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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 0605559

ROBERT L. WHITE, as Trustee of the
CMM Trust No. 1400 u/a/d July 18, 2000,

Plaintiff,

vs.

KURT BOSSHARDT & ASSOCIATES,
P.A., a Florida professional association;
KURT E. BOSSHARDT, individually;
CRAIG I. KARTIGANER, individually;
ANTONIO BAYON, individually;
DIANA M. FABOZZI, individually; and
MARSH USA INC., a foreign corporation,

Defendants.

A TRUE COPY
APR 20 2006
CLERK OF COURT

COMPLAINT

Plaintiff, ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000, hereby sues Defendants, KURT BOSSHARDT & ASSOCIATES, P.A., a Florida professional association, KURT E. BOSSHARDT, individually, CRAIG I. KARTIGANER, individually, ANTONIO BAYON, individually, (hereinafter referred to as the "Bosshardt Defendants"); DIANA M. FABOZZI, individually, and MARSH USA INC., a foreign corporation, (hereinafter referred to as the "Marsh Defendants") and alleges as follows:

Jurisdictional Allegations

1. This is a negligence action for damages in excess of the Court's minimal jurisdictional amount, \$15,000.00, exclusive of interests and costs.

4-20-06

2. The Trustee, ROBERT L. WHITE, is the Successor Trustee, having taken the place of the former Trustee, Michael J. Volpe, as the Trustee of the CMM Trust No. 1400 u/a/d July 18, 2000 (hereinafter "the Trust" or "CMM Trust"). The Trust is a private trust.

3. The causes of action raised herein by the Trustee, ROBERT L. WHITE (hereinafter "the Trustee"), are not based on the trust document, and it is not attached to this Complaint. See Rule 1.130, Fla. R. Civ. P.

4. Plaintiff, the Trustee, ROBERT L. WHITE, is and was, at all material times hereto, a resident of Lee County, Florida. The Trustee maintains an office in Naples, Florida.

5. Defendant, KURT BOSSHARDT & ASSOCIATES, P.A., is and was, at all times material hereto, a Florida professional association authorized to do business and doing business in the State of Florida with its principal place of business in Fort Lauderdale, Florida at 1600 SE 17th Street, Suite 405. At all times material hereto, KURT BOSSHARDT & ASSOCIATES, P.A. was engaged in the business of and held itself out as providing legal, accounting and management services for yacht owners, and was, through its attorneys employed by or acting on behalf of the law firm, CMM Trust's attorney responsible for providing legal, accounting and management services for the vessel owned by CMM Trust, the M/V "Newfoundland Explorer."

6. Defendant KURT E. BOSSHARDT is, and was, at all times material hereto, an attorney licensed to practice law in the State of Florida, and was engaged in the practice of law in Fort Lauderdale, Florida. Defendant KURT E. BOSSHARDT was, at all times material, a resident of Broward County, Florida. At all times material hereto, Defendant KURT E. BOSSHARDT was the controlling shareholder, officer, and agent of KURT BOSSHARDT & ASSOCIATES, P.A. and was engaged in the business of and held himself out as providing legal, accounting and management

services for yacht owners, and was CMM Trust's attorney responsible for providing legal, accounting and management services for the vessel owned by CMM Trust, the M/V "Newfoundland Explorer."

7. Defendant CRAIG I. KARTIGANER is and was, at all times material hereto, an attorney licensed to practice law in the State of Florida, and was engaged in the practice of law in Fort Lauderdale, Florida. Defendant CRAIG I. KARTIGANER was, at all times material, a resident of Broward County, Florida. At all times material hereto, Defendant CRAIG I. KARTIGANER was engaged in the business of and held himself out as providing legal, accounting and management services for yacht owners, and was an agent and employee/associate attorney of KURT BOSSHARDT & ASSOCIATES, P.A. and responsible for providing legal, accounting and management services for the vessel owned by CMM Trust, the M/V "Newfoundland Explorer."

8. Defendant ANTONIO BAYON is and was, at all time material hereto, an attorney licensed to practice law in the State of Florida, and was engaged in the practice of law in Fort Lauderdale, Florida. Defendant ANTONIO BAYON was, at all times material, a resident of Broward County, Florida. At all time material hereto, Defendant ANTONIO BAYON was engaged in the business of and held himself out as providing legal, accounting and management services for yacht owners, and was an agent and employee/associate attorney of KURT BOSSHARDT & ASSOCIATES, P.A. and responsible for providing legal, accounting and management services for the vessel owned by CMM Trust, the M/V "Newfoundland Explorer."

9. Defendant MARSH USA INC. is a foreign corporation incorporated in Delaware, and at all times material hereto was and is an insurance agency engaged in obtaining and procuring

insurance coverage for citizens and businesses in Florida, and was, at all times material hereto, licensed to do business in the State of Florida.

10. Defendant MARSH USA INC., through its agents and employees, operated as an insurance agent and broker engaged in the business of procuring insurance on behalf of its clients in Florida, and specifically on behalf of CMM Trust with regards to the M/V "Newfoundland Explorer" based on arrangements made by the Bosshardt Defendants.

11. Defendant DIANA M. FABOZZI, at all times material hereto, was a resident of Broward County, Florida.

12. Defendant DIANA M. FABOZZI, at all times material hereto, was an agent, apparent agent or employee of Defendant MARSH USA INC., and operated as an insurance agent and broker engaged in the business of procuring insurance on behalf of her clients in Florida, and specifically on behalf of CMM Trust with regards to the M/V "Newfoundland Explorer" based on arrangements made by the Bosshardt Defendants.

13. Venue is proper in Broward County where the Bosshardt Defendants and Marsh Defendants have offices and do business.

General Factual Allegations

14. On or about July 27, 2000 CMM Trust executed a loan agreement in which the Trust made a loan to a mining company by the name of Alico Mining, Inc. in the amount of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00).

15. After the mining company defaulted on the loan, CMM Trust initiated a lawsuit against the personal guarantors, Robert S. Hardy and Robert Paul Hardy, to recover the loan proceeds.

16 In that action, CMM Trust reached a settlement with the guarantors. The parties executed a consent judgment whereby, *inter alia*, the CMM Trust received a mortgage secured by an ocean going vessel called the M/V “Newfoundland Explorer.”

17. CMM Trust retained the services of the Bosshardt Defendants in or about late July 2002 to perfect the mortgage on the M/V “Newfoundland Explorer.” The Bosshardt Defendants held themselves out as admiralty law specialists, representing to the public — including the Trust — that they provided legal, accounting and management services for yacht owners.

18. When the balance of the loan proceeds were not timely paid in accordance with the settlement, CMM Trust began foreclosure proceedings on the vessel.

19. The Bosshardt Defendants assured the Trust that they could handle all the steps necessary to seize, possess, and foreclose on the M/V “Newfoundland Explorer,” manage and maintain the vessel, and assist the Trust in selling it. Thus, the Trust employed the Bosshardt Defendants to perform those services.

20. CMM Trust had the M/V “Newfoundland Explorer” arrested and placed in the possession of a court-appointed trustee in September of 2003. The Trust purchased the “M/V Newfoundland Explorer” when the vessel was auctioned by the U.S. Marshall in January of 2004. All of these activities were handled, supervised and directed by the Bosshardt Defendants.

21. Based on the Defendants’ representations regarding their expertise and CMM Trust’s lack of experience with vessels and admiralty matters, the Trust relied on the Bosshardt Defendants to handle all issues relating to and arising out of the Trust’s arrest, disposition and, later, ownership of the M/V “Newfoundland Explorer,” including all legal, accounting and management issues

relating to the arrest and ownership of the vessel. The Bosshardt Defendants began actively managing the vessel at the time of its arrest in September of 2003.

22. The Bosshardt Defendants managed the operations of the M/V "Newfoundland Explorer" for CMM Trust. Such management included but was not limited to: (a) hiring contractors, vendors and other persons performing work on the vessel; (b) managing the payment of those repairs and services through a trust account in which the Trust placed monies for those purposes; (c) acquiring insurance for the vessel, (d) controlling the movements of the vessel, (e) crewing the vessel, and (f) otherwise assisting CMM Trust in its effort to sell the M/V "Newfoundland Explorer" by providing legal services and advice to CMM Trust in regards to the vessel.

23. At the time the M/V "Newfoundland Explorer" was arrested, at least two crew members lived aboard the vessel, Gary Raines and Tom Schillig.

24. At the time the M/V "Newfoundland Explorer" was arrested, the vessel was fully crewed in that the crew worked and lived on the vessel twenty-four hours a day, seven days a week.

25. Prior to the M/V "Newfoundland Explorer" coming into the Trust's possession, vessel insurance had been secured through North Atlantic Marine Services Limited and contained P + I insurance as per TL Dallas (TLD/3/PPO/OSP) terms and conditions.

26. Vessel insurance had also been secured through British Marine Luxembourg S.A. covering Hull and Machinery.

27. The Bosshardt Defendants allowed the vessel insurance acquired through North Atlantic Marine Insurance Services Limited to expire on November 5, 2003 and acquired new vessel insurance through the Marsh Defendants effective November 5, 2003.

28. The Bosshardt Defendants contacted the Marsh Defendants in the fall of 2003 to obtain insurance coverage for the M/V “Newfoundland Explorer.” North Atlantic Marine Insurance Services Limited was willing to renew the vessel insurance that had been in place for substantially the same premium as that quoted by the Marsh Defendants, yet the Bosshardt Defendants elected to obtain the insurance through the Marsh Defendants.

29. The Bosshardt and Marsh Defendants should have obtained a vessel insurance policy substantially similar to the insurance policy previously maintained for the M/V “Newfoundland Explorer.”

30. In fact, the Bosshardt and Marsh Defendants failed to procure the appropriate insurance for the M/V “Newfoundland Explorer” even though they knew or should have known it was available.

31. The new insurance policy the Bosshardt and Marsh Defendants procured contained three significant deficiencies. The new policy was deficient in that it explicitly required CMM Trust to:

- a. warrant that the vessel be fully crewed at all times;
- b. warrant that the vessel not be under repair; and
- c. litigate any disputes regarding coverage or the interpretation of the insurance policy under English law in an English court.

32. These deficiencies in the terms of the policies were significant because the Bosshardt and Marsh Defendants knew or should have known that the M/V “Newfoundland Explorer” was at the time, or was likely to be in the near future:

- a. not fully crewed as that term is defined and interpreted in the new insurance policy;

- b. under repair, or would likely come under repair, as that term is defined and interpreted in the new insurance policy; and
- c. English courts would be an inconvenient forum, and English law would be less favorable to CMM Trust in the interpretation and application of the insurance policy and its warranty provisions.

33. In February 2004, after the Trust purchased the vessel at auction, Robert S. Hardy dismissed the only “live on board” crew members, whom he had been paying, from their employment aboard the M/V “Newfoundland Explorer.”

34. In September of 2003, when they began managing the vessel, the Bosshardt Defendants hired Sergio M. Criado as the vessel’s new captain. The Bosshardt Defendants paid Mr. Criado who supervised the work of the “live on board” crew members employed by Mr. Hardy. The Bosshardt Defendants paid Mr. Criado from Trust funds held in escrow with the law firm for the purpose of managing and paying expenses related to the vessel.

35. Mr. Criado did not live on board the vessel. He lived on shore some fifteen miles away. The Bosshardt Defendants knew that Mr. Criado did not live on board the vessel, yet they advocated for the dismissal of Mr. Raines and Mr. Schillig who did live on board. Once Mr. Raines and Mr. Schillig were dismissed in February of 2004, the Bosshardt Defendants knew or should have known that the Trust was in violation of the warranty requiring the vessel to be fully crewed at all times. The Bosshardt Defendants knew or should have known that the warranty requiring the vessel to be “fully crewed at all times” meant that crew members had to live on board on the vessel.

36. The Bosshardt Defendants also knew or should have known that the M/V “Newfoundland Explorer” was under repair in violation of another warranty which prohibited the vessel from being under repair while the insurance policy was in effect. The Bosshardt Defendants

supervised Mr. Criado, authorized the repairs being made on the vessel, and authorized payment for the repairs — repairs which put the Trust in violation of a this second warranty in the policy.

37. On or about April 25, 2004, while the vessel was docked at the Marina Inn in Fort Lauderdale, Florida, a fire broke out in the engine room of the M/V “Newfoundland Explorer.” Smoke was reported to the Fort Lauderdale Fire Department. The Fire Department reported to the scene and attempted to control the fire. No crew member was on board the vessel at the time of the fire.

38. The Fire Department’s efforts failed to save the M/V “Newfoundland Explorer.” The vessel sunk at the dock and was declared a constructive total loss.

39. The Bosshardt Defendants reported the insurance claim to the Marsh Defendants and the new insurance carrier.

40. The Bosshardt Defendants originally advised the Trust that the new insurance had been placed with Lloyds of London. After filing the claim, CMM Trust learned that the policy the Bosshardt Defendants obtained through the Marsh Defendants was not issued by Lloyd’s of London, but rather, by GE Frankona Re.

41. The underwriters (acting for GE Frankona Re) denied the claim because the vessel was not fully crewed at all times. In fact, there were no crew members on board the vessel at the time of the fire. The underwriters also gave as an alternate basis for denying CMM Trust’s claim the fact that repairs were underway without the insurer being notified.

42. GE Frankona Re instituted an legal action in England against the Trust seeking a judicial determination that it had no obligation to pay the insurance policy proceeds on grounds that the Trust had violated the “fully crewed at all times” warranty. The Trust defended this action at

substantial cost. GE Frankona Re prevailed in that action. The English court determined that the plain unambiguous language of the warranty required the Trust to keep at least one crew member on board the vessel 24 hours a day subject to certain exceptions which did not apply. As a result of that ruling, no insurance coverage exists for the loss of the M/V "Newfoundland Explorer" and the other consequential damages arising from its destruction.

43. Had the proper insurance been in place or, alternatively, had the Bosshardt Defendants managed the vessel such that it met the terms of the warranties in the insurance policy which was in place, the Trust would have received \$3 million for the loss of the M/V "Newfoundland Explorer."

44. As a result of the fire and the sinking of the vessel, a marine salvage company by the name of Titan was retained to raise the vessel and recover those portions of it which could be salvaged. The salvage costs were \$650,000. The insurer, GE Frankona Re, paid \$500,000 towards those salvage costs prior to the judicial determination that coverage existed for the claim. GE Frankona Re has sued the Trust for reimbursement of those funds, and the Trust owes the balance of those salvage costs (approximately \$150,000) to Titan directly.

45. GE Frankona Re also paid TowBoat USA \$112,028.99 for services it rendered in connection with the salvage of the M/V "Newfoundland Explorer." The Trust paid TowBoat an additional \$55,893.05 which was due, and GE Frankona Re has sued the Trust for reimbursement of the funds it paid TowBoat.

46. In addition, the local authorities have made a claim against the Trust for expenses incurred as a result of the fire, as well as other businesses located in the marina area where the fire occurred.

47. CMM Trust has been involved in extensive litigation as a result of the negligence alleged herein, has incurred significant legal fees and costs in the United States and in Great Britain, and has incurred other damages.

48. The losses and damages detailed in paragraphs 43 through 47 are in addition to the loss of the agreed, insured value of the M/V "Newfoundland Explorer" which was \$3 million.

COUNT I
NEGLIGENCE OF DEFENDANT
KURT BOSSHARDT & ASSOCIATES, P.A.

49. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48, and further alleges as follows:

50. Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A., was engaged in the business of and held itself out as providing legal, accounting and management services for yacht owners.

51. Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A., through its agents and employees, including the attorneys, partners, associates, and staff, was CMM Trust's attorney responsible for the care and management of the vessel seized and later owned by CMM Trust, the M/V "Newfoundland Explorer."

52. Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A., through its agents and employees, including the attorneys, partners, associates, and staff agreed to perform services for CMM Trust when it accepted the legal representation of CMM Trust.

53. Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A., through its agents and employees, including the attorneys, partners, associates, and staff, had a duty to provide reasonable

and appropriate legal advice, representation, and services to its client, CMM Trust, in regards to the legal, accounting, and management services for the M/V “Newfoundland Explorer.”

54. Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A., through its agents and employees, including the attorneys, partners, associates, and staff, breached that duty and was negligent for at least the following reasons:

- a. Failing to obtain appropriate vessel insurance for the M/V “Newfoundland Explorer.”
- b. Failing to obtain vessel insurance with a choice of law and/or choice of forum clause designating local laws and/or a local U.S. jurisdiction.
- c. Failing to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the insurance it obtained for the vessel.
- d. Failing to advise CMM Trust that the new insurance policy contained significantly different warranties than the insurance policy that had been in effect.
- e. Failing to advise CMM Trust to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the new insurance policy it obtained for the vessel.
- f. Failing to competently represent CMM Trust in matters relating to the M/V “Newfoundland Explorer,” including the legal proceedings, legal issues and insurance issues that arose prior to and following the foreclosure on and destruction of the vessel.
- g. Failing to properly supervise the attorneys, partners, associates, and staff who work at the law firm to ensure that reasonable and appropriate representation was provided to CMM Trust in all matters relating to the M/V “Newfoundland Explorer.”
- h. Failing to properly manage the M/V “Newfoundland Explorer” with Trust funds held by the Defendant in escrow, including but not limited to the improper payment of all types of expenses and the improper expenditure of Trust funds.

55. The actions and omissions of Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A. described in paragraph 54, above, were negligent and below the applicable duty and standard

of care for reasonably careful attorneys and law firms in Fort Lauderdale, Florida, and similar communities, under like circumstances.

56. As a direct and proximate result of the negligence described in this Count, Plaintiff CMM Trust suffered losses, including but not limited to the following: the agreed, insured value of the M/V "Newfoundland Explorer" (\$3 million, plus interest); attorneys fees and costs for various litigation that has arisen; towing and salvage fees; the additional expense of litigating in England; and other damages that have proximately flowed from the negligence alleged herein, including contingent liability to third parties.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000 hereby demands judgment for damages against Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A., and any such other relief that the Court deems just and proper.

**COUNT II
NEGLIGENCE OF DEFENDANT
KURT E. BOSSHARDT**

57. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48, and further alleges as follows:

58. Defendant KURT E. BOSSHARDT was engaged in the business of and held himself out as providing legal, accounting and management services for yacht owners.

59. Defendant KURT E. BOSSHARDT was CMM Trust's attorney responsible for the care and management of the vessel seized and later owned by CMM Trust, the M/V "Newfoundland Explorer."

60. Defendant KURT E. BOSSHARDT agreed to perform services for his client, CMM Trust, when he accepted the legal representation of CMM Trust.

61. Defendant KURTE E. BOSSHARDT had a duty to provide reasonable and appropriate legal advice, representation, and services to his client, CMM Trust, in regards to the legal, accounting, and management services for the M/V “Newfoundland Explorer.”

62. Defendant KURTE E. BOSSHARDT breached that duty and was negligent for at least the following reasons:

- a. Failing to obtain appropriate vessel insurance for the M/V “Newfoundland Explorer.”
- b. Failing to obtain vessel insurance with a choice of law and/or choice of forum clause designating local laws and/or a local U.S. jurisdiction.
- c. Failing to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the insurance it obtained for the vessel.
- d. Failing to advise CMM Trust that the new insurance policy contained significantly different warranties than the insurance policy that had been in effect.
- e. Failing to advise CMM Trust to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the new insurance policy it obtained for the vessel.
- f. Failing to competently represent CMM Trust in matters relating to the M/V “Newfoundland Explorer,” including the legal proceedings, legal issues, and insurance issues that arose prior to and following the foreclosure on and destruction of the vessel.
- g. Failing to properly supervise the attorneys, partners, associates, and staff who work at the law firm to ensure that reasonable and appropriate representation was provided to CMM Trust in all matters relating to the M/V “Newfoundland Explorer.”
- h. Failing to properly manage the M/V “Newfoundland Explorer” with Trust funds held by the Defendant in escrow, including but not limited to the improper payment of all types of expenses and the improper expenditure of Trust funds.

63. The actions and omissions of Defendant KURT E. BOSSHARDT described in paragraph 62, above, were negligent and below the applicable duty and standard of care for

reasonably careful attorneys in Fort Lauderdale, Florida, and similar communities, under like circumstances.

64. As a direct and proximate result of the negligence described in this Count, Plaintiff CMM Trust suffered losses, including but not limited to the following: the agreed, insured value of the M/V "Newfoundland Explorer" (\$3 million, plus interest); attorneys fees and costs for various litigation that has arisen; towing and salvage fees; the additional expense of litigating in England; and other damages that have proximately flowed from the negligence alleged herein, including contingent liability to third parties.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000 hereby demands judgment for damages against Defendant KURT E. BOSSHARDT, and any such other relief that the Court deems just and proper.

**COUNT III
NEGLIGENCE OF DEFENDANT
CRAIG I. KARTIGANER**

65. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48, and further alleges as follows:

66. Defendant CRAIG I. KARTIGANER was engaged in the business of and held himself out as providing legal, accounting and management services for yacht owners.

67. Defendant CRAIG I. KARTIGANER was CMM Trust's attorney responsible for the care and management of the vessel seized and later owned by CMM Trust, the M/V "Newfoundland Explorer."

68. Defendant CRAIG I. KARTIGANER agreed to perform services for his client, CMM Trust, when he accepted the legal representation of CMM Trust.

69. Defendant CRAIG I. KARTIGANER had a duty to provide reasonable and appropriate legal advice, representation, and services to his client, CMM Trust, in regards to the legal, accounting, and management services for the M/V “Newfoundland Explorer.”

70. Defendant CRAIG I. KARTIGANER breached that duty and was negligent for at least the following reasons:

- a. Failing to obtain appropriate vessel insurance for the M/V “Newfoundland Explorer.”
- b. Failing to obtain vessel insurance with a choice of law and/or choice of forum clause designating local laws and/or a local U.S. jurisdiction.
- c. Failing to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the insurance it obtained for the vessel.
- d. Failing to advise CMM Trust that the new insurance policy contained significantly different warranties than the insurance policy that had been in effect.
- e. Failing to advise CMM Trust to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the new insurance policy it obtained for the vessel.
- f. Failing to competently represent CMM Trust in matters relating to the M/V “Newfoundland Explorer,” including the legal proceedings, legal issues, and insurance issues that arose prior to and following the foreclosure on and destruction of the vessel.
- g. Failing to properly supervise the staff who work at the law firm to ensure that reasonable and appropriate representation was provided to CMM Trust in all matters relating to the M/V “Newfoundland Explorer.”
- h. Failing to properly manage the M/V “Newfoundland Explorer” with Trust funds held by the Defendant in escrow, including but not limited to the improper payment of all types of expenses and the improper expenditure of Trust funds.

71. The actions and omissions of Defendant CRAIG I. KARTIGANER described in paragraph 70, above, were negligent and below the applicable duty and standard of care for

reasonably careful attorneys in Fort Lauderdale, Florida, and similar communities, under like circumstances.

72. As a direct and proximate result of the negligence described in this Count, Plaintiff CMM Trust suffered losses, including but not limited to the following: the agreed, insured value of the M/V "Newfoundland Explorer" (\$3 million, plus interest); attorneys fees and costs for various litigation that has arisen; towing and salvage fees; the additional expense of litigating in England; and other damages that have proximately flowed from the negligence alleged herein, including contingent liability to third parties, attorneys fees and costs for various litigation that has arisen; towing and salvage fees; the additional expense of litigating in England; and other damages that have proximately flowed from the negligence alleged herein, including contingent liability to third parties.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000 hereby demands judgment for damages against Defendant CRAIG I. KARTIGANER, and any such other relief that the Court deems just and proper.

**COUNT IV
NEGLIGENCE OF DEFENDANT
ANTONIO BAYON**

73. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48, and further alleges as follows:

74. Defendant ANTONIO BAYON was engaged in the business of and held himself out as providing legal, accounting and management services for yacht owners.

75. Defendant ANTONIO BAYON was CMM Trust's attorney responsible for the care and management of the vessel seized and later owned by CMM Trust, the M/V "Newfoundland Explorer."

76. Defendant ANTONIO BAYON agreed to perform services for his client, CMM Trust, when he accepted the legal representation of CMM Trust.

77. Defendant ANTONIO BAYON had a duty to provide reasonable and appropriate legal advice, representation, and services to his client, CMM Trust, in regards to the legal, accounting, and management services for the M/V “Newfoundland Explorer.”

78. Defendant ANTONIO BAYON breached that duty and was negligent for at least the following reasons:

- a. Failing to obtain appropriate vessel insurance for the M/V “Newfoundland Explorer.”
- b. Failing to obtain vessel insurance with a choice of law and/or choice of forum clause designating local laws and/or a local U.S. jurisdiction.
- c. Failing to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the insurance it obtained for the vessel.
- d. Failing to advise CMM Trust that the new insurance policy contained significantly different warranties than the insurance policy that had been in effect.
- e. Failing to advise CMM Trust to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the new insurance policy it obtained for the vessel.
- f. Failing to competently represent CMM Trust in matters relating to the M/V “Newfoundland Explorer,” including the legal proceedings, legal issues, and insurance issues that arose prior to and following the foreclosure on and destruction of the vessel.
- g. Failing to properly supervise the staff who work at the law firm to ensure that reasonable and appropriate representation was provided to CMM Trust in all matters relating to the M/V “Newfoundland Explorer.”
- h. Failing to properly manage the M/V “Newfoundland Explorer” with Trust funds held by the Defendant in escrow, including but not limited to the improper payment of all types of expenses and the improper expenditure of Trust funds.

79. The actions and omissions of Defendant ANTONIO BAYON described in paragraph 78, above, were negligent and below the applicable duty and standard of care for reasonably careful attorneys in Fort Lauderdale, Florida, and similar communities, under like circumstances.

80. As a direct and proximate result of the negligence described in this Count, Plaintiff CMM Trust suffered losses, including but not limited to the following: the agreed, insured value of the M/V "Newfoundland Explorer" (\$3 million, plus interest); attorneys fees and costs for various litigation that has arisen; towing and salvage fees; the additional expense of litigating in England; and other damages that have proximately flowed from the negligence alleged herein, including contingent liability to third parties, attorneys fees and costs for various litigation that has arisen; towing and salvage fees; the additional expense of litigating in England; and other damages that have proximately flowed from the negligence alleged herein, including contingent liability to third parties.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000 hereby demands judgment for damages against Defendant ANTONIO BAYON, and any such other relief that the Court deems just and proper.

COUNT V
VICARIOUS LIABILITY OF DEFENDANT
KURT BOSSHARDT & ASSOCIATES, P.A.

81. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48, and further alleges as follows:

82. Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER, and ANTONIO BAYON were actual agents of Defendant KURT BOSSHARDT & ASSOCIATES, P.A. Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER and ANTONIO BAYON were, at all times

material hereto, acting within the course and scope of their agency relationship with Defendant KURT BOSSHARDT & ASSOCIATES, P.A.

83. Defendant KURT BOSSHARDT & ASSOCIATES, P.A., also held Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER, and ANTONIO BAYON out as its agents, never informing Plaintiff CMM Trust otherwise and never informing the Trust that KURT BOSSHARDT & ASSOCIATES, P.A. took no responsibility for their actions. Plaintiff CMM Trust accepted legal representation and services from Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER, and ANTONIO BAYON in the belief that this representation was being provided by Defendant KURT BOSSHARDT & ASSOCIATES, P.A.

84. Defendant KURT BOSSHARDT & ASSOCIATES, P.A. entered into an express and implied contract with Plaintiff CMM Trust for the performance of the legal representation, provided by its partners and/or associates Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER, and ANTONIO BAYON, in regards to the M/V "Newfoundland Explorer." The parties intended that the legal representation provided by Defendant KURT BOSSHARDT & ASSOCIATES, P.A. would be in accordance with the acceptable standards of care for similarly situated lawyers. Defendant KURT BOSSHARDT & ASSOCIATES, P.A.'s duty to provide non-negligent legal representation was non-delegable, and Defendant KURT BOSSHARDT & ASSOCIATES, P.A. undertook to deliver the legal representation through its partners and/or associates, Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER, and ANTONIO BAYON.

85. Defendant KURT BOSSHARDT & ASSOCIATES, P.A. is therefore vicariously liable for the negligence of Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER, and ANTONIO BAYON as described in the complaint at paragraphs 62, 70 and 78.

86. As a direct and proximate result of the negligence described in this count, Plaintiff CMM Trust suffered damages, including but not limited to the damages described in paragraphs 43 through 47. But for the negligence detailed herein, the damages incurred by CMM Trust would not have been sustained.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000, hereby demands judgment for damages against Defendant KURT BOSSHARDT & ASSOCIATES, P.A., and any other such relief that the Court deems just and proper.

COUNT V I
BREACH OF FIDUCIARY DUTY
KURT BOSSHARDT & ASSOCIATES, P.A.

87. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48, and further alleges as follows:

88. Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A., was engaged in the business of and held itself out as providing legal, accounting and management services for yacht owners.

89. Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A., through its agents and employees, including the attorneys, partners, associates, and staff, was CMM Trust's attorney responsible for the care and management of the vessel seized and later owned by CMM Trust, the M/V "Newfoundland Explorer."

90. Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A., through its agents and employees, including the attorneys, partners, associates, and staff, agreed to perform services for its client, CMM Trust, when it accepted the legal representation of CMM Trust.

91. Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A., through its agents and employees, including the attorneys, partners, associates, and staff, had a fiduciary duty to its client, CMM Trust, in regards to its management of the M/V “Newfoundland Explorer.”

92. Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A., through its agents and employees, including the attorneys, partners, associates, and staff, breached its fiduciary duty for at least the following reasons:

- a. Failing to obtain appropriate vessel insurance for the M/V “Newfoundland Explorer.”
- b. Failing to obtain vessel insurance with a choice of law and/or choice of forum clause designating local laws and/or a local U.S. jurisdiction.
- c. Failing to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the insurance it obtained for the vessel.
- d. Failing to advise CMM Trust that the new insurance policy contained significantly different warranties than the insurance policy that had been in effect.
- e. Failing to advise CMM Trust to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the new insurance policy it obtained for the vessel.
- f. Failing to competently represent CMM Trust in matters relating to the M/V “Newfoundland Explorer,” including the legal proceedings, legal issues, and insurance issues that arose prior to and following the foreclosure on and destruction of the vessel.
- g. Failing to properly supervise the attorneys, partners, associates, and staff who work at the law firm to ensure that reasonable and appropriate representation was provided to CMM Trust in all matters relating to the M/V “Newfoundland Explorer.”
- h. Failing to properly manage the M/V “Newfoundland Explorer” with Trust funds held by the Defendant in escrow, including but not limited to the improper payment of all types of expenses and the improper expenditure of Trust funds.

93. The actions and omissions of Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A. described in paragraph 92, above, were negligent and below the applicable duty and standard of care for reasonably careful fiduciaries under like circumstances.

94. As a direct and proximate result of the negligence described in this Count, Plaintiff CMM Trust suffered losses, including but not limited to the following: the agreed, insured value of the M/V "Newfoundland Explorer" (\$3 million, plus interest); attorneys fees and costs for various litigation that has arisen; towing and salvage fees; the additional expense of litigating in England; and other damages that have proximately flowed from the negligence alleged herein, including contingent liability to third parties.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000 hereby demands judgment for damages against Defendant KURT E. BOSSHARDT & ASSOCIATES, P.A., and any such other relief that the Court deems just and proper.

**COUNT VII
BREACH OF FIDUCIARY DUTY
KURT E. BOSSHARDT**

95. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48, and further alleges as follows:

96. Defendant KURT E. BOSSHARDT was engaged in the business of and held himself out as providing legal, accounting and management services for yacht owners.

97. Defendant KURT E. BOSSHARDT was CMM Trust's attorney responsible for the care and management of the vessel seized and later owned by CMM Trust, the M/V "Newfoundland Explorer."

98. Defendant KURT E. BOSSHARDT agreed to perform services for his client, CMM Trust, when he accepted the legal representation of CMM Trust.

99. Defendant KURT E. BOSSHARDT had a fiduciary duty to his client, CMM Trust, in regards to his management of the M/V “Newfoundland Explorer.”

100. Defendant KURT E. BOSSHARDT breached that fiduciary duty for at least the following reasons:

- a. Failing to obtain appropriate vessel insurance for the M/V “Newfoundland Explorer.”
- b. Failing to obtain vessel insurance with a choice of law and/or choice of forum clause designating local laws and/or a local U.S. jurisdiction.
- c. Failing to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the insurance it obtained for the vessel.
- d. Failing to advise CMM Trust that the new insurance policy contained significantly different warranties than the insurance policy that had been in effect.
- e. Failing to advise CMM Trust to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the new insurance policy it obtained for the vessel.
- f. Failing to competently represent CMM Trust in matters relating to the M/V “Newfoundland Explorer,” including the legal proceedings, legal issues, and insurance issues that arose prior to and following the foreclosure on and destruction of the vessel.
- g. Failing to properly supervise the attorneys, partners, associates, and staff who work at the law firm to ensure that reasonable and appropriate representation was provided to CMM Trust in all matters relating to the M/V “Newfoundland Explorer.”
- h. Failing to properly manage the M/V “Newfoundland Explorer” with Trust funds held by the Defendant in escrow, including but not limited to the improper payment of all types of expenses and the improper expenditure of Trust funds.

101. The actions and omissions of Defendant KURT E. BOSSHARDT described in paragraph 100, above, were negligent and below the applicable duty and standard of care for reasonably careful fiduciaries under like circumstances.

102. As a direct and proximate result of the negligence described in this Count, Plaintiff CMM Trust suffered losses, including but not limited to the following: the agreed, insured value of the M/V "Newfoundland Explorer" (\$3 million, plus interest); attorneys fees and costs for various litigation that has arisen; towing and salvage fees; the additional expense of litigating in England; and other damages that have proximately flowed from the negligence alleged herein, including contingent liability to third parties.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000 hereby demands judgment for damages against Defendant KURT E. BOSSHARDT, and any such other relief that the Court deems just and proper.

**COUNT VIII
BREACH OF FIDUCIARY DUTY
CRAIG I. KARTIGANER**

103. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48, and further alleges as follows:

104. Defendant CRAIG I. KARTIGANER was engaged in the business of and held himself out as providing legal, accounting and management services for yacht owners.

105. Defendant CRAIG I. KARTIGANER was CMM Trust's attorney responsible for the care and management of the vessel seized and later owned by CMM Trust, the M/V "Newfoundland Explorer."

106. Defendant CRAIG I. KARTIGANER agreed to perform services for his client, CMM Trust, when he accepted the legal representation of CMM Trust.

107. Defendant CRAIG I. KARTIGANER had a fiduciary duty to his client, CMM Trust, in regards to his management of the M/V “Newfoundland Explorer.”

108. Defendant CRAIG I. KARTIGANER breached that fiduciary duty for at least the following reasons:

- a. Failing to obtain appropriate vessel insurance for the M/V “Newfoundland Explorer.”
- b. Failing to obtain vessel insurance with a choice of law and/or choice of forum clause designating local laws and/or a local U.S. jurisdiction.
- c. Failing to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the insurance it obtained for the vessel.
- d. Failing to advise CMM Trust that the new insurance policy contained significantly different warranties than the insurance policy that had been in effect.
- e. Failing to advise CMM Trust to manage and/or operate the M/V “Newfoundland Explorer” in compliance with the new insurance policy it obtained for the vessel.
- f. Failing to competently represent CMM Trust in matters relating to the M/V “Newfoundland Explorer,” including the legal proceedings, legal issues, and insurance issues that arose prior to and following the foreclosure on and destruction of the vessel.
- g. Failing to properly supervise the staff who work at the law firm to ensure that reasonable and appropriate representation was provided to CMM Trust in all matters relating to the M/V “Newfoundland Explorer.”
- h. Failing to properly manage the M/V “Newfoundland Explorer” with Trust funds held by the Defendant in escrow, including but not limited to the improper payment of all types of expenses and the improper expenditure of Trust funds.

109. The actions and omissions of Defendant CRAIG I. KARTIGANER described in paragraph 108, above, were negligent and below the applicable duty and standard of care for reasonably careful fiduciaries under like circumstances.

110. As a direct and proximate result of the negligence described in this Count, Plaintiff CMM Trust suffered losses, including but not limited to the following: the agreed, insured value of the M/V "Newfoundland Explorer" (\$3 million, plus interest); attorneys fees and costs for various litigation that has arisen; towing and salvage fees; the additional expense of litigating in England; and other damages that have proximately flowed from the negligence alleged herein, including contingent liability to third parties, attorneys fees and costs for various litigation that has arisen; towing and salvage fees; the additional expense of litigating in England; and other damages that have proximately flowed from the negligence alleged herein, including contingent liability to third parties.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000 hereby demands judgment for damages against Defendant CRAIG I. KARTIGANER, and any such other relief that the Court deems just and proper.

**COUNT IX
BREACH OF FIDUCIARY DUTY
ANTONIO BAYON**

111. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48, and further alleges as follows:

112. Defendant ANTONIO BAYON was engaged in the business of and held himself out as providing legal, accounting and management services for yacht owners.

113. Defendant ANTONIO BAYON was CMM Trust's attorney responsible for the care and management of the vessel seized and later owned by CMM Trust, the M/V "Newfoundland Explorer."

114. Defendant ANTONIO BAYON agreed to perform services for his client, CMM Trust, when he accepted the legal representation of CMM Trust.

115. Defendant ANTONIO BAYON had a fiduciary duty to his client, CMM Trust, in regards to his management of the M/V "Newfoundland Explorer."

116. Defendant ANTONIO BAYON breached that fiduciary duty for at least the following reasons:

- a. Failing to obtain appropriate vessel insurance for the M/V "Newfoundland Explorer."
- b. Failing to obtain vessel insurance with a choice of law and/or choice of forum clause designating local laws and/or a local U.S. jurisdiction.
- c. Failing to manage and/or operate the M/V "Newfoundland Explorer" in compliance with the insurance it obtained for the vessel.
- d. Failing to advise CMM Trust that the new insurance policy contained significantly different warranties than the insurance policy that had been in effect.
- e. Failing to advise CMM Trust to manage and/or operate the M/V "Newfoundland Explorer" in compliance with the new insurance policy it obtained for the vessel.
- f. Failing to competently represent CMM Trust in matters relating to the M/V "Newfoundland Explorer," including the legal proceedings, legal issues, and insurance issues that arose prior to and following the foreclosure on and destruction of the vessel.
- g. Failing to properly supervise the staff who work at the law firm to ensure that reasonable and appropriate representation was provided to CMM Trust in all matters relating to the M/V "Newfoundland Explorer."

h. Failing to properly manage the M/V "Newfoundland Explorer" with Trust funds held by the Defendant in escrow, including but not limited to the improper payment of all types of expenses and the improper expenditure of Trust funds.

117. The actions and omissions of Defendant ANTONIO BAYON described in paragraph 116, above, were negligent and below the applicable duty and standard of care for reasonably careful fiduciaries under like circumstances.

118. As a direct and proximate result of the negligence described in this Count, Plaintiff CMM Trust suffered losses, including but not limited to the following: the agreed, insured value of the M/V "Newfoundland Explorer" (\$3 million, plus interest); attorneys fees and costs for various litigation that has arisen; towing and salvage fees; the additional expense of litigating in England; and other damages that have proximately flowed from the negligence alleged herein, including contingent liability to third parties, attorneys fees and costs for various litigation that has arisen; towing and salvage fees; the additional expense of litigating in England; and other damages that have proximately flowed from the negligence alleged herein, including contingent liability to third parties.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000 hereby demands judgment for damages against Defendant ANTONIO BAYON, and any such other relief that the Court deems just and proper.

COUNT X
VICARIOUS LIABILITY OF DEFENDANT
KURT BOSSHARDT & ASSOCIATES, P.A. — BREACH OF FIDUCIARY DUTY

119. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48, and further alleges as follows:

120. Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER, and ANTONIO BAYON were actual agents of Defendant KURT BOSSHARDT & ASSOCIATES, P.A. Defendants

KURT E. BOSSHARDT, CRAIG I. KARTIGANER and ANTONIO BAYON were, at all times material hereto, acting within the course and scope of their agency relationship with Defendant KURT BOSSHARDT & ASSOCIATES, P.A.

121. Defendant KURT BOSSHARDT & ASSOCIATES, P.A., also held Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER, and ANTONIO BAYON out as its agents, never informing Plaintiff CMM Trust otherwise and never informing the Trust that KURT BOSSHARDT & ASSOCIATES, P.A. took no responsibility for their actions. Plaintiff CMM Trust accepted legal representation and services from Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER, and ANTONIO BAYON in the belief that this representation was being provided by Defendant KURT BOSSHARDT & ASSOCIATES, P.A.

122. Defendant KURT BOSSHARDT & ASSOCIATES, P.A. entered into an express and implied contract with Plaintiff CMM Trust for the performance of the legal representation and yacht management services, provided by its partners and/or associates Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER, and ANTONIO BAYON. in regards to the M/V "Newfoundland Explorer." The parties intended that the legal representation and yacht management services provided by Defendant KURT BOSSHARDT & ASSOCIATES, P.A. would be in accordance with the acceptable standards of care for similarly situated lawyers. Defendant KURT BOSSHARDT & ASSOCIATES, P.A.'s duty to provide non-negligent legal representation and non-negligent yacht management services was non-delegable, and Defendant KURT BOSSHARDT & ASSOCIATES, P.A. undertook to deliver the legal representation through its partners and/or associates, Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER, and ANTONIO BAYON.

123. Defendant KURT BOSSHARDT & ASSOCIATES, P.A. is therefore vicariously liable for the negligence and breach of fiduciary duty of Defendants KURT E. BOSSHARDT, CRAIG I. KARTIGANER, and ANTONIO BAYON as described in the complaint at paragraphs 100, 108 and 116.

124. As a direct and proximate result of the negligence and breach of fiduciary duty described in this count, Plaintiff CMM Trust suffered damages, including but not limited to the damages described in paragraphs 43 through 47. But for the negligence and breach of fiduciary duty detailed herein, the damages incurred by CMM Trust would not have been sustained.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000, hereby demands judgment for damages against Defendant KURT BOSSHARDT & ASSOCIATES, P.A., and any other such relief that the Court deems just and proper.

**COUNT XI
BREACH OF FIDUCIARY DUTY
DIANA M. FABOZZI**

125. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48 and further alleges as follows:

126. Defendant DIANA M. FABOZZI, as the insurance agent for CMM Trust, owed CMM Trust a fiduciary duty in all of her dealings with and on behalf of CMM Trust.

127. Defendant DIANA M. FABOZZI breached that fiduciary duty in at least the following respects:

- a. She failed to procure insurance which was substantially similar to the insurance which was previously maintained for the M/V "Newfoundland Explorer" even though she knew of its availability;

- b. She failed to appropriately investigate and ascertain the availability of insurance coverage properly suited and appropriately tailored to the normal and expected activities of the M/V “Newfoundland Explorer,” to wit: docking of the vessel in Fort Lauderdale without keeping the vessel fully crewed at all times, determining the vessel’s state of repair, and/or considering favorable choice of law and choice of forum provisions;
- c. She failed to advise CMM Trust of the importance of this type of coverage and failed to recommend that CMM Trust purchase the type of coverage in compliance with its needs;
- d. She failed to procure appropriate insurance coverage for the M/V “Newfoundland Explorer” and, instead, procured a policy that explicitly required the vessel be maintained fully crewed, required the vessel not be under repair, and had unfavorable choice of law and choice of forum provisions; and
- e. She failed to advise CMM Trust that, in the event the M/V “Newfoundland Explorer” was not maintained fully crewed and/or was under repair, and an otherwise insurable event occurred, the policy would provide no coverage, and that any litigation would proceed in an English court.

128. As a direct and proximate result of the breach of fiduciary duty of Defendant DIANA M. FABOZZI, CMM Trust has no insurance coverage for the loss of the M/V “Newfoundland Explorer” and has sustained additional damages as a result of and in connection therewith, including but not limited to the damages described in paragraphs 43 through 47. Plaintiff CMM Trust is entitled to recovery against Defendant DIANA M. FABOZZI for damages, plus all interest, costs and attorneys fees recoverable pursuant to Florida law.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000, hereby demands judgment for damages against Defendant DIANA M. FABOZZI, and any other such relief that the Court deems just and proper.

COUNT XII
NEGLIGENCE OF DEFENDANT DIANA M. FABOZZI

129. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48 and further alleges as follows:

130. The Defendant DIANA M. FABOZZI, as the insurance agent for CMM Trust, had the duty to use reasonable care in rendering any advice or recommendations to CMM Trust and had a duty to procure appropriate insurance coverage for CMM Trust with respect to the M/V “Newfoundland Explorer.”

131. Defendant DIANA M. FABOZZI breached those duties and was negligent in at least the following respects:

- a. She failed to procure insurance which was substantially similar to the insurance which was previously maintained for the M/V “Newfoundland Explorer” even though she knew it of its availability;
- b. She failed to appropriately investigate and ascertain the availability of insurance coverage properly suited and appropriately tailored to the normal and expected activities of the M/V “Newfoundland Explorer,” to wit: docking of the vessel in Fort Lauderdale without keeping the vessel fully crewed at all times, determining the vessel’s state of repair, and/or considering favorable choice of law and choice of forum provisions;
- c. She failed to advise CMM Trust of the importance of this type of coverage and failed to recommend that CMM Trust purchase the type of coverage in compliance with its needs;
- d. She failed to procure insurance coverage for the activity of CMM Trust and, instead, procured a policy that explicitly required the vessel be maintained fully crewed, and had an unfavorable choice of law and choice of forum provisions; and
- e. She failed to advise CMM Trust that, in the event the M/V “Newfoundland Explorer” was not maintained fully crewed, and an otherwise insurable event occurred, the policy would provide no coverage, and that any litigation would proceed in an English court.

132. As a direct and proximate result of Defendant DIANA M. FABOZZI's negligence, CMM Trust has no insurance coverage for the loss of the M/V "Newfoundland Explorer" and has sustained additional damages as a result of and in connection therewith, including but not limited to the damages described in paragraphs 43 through 47. Plaintiff CMM Trust is entitled to recovery against Defendant DIANA M. FABOZZI for damages, plus all interest, costs and attorneys fees recoverable pursuant to Florida law.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000, hereby demands judgment for damages against Defendant DIANA M. FABOZZI, and any other such relief that the Court deems just and proper.

COUNT XIII
VICARIOUS LIABILITY OF MARSH USA INC.

133. Plaintiff realleges the facts and allegations contained in paragraphs 1 through 48 and further alleges as follows:

134. Defendant DIANA M. FABOZZI was the actual agent of Defendant MARSH USA INC. In selling and procuring insurance and providing insurance advice, Defendant DIANA M. FABOZZI was acting in the course and scope of her employment and agency relationship with Defendant MARSH USA INC.

135. Defendant MARSH USA INC. also held Defendant DIANA M. FABOZZI out as its agent, never informing Plaintiff CMM Trust otherwise and never informing the Trust that MARSH USA INC. took no responsibility for her actions. Plaintiff CMM Trust accepted services from Defendant DIANA M. FABOZZI in the belief that those services were being provided by Defendant MARSH USA INC.

136. CMM Trust, through the Bosshardt Defendants, entered into an express and implied contract with Defendant DIANA M. FABOZZI for the performance of insurance services in regards to the M/V "Newfoundland Explorer." The parties intended that the services provided by Defendant DIANA M. FABOZZI would be rendered in a non-negligent manner. Defendant MARSH USA INC.'s duty to provide non-negligent insurance services was non-delegable, and Defendant MARSH USA INC. undertook to deliver insurance services through its employees, agents, and apparent agents, including Defendant DIANA M. FABOZZI.

137. Defendant MARSH USA INC. is therefore vicariously liable for the negligence and breach of fiduciary duty of Defendant DIANA M. FABOZZI as described in the complaint at paragraphs 125 through 132.

138. As a direct and proximate result of the negligence and breach of fiduciary duty described in this count, Plaintiff CMM Trust suffered damages, including but not limited to the damages described in paragraphs 43 through 47. But for the negligence and breach of fiduciary duty detailed herein, the damages incurred by CMM Trust would not have been sustained.

WHEREFORE, Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000, hereby demands judgment for damages against Defendant MARSH USA INC., and any other such relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff ROBERT L. WHITE, as Trustee for the CMM Trust No. 1400 u/a/d July 18, 2000,
hereby demands a jury trial on all causes of action and issues triable as a matter of right.

Respectfully submitted,

BOLDT LAW FIRM

Boca Plaza, Suite 203
299 W. Camino Gardens Boulevard
Boca Raton, Florida 33432

- and -

RATZAN & ALTERS, P.A.

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Miami, Florida 33131
Telephone (305) 374-6366

Attorneys for Plaintiff CMM Trust

BY: 

STUART N. RATZAN
Florida Bar No. 911445

DATED this 1st day of April, 2006.