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November 14, 2013

**BY ECF AND FAX**

Hon. Paul G. Gardephe  
United States District Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

**Re: Novel Commodities S.A. v. QBE Insurance Corporation  
(Index No. 11-CV-6339)**

Dear Judge Gardephe:

We represent Defendant QBE Insurance Corporation ("QBE") in the above-referenced action. We write in response to Novel Commodities S.A.'s ("Novel's") letter to the Court of today. (Dkt. No. 102).

As Your Honor knows, the Court held a conference with QBE and Novel last Friday, November 8, to discuss QBE's application to pay the Judgment against it into Court pursuant to Rule 67 of the Federal Rules of Civil Procedure. QBE's Rule 67 application was made in light of the restraining notices served on it and its bank, JP Morgan, by Novel, as well as the competing claims to the Judgment Amount made by Polish Steamship Company and Polsteam Shipping Company (collectively, "Polish Steamship"), Wind Shipping Company S.A. ("Wind Shipping"), and Sullivan & Worcester LLP ("Sullivan & Worcester") (which has a claim for attorneys' fees against Novel in an amount not yet disclosed to QBE). At the conference, it was agreed to postpone QBE's application for one week while Novel attempted to reach a global agreement with all interested parties.

Today, Novel's agent in procuring the policy at issue in this case, Access Global Capital, LLP ("Access Global"), confirmed in writing that Access Global continues to claim a right to the policy proceeds that it first asserted against QBE in a letter dated April 11, 2013. (Dkt. No. 102 at 5 and 11). Although Novel attempts to diminish the validity of Access Global's claim, the fact that Access Global continues to maintain it means that Access Global must be included in any

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global settlement agreement resolving all of the claims to the Judgment Amount. Accordingly, QBE asked Novel to include its agent, Access Global, in the negotiations of the settlement agreement taking place among Novel, Polish Steamship, Wind Shipping, and Sullivan & Worcester. Novel, however, flatly refused QBE's request.

Without Access Global's consent to the settlement of this matter, and given its demand that QBE interplead more than \$900,000 into the Court, Novel has no basis to ask this Court "to direct QBE to pay the proceeds of the judgment as directed by Novel, Polish Steamship and Wind Shipping."

In addition to Access Global's demand against QBE for the Judgment Amount, there is another obstacle to resolving this matter by agreement among the parties. Today, Polish Steamship advised for the first time that it would not give QBE a release relating to the garnishment order it secured against QBE as part of the overall deal to resolve this matter amicably without QBE having to pursue its right to seek relief from this Court.

Thus, in light of Access Global's renewed claim for more than \$900,000 of the policy proceeds and Polish Steamship's refusal to grant QBE a release, there does not appear to be a way for QBE to resolve the competing claims against the Judgment Amount without the Court's assistance. QBE, therefore, will ask Your Honor at tomorrow's conference to grant: (1) QBE's application to pay the Judgment Amount into the Court's registry and (2) QBE's request for appropriate protection against Novel's, Polish Steamship's, Wind Shipping's, Sullivan & Worcester's, and Access Global's competing claims for the Judgment Amount.

We thank Your Honor for your time and consideration.

Respectfully submitted,

  
Stephen M. Kennedy

cc: Michael T. Sullivan, Esq. (via ECF)  
Karen E. Abravanel, Esq. (via ECF)