EXHIBIT A (PART 2)

"Sentry, Sigma and Lambda are hereinafter collectively referred to as the "Debtors""

and PwC Nederland and PwC Canada are named as the Funds' auditors (margin number 17, p. 10, para 1):

"Prior to the fiscal year ended 2006, the Debtors' auditors were PricewaterhouseCoopers Accountants N.V. of Rotterdam, the Netherlands ("PwC Netherlands"). From 2006 on, PricewaterhouseCoopers LLP of Toronto Canada ("PwC Canada") served as the Debtors' auditors."

3.43 Every year PwC issued an unqualified opinion on the relevant financial statements of the Funds. As a result of the fraud perpetrated over a number of years by BMIS, it is clear that the Funds' financial statements over the years, and certainly in the period 2000 to 2007 inclusive, presented a misleading picture of the financial position of the Funds.

3.44 For 2008, the year in which the fraud came to light, no financial statements were produced.

III.4 Importance and significance of PwC's role as auditor of the Funds

3.45 The role of PwC as auditor of the Funds and as a beacon of trust for investors and others, including the Plaintiffs, can hardly be underestimated. The issue, year after year without interruption, of unqualified audit opinions on the annual financial statements of funds as those involved in this case is an indicator for anyone doing business with or wishing to invest in such funds. An unqualified opinion means that, at the very least, qualitatively adequate audits have been performed by an auditor with professional skepticism. Banks, intermediaries, brokers, etc. do not sell or recommend funds if there is no such unqualified opinion. PwC's unqualified opinions did not have value only for investors, but also served a general interest.

3.46 PwC has presented itself in the market as "the" expert when it comes to auditing alternative – non stock-exchange traded – investment funds such as the Funds in question (**exhibit 31**).

3.47 Through PwC's active promotion of its expertise, the idea arose that, since PwC audited the Funds, a high degree of professionalism and expertise might and could be expected from these audits.

3.48 If no unqualified opinions had been given, it would have been impossible for the Funds to attract or continue attracting money from investors worldwide – including from the Plaintiffs and the Plaintiffs would not have lost their investment.

3.49 It is furthermore significant that, as will be extensively discussed hereunder, there was a strong need for thorough, effective and ongoing control mechanisms on the Funds in view of the heavy concentration of duties at BMIS and the absence of any other effective external supervision of the Funds by stock exchange or other authorities for example and/or supervisors. In this respect there was also a strong need for external checks on the Funds' internal control mechanisms, specifically on whether such mechanisms were actually in place and were being correctly applied. The foregoing underscores once again the importance and value of PwC's role as sole external and independent supervisor.

3.50 As one of the "Key Risks" mentioned in the PPM for Sentry, the following appears with regard to the risk of sub-custody (by BMIS) of Sentry's assets (**Exhibit 1**, p.19, **Exhibit 2**, p. 21):

"***Possibility of Misappropriation of Assets.*** *When the Fund invests utilizing the "split strike conversion" strategy or in a Non-SSC Investment vehicle, it will not have custody of the assets so invested. Therefore, there is always the risk that the personnel of any entity with which the Fund invests could misappropriate the securities or funds (or both) of the Fund.*"

The PPM for Sigma makes explicit mention of BMIS (**Exhibit 12**, p. 20):

"*17. **Possibility of Misappropriation of Assets**. When FSL invests with Bernard L. Madoff Investment Securities or in a Non-SSC Investment vehicle, it will not have custody of the assets so invested. Therefore, there is always the risk that the personnel of any entity with which the Fund invests could misappropriate the securities or funds (or both) of the Fund.*"

3.51 Actually these documents already point to the fact that the sub-custody of the assets entails a potential danger.

3.52 It is also significant that the Sentry PPM for 2006 refers to the following as key documents that can be requested from Sentry (**exhibit 2**, p. 35):

"***Documents Available for Inspection***

Copies of the following documents will be available for inspection at the offices of the Fund's registered office in the British Virgin Islands and the offices of the sponsoring broker during usual business hours on any weekday (Saturdays, Sundays and holidays excepted):

a) the Memorandum and Articles of Association of the Fund;
b) the material contracts of the Fund with the Investment Manager, the Administrator, Registrar and Transfer Agent;
c) the British Virgin Islands Mutual Funds Act, 1996;
d) when available, the latest financial statements of the Fund;
e) audited accounts as of the close of the last immediately fiscal year;
f) Auditors letter of consent; and
g) a list of all past and present directorships and partnerships held by each Director over the past five years."

This undeniably indicates that PwC's role was substantial, in view of its involvement in the production of a number of key documents relating to the Funds.

3.53 As will be explained in more detail in the legal context discussed hereunder in the light of the Vie d'Or ruling, the audit and approval of financial statements has external effects. Moreover, in expressing its opinion, PwC clearly addresses third parties such as investors in the Funds (see for example **exhibit 22**, p.23 under the heading "*To the directors and shareholders of*"). PwC thus knew that the declaration was not addressed only to the directors.

3.54 Lastly, in this context it is important to mention that a cloud of mystery and non-transparency hung over BMIS, and that this was known to the markets. That this too was known to PwC will be shown later. BMIS refused for example any form of due diligence by third parties. BMIS/Madoff did occasionally agree to 'conversations' with third parties, but the scope of these conversations was extremely limited.

3.55 All these factors meant that PwC's audits can be considered as being of great importance and even indispensible for forming a judgement as to the reliability of the Funds and their activities.

III.5 The disciplinary proceedings

3.56 In a complaint dated 3 January 2011, the Plaintiffs submitted a complaint to the *Accountantskamer* (Disciplinary Court for Auditors) in Zwolle against Mr. H.F.M. Gertsen R.A. in his capacity as partner of PricewaterhouseCoopers Accountants N.V. Mr. Gertsen signed unqualified opinions on the financial statements of Sentry for the financial years 2003, 2004 and 2005. Sentry's financial statements for financial years 2000 to 2002 inclusive were audited under the responsibility of two other partners of PwC.

3.57 In the disciplinary hearing, the Plaintiffs and Mr. Gertsen exchanged the usual court filings (including reply and rejoinder). On 6 January 2012 the Disciplinary Court for

Auditors declared the complaint unfounded. **Exhibits 32 to 37 inclusive** relate to the documents produced in the disciplinary proceedings.

3.58 For reasons of their own, the Plaintiffs did not appeal against the decision of the Disciplinary Court for Auditors. Part of those reasons was the fact that it has become clear to the Plaintiffs that production of the audit files is necessary for the establishment of their legal position vis-à-vis PwC Nederland and PwC Canada, and that a claim under Article 843a of the Dutch Code of Civil Procedure in a civil action lends itself better thereto than a disciplinary action. Furthermore at that time the decisions of the District Court of Amsterdam regarding Article 843a of the Dutch Code of Civil Procedure (16 December 2011 LJN: BP3071 and 27 March 2012 LJN: BW0075) had not yet been pronounced or published. The Plaintiffs are therefore requesting in these present proceedings that the audit files be produced. Furthermore the Plaintiffs are seeking compensation for the damage that they have suffered, and this too cannot be claimed in disciplinary proceedings.

3.59 It is also significant that the ruling of the Disciplinary Court for Auditors focused only on (i) Mr. Gertsen's conduct as partner of PricewaterhouseCoopers Accountants N.V. regarding (ii) financial years 2004 and 2005 (because of the statute of limitations applying to disciplinary cases brought before the Disciplinary Court for Auditors) of (iii) Sentry and (iv) made no judgement as to the contents of any relevant audit files. Mr. Gertsen had curiously enough refused to produce his audit files voluntarily, in spite of repeated requests by the Plaintiffs. On this last point - which is crucial to the present claim - the Disciplinary Court for Auditors did however expressly state that it did not exclude the possibility that "*an (in-depth) investigation of the audit files in dispute*" might give rise to "*new facts and/or circumstances*" being identified. The subject of these present proceedings moreover is not only the improper actions of PricewaterhouseCoopers Accountants N.V., but also those of PricewaterhouseCoopers N.V. and PwC Canada. Furthermore the present proceedings relate also to the auditor's reports on Sigma and Lambda, and are not limited to financial years 2004 and 2005 but also encompass financial years 2001, 2002, 2003, 2006 and 2007. The

present proceedings also focus on an investigation into PwC's actual performance of its audit assignments as must appear from the audit files.

3.60 Both the parties to the proceedings and the factual and legal points in dispute are therefore so different as to resist application of the disciplinary judge's ruling to the present civil case. The Supreme Court has determined that it must be accepted as a starting point that disciplinary proceedings cannot be referred to as a reasonable standard for establishing liability, because the disciplinary judge applies partly different criteria (Supreme Court 10 January 2003, NJ 2003, 537, Supreme Court 13 October 2006, NJ 2008, 528 and District Court of Rotterdam, 18 January 2012, LJN BV1975) so that for this reason too no binding authority can be derived from the ruling of the Disciplinary Court for Auditors. Accordingly the defences and arguments raised by PwC in the disciplinary proceedings will also be addressed in that light in the present summons.

IV. APPLICABLE LAW

IV.1 Misconduct (tort)

4.1 With effect from 1 January 2012 the WCOD (*Wet conflictenrecht onrechtmatige daad* or Conflict of Laws (Tort Cases) Act (hereinafter the "WCOD")) was replaced by Title 14, Book 10 of the Dutch Civil Code. However the provisions of the WCOD are relevant to the claims in hand re tort since the events having caused damage and loss took place before 1 January 2012.

4.2 Pursuant to the WCOD, claims arising from tort are in principle, subject to a choice of law, governed by the law of the country where the tort has occured (*lex loci delicti*). This rule is laid down in Article 3 section 1 of the WCOD, which also refers to the standard ruling of the Supreme Court of 19 November 1993, NJ 1994, 622, nt JCS and PvS (COVA).

4.3 In the present proceedings the most important connecting factors point to the law of the Netherlands as *lex loci delicti*. The Plaintiffs' claim for liability is based on (1) deficient checks by PwC on inter alia the Funds' assets and (2) unqualified and misleading opinions issued on the basis of these deficient checks.

4.4 The core of PwC's activities concerned checks on (the existence of) the Funds' assets. As already mentioned above, the Funds' assets were entrusted for custody to a Dutch custodian, Citco. The fact that a sub-custodian (BMIS) was appointed does not affect the issue. This is confirmed by the Brokerage and Custody Agreement with Sentry of 17 July 2003: "*The Securities held at any one time by the Custodian or any sub-custodian shall be recorded in and ascertainable from the books and/or ledgers of the Bank and the Custodian*" (Article 7.2.). The Brokerage and Custody Agreement was moreover subject at all times to Dutch law. The - deficient - performance of the audit assignment also took place in the Netherlands. Moreover the assignment to PwC was entrusted to PwC Nederland. The activities were thus connected only to the Dutch legal sphere. The Plaintiffs do not know why or by whom PwC Canada was at some point in time brought into the picture. PwC Canada did however immediately replace PwC Nederland, which brought with it a certain continuity in the – deficient – auditing of the Funds' financial statements. The above allegations regarding audits by PwC Nederland apply equally to PwC Canada. There is no point of connection whatsoever with the Canadian legal sphere.

4.5 Regarding the unqualified opinions given by PwC Nederland, there is also a second connecting factor that points to Dutch law. For the issuance of the unqualified yet misleading opinions, Rotterdam has to be cited herein as the place where this tort (the issuance of unqualified yet misleading opinions) took place.

4.6 The foregoing means that the conduct of PwC Nederland vis-à-vis the Plaintiffs and the Plaintiffs' claims against PwC Nederland can be governed only by Dutch law. The conduct of PwC Canada vis-à-vis the Plaintiffs and the Plaintiffs' claims against PwC Canada are also governed by Dutch law.

IV.2 Performance of task

4.7 The financial statements to be audited by PwC were prepared in accordance with the International Financial Reporting Standards ("IFRS"). The IFRS are accounting standards for corporate financial statements. The body responsible for setting the IFRS is the International Accounting Standards Board ("IASB"). Auditors are supposed to check whether companies have followed the IFRS in drawing up their financial statements.

4.8 PwC Nederland carried out its audits on the basis of the International Standards on Auditing ("ISA") (see for example **exhibit 22**, p. 23):

"*We conducted our audit in accordance with international standards on auditing. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.*"

4.9 The ISA contain rules and guidelines for performing audits, and are set by the International Auditing and Assurance Standards Board, a private organisation of auditors ("IAASB") under the International Federation of Accountants. In the Netherlands these ISA were incorporated in the RAC (*Richtlijnen voor de Accountantscontrole* or Audit Guidelines), which were updated and converted with effect from 1 February 2007 into the COS (*Controle- en overige standaarden* or 'Auditing and other standards', hereinafter the "COS"). During 2007 these were confirmed in the form of more detailed regulations under the name *Nadere Voorschriften Controle- en overige standaarden* or 'further regulations on auditing and other standards', hereinafter the "NV COS", as a result of which they acquired a more obligatory character for auditors.

4.10 PwC Canada conducted its audits on the basis of the United States Generally Accepted Auditing Standards ("US GAAS") (see for example **exhibit 23**, p. 6):

"*In our opinion, the accompanying balance sheet and the related income statement, the statement of changes in net assets attributable to holders of redeemable participating shares and the cash flow statement present fairly, in all material respects, the financial position (...) and the results of its operations, the changes in its net assets attributable to holders of redeemable participating shares and its cash flows for the year then ended in conformity with International Financial Reporting Standards. (...) We conducted our audit of these financial statements in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by the Company's management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.*"

4.11 The US GAAS are American guidelines supporting auditors in their audits of annual financial statements. They are issued by the American Institute of Certified Public Accountants ("AICPA"). These standards prescribe the minimum levels of performance and quality that audits must meet. The standards laid down in the US GAAS are in all respects consistent with those of the ISA. That means that the audit activities of PwC Nederland and PwC Canada are effectively subject to the same auditing standards.

4.12 This implies that for these proceedings reference can be made to the applicable ISA.

V. LEGAL FRAMEWORK

V.I Auditor's duty of care vis-à-vis third parties

5.1 Under Dutch law the auditor is required generally to act with the degree of care that may be expected of a reasonably competent and reasonably acting professional in carrying out his activities. If he fails in his duty of care, he can be held liable to his client for the damage arising from such failure.

5.2 An auditor can also be held liable to third parties: such liability may arise in relation to activities the outcome of which has a certain external effect: third parties must be able to be informed of the outcome of the activities and must be able to rely on them. Such an external effect applies in any case to the auditing and approval of financial statements. On the subject of this 'public role' of financial statements, we quote from the preamble to the Wta (*Wet toezicht accountantsorganisaties* or Act on the Supervision of Audit Firms (hereinafter "Wta") (*Parliamentary documents II* 2003/04, 29 658, no. 3, p. 2 (preamble): "*financial reporting – for which the Management is primarily responsible – accompanied by an unqualified audit opinion, forms a source of information to which society attaches more than average value.*" Article 1 of the Wta also describes the audit of financial statements as being for the benefit of society.

5.3 In its Vie d'Or ruling of 13 October 2006 (NJ 2008, 528), the Supreme Court, in r.o. 5.4.1, confirmed the external effect of the financial statements:

"*The interests served by proper performance of the external auditor's task are not confined to those of the company whose financial statements are involved. In the social environment third parties are entitled to expect that the information as published, often mandatorily, and accompanied by an auditor's unqualified opinion, will reflect, in the auditor's independent and objective view, a true and fair picture of the assets, results, solvency and liquidity of the company and that the financial statements will comply with the requirements of the law and of applicable regulations including EU regulations and will conform to the relevant rules and standards*

generally accepted in this profession. Third parties must also be able to base their behaviour on this information and be able to rely on the picture presented not being misleading when taking their financial or other decisions. Thus the auditor's performance of his tasks also serves a vital public interest."

5.4 The Supreme Court thus points to the fact that the auditor's task also serves a vital public interest. The interests served by the performance of his task are not confined to those of the company whose annual report and financial statements are concerned. The Supreme Court adds that this is particularly the case with the legal audit of financial statements and that consequently stringent demands must be made as to the degree of care to be exercised by the auditor.

5.5 In the Vie d'Or case the Supreme Court also elaborated, in r.o. 5.4.2, on the demands made regarding the auditor's duty of care:

"*In answering the question as to whether the external auditor has acted in accordance with the degree of care called for in the specific case, bearing in mind the foregoing assumptions, all the circumstances of the case have to be assessed.*
In so doing an investigation must be carried out into whether and if so to what extent (mandatory) guidelines set out in national or European legislation regarding the performance of that task – such as in the present case those regarding the financial reporting of life insurance companies - have been complied with. Other factors to be taken into account in the assessment include the nature of the rule breached and the seriousness of an established breach thereof, the measures taken or information provided by the auditor, the extent to which the risk of damage by harm to the financial interests involved in this case was reasonably foreseeable for the auditor and, partly in this connection, whether control and other measures have been taken and such warnings given as in the given circumstances the auditor could reasonably be expected to give in order to prevent this danger."

5.6 Thus according to the Supreme Court, in assessing the question as to whether the auditor is liable to a third party in any given case, all the circumstances of the case

must be taken into account. According to the Supreme Court the following questions will in any case play an important role in this:

1) has the auditor complied with the rules (national and European) in place for the activities in question?
2) which rule has been broken, and how serious is the breach?
3) what measures has the auditor taken, and what information has it provided to its client?
4) to what extent was the damage actually suffered foreseeable?
5) as regards this predictability: has the auditor taken reasonable controlling or other measures or issued warnings aimed at preventing the damage?

5.7 In Steens / Crossroads c.s. (District Court of Rotterdam, 15 October 2008, JOR 2009, 65) the District Court considered, in r.o. 5.5, that the extent of the auditor's duty of care is greater when he is performing his activities in the context of his legally assigned task, than when he is performing activities that fall outside it. In the case of activities connected with the task assigned to him the starting point is a certain duty of care on the part of the auditor towards third parties. The District Court confirmed that third parties are in principle entitled to base their behaviour on the information provided concerning the auditor's report and that in taking or maintaining their decisions, financial or otherwise, they may rely on the picture presented not being misleading.

V.2 Audit standards to be complied with

5.8 The answer to the question as to which extent PwC can be held liable vis-à-vis the Plaintiffs thus depends on the answer to the question as to which extent PwC complied with the ISA in carrying out its audits. There follows a brief discussion of the relevant ISA auditing standards.

5.9 ISA 200 obliges the auditor to apply professional care in planning and performing the audit so as to obtain a reasonable assurance that the financial statements do not contain

material misstatements as a result of error or fraud. ISA 200 establishes that the auditor should set up and perform the audit with a degree of 'professional skepticism', taking account of the possibility that there may be circumstances that could lead to the financial statements to be audited containing material misstatements. According to ISA 200, professional skepticism involves the auditor making a critical assessment, with a questioning mind, of the validity of audit evidence obtained and is alert to audit evidence that contradicts or brings into question the reliability of documents or management statements. ISA 200 also stipulates that representations from the management are not a substitute for obtaining sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion. From that starting point it is stressed that in performing his audit the auditor may not unquestioningly rely on information provided by the company being audited.

5.10 ISA 240 deals particularly with the auditor's responsibility with regard to the detection of fraud or error in the financial statements. From the planning stage and throughout the performance of the audit procedures aimed at bringing the audit risk down to an acceptably low level, the auditor should consider the risks of material misstatement in the financial statements due to fraud. In obtaining an understanding of an entity's financial status and environment, the auditor must consider whether the information that he has gathered gives an indication of the existence of one or more fraud risks factors. If in the course of his audit work the auditor identifies unusual or unexpected relationships that could point to material misstatement due to fraud, he is required to evaluate them. In order to obtain a reasonable degree of assurance that the financial statements as a whole do not contain any material misstatement due to fraud or error, the auditor must in any case apply his professional skepticism in considering the possibility of management having overrided internal controls, and the auditor must recognise the fact that audit procedures that are effective for detecting error may not all be suitable in the context of a flagged risk of material misstatement due to fraud. Thus the auditor must not be satisfied with less-than-persuasive audit evidence based on a belief that management and those charged with governance are honest and have integrity.

5.11 According to ISA 315 the auditor is required to obtain an understanding of the entity and its environment, including the internal control structure, in order to detect and assess any risks of material misstatement in the financial statements to be audited and to plan and perform further audit procedures. ISA 315 prescribes literally that the auditor must gain an understanding of all internal controls that are relevant to the audit. Once any risks have been detected, the auditor must then, as part of his risk assessment, establish which conditions or factors in the audit point to a risk of material error.

5.12 ISA 330 concerns the auditor's responsibility for determining overall responses and designing and performing further audit procedures to respond to the assessed risks of material misstatement at the financial statement level as well as designing and performing further audit procedures whose nature, timing and extent are based on and are responsive to the assessed risks of material misstatement at the assertion level. Furthermore, according to ISA 330 the auditor, irrespective of the assessed risks of material misstatement, must perform substantive procedures for each material class of transactions, account balance, and disclosure, including notes to the financial statements. The auditor is also required to consider whether external confirmation procedures are to be performed as substantive audit procedures. According to ISA 330 the higher the auditor's assessment of a risk, the more persuasive the audit information obtained must be. To obtain more persuasive audit evidence, the auditor may increase the quantity of the evidence, or obtain evidence that is more relevant or reliable, or both. For example he may place more emphasis on obtaining evidence directly from third parties, or on obtaining corroborating evidence from a number of independent sources. Requesting external confirmations may also help the auditor to obtain audit evidence with the degree of reliability that the auditor considers necessary in order to be able to respond to significant risks of material misstatement due to fraud or error. According to ISA 330 the audit documentation must show that there is sufficient appropriate audit evidence forming a proper basis for the auditor's opinion as expressed. If the auditor has not obtained sufficient appropriate audit evidence as to a material financial statement assertion, he must attempt to obtain further audit evidence. If the auditor is unable to obtain sufficient appropriate audit evidence, he

should express a qualified opinion or a disclaimer of opinion on the financial statements.

5.13 ISA 402 establishes guidelines for performing audits of companies that make use of service organisations, and states that the auditor must at least establish the significance of service organization activities to the entity and the relevance to the audit. If the auditor concludes that these activities are significant to the entity and relevant to the audit, he must obtain a sufficient understanding of the financial affairs and internal controls of the service organisation to be able to identify and assess any risk of material misstatement and design further audit procedures in order to respond to the assessed risk. In so doing, the auditor may make use of any report by the auditor of the service organisation. If the auditor makes use thereof, he must consider making inquiries concerning the professional competence of the auditor of the service organisation in the context of the specific assignment undertaken.

5.14 ISA 500 states that the auditor must obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion. ISA 500 requires the auditor, in auditing any particular process, to endeavour to obtain audit evidence of different kinds and from different sources. As regards reliability, it says that:

- external documents such as third-party confirmations are more reliable than internal confirmations;
- audit evidence is more reliable when the administrative organisation and internal management to which they are subjected are effective.
- audit evidence obtained directly by the auditor is more reliable than information obtained from the entity to be audited.
- written records and communications are more reliable than information obtained orally.

V.3 Application of legal framework

5.15 From the information available to date on the financial statements, and the confirmation that large-scale fraud was perpetrated (the assets of the audited Funds did not exist), the Plaintiffs can only conclude that PwC failed in conducting its audits and that PwC failed to comply with some of the most important ISA. PwC continues to refuse to give access to its audit procedures, and confines itself to adopting a position without backing it up with documents. PwC did not even make use of the disciplinary proceedings to produce its audit files. By acting in this mysterious way, PwC leaves crucial question marks hanging over whether it audited the Funds' financial statements properly or not. More specifically, the Plaintiffs allege that, in its audits, PwC did not exercise the required degree of professional care and fell short of its obligation to conduct the audit with a degree of professional skepticism. Amongst other things, PwC gave insufficient consideration to the possible existence of the circumstances that in fact led to the financial statements of the Funds containing material misstatements due to fraud.

(a) Insufficient understanding

5.16 PwC obtained insufficient understanding of the Funds and their environment, including their internal control mechanisms, to be able to detect and assess the risks of material misstatements in the financial statements as a result of error or fraud. Given the importance of the service providers' activities, PwC also obtained inadequate information regarding the financial status and internal control systems of the Funds' service providers.

Citco

5.17 The essential roles performed by the Citco group were sufficiently known to PwC. PwC wrongfully failed to obtain sufficient understanding of the financial administration and internal control at Citco and was therefore not in a position to

detect and evaluate the risk of material misstatement or to set up complementary audit procedures to counter the assessed risk.

5.18 As explained above (see margin numbers 3.13 to 3.29 inclusive), the Citco entities performed essential tasks and duties for the Funds, regarding inter alia the assets and financial transactions of the Funds and information on same. Specifically the following tasks and duties were involved:

(i) as custodian:

- "*Citco Custody (...) shall be responsible to the Fund for the duration of the sub-custody agreement for satisfying itself as to the ongoing suitability of the sub-custodians to provide custodial services to the Fund. Citco Custody will also maintain an appropriate level of supervision over the sub-custodians and will make appropriate inquiries periodically to confirm that the obligations of the sub-custodians continue to be completely discharged.*" (**Exhibit 1**, p.15)
- "*Citco Bank (...) shall be responsible to the Fund for the duration of the sub-custody arrangement for satisfying itself as to the ongoing suitability of the sub-custodian to provide custodial services to the Fund. Citco Bank will maintain an appropriate level of supervision over the sub-custodian(s) and make appropriate enquiries, periodically, to confirm that the obligations of the sub-custodian(s) continue to be competently discharged.*" (**Exhibit 2**, p.16)

(ii) as administrator:

- "*reconciliation of cash and other balances at brokers*";
- "*reconciliation of bank accounts*";
- "*independent reconciliation of the Fund's portfolio holdings*";
- "*calculation of the Net Asset Value and Net Asset Value per Share on a monthly basis in accordance with the Fund Documents*";
- "*preparation of monthly financial statements, in conformity with the International Accounting Standards*"

- *"preparation of books and records (including specific schedules and analysis) to facilitate external audit, and liaising with the Fund's auditors in their review and preparation of the annual financial statements"*
- *"reconciliation of information provided by the Fund's prime broker and custodian with information provided by the Investment Manager"* (**Exhibits 14** and **15**, p. 18 and 19)

In view of (i) the involvement of BMIS as sub-custodian in the whole structure of the Funds, (ii) the combination of essential functions – manager, custodian and broker/dealer – in BMIS, which placed the Funds under the influence and control of BMIS and (iii) the position of BMIS as exclusive source of information regarding the assets and transactions of the Funds, it was all the more important for PwC to check on whether the abovementioned tasks were being correctly performed by Citco, the more so as this intervention of BMIS was considered as a risk:

"***17. Possibility of Misappropriation of Assets.*** *When FSL invests with Bernard L. Madoff Investment Securities or in a Non-SSC Investment vehicle, it will not have custody of the assets so invested. Therefore, there is always the risk that the personnel of any entity with which the Fund invests could misappropriate the securities or funds (or both) of the Fund.*" (**Exhibit 1**, p. 20)

5.19 Until at least 30 November 2005, PwC wrongfully failed to assess, or at least failed to adequately assess, the internal control measures at Citco. Indeed, in the disciplinary proceedings PwC did state that the internal control measures at Citco worked, but produced no proof whatsoever of this allegation (**exhibit 33**, p. 10, margin number 3.5.). One of Citco's tasks for example was the external reconciliation of the information that BMIS provided on the (trading) transactions carried out by BMIS for the Funds. This task was expressly included in the list of services that CFS provided to the Funds under the Administration Agreement. Since the only information available regarding the trading or other activities of BMIS originated from BMIS, the external

reconciliation by Citco was of crucial importance. In the absence of any evidence, the Plaintiffs dispute PwC's assessment of Citco.

5.20 On 30 November 2005 Ernst & Young supposedly issued an SAS 70 statement showing that Citco had an adequate internal control system (**exhibit 33**, p. 51, margin number 7.6.1.). An SAS 70 investigation looks into the internal management of service organisations such as Citco. PwC has not communicated the SAS 70 statement to the Plaintiffs. It is therefore unclear what Ernst & Young investigated and at which Citco entities, what was the outcome of the investigation and whether Ernst & Young made any observations or expressed any reservations. The question therefore also arises as to which extent PwC was justified in relying on Ernst & Young's statement from 2005 onwards. On top of this, even supposing that the SAS statement indeed showed that Citco's internal control system was adequate, PwC should have checked that Citco was actually applying that system to the Funds, in view of the fact that practically all other controls were with BMIS. After all, this statement gives no information on how Citco performed its tasks and duties in the specific context of the Funds. This SAS 70 statement was not issued with reference to the Funds. PwC should therefore have carried out specific, tangible audits, in the context of the Funds, on Citco's performance of its tasks and duties as custodian, depository and administrator of the Funds. PwC has neglected to do so.

5.21 PwC's defence that CBN and CGC were under the supervision of DNB does not affect this obligation (**exhibit 33**, p. 25, margin number 6.2.33.); DNB supervision does not provide PwC with the required degree of understanding.

BMIS

5.22 In the context of its audit procedures of the Funds, PwC failed to carry out an adequate and appropriate investigation of BMIS. PwC knew that BMIS played an important role in the Funds' financial affairs. PwC also knew that BMIS acted as sub-custodian for the Funds. PwC knew too that this was described as a risk factor in the Funds' documentation. More than 95% of the Funds' assets were consistently entrusted to

BMIS, which also effectively managed these assets. The performance that BMIS had recorded on these assets constituted practically the only source of revenue (i.e. investment results) for the Funds.

5.23 In view of the close relationship between BMIS and the Funds, PwC should have carried out further investigations into the activities of BMIS, in the context of obtaining an understanding of the financial affairs and environment of the Funds. PwC should in any case not have accepted unquestioningly that overviews of the assets on the Funds' balance sheets - which was based on information coming directly and exclusively from BMIS - were reliable, without making its own controls on whether these assets actually existed – all the more so as PwC was well aware of the role and structure of BMIS in the sense that it combined the functions of custodian and prime broker/manager and the fact that this structure exposed the Funds' assets to risks of fraud, loss and bankruptcy. Moreover, these risks were expressly referred to in the Fund documentation. This remarkable and risky structure, given that not less than 95% of the Funds' assets were entrusted to BMIS, in combination with the fact that Madoff/BMIS refused to grant access and disclosure, put PwC under an obligation to carry out closer investigations of BMIS/Madoff. This obligation follows from its close relationship with the Funds as sub-custodian, manager and broker/dealer, and in any case from its capacity as a service organisation.

5.24 PwC knew, or at least should have known, that neither Citco nor Fairfield could exert any effective control over Madoff/BMIS (and that such control was therefore in effect non-existent) other than by verifying information from parties other than Madoff/BMIS (reconciliation with independent third parties). After all, approximately 95% of the Funds' US$7.2 billion of assets were entrusted to BMIS. Given that both the custody and trading activities were entrusted to Madoff/BMIS and that as a result complete control of the monies entrusted rested with Madoff/BMIS, PwC should have paid extra attention to (i) the controlling functions that were present within the Funds and (ii) the controlling functions that should have been present within the Funds. Furthermore PwC should have paid extra attention to (iii) Madoff/BMIS in view of this entity's crucial role for the Funds.

5.25 An investigation of BMIS was therefore a necessary part of the process of determining the necessary audit procedures to be applied to the Funds. Moreover, BMIS' financial statements were audited by a single person, who as such was incapable of performing a proper audit of the financial statements of BMIS, whose activities consisted in the management and custody of funds worth several billion dollars. In view of this fact, PwC should have made further enquiries and performed additional audit controls on BMIS. The financial statements of BMIS were audited by a firm called Friehling & Horowitz. Very few people worked at this office: apart from CPA David Friehling, there was just an administrative assistant and the partly retired Horowitz. On 3 November 2009 Friehling pleaded guilty to a number of criminal charges relating to BMIS. He admitted to practically rubber-stamping the financial statements of BMIS over the course of many years. PwC should immediately have identified the fact that BMIS effectively had its financial statements checked by a single person as a risk factor. After all, one is entitled to expect a firm such as BMIS with assets of several billion dollars under management and/or in custody to have its financial statements audited by a firm having the capacity to perform annual audits for organisations of the scale of BMIS.

5.26 In this respect it is striking that PwC Toronto, in an audit plan for the audit of the financial statements of 2008, saw the need to perform tests at BMIS (**exhibit 38**, p. 11):

Bernard L. Madoff Investment Securities LLC - custodian - sub-custodian - prime broker	Through discussion and enquiry with Bernard L. Madoff Investment Securities LLC, we will obtain an understanding of the key control activities as they relate to the operations and processes over the custodian, sub-custodian and prime broker functions. We will perform transaction testing on the investment strategy applied by Bernard L. Madoff Investment Securities LLC, for the applicable Funds.

5.27 In the disciplinary proceedings, PWC stated that in view of the reputation of BMIS/Madoff, made it possible to dispense with tests on internal controls at BMIS and checks on whether BMIS' auditor was equipped to perform audits on BMIS practically alone,(**exhibit 33**, p. 36, margin number 6.2.72). SEC oversight was also

alleged as having released PwC from complying with its obligation (**exhibit 33**, p. 41, margin numbers 6.4.1). This defence cuts no ice. The supposed success of BMIS/Madoff, their reputation and SEC oversight are not relevant to the performance of an audit, and do not release PwC from the obligation to make further enquiries about BMIS. After all, these circumstances do not provide PwC with the degree of understanding of BMIS/Madoff and their internal control mechanisms required by the ISA. It is therefore incomprehensible that PwC should have dispensed with the obligatory audit procedures based on the aforementioned circumstances.

5.28 Nor did the visit by PricewaterhouseCoopers Bermuda ("PwC Bermuda") to BMIS/Madoff in December 2004, as alleged in the disciplinary proceedings, provide PwC with the required degree of understanding; indeed the purpose of this visit was emphatically not to perform checks on BMIS (**exhibit 34**, p. 5, margin number 3.9). It is not clear what activities PwC Bermuda did carry out regarding BMIS on that visit, nor is it clear whether it also visited BMIS before and/or after 2004. The question also remains as to how much reliance PwC placed on the activities of PwC Bermuda. What is clear is that PwC performed no testing at BMIS and therefore did not have knowledge of all internal control mechanisms relevant to its audit procedures.

Fairfield

5.29 PwC also failed to assess the internal control system of Fairfield, which in view of Fairfield's prominent role as investment manager, was required.

5.30 In the disciplinary proceedings, PwC sought to justify the omission by referring to an Administrative Complaint filed by the Massachusetts Securities Division Enforcement Section (**exhibit 33**, p. 9, margin number 3.3.2). The fact that in this Administrative Complaint Fairfield represented that it '*carefully assess(es) the controls and procedures that managers have in place and seek to determine actual compliance with those procedures, often suggesting modifications, separation of responsibilities and remedial service provider, technology, or staff additions*", is not relevant. In any case it does not constitute grounds for PwC to validly rely on Fairfield having a functioning

internal control system as claimed, and therefore does not release PwC from its obligation to assess Fairfield's control systems. Additionally, PwC did not verify Fairfield's allegations, made in its marketing materials, that it performed exhaustive due diligence.

5.31 Supervision of Fairfield by the FSC from 2006 on affords just as little excuse for the omission (**exhibit 33**, p. 7, margin number 3.2.1). As said, such oversight does not provide PwC with the required degree of understanding. Nor does Fairfield's supposedly wide experience in investment activities have any effect on the scope of the audit of the financial statements to be performed by PwC (**exhibit 33**, p. 49, margin number 7.4.3).

(b) Insufficient tests of controls

5.32 With regard to audit evidence, PwC performed insufficient tests of controls. Although audit evidence should in principle be obtained through a suitable combination of system-based and substantive procedures, PwC opted for the substantive audit approach, to which there is no objection *per se*, provided the information thus obtained is sufficient to enable the auditor to reasonably draw conclusions on which to base an opinion. PwC did not obtain sufficient audit evidence on the adequacy of the setting up or the effectiveness of the operations of the administrative organisation and internal control of the Funds. These are aspects of audit evidence that can typically be obtained by means of tests of controls. Such information would have enabled PwC to obtain a sufficient understanding of the internal control mechanisms to be able to establish an audit plan.

5.33 In the disciplinary proceedings, PwC put forward a number of arguments for opting for the substantive approach (**exhibit 33**, p. 49, margin numbers 7.4.2 et seq.). None of these arguments implies that sufficient audit evidence was obtained showing that PwC was justified in expressing its unqualified opinions. So PwC also placed unwarranted faith in the arguments which it put forward:

- the structure of the Funds was anything but normal, in view of the construction in which Citco acted as custodian and BMIS as sub-custodian, manager and prime broker. The involvement of BMIS is even considered as a risk in the information on the Funds;
- by performing no, or at least no sufficient tests of controls, PwC was unable to confirm whether Sentry was actually professionally managed and whether the Citco entities had effectively carried out the tasks and duties assigned to them (supervision and investigation of the sub-custodian, reconciliation of information, etc.);
- the allegations made by Fairfield in its marketing materials that it performed due diligence were not verified by PwC;
- until the SAS 70 declaration of Ernst & Young, PwC was unable to assess the control mechanisms at Citco, and it is also not clear whether and if so to what extent PwC performed checks on Citco after the SAS 70 declaration was issued (this declaration was after all never produced by PwC);
- in the absence of an understanding of the operations of the control mechanisms of the abovementioned service organisations, PwC had not obtained sufficient assurance to be able to confirm that information and statements obtained from them did not contain any material misstatements. A purely substantive audit was thus not sufficiently effective;
- Fairfield's experience in investment activities has no effect on the scope of the audit of the annual financial statements to be performed by PwC;
- the same holds true for reputation and oversight; these circumstances are irrelevant to the decision as to whether or not to perform tests of controls.

5.34 Because PwC obtained insufficient audit evidence, it did not reduce the risk of material misstatement in the Funds' financial statements to an acceptable level. Moreover, the information on which PwC relied in carrying out its audit assignment was limited to information provided by broker/custodian BMIS, with no verification at, or confirmation by, an independent third party, and as such this information was insufficient and unreliable.

5.35 In the context of the substantive audit, BMIS can hardly be regarded as an independent third party, since practically all the money invested in the Funds were passed on to BMIS; so there can be no question of an external confirmation from BMIS in this context. Consequently the reliability of the information provided by BMIS is considerably limited. PwC should have taken account of this in its assessment, rather than unquestioningly accepting the information provided by BMIS as true. Here too PwC showed insufficient professional skepticism, wrongly failing to perform any additional checks or to obtain external confirmations as required when, as in this case, there is no segregation of crucial roles.

5.36 PwC did not follow the required procedures to obtain sufficient information so as to be able to derive comfort from and fully rely on the declarations obtained from BMIS. It is remarkable, and incomprehensible, that PwC should have drawn such comfort from a visit by PwC Bermuda to BMIS as to decide that in auditing the Funds' financial statements a substantive approach would suffice (**exhibit 33**, p. 33, margin number 6.2.63). If PwC had actually used the knowledge gained by PwC Bermuda in assessing the risks associated with the Funds, it would have reached the conclusion that for auditing the Funds a substantive approach would not suffice. A test of controls approach at Funds level would have been the more obvious choice, in the context of which PwC would have been able to acquire a greater understanding and could have revealed the risks associated with BMIS to which the Funds were exposed. In any case a single visit to BMIS does not suffice. Moreover PwC Bermuda stated explicitly in its report of 15 March 2005 that the scope of its assignment with BMIS was extremely limited: "*the procedures performed are not directed to the providing of assurance in respect of internal control, nor to the detection of fraud, errors or illegal acts. The procedures performed do not constitute an audit nor an investigation of the internal controls of/at BLM.*" (**Exhibit 39**, p. 1)

5.37 As a result of its conduct, PwC obtained insufficient appropriate and independent audit evidence regarding the existence of the investments and the assets of the Funds that were entrusted to BMIS. PwC did not follow the necessary procedures to verify the existence of assets and liabilities shown in the balance sheets and to check their

value. It can absolutely not be assumed that the financial assets shown in the balance sheets in the Funds' financial statements at closing date - mainly US Treasury bills – actually existed or at least were actually in the Funds' possession. PwC wrongly neglected to verify the existence and value of these assets, while the unqualified opinions on the financial statements are largely based on PwC's erroneous assumption that these assets existed or had existed. The same is true of the item 'investment results' in the income statement. PwC obtained no satisfactory assurance that the US Treasury bills were (i) actually acquired or (ii) registered in the name of the Funds. The fact that the 'cost price' of the US Treasury bills in the Funds' financial statements matches the information that PwC apparently requested from BMIS in the context of its substantive audit is hardly surprising, considering that the Funds' financial statements were drawn up from the same information as that which BMIS supplied to the Funds. PwC was thus 'checking' information against identical information, i.e. not checking anything at all.

5.38 PwC also neglected to carry out the necessary procedures to check the existence of the transactions implementing the SSC Strategy (see margin number 3.30 of this summons), such as obtaining confirmation from counterparties, obtaining confirmation of settled transactions or through the physical checking of collateral.

5.39 In nevertheless issuing unqualified opinions on the financial statements, PwC failed to comply with audit standards, and at the same time there was no proper basis for such opinions.

5.40 Based on the foregoing we may conclude that PwC failed to comply with some of the most important ISA. PwC thus fell short in its (legal) duties as auditor of the Funds by failing to comply with regulations regarding the performance of its duties. Had PwC acted as should be expected of a competent and reasonable auditor, it would not have issued unqualified opinions.

5.41 The seriousness of the breach is thus established. If no such unqualified opinions had been given, it would have been impossible for the Funds to attract or continue

attracting investors' money – including that of the Plaintiffs – worldwide, and the Plaintiffs would not have lost their investment. But since PwC wrongfully issued the unqualified opinions, the Plaintiffs suffered losses. These losses were predictable in the sense that it is predictable that investors will suffer losses as a result of financial statements containing material misstatements and accompanied by wrongly unqualified auditor's opinions. That predictability further derives from the importance and significance of PwC's role as auditor of the Funds. Please refer to margin numbers 3.37 to 3.45 inclusive of this summons.

VI. IN THE INCIDENTAL CLAIM

VI.1 The demand under Article 843a of the Dutch Code of Civil Procedure

6.1 Without the documents referred to under margin number 6.13 hereunder, the Plaintiffs cannot possibly determine the nature and scope of PwC's activities and services relating to the audit of the Funds, nor therefore its tort and liability or the extent thereof. The Plaintiffs therefore seek, pursuant to Article 843a of the Dutch Code of Civil Procedure, production by PwC of the records specified hereunder. PwC is in possession of these documents, whereas the Plaintiffs have an interest in their being produced. They relate to a legal relationship between the parties.

(a) Legitimate interest

6.2 The Plaintiffs have a legitimate interest in their claim. Such interest exists when there is a legally substantive claim to the requested documents (Supreme Court 6 October 2006, JBPr 2007/6) or there is an interest with respect to evidence (preamble, *Parliamentary documents II* 1999/2000, 26 855, no. 3, p. 188). There is a legitimate interest now that the requested records serve to underpin the (not unfounded at first sight) Plaintiffs' demand for a declaratory judgment on PwC's liability for misconduct. In this context it should be stated in advance that, as was considered by the Supreme Court in its ruling of 13 October 2006 (LJN AW2080), the interests served by a proper performance of the external auditor's task are not confined to those

of the company which financial statements are involved. According to what is generally accepted in society, third parties are entitled to expect that the information as published, often mandatorily, and accompanied by an auditor's unqualified opinion, provides a true and fair picture, in the auditor's independent and objective view, of the assets, results, solvency and liquidity of the company and that the financial statements will comply with the requirements of the law and of applicable regulations including EU regulations and will conform to the relevant rules and standards generally accepted in this profession. Thus the auditor's performance of his tasks also serves a vital public interest. As regards the demand for a declaratory judgment based on tort, it is also the case that PwC as auditor has obligations not just towards the audited entities (Sentry, Sigma and Lambda, the Funds), but also towards third parties having dealings with the company in question, such as investors, including the Plaintiffs, and if PwC fails in its task it commits a tort against these third parties. The Plaintiffs refer in this context to the ruling of the District Court of Amsterdam of 16 December 2010 (LJN: BP3071) in which the District Court, referring to the aforementioned ruling of the Supreme Court of 13 October 2006, found that there was a legitimate interest:

"4.6 *(...) Since it is not disputed that neither JumboDiset nor Koninklijke Jumbo has access to the documents which KPMG used in auditing the financial statements of H&H, and KPMG also refuses to make its files available to BDO, this means that only KPMG currently has any insight into how it performed its audit duties. It can readily be assumed that KPMG is withholding the documents that are relevant to JumboDiset in underpinning its claim - which does not appear manifestly unfounded - in view of the considerations set forth in section 4.5 above, the guidelines and standards mentioned by JumboDiset and the anomalies in the financial statements noted by JumboDiset - and that in that sense JumboDiset has a legitimate interest in obtaining those documents.*"

6.3 Meanwhile it has become evident that the Funds' financial statements do not give a true and fair view of reality. The mere fact that PwC issued the auditor's reports with the statement "*in our opinion the financial statements give a true and fair view of the financial position of the Company (...) and of the results of its operations and its cash*

flows", and without any qualification, in itself constitutes an incorrect observation resulting from a failure to comply properly with the ISA and US GAAS audit standards. As previously set forth, the Plaintiffs are of the opinion that in performing its audits PwC failed to comply with the ISA and the US GAAS. If irrefutable evidence of this can be produced, then this will demonstrate that PwC acted in a manner not consistent with the degree of care that an auditor is required to exercise according to what is generally accepted in society in its dealings with third parties and that PwC has thus committed a tort against the Plaintiffs and is consequently liable for the damage suffered by the Plaintiffs. There can thus be absolutely no question of the claim being manifestly unfounded.

6.4 The Plaintiffs also wish to investigate further when PwC's liability arose, what specific rules PwC broke and what damage arose therefrom. For this, access to the information on the performance of the audit procedures is necessary.

6.5 A legitimate interest exists when the requested records are relevant in establishing the applicant party's legal position *(see for example District Court of Utrecht 18 March 2009,* LJN BH6556). Only in the light of the audit files can it be established whether PwC acted as can be expected of a competent and reasonable auditor. Thus only by allowing PwC's audit files to be examined can it be established whether the damage is attributable to PwC.

6.6 The Plaintiffs' legitimate interest lies also in the fact that the information from the audit files will help them to investigate further and, based on that investigation, subsequently to prove that PwC did not perform its (legal) task properly and that it therefore should not have issued the unqualified opinions. The requested documents will show whether PwC considered possible risks of fraud (and, if so, which risks), and whether and to what extent PwC gave attention to the (controlling) tasks of other service providers to the Funds, particularly the Citco entities, and BMIS (to the extent not considered as service provider to the Funds), what activities it performed, what its findings were and how its opinion that the financial statements were free of material misstatement can have been substantiated.

6.7 As per the ruling of the District Court of Amsterdam of 27 March 2012 (LJN: BW0075, r.o. 5.26), the purpose of these audit files is, inter alia, to be able subsequently to render account of the procedures performed by the auditor. The audit files will show how PwC dealt with the audits and what documents it requested from or via the Funds or Citco, what instructions it gave and what questions it asked. They will show on what documents PwC based its judgement that there was no need to refrain from issuing a favourable opinion, what controls it carried out, what the outcome of these controls was and whether it thereby complied with its (legal) duties. The fraud is of a size such as to necessitate production of the entire audit documentation. The various documents comprising an audit file need to be assessed as a comprehensive whole.

6.8 For an investigation of this kind the Plaintiffs also need to have access to PwC's internal documents relating to the audit. Insofar as internal documents provide no insight into how the auditors performed their procedures, PwC will have to give a description of the document and explain why that document cannot contribute to the judgement to be formed by the Plaintiffs as to whether or not it properly performed its task. It is after all only in such a case that there might not be a legitimate interest in the production of a document. We refer to the ruling of the District Court of Amsterdam of 27 March 2012 (LJN: BW0075, r.o. 5.26):

"*In principle the audit file must therefore be made fully available to the liquidators, since part of the task of the liquidators (whether or not as representatives of the creditors as a whole) is to investigate whether or not the auditor has fallen short in his supervision and if so to hold the auditor liable for the damage suffered. This means that (copies of) internal documents that have not yet been made available to the liquidators must also be produced, where necessary with explanatory notes. This can be otherwise only insofar as there are internal documents in the audit file that provide no insight into the way in which the auditors performed their procedures. In that case KPMG will have to give a description of the document and explain why that document cannot contribute to the judgement to be formed by the Plaintiffs as to whether or not it properly performed its task. It is after all only in such a case that there might not be*

a legitimate interest in the production of a document. The liquidators can, if they deem the alleged reasons unsatisfactory, still demand production of those documents too, giving reasons, possibly in new proceedings."

6.9 The Plaintiffs point out, albeit redundantly, that in answering the question as to whether or not PwC was deficient in the performance of its duties, the role of Citco is also relevant (we refer to margin numbers 3.13 to 3.29 inclusive of this summons). Citco was responsible, in its capacity as custodian, for the legal and physical safekeeping and custody of the monies and securities entrusted to it. The custodian agreement(s) between the Funds and Citco may provide insight inter alia into the contractual relationship between the Funds and Citco. Given their importance, these custodian agreement(s) will also form part of PwC's audit files. The same is also certainly true of the sub-custody agreement(s) between Citco and BMIS.

6.10 Also of relevant importance is the extent to which PwC was right in relying on the SAS 70 statement issued by Ernst & Young (we refer to margin number 5.20 of this summons). The Plaintiffs have no insight into the content of Ernst & Young's SAS 70 statement. The Plaintiffs can therefore not establish what Ernst & Young investigated or what the outcome of their audit was, or whether they expressed any reservations. The SAS 70 statement will also be included in PwC's audit files.

6.11 Furthermore the Plaintiffs are also unable to establish how the discussion between Citco and PwC went (in which discussion an SAS 70 specialist was involved on the part of PwC) regarding the internal control mechanisms at Citco and the SAS 70 statement, since the Plaintiffs have no access to any report or documentation forming the basis of, or resulting from, this discussion. These documents too will be included in the audit files.

6.12 The Plaintiffs therefore have a right to and an interest in gaining access to the complete audit files, including the internal documents, so that they can be indemnified for loss suffered as a result of wrongful deeds (tort) committed by PwC.

(b) Specified records

6.13 The records which the Plaintiffs are demanding to be produced concern the complete audit files, including the internal documents of PwC relating to Sentry, Sigma and Lambda for the years 2000-2007.

6.14 For financial years 2000 and 2001 the financial statements were audited by PricewaterhouseCoopers N.V. and for financial years 2002-2005 by PricewaterhouseCoopers Accountants N.V. For financial years 2006 and 2007 PwC Canada was the auditor. Under their demand in this incidental claim, the Plaintiffs request from each of the aforementioned PwC group firms the audit files compiled by them.

6.15 The Plaintiffs wish to define and improve their legal position with regard to PwC. It can be readily assumed that for an optimal conduct of such a search for evidence it is important for the Plaintiffs to gain access to the complete audit files, including the internal documents for the aforementioned years. Another factor is that only PwC holds the records that were used in the audit. For the Plaintiffs it is thus impossible to indicate the records more specifically. The Plaintiffs can therefore not reasonably be asked to further specify the records than they have already done. In demanding the complete audit files for 2000-2007 the Plaintiffs have also sufficiently specified which records PwC are being asked to produce. The Plaintiffs refer to the ruling of the District Court of Amsterdam of 16 December 2011 (LJN: BP3071, r.o. 4.7):

"*An additional factor is that, as already previously considered, KPMG is at present the only party with access to the records that were used in the audit. For JumboDiset it is therefore impossible to indicate the records more specifically. JumboDiset can therefore not reasonably be asked to provide any other identification of the records than it has already done. In demanding the complete audit files for 2005-2006 and 2006 JumboDiset has also sufficiently specified for KPMG which records they are being asked to produce to BDO.*"

6.16 In accordance with Article 11 section 3 of the Bta (*Besluit toezicht accountantsorganisaties* or Decree on the supervision of audit firms, hereinafter "Bta") at least the following data and records (written or digital) must be kept in the audit files:

- the agreement between the audit firm and the client and any amendments thereto;
- the correspondence relating to the client, insofar as it concerns the legal audit;
- an audit plan establishing the envisaged scope and conduct of the legal audit;
- a description of the nature and scope of the audit activities performed;
- the start- and end-dates for the performance of the various stages of audit procedures specified in the audit plan;
- the main findings of the audit procedures performed;
- the conclusions drawn from the findings as referred to in sub-section f;
- the external auditor's opinion as reflected in the auditor's report to be issued by him;
- the data established pursuant to Articles 12, section 3, Article 13, section 2, 15a, sections 1, 3 and 5, 17, section 2, 20, section 3, and 37, section 2 of the Bta; and
- such other significant data and records as are relevant to substantiate the auditor's report issued by the external auditor and to the supervision of compliance with the rules established by the law and the *Wet op de Registeraccountants* (Registered Auditors Act) and/or the *Wet op de Accountants-Administratieconsulenten* (Certified Accountants Act).

6.17 If the demand for production is not allowed, there is a significant chance that, despite the information currently available which justifies the objective suspicion that PwC did not act as might be expected of a competent and reasonable auditor, the Plaintiffs will not be able to prove this, since it is not presently clear on which documents PwC based its judgement that there was no need to refrain from issuing an unqualified opinion, or what audit procedures it performed and what their outcome was, and whether in so doing it complied with its (legal) duties. There is therefore a risk that, without the aforementioned documents being produced, the Plaintiffs will be unable to meet the burden of proof that PwC did not perform its task properly and that it should

not have issued unqualified opinions. On top of this PwC still refuses to provide this information voluntarily.

(c) Regarding the legal relationship

6.18 The requested documents concern a legal relationship between the parties. The legal relationship between the parties is based on tort, and the records which production is sought by the Plaintiffs are directly connected with this. The Plaintiffs need the requested records in order to be able to determine the extent of the tort and hence of the liability.

(d) No compelling reasons

6.19 PwC does not qualify as being subject to confidentiality within the meaning of Article 843a section 3 of the Dutch Code of Civil Procedure. Furthermore the files concerned were in principle compiled for the benefit of Sentry, Sigma and Lambda. The question is therefore whether in the present case the Funds' interests as regards confidentiality would be harmed by the release of the requested records (District Court of Amsterdam 27 March 2012, LJN BW0075). Now that the aforementioned Funds are in liquidation, and no activity whatsoever is any longer carried out apart from the liquidation itself, their interests as regards confidentiality can no longer be harmed, and one cannot see what compelling reasons on the part of the Funds could stand in the way of production of the requested records. PwC can therefore not avoid this obligation to produce by reference to an alleged obligation of confidentiality. Furthermore Article 38 section 1 sub-section c of the Bta allows PwC to produce confidential information in the context of judicial proceedings brought against it concerning a legal audit. Accordingly, the Wta is also no obstacle to production.

6.20 The Supreme Court ruled that the right to refuse to answer questions does not apply to auditors (Supreme Court 14 June 1985, NJ 1986/175). According to the Supreme Court, the interests of establishing the truth outweigh everyone's interest in having the right to hire freely such an adviser. Applying this balance of interests in the context of

Article 843a of the Dutch Code of Civil Procedure, this means that the interest of being able to hire an auditor freely and without fear of disclosure provides no substantial reason. The public interest– and thus the application of Article 843a of the Dutch Code of Civil Procedure – must prevail.

6.21 To the extent that PwC's internal documents also contain confidential information on PwC (or its working methods) and the risk would exist that this information will be made public, this risk can be covered by having PwC explicitly state in these proceedings which specific documents contain sensitive corporate information on its working methods which must be kept confidential (District Court of Amsterdam 27 March 2012, LJN BW0075, r.o. 5.23). The District Court can thus judge whether such documents qualify as sensitive corporate information. In this way it can be avoided that the Plaintiffs disclose what, according to PwC, needs rightfully to be kept confidential.

(e) Necessary for proper administration of justice

6.22 From the point of view of proper administration of justice, production of the requested records is indispensable, because proof cannot be obtained in any other way, given that only PwC has access to the records.

(f) The obligation to produce also applies to main legal proceedings outside the Netherlands

6.23 The Supreme Court ruled on 8 June 2012 (LJN BV8510) that a claim for production of records under Article 843a of the Dutch Code of Civil Procedure may be brought either in current pending case or in a separate case. In the latter case there is no requirement for proceedings to be pending or envisaged concerning the legal relationship in which respect the production of records is being sought, nor that such proceedings will be launched in the Netherlands. That means that the alleged lack of jurisdiction of the District Court of Amsterdam with regard to the Plaintiff's claims

against PwC Canada does not stand in the way of the Plaintiffs' claim against PwC Canada for the production of records.

VII. DEFENCES RAISED BY PWC AGAINST THE DEMAND AND THE CORRESPONDING GROUNDS

7.1 The defences adduced by PwC and the rebuttal thereof follow sufficiently from the foregoing.

VIII. EVIDENCE OFFERED

8.1 The Plaintiffs' allegations are supported by the aforementioned exhibits 1 up to 40.

8.2 To the extent necessary, Plaintiffs propose, while explicitly denying being obliged to, evidence of all their allegations, including through the hearing of witnesses, who can make statements based on their own knowledge.

8.3 May be heard as witnesses, among others:

- the partners of PwC who have signed the audit opinions, including Mr. H.F.M. Gertsen R.A.;
- the other partners or associates of PwC who have taken part in the audit assignments with respect to the Funds;
- the persons within the organisations of CBN, CGC and/or CFS who were in contact with PwC within the framework of their audit assignments.

IX. JURISDICTION OF THE DISTRICT COURT OF AMSTERDAM

9.1 The District Court of Amsterdam has jurisdiction by virtue of Article 99 of the Dutch Code of Civil Procedure to hear the Plaintiffs' claims against PwC Nederland, as set forth herein, since PwC Nederland is established within the district covered by the District Court of Amsterdam.

9.2 The jurisdiction of the District Court of Amsterdam with regard to the Plaintiffs' claims against PwC Canada follows from Article 7 of the Dutch Code of Civil Procedure, since that there is such a clause connection between the claims against PwC Nederland and those against PwC Canada that for reasons of efficiency a common handling of the claims is justified. After all, the claims are based on the same facts and circumstances and the legal questions to be addressed are also the same. The close relationship implies also that a proper administration of justice calls for the simultaneous consideration and judgement of the claims, in order to avoid the possibility of irreconcilable rulings being made in the case of separate judgements.

X. INDICATION RE APPEARANCE

10.1 The Plaintiffs consider the case appropriate for an informational appearance and/or an appearance of the parties to reach a settlement.

NOW THEREFORE

IN THE INCIDENTAL CLAIM

May it please the District Court of Amsterdam in its ruling on the incidental demand, immediately enforceable,

I. To order PricewaterhouseCoopers N.V. to deliver within seven business days of this ruling on the incidental claim being served and on the Plaintiffs' first demand, copies of the complete audit files, including the internal documents, relating to the financial statements of Sentry, Sigma and Lambda for the years 2000 and 2001, on pain of payment of a penalty of €50,000 for each day, or part of a day, during which defendant sub I fails totally or partly to comply with such order;

II. To order PricewaterhouseCoopers Accountants N.V. to deliver within seven business days of this ruling on the incidental claim being served and on the Plaintiffs' first demand, copies of the complete audit files, including the internal documents, relating to the financial statements of Sentry, Sigma and Lambda for the years 2002, 2003, 2004 and 2005, on pain of payment of a penalty of €50,000 for each day, or part of a day, during which defendant sub II fails totally or partly to comply with such order;

III. To order PricewaterhouseCoopers LLP Chartered Accountants to deliver within seven business days of this ruling on the incidental claim being served and on the Plaintiffs' first demand, copies of the complete audit files, including the internal documents, relating to the financial statements of Sentry, Sigma and Lambda for the years 2006 and 2007, on pain of payment of a penalty of €50,000 for each day, or part of a day, during which defendant sub III fails totally or partly to comply with such order;

IV. To order PwC jointly and severally, meaning that if the one pays the other is being discharged, to pay the costs of the proceedings, as well as legal costs incurred in the amount of €131.00 and in the event that notice of the ruling has to be served, €199.00, to be paid within fourteen days of the signing of the ruling on the incidental claim, and, if it is not paid within this established time, plus interest thereon at the legal rate from fourteen days after the date of signing of the ruling on the incidental claim until such time as payment shall have been made in full.

IN THE MAIN CLAIM

May it please the District Court of Amsterdam in its ruling, immediately enforceable in anticipation,

I. to declare that PwC acted wrongfully vis-à-vis the Plaintiffs by negligently carrying out their duties as auditors;

II. To order PwC jointly and severally, meaning that if the one pays the other is being discharged, or each for an equal part, or each for such part as the District Court shall establish in accordance with the law, to pay to Colima the amount of the losses suffered by Colima, plus interest thereon at the legal rate from the day on which Colima invested in Sentry, or from the day of the summons, until such time as payment shall have been made in full;

III. To order PwC joint and severally, meaning that if the one pays the other is being discharged, or each for an equal part, or each for such part as the District Court shall establish in accordance with the law, to pay the Foundation for collection the amount of the losses suffered by investors, or at least the losses suffered by the Participants, plus interest thereon at the legal rate from the day of investment in the Funds, or from the day of the summons, until such time as payment shall have been made in full;

IV. To order PwC joint and severally, meaning that if the one pays the other is being discharged, to pay the costs of the proceedings, as well as legal costs incurred in the amount of €131.00 and in the event that notice of the ruling has to be served, €199.00, to be paid within fourteen days of the signing of the ruling on the incidental case, and, if it is not paid within this established time, plus interest thereon at the legal rate from fourteen days after the date of signing of the ruling on the incidental case until such time as payment shall have been made in full.

The costs of this writ are for me, the bailiff: € _____

LIST EXHIBITS

COLIMA INTERNATIONAL LIMITED - STICHTING FAIRFIELD COMPENSATION FOUNDATION
VS
PRICEWATERHOUSECOOPERS

1. Private Placement Memorandum Fairfield Sentry Limited dated 1 October 2004
2. Private Placement Memorandum Fairfield Sentry Limited dated 14 Augustus 2006
3. Articles of Association Colima International Limited
4. Articles of Association Stichting Fairfield Compensation Foundation
5. Participation Agreement Stichting Fairfield Compensation Foundation
6. Structure of the Fairfield Fondsen
7. Investment Management Agreement between Fairfield and Sentry dated 1 October 2004
8. Investment Management Agreement between Fairfield and Sigma dated 1 October 2004
9. Brokerage & Custody Agreement dated 1 September 2003 between Citco Bank Nederland, Citco Global Custody and Fairfield Sentry Ltd
10. Brokerage & Custody Agreement dated 12 augustus 2003 between Citco Bank Nederland, Citco Global Custody and Fairfield Sigma Ltd
11. Custodian Agreement dated 3 juli 2006 between Citco Bank Nederland, Citco Global Custody and Fairfield Sentry Ltd
12. Private Placement Memorandum Fairfield Sigma Limited dated 1 October 2004
13. Private Placement Memorandum Fairfield Sigma Limited dated 1 December 2008
14. Administration Agreement dated 20 February 2003 between Citco Fund Services and Fairfield Sentry Ltd
15. Administration Agreement dated 20 februari 2003 between Citco Fund Services and Fairfield Sigma Ltd
16. Sub-custody Agreement of 2004 between Citco Global Custody and Bernard L. Madoff Investment Securities LLC (not signed)
17. Annual Account of Fairfield Sentry Ltd financial year 2000
18. Annual Account of Fairfield Sentry Ltd financial year 2001
19. Annual Account of Fairfield Sentry Ltd financial year 2002
20. Annual Account of Fairfield Sentry Ltd financial year 2003
21. Annual Account of Fairfield Sentry Ltd financial year 2004
22. Annual Account of Fairfield Sentry Ltd financial year 2005
23. Annual Account of Fairfield Sentry Ltd financial year 2006
24. Annual Account of Fairfield Sentry Ltd financial year 2007
25. Annual Account of Fairfield Sigma Ltd financial year 2003
26. Annual Account of Fairfield Sigma Ltd financial year 2004
27. Annual Account of Fairfield Sigma Ltd financial year 2005
28. Annual Account of Fairfield Sigma Ltd financial year 2006
29. Annual Account of Fairfield Sigma Ltd financial year 2007

30. Statement of Kenneth Krys, liquidator of the Fairfield Fondsen dated 14 June 2010
31. Document of PriceWaterhouseCoopers – Auditing Alternative Investment Funds of April 2007
32. "Klaagschrift" dated 3 januari 2011 against Mr. Gertsen including exhibits
33. "Verweerschrift" of Mr. Gertsen dated 23 March2011 including exhibits
34. "Conclusie van repliek" of complainants dated 28 April 2011 including exhibits
35. "Conclusie van dupliek" of Mr. Gertsen dated 27 May 2011 including exhibits
36. "Pleitnotities" of complainants dated 1 July 2011
37. "Pleitnotities" of Mr. Gertsen dated 1 July 2011
38. Audit Plan drawn up by PwC with regard to the financing year ending 31 december 2008
39. Letter of PriceWaterhouseCoopers Accountants N.V. dated 15 March 2005 toFairfield Greenwich Advisors, L.L.C.
40. Report KPMG dated 8 September 2008 – Extracts

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This case is being handled by:

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