRD PARTY COMPLAINT**

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Gerald Carnago and Stephen D. Schutte, Defendants/Third-Party Plaintiff's, bring this Third-Party Complaint, and state:

1. Gerald Carnago ("Carnago") and Stephen D. Schutte ("Schutte") are Defendants in an action for Declaratory Relief brought by The Penn Mutual Insurance Company ("Penn Mutual"), alleging that the procurement of a Life Insurance Policy by Carnago was done with an intention at the time of application to sell that policy on the secondary market. In that action, Penn Mutual also seeks damages for administrative fees, legal fees, and re-insurance costs. Penn Mutual's Action for Declaratory Relief is attached as Exhibit A.
2. Third Party Defendant Visionary Marketing Group, Inc., is a Michigan corporation doing business in Sterling Heights, Michigan, and is a citizen of the State of Michigan. Visionary Marketing Group maintains an office at 6957 Nineteen Mile Road, Sterling Heights, Michigan 48314, and maintains a resident agent at 38540 Applewood, Clinton Township, Michigan, 48036.
3. Third Party Defendant Ted Bernstein ("Bernstein") is, upon information and belief, a citizen and resident of the State of Florida, and maintains an address at 7700 Congress Avenue, Boca Raton, Florida, 33487.
4. Third Party Defendant CFC Delaware II, LLC is, upon information and belief, a limited liability company registered in Minnesota, and is a citizen of Minnesota, maintaining an address at 333 South Seventh Street, #150, Minneapolis, MN 85402.
5. Third Party Defendant CFC Collateral Holdings, LLC, is, upon information and belief, a limited liability company registered in Minnesota, and is a citizen of

Minnesota, maintaining an address at 333 South Seventh Street, #150, Minneapolis, MN 85402. It is believed to be a wholly owned subsidiary, and/or assumed name, of Cambridge Financing Company.

6. Third Party Defendant Cambridge Financing Company ("Cambridge Financing") is, upon information and belief, a Florida corporation, and is a citizen of Florida, maintaining offices at 950 Peninsula Corporate Circle #3009, Boca Raton, Florida 33487.
7. Third Party Defendant Global Secured Capital, LLC ("Global") is, upon information and belief, a limited liability company registered in New York, and is a citizen of New York, maintaining offices at 200 Business Park Drive #208, Armonk, New York, 10509.
8. Third Party Defendant GSCF Loan Trust, is, upon information and belief, a limited liability company registered in New York, and is a citizen of New York, maintaining offices at 200 Business Park Drive #208, Armonk, New York, 10509. It is believed to be a wholly owned subsidiary, and/or assumed name, of Global Secured Capital, LLC.
9. Defendant Premium Finance Collateral Trust is, upon information and belief, a citizen of New York, maintaining offices at 1 Byram Brook Place #202, Armonk, New York 10504. It is believed to be a wholly owned subsidiary, and/or assumed name, of Global Secured Capital, LLC.

**FACTUAL BACKGROUND**

10. Plaintiff Penn Mutual filed an Action for Declaratory Relief in the Court of Common Pleas of Montgomery County, Pennsylvania, which Action was removed to this Court by Defendants on February 16, 2010.
11. In that Action, Penn Mutual asserted that on October 15, 2007, Defendant Gerald Carnago ("Carnago") applied for a life insurance policy with Penn Mutual, and at that time intended to sell the policy to an investor in the secondary market, and created the Gerald Carnago 2007 Irrevocable Trust ("Carnago Trust") to own that policy. The Penn Mutual Action for Declaratory Relief did not specify the participants in the alleged secondary market, or name them as parties to the Action.
12. Penn Mutual alleged that neither Carnago nor the Carnago Trust intended that the life insurance policy was going to be used for legitimate estate planning purposes, but that, from the outset, it was intended that the policy would be transferred to an investor in the secondary market.
13. The application for life insurance clearly indicated that Carnago was obtaining financing for the premium from CFC of Delaware II, LLC ("CFC").
14. CFC's parent company is Cambridge Financing Company, which Penn Mutual alleges is regularly involved in cases involving the secondary market for life insurance policies.
15. At the time of application, Carnago intended that the life insurance policy would be for estate planning purposes, and would be a source of funding for potential tax liabilities which might result from Carnago's investments. Those investments, mostly in real estate, never materialized because of the devastating downturn in real

estate values, especially in southeast Michigan, and, as a result, Carnago defaulted on the repayment of his premium financing loan.

16. Upon Carnago's default of the premium financing loan, CFC, in its default notice, indicated that it would accept the assignment of the life insurance policy as full satisfaction of the amounts due on the premium financing loan.
17. CFC provided Carnago with an "Owner Beneficiary Designation" (using a Penn Mutual form), which Carnago signed. On that designation, CFC designated Global Secured Capital, LLC as the "new policyholder", and named "GSCF Loan Trust" as the new "primary beneficiary".
18. On January 7, 2010 a "Surrender of Policy" letter was sent from GSCF Loan Trust to Carnago, indicating that his surrender of the life insurance policy fully satisfied his obligations on the premium financing loan. In this letter, GSCF used the same address as Global, and referred to Global as if it were the same entity.
19. Carnago has relinquished all interest in the life insurance policy, which is now believed to be owned by Global and/or GSCF Loan Trust.
20. Defendant Schutte, along with Third Party Defendant Ted Bernstein ("Bernstein"), were soliciting agents on the Carnago life insurance policy. Schutte had never written a Penn Mutual policy before this one, and needed to be approved by Penn Mutual. He was directed to Third Party Defendant Visionary Marketing Group, Inc., which, upon information and belief, obtained Penn Mutual's approval for Schutte to be an agent of Penn Mutual. As clearly indicated on the Application, Schutte was to receive 65% of the commission, and Bernstein to receive 35% of the commission.

**COUNT I - THIRD PARTY LIABILITY OF CFC DELAWARE II, LLC, CFC  
COLLATERAL HOLDINGS, LLC, CAMBRIDGE FINANCING COMPANY, GLOBAL  
SECURED CAPITAL, LLC, GSCF LOAN TRUST, and PREMIUM FINANCE  
COLLATERAL TRUST**

20. Defendant/Third Party Plaintiffs Carnago and Schutte hereby repeat and reallege each and every allegation contained in this Third Party Complaint with the same force and effect as though more fully set forth herein.
21. Penn Mutual has alleged that Carnago and the Carnago Trust made material misrepresentations on the application for life insurance regarding the purpose for the application, an intent to transfer, and the payor of the premiums, and knew of the falsity of the representations concerning the intent to transfer the Carnago Policy, or made misrepresentations in reckless disregard of the truth.
22. Carnago, Schutte and the Carnago Trust deny the allegations as set forth in Penn Mutual's Action, but assert that CFC Delaware II, LLC CFC Collateral Holdings, LLC, Cambridge II Financing Company, Global Secured Capital, LLC, GSCF Loan Trust, and Premium Finance Collateral Trust may be liable for all or part of the claim against Carnago and/or Schutte, should Penn Mutual prevail in the Action for Declaratory Relief, for the following reasons:
- a. if there were material misrepresentations by Carnago and/or the Carnago Trust concerning the intent to transfer the life insurance policy, such misrepresentations were made based upon:
1. misinformation provided to Carnago by the Third Party Defendants;
  2. the lack of information provided to Carnago by the Third Party Defendants;
  3. the true ability of Carnago timely repay that loan;
  4. the existence and operation of the secondary market;
  5. the pattern and practice of the Third Party Defendants in the secondary market;
  6. interrelation of interests among the Third Party Defendants;

7. the history of claims made against the Third Party Defendants by others;
8. the relationship of the Third Party Defendants to BNC Bank;
9. the intention and/ or expectation of the lender that Carnago default on the premium financing loan.

b. if there were material misrepresentations by Carnago and/or the Carnago Trust concerning the purpose of the life insurance policy, such misrepresentations were made based upon:

1. misinformation provided to Carnago by the Third Party Defendants;
2. the lack of information provided to Carnago by the Third Party Defendants;
3. the true ability of Carnago timely repay that loan;
4. the existence and operation of the secondary market;
5. the pattern and practice of the Third Party Defendants in the secondary market;
6. interrelation of interests among the Third Party Defendants;
7. the history of claims made against the Third Party Defendants by others;
8. the relationship of the Third Party Defendants to BNC Bank;
9. the intention and/ or expectation of the lender that Carnago default on the premium financing loan.

23. Plaintiff Penn Mutual has alleged that the life insurance policy was procured by persons having no insurable interest at policy inception, and that there was, at the time of application, a plan to transfer the Carnago Policy to a party or parties possessing no insurable interest in the life of Carnago. In the event that Penn Mutual prevails on this allegation, Third Party Plaintiffs Carnago and Schutte assert that Third Party Defendants CFC Delaware II, LLC CFC Collateral Holdings, LLC, Cambridge II Financing Company, Global Secured Capital, LLC, GSCF Loan Trust, and Premium Finance Collateral Trust may be liable for all or part of that claim.
24. Plaintiff Penn Mutual has alleged that there were material misrepresentations made concerning the intent to transfer the life insurance policy. In the event that Penn Mutual prevails on this allegation, Third Party Plaintiffs Carnago and Schutte assert

that Third Party Defendants CFC Delaware II, LLC CFC Collateral Holdings, LLC, Cambridge II Financing Company, Global Secured Capital, LLC, GSCF Loan Trust, and Premium Finance Collateral Trust may be liable for all or part of that claim.

25. Defendants Carnago and Schutte are entitled to a judicial declaration that the Third Party Defendants are liable to the Defendants for all or part of the claims made by Plaintiff Penn Mutual in its Action for Declaratory Relief, and that the Third Party Defendants are liable for all or part of any monetary damages awarded to Plaintiff Penn Mutual.

**COUNT II - LIABILITY OF THIRD PARTY DEFENDANTS VISIONARY MARKETING GROUP, INC. AND TED BERNSTEIN**

26. Defendant/Third Party Plaintiffs Carnago and Schutte hereby repeat and reallege each and every allegation contained in this Third Party Complaint with the same force and effect as though more fully set forth herein.
27. Third Party Defendant Visionary Marketing procured the authority from Penn Mutual for Defendant Schutte to act as its agent regarding the Carnago Policy.
28. Third Party Defendant Bernstein received 35% of the earned commissions regarding the Carnago Policy.
29. Penn Mutual has alleged that Carnago and the Carnago Trust made material misrepresentations on the application for life insurance regarding the purpose for the application, an intent to transfer, and the payor of the premiums, and knew of the falsity of the representations concerning the intent to transfer the Carnago Policy, or made misrepresentations in reckless disregard of the truth.



30. Carnago, Schutte and the Carnago Trust deny the allegations as set forth in Penn Mutual's Action, but assert that Third Party Defendant Visionary Marketing and/or Ted Bernstein may be liable for all or part of the claim against Carnago and/or Schutte for the following reasons:

a. if there were material misrepresentations by Carnago and/or the Carnago Trust concerning the intent to transfer the life insurance policy, such misrepresentations were made based upon:

1. misinformation provided to Carnago by the Third Party Defendants;
2. the lack of information provided to Carnago by the Third Party Defendants;
3. the true ability of Carnago timely repay that loan;
4. the existence and operation of the secondary market;
5. the pattern and practice of the Third Party Defendants in the secondary market;
6. interrelation of interests among the Third Party Defendants;
7. the history of claims made against the Third Party Defendants by others;
8. the relationship of the Third Party Defendants to BNC Bank;
9. the intention and/ or expectation of the lender that Carnago default on the premium financing loan.

b. if there were material misrepresentations by Carnago and/or the Carnago Trust concerning the purpose of the life insurance policy, such misrepresentations were made based upon:

1. misinformation provided to Carnago by the Third Party Defendants;
2. the lack of information provided to Carnago by the Third Party Defendants;
3. the true ability of Carnago timely repay that loan;
4. the existence and operation of the secondary market;
5. the pattern and practice of the Third Party Defendants in the secondary market;
6. interrelation of interests among the Third Party Defendants;
7. the history of claims made against the Third Party Defendants by others;
8. the relationship of the Third Party Defendants to BNC Bank;
9. the intention and/ or expectation of the lender that Carnago default on the premium financing loan.

31. Plaintiff Penn Mutual has alleged that the life insurance policy was procured by persons having no insurable interest at policy inception, and that there was, at the time of application, a plan to transfer the Carnago Policy to a party or parties possessing no insurable interest in the life of Carnago. In the event that Penn Mutual prevails on this allegation, Third Party Plaintiffs Carnago and Schutte assert that Third Party Defendant Visionary Marketing and/or Ted Bernstein may be liable for all or part of that claim.
32. Plaintiff Penn Mutual has alleged that there were material misrepresentations made concerning the intent to transfer the life insurance policy. In the event that Penn Mutual prevails on this allegation, Third Party Plaintiffs Carnago and Schutte assert that Third Party Defendant Visionary Marketing and/or Ted Bernstein may be liable for all or part of that claim.
33. Defendants Carnago and Schutte are entitled to a judicial declaration that the Third Party Defendants are liable to the Defendants for all or part of the claims made by Plaintiff Penn Mutual in its Action for Declaratory Relief, and that the Third Party Defendants are liable for all or part of any monetary damages awarded to Plaintiff Penn Mutual.

**RELIEF REQUESTED**

WHEREFORE, Defendants Gerald Carnago and Stephen D. Schutte respectfully request entry of an Order by this Court, as follows:

- A. In the event that this Court awards damages of any nature to Penn Mutual on its Complaint, then this Court should determine that the Third Party Defendants are liable for all, or part, of said award.

B. Award any such further relief as this Court deems appropriate.

Respectfully submitted:

*/s/ Harvey R. Weingarden*

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COHEN, LERNER, RABINOVITZ & WITUS, P.C.

By: Harvey R. Weingarden (P31534)

Attorney for Third-Party Plaintiffs

26862 Woodward Avenue, Ste. 200

Royal Oak, MI 48067

(248) 691-2200 / (248) 691-2214 Fax

Date: \_\_\_\_\_

P:\CLIENTS\Schulte, Stephen\Third Party Complaint fw.wpd

# **EXHIBIT “A”**

IN THE COURT OF COMMON PLEAS OF  
MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION — LAW

THE PENN MUTUAL LIFE INSURANCE  
COMPANY,

Plaintiff,

v.

BNC NATIONAL BANK, as trustee of the  
GERALD CARNAGO 2007 IRREVOCABLE  
TRUST; GERALD CARNAGO; and  
STEPHEN D. SCHUTTE,

Defendants.

Index No. 09-34213

JURY TRIAL DEMANDED

ACTION FOR DECLARATORY RELIEF

Plaintiff, The Penn Mutual Life Insurance Company ("Penn Mutual"), by and through its attorneys, Drinker Biddle & Reath LLP, hereby files this Action for Declaratory Relief, and in support thereof, avers as follows:

1. This is an action for Declaratory Judgment under Pennsylvania Code § 1601. Penn Mutual seeks a declaration relative to its rights and obligations under a policy of life insurance issued on the life of Gerald Carnago (the "Carnago Policy"). Upon information and belief, the Carnago Policy is void or voidable due to a lack of insurable interest at inception and/or material misrepresentations in the application. In the event that the Carnago Policy is declared to be void or voidable, Penn Mutual also seeks damages as a result of the intentional misrepresentations made in connection with the Carnago Policy.

### PARTIES

2. Plaintiff Penn Mutual is a citizen of Pennsylvania, being a life insurance company organized and existing under the laws of the Commonwealth of Pennsylvania, located at 600 Dresher Road, Horsham, PA 19044.

3. Upon information and belief, Defendant BNC National Bank, as trustee of the Gerald Carnago 2007 Irrevocable Trust (the "Carnago Trust"), is a citizen of the State of Minnesota, maintaining an address at 333 South 7th Street, Suite 150, Minneapolis, MN 55402.

4. Upon information and belief, Defendant Gerald Carnago is a citizen and resident of the State of Michigan, and maintains an address at 2033 Wabeek Hill Court, Bloomfield Hills, MI 48302.

5. Upon information and belief, Defendant Stephen D. Schutte is a citizen and resident of the State of Michigan, and maintains an address at 842 Thorntree Court, Bloomfield Hills, MI 48304. Stephen D. Schutte was a soliciting agent on the Carnago Policy.

### FACTUAL BACKGROUND

#### A. Stranger Originated Life Insurance

6. In recent years, a secondary market has emerged in which speculative investors seek to obtain pecuniary interests in life insurance policies on individuals with whom they have no prior relationship. Although it is sometimes permissible for an investor to obtain an interest in a legitimately procured life insurance policy, it is unlawful to procure a policy for the sole purpose of transferring it, directly or indirectly, to an investor. Such arrangements are commonly referred to as STOLI, which stands for "stranger originated life insurance."

7. STOLI investors do not acquire interests in life insurance policies on the lives of persons with whom the investors have a familial relationship, or in whose longevity the investors

possess a legally recognized interest. Instead, these investors purchase policies that insure the lives of strangers – or, in many cases, purchase beneficial interests in insurance trusts or ownership in shell corporations that own those policies – with the expectation that the investors will profit by the death of the insureds.

8. STOLI transactions run afoul of state insurable interest laws, which protect the integrity of life insurance by requiring that a policy owner have a legally cognizable interest in the longevity of the insured at the time the policy is issued.

9. STOLI investors, who are the true intended owners of STOLI policies, attempt to circumvent these laws by carefully constructing their transactions to hide these impermissible investments.

10. STOLI investors seek out the highest anticipated rates of return when choosing the life insurance policies. This means the typical life insurance policy to which STOLI investors gravitate insures the life of an individual aged seventy or older, with a net worth in excess of \$1 million. These individuals can obtain large value policies, and, actuarially speaking, are expected to have a relatively limited lifespan. For these and other reasons, these individuals are targeted by STOLI investors.

11. The STOLI investors must also determine the resale value of the policy in the secondary market. This value is based largely upon the life expectancy of the prospective insured. The shorter the expected lifetime of the prospective insured, the more valuable the policy is to those who would gamble on his or her life. At or around the time of the application for insurance, the prospective insured often submits to a life expectancy analysis to determine whether the policy, if issued, would be saleable in the secondary market.

12. Once the STOLI investors locate an individual who meets their profile, and who will agree to collaborate in the STOLI arrangement, an application is submitted for one or more insurance policies. The STOLI investors typically pay most or all of the prospective insured's costs, including premium payments. STOLI investors also typically agree to pay the prospective insured a fee upon the issuance of the policy.

13. In many cases, the policy application indicates that a third-party entity, such as a trust, a shell corporation, or a limited partnership, will be the owner and beneficiary of the life insurance proceeds. This permits the STOLI investors to acquire an interest in this holding entity – and, most importantly, in the death benefit that later will be disbursed by the insurer – without disclosing the fact of the investors' ownership to the insurer.

14. Another way the STOLI investors obtain ownership of the policy is to lend the insured the funds to pay the premium for a finite period of time, usually for the two-year contestability period. Once this contestability period has expired, the insured can either repay the loan or assign the policy to the investors, thus completing the transaction. The loan is structured to encourage the insured to assign the policy to the investors by, among other things, lending the funds at a high interest rate.

15. While there are many other variations, all STOLI programs have one thing in common: their objective is to give investors who have no insurable interest in the life of the insured a stake in the life insurance policy of a complete stranger.

**B. Procurement of the Carnago Policy**

16. Upon information and belief, sometime prior to October 15, 2007, Gerald Carnago ("Mr. Carnago") was approached by Stephen Schutte, Ted Bernstein, and/or certain STOLI promoters to participate in a STOLI scheme. The plan called for Mr. Carnago to apply



for a life insurance policy on his own life to be issued by Penn Mutual, and to conceal from Penn Mutual the intent to sell the policy, and/or an interest in the policy, to an investor in the secondary market.

17. Upon information and belief, the plan also called for Mr. Carnago to create a trust that would be the owner and the beneficiary of the policy. However, neither the trust nor the policy were intended for estate liquidity, financial planning, or other legitimate insurance-related purposes. To the contrary, it was intended from the outset that the policy would be transferred to an investor in the secondary market, and the use of the Carnago Trust was to conceal this true purpose of the policy.

18. In accordance with this plan, on October 15, 2007, Mr. Carnago applied to Penn Mutual for a \$5 million life insurance policy (the "Application").<sup>1</sup> At the time of the Application, Mr. Carnago was seventy-six years old.

19. The Application indicated that the purpose of the policy was "[e]state planning[.]"

20. The intended owner of the policy was to be the Carnago Trust, and the trustee of the Carnago Trust was to be BNC National Bank.

21. The Carnago Trust was created on October 15, 2007, the same day the Application was signed.

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<sup>1</sup> A copy of the Application, including an amendment to the Application, and the Agent's Underwriting Report are attached to the Policy, which is attached hereto as Exhibit A. The Application was signed by both Gerald Carnago and a representative of BNC National Bank, the trustee of the Carnago Trust that was the intended owner of the Carnago Policy, *see infra* at ¶ 20. Mr. Carnago's date of birth, social security number, and driver's license number were included on the Application. That information, along with other identifying information and medical data, has been redacted to protect Mr. Carnago's confidentiality.

22. The Application included the following two questions:

- Have you been involved in any discussion about the possible sale or assignment of this policy to a Life Settlement, Viatical or other secondary market provider?
- Have you in the past 2 years sold a policy to a Life Settlement, Viatical or other secondary market provider?

23. These questions were intended to discern whether the Carnago Policy was being sought for purposes of resale in the secondary market.

24. Mr. Carnago and/or the Carnago Trust answered "No" to both of these questions.

25. Additionally, the Application indicated that the "[c]lient is aware of the settlement marketplace, however there is no current intention to sell this policy[.]"

26. The Application did not identify the "Payor," which was to be identified if the payor "is other than the Proposed Insured or Owner[.]"

27. The Application indicated that premium payments for the Carnago Policy would be made from funds that were borrowed or financed from CFC of Delaware II, LLC ("CFC").

28. CFC's parent company is Cambridge Financing Company.

29. Cambridge Financing Company is regularly alleged to be a defendant in cases involving life insurance and failed premium financing deals. *See, e.g., Shapiro v. Cambridge Financing Company, et al.*, Case No. 09-34290 (Palm Beach County, Florida Oct. 9, 2009); *Global Secured Capital Fund, L.P. v. Cambridge Financing Company and CFC of Delaware II, LLC, et al.*, Case No. 08-19242 (Westchester County, New York Nov. 24, 2008).

30. The Application was signed by Mr. Carnago as the proposed insured and by a representative of BNC National Bank on behalf of the Carnago Trust, which was the intended owner of the Carnago Policy.

31. The Application was also signed by Mr. Schutte, who certified that "to the best of [his] knowledge the answers to the questions in all parts of [the] application [were] true and correct."

32. Based upon the Application and the representations contained therein, Mr. Carnago's Application was approved for \$5 million in coverage, and the Carnago Policy (Policy No. 8200682) was issued with a Policy Date of October 24, 2007.

33. Upon information and belief, Mr. Carnago entered into a premium financing agreement with CFC, whereby CFC or a third-party lender would provide the funds for the premium payments on the Carnago Policy in exchange for an agreement to transfer the Carnago Policy or the beneficial interest therein to CFC or CFC's designee at a specified future date.

34. Mr. Carnago was not in a relationship of affinity with CFC prior to completing the Application and/or procuring the Carnago Policy.

35. Upon information and belief, Mr. Carnago received remuneration for his participation in the STOLI transaction.

36. Upon information and belief, Mr. Carnago has relinquished or agreed to relinquish any beneficial interest in the proceeds of the Carnago Policy, as well as all interests in the Carnago Trust.

37. Penn Mutual has recently learned that Global Secured Capital, LLC, now owns the Carnago Policy or the beneficial interests therein.

38. To date, Penn Mutual has received an aggregate of \$329,500 in premium payments in connection with the Carnago Policy.

39. As a result of the foregoing, Penn Mutual has incurred significant expenses, costs, and damages.

40. In accordance with applicable law, Penn Mutual will return the portion of the premiums, if any, that the Court orders Penn Mutual to return.

COUNT I

DECLARATORY JUDGMENT-MATERIAL MISREPRESENTATIONS (against the Carnago Trust and Gerald Carnago)

41. Penn Mutual hereby incorporates by reference each and every averment of fact contained in the preceding paragraphs as if set forth herein at length.

42. Upon information and belief, based on all the facts and circumstances, Mr. Carnago and/or the Carnago Trust made material misrepresentations to Penn Mutual in the Application concerning the intent to transfer the Carnago Policy into the secondary market.

43. Upon information and belief, Mr. Carnago and/or the Carnago Trust knew of the falsity of the representations concerning the intent to transfer the Carnago Policy or made such misrepresentations in reckless disregard of the truth. Thus, these misrepresentations were intentional.

44. Upon information and belief, Mr. Carnago and/or the Carnago Trust also made material misrepresentations to Penn Mutual in the Application concerning the purpose of the Carnago Policy.

45. Upon information and belief, Mr. Carnago and/or the Carnago Trust knew of the falsity of the representations concerning the purpose of the Carnago Policy or made such misrepresentations in reckless disregard of the truth. Thus, these misrepresentations were intentional.

46. Upon information and belief, based on all of the facts and circumstances, Mr. Carnago and/or the Carnago Trust may have made material misrepresentations to Penn Mutual in the Application concerning the payor of premium payments.

47. Penn Mutual justifiably relied on these misrepresentations. Had Penn Mutual known of the intent to transfer the Carnago Policy into the secondary market, the true purpose of the Carnago Policy, and/or the payor of the premium payments, it would not have issued the Carnago Policy. Thus, the misrepresentations were material.

48. Penn Mutual is thus entitled to a judicial declaration that, pursuant to applicable law, the Carnago Policy is void *ab initio*, as it was issued by Penn Mutual in reliance upon material misrepresentations, or, in the alternative, that the misrepresentations constitute grounds for rescission of the Carnago Policy by Penn Mutual.

## COUNT II

### DECLARATORY JUDGMENT-LACK OF INSURABLE INTEREST (against the Carnago Trust)

49. Penn Mutual hereby incorporates by reference each and every averment contained in the preceding paragraphs as if set forth herein at length.

50. Upon information and belief, the Carnago Policy was procured in accordance with a plan to transfer the Carnago Policy to a party or parties possessing no insurable interest as recognized under applicable law and, in any event, there was a lack of insurable interest at policy inception.

51. Upon information and belief, the Carnago Policy was issued to, at the behest of, and/or in accordance with a plan to transfer the Carnago Policy to a party or parties possessing no insurable interest in the life of Mr. Carnago.

52. Upon information and belief, the purpose of the transaction was to gamble upon the life of Mr. Carnago.

53. Under applicable law, Penn Mutual is entitled to a judicial declaration that the Carnago Policy lacked an insurable interest at inception and is therefore void *ab initio*.

COUNT III

MATERIAL MISREPRESENTATIONS (against all Defendants)

54. Penn Mutual hereby incorporates by reference each and every averment of fact contained in the preceding paragraphs as if set forth herein at length.

55. Upon information and belief, Mr. Schutte, acting on behalf of the Carnago Trust and/or Mr. Carnago, made material misrepresentations to Penn Mutual in the Application by certifying that there was no intent to transfer the Carnago Policy into the secondary market.

56. Upon information and belief, Mr. Schutte, acting on behalf of the Carnago Trust and/or Mr. Carnago, knew of the falsity of the representations concerning the intent to transfer the Carnago Policy or made such misrepresentations in reckless disregard of the truth. Thus, these misrepresentations were intentional.

57. Upon information and belief, Mr. Schutte, acting on behalf of the Carnago Trust and/or Mr. Carnago, made representations concerning the intent to transfer the Carnago Policy for the purpose of defrauding Penn Mutual.

58. Penn Mutual had a right to rely on these misrepresentations and justifiably relied on them. Had Penn Mutual known of the intent to transfer the Carnago Policy into the secondary market, it would not have issued the Carnago Policy. Thus, the misrepresentations were material.

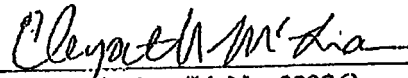
59. Penn Mutual has incurred substantial damages as a direct result of Defendants' wrongful conduct, including, among other things, costs and expenses associated with the issuance of the Carnago Policy.

RELIEF REQUESTED

WHEREFORE, Penn Mutual respectfully requests the entry of an Order by this Court as follows:

- A. Declaring whether the Carnago Policy is void or voidable due to material misrepresentations in the Application;
- B. Declaring whether the Carnago Policy is void or voidable due to a lack of insurable interest at the inception of the Carnago Policy;
- C. In the event that the Court declares the Carnago Policy void or voidable, declaring whether Penn Mutual may retain some or all of the premiums paid on the Carnago Policy;
- D. In the event that the Court declares the Carnago Policy void or voidable, awarding Penn Mutual damages in the amount of its costs, expenses and commission as a result of the intentional misrepresentations; and
- E. Awarding such further relief as this Court deems appropriate.

DRINKER BIDDLE & REATH LLP



Stephen C. Baker (Id. No. 32326)  
Katherine L. Villanueva (Id. No. 203848)  
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Dated: January 22, 2010

*Attorneys for Plaintiff, The Penn Mutual  
Life Insurance Company*

CERTIFICATE OF SERVICE

I, Elizabeth L. McLachlan, hereby certify that, on the date set forth below, I filed a copy of the foregoing Action for Declaratory Relief in the above-captioned matter.

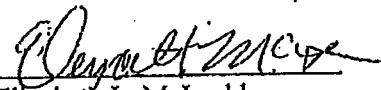
I also hereby certify that on the date set forth below, I mailed a copy of the aforementioned by regular mail to the following:

BNC National Bank  
333 S. 7<sup>th</sup> Street, Suite 150  
Minneapolis, MN 55402  
*For itself*

Joel Rosen  
James Shrimp  
High Swartz LLP  
40 East Airy Street  
Norristown, PA 19404  
*Attorneys for Ted Bernstein*

Gerald Carnago  
2033 Wabeek Hill Court  
Bloomfield, MI 48302  
*For himself*

Stephen D. Shutto  
842 Thorntree Court  
Bloomfield, MI 48304  
*For himself*

  
Elizabeth L. McLachlan


Dated: January 22, 2010



VERIFICATION

I, Frank Best, hereby state that I am an employee of The Penn Mutual Life Insurance Company, the plaintiff in the foregoing Complaint, and I verify that the statements made therein are true and correct based upon my personal knowledge, information and belief. The undersigned understands that the statements therein are subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904, relating to unsworn falsifications to authorities.

Date: 1/19/10



Frank Best