

ORIGINAL

P.K. SCHRIEFFER LLP
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

1 **P.K. SCHRIEFFER LLP**
Paul K. Schrieffer, Esq. (CSB# 151358)
2 Rena M. Stone, Esq. (CSB#117090)
Wayne H. Hammack, Esq. (CSB# 202709)
3 100 N. Barranca Avenue, Suite 1100
West Covina, California 91791
4 Telephone: (626) 373-2444
Facsimile: (626) 974-8403

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JUN 29 2012

John A. Clarke, Executive Officer/Clerk
BY Shaunya Wesley, Deputy

5 Attorneys for Plaintiffs/Cross-Defendants
6 CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO
7 CONTINGENCY NON-APPEARANCE AND CANCELLATION POLICY NO.
B0638C091985

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 CERTAIN UNDERWRITERS AT
12 LLOYD'S OF LONDON SUBSCRIBING
TO CONTINGENCY NON-
13 APPEARANCE AND CANCELLATION
POLICY NO. B0638C091985,
14 Plaintiffs,

Case No.: BC462973

ASSIGNED FOR ALL PURPOSES TO: THE
HONORABLE MALCOLM MACKEY

DEPT.: 55

15 vs.

16 AEG LIVE LLC; THE MICHAEL
JACKSON COMPANY LLC and DOES 1-
17 75, inclusive,

**PLAINTIFFS AND CROSS-DEFENDANTS
CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON SUBSCRIBING TO
CONTINGENCY NON-APPEARANCE
POLICY NO. B0638C091985's SEPARATE
STATEMENT OF MATERIAL
UNDISPUTED FACTS IN SUPPORT OF
MOTION FOR ADJUDICATION OF
ISSUES**

18 Defendants.

19 THE MICHAEL JACKSON COMPANY
20 LLC,

Cross-Complaint

21 vs.

22 CERTAIN UNDERWRITERS AT
LLOYD'S OF LONDON; NORTH
23 AMERICAN CAPACITY INSURANCE
CO.; HOMELAND INSURANCE
24 COMPANY OF NEW YORK, and ROES
1 through 15, inclusive

[Filed concurrently with Notice of Motion and
Motion for Summary Adjudication of Issues;
Request for Judicial Notice; Declaration of
Paul K. Schrieffer; and [Proposed] Order]

**DATE: September 12, 2012
TIME: 8:30 a.m.
DEPT: 55**

25 Cross-Defendants.

TRIAL DATE: NONE
ACTION FILED: JUNE 6, 2011

26
27
28
**PLAINTIFF/CROSS-DEFENDANTS CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON
SUBSCRIBING TO CONTINGENCY NON-APPEARANCE POLICY NO. B0638C091985'S SEPARATE
STATEMENT OF MATERIAL UNDISPUTED FACTS**

P.K. SCHRIEFFER LLP
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

Pursuant to California Code of Civil Procedure § 437c(f), Plaintiffs and Cross-Defendants CERTAIN UNDERWRITERS AT LLOYD’S, LONDON SUBSCRIBING TO CONTINGENCY NON-APPEARANCE POLICY NO. B0638C091985 hereby submit their separate statement of material undisputed facts, together with reference to supporting evidence in support of their motion for summary adjudication of issues as to the declaratory relief complaint’s third cause of action for declaratory relief – duty to indemnify:

PLAINTIFFS’ UNDISPUTED MATERIALS FACTS AND SUPPORTING EVIDENCE:	DEFENDANT AEG’S RESPONSE AND SUPPORTING EVIDENCE:
ISSUE NO. 1:	
<p>1. Underwriters’ contingency non-appearance and cancellation policy (no. B0638091985) was issued to (amongst others) AEG Live, LLC, doing business as Concerts West, (“AEG”).</p> <p>Evidence:</p> <p>Schrieffler dec., ¶ 2; A true and correct copy of policy no. B0638091985 is attached hereto and incorporated herein as exhibit “1.” True and correct copies of the cited and pertinent pages of AEG’s responses to Underwriters’ first set of requests for admissions are attached hereto and incorporated herein as Exhibit 2. See, AEG’s responses to Underwriters’ first set of requests for admission, response nos. 4 and 234. See Exhibit 12 (Underwriters’ first set of requests for admissions), nos. 4 and 234, and attached</p>	

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

01/26/20

1 copy of policy no. B0638C091985 (Exhibit
2 "C" to Requests for admission).

3 2. The policy was written to provide
4 indemnity to AEG and/or the other named
5 assured, the Michael Jackson Company LLC,
6 "for their ascertained Net Loss and
7 Additional Costs as set out in Insurance
8 Clause 1.1, 1.2 and 3.1 of the Policy."

9 Evidence:

10 Schrieffler dec., ¶ 2; Exhibit "1," pages 8; and
11 9 Exhibit 2, nos. 4 and 234.

12 3. The policy stated in pertinent part:

13 1. INSURANCE CLAUSE

14 1.1 Subject always to the terms, conditions,
15 limitations and exclusions contained herein or
16 endorsed hereon this Insurance is to
17 indemnify [AEG and/or Jackson LLC] for
18 their Ascertained Net Loss should any
19 Insured Performance(s) or Event(s) specified
20 in the Tour Schedule be necessarily
21 Cancelled, Abandoned, Postponed or
22 interrupted. [emphasis added.]

23 Provided that:

24 (1.1.1) the necessary Cancellation,
25 Abandonment, Postponement or
26 Interruption is caused by a peril
27 described in 2.1 to 2.7 below and

P.K. SCHRIEFFER LLP
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

ST-202-00

1 (1.1.2) such peril is beyond the control of
2 (i) [AEG and/or Jackson LLC]
3 and
4 (ii) [Michael Jackson];
5 (1.1.3) the circumstances giving rise to the
6 loss first occurs during the Period of
7 Insurance stated in the Schedule.

8 1.2 This Insurance also indemnifies the
9 Assured for proven additional costs or
10 charges reasonably and necessarily paid by
11 the Assured to avoid or diminish a loss herein
12 insured.

13 Evidence:

14 Schrieffter dec., ¶ 2; Exhibit "1," p. 8; Exhibit
15 2, nos. 4 and 234.

16 4. The policy's coverage attached (subject to
17 the terms, conditions, limitations and
18 exclusions of the policy), with respect to
19 certain "perils", i.e.:

20 *Death* 2.1 DEATH of any Insured Person.
21 *Accident/* 2.2 ACCIDENT to ... any Insured
22 *Illness* Person which, in the opinion of an
23 Independent medical practitioner
24 approved by the Insurers, entirely
25 prevents any Insured Person from
26 appearing or continuing to appear
27 in any or all of the Insured

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

2/1/2009

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>Performance(s) or Event(s).</p> <p>Evidence:</p> <p>Schrieffler dec., ¶ 2; Exhibit "1," p. 8; Exhibit 2, nos. 4 and 234.</p>	
<p>5. The policy's declaration page, under "interest," stated that the insurance "[was] to indemnify the Assured for their Ascertained Net Loss and Additional Costs as set out in Insurance Clauses 1.1, 1.2 and 3.1" of the policy's wording, and applied to the first thirty (30) concerts of Jacksons' tour, taking place at the O2 Arena in London and commencing on July 13, 2009.</p> <p>Evidence:</p> <p>Schrieffler dec., ¶ 2; Exhibit "1," p. 1, Exhibit 2, nos. 4 and 234.</p>	
<p>6. The policy at 3. DEFINITIONS 3.1 defines "Ascertained Net Loss" in part as follows:</p> <p>3.1 Ascertained Net Loss means such sums in excess of any deductible stated in the Schedule as represent:</p> <p>(3.1.1) that part of the Expenses which have been irrevocably expended in connection with the Insured Performance(s) or Event(s), less such part of the Gross Revenue received</p>	

P.K. SCHRIEFFER LLP
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

07/26/09

1 or receivable less any saving the Assured is
2 able to effect to mitigate such loss

3 Evidence:

4 Schrieffler dec., ¶ 2; Exhibit "1," p. 9; Exhibit
5 2, nos. 4 and 234.

6 7. Michael Jackson ("Jackson") died at age
7 50 on June 25, 2009 in his Beverly Hills
8 home.

9 Evidence:

10 True and correct copies of Jackson's
11 Certificate of Death dated July 7, 2009 and
12 Coroner's Amendment dated August 31,
13 2009 are attached to Underwriters' Request
14 for Judicial Notice herein as Exhibits 3 and 4
15 and incorporated herein by reference.

16 8. On November 20, 2009, AEG's attorney
17 Howard Weitzman wrote to counsel for
18 Underwriters and for the domestic carriers on
19 the policy, One Beacon and North American
20 Capacity, and provided a copy of Jackson's
21 official death certificate, which Weitzman
22 claimed:

23 . . . establishes that Mr. Jackson's death was a
24 covered peril under paragraph 2.1 of the
25 cancellation policy and occurred within the
26 Period of Insurance. Given that Mr.
27 Jackson's death certificate establishes AEG's

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

1 entitlement to full indemnity under the
2 policy, we request that liability be admitted
3 and agreed within thirty days of this letter.

4 Evidence:

5 Exhibit 2, no. 12; Schrieffler dec., ¶ 3; A true
6 and correct copy of Mr. Weitzman's letter
7 dated November 20, 2009 is attached hereto
8 and incorporated herein as Exhibit "5."

9 9. Underwriters responded to Mr. Weitzman
10 through counsel, and asked AEG to provide
11 Underwriters with the information necessary
12 to allow Underwriters to evaluate AEG's
13 claim, including Jackson's medical records,
14 the L.A. County Coroner's report, autopsy
15 results, blood tests, documents related to Dr.
16 Conrad Murray and Jackson's drug use.

17 Evidence:

18 Schrieffler dec., ¶ 2, 3, 4; Exhibit "2," nos. 22,
19 27, 31, 36, 40, 50 and 54.

20 10. Underwriters also asked AEG to submit a
21 signed and sworn proof of claim "to
22 substantiate the 'occurrence, nature, cause
23 and amount of loss claimed under this
24 insurance, as required under the policy."

25 Evidence:

26 Schrieffler dec., ¶ 2, 4; Exhibit "2," no. 22.

27 11. Over the ensuing months, Underwriters

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

1 unsuccessfully sought from AEG's counsel
2 the information necessary to allow
3 Underwriters to evaluate AEG's claim,
4 including a sworn proof of loss.

5 Evidence:

6 Schrieffler dec., ¶2, 4; 5: Exhibit 2, nos. 22; 23;
7 24; 25; 27-30; 31-32; 34-35; 36-42; and 105-
8 107.

9 12. On February 2, 2010, while declining to
10 provide a proof of loss, Mr. Weitzman
11 advised Underwriters that AEG and the
12 Estate of Michael Jackson had "entered into
13 an agreement with respect to how proceeds
14 under the Policy are to be allocated..."

15 Evidence:

16 Schrieffler dec., ¶ 5; A true and correct copy
17 of Weitzman's February 2, 2010 letter is
18 attached hereto and incorporated herein as
19 Exhibit "6." A true and correct copy of the
20 "Redacted Ex Parte Petition For Order
21 Authorizing Special Administrators To Enter,
22 Or Cause, Wholly Owned Entity To Enter,
23 Proposed Business Transaction With AEG
24 Live, LLC," filed with this Court in case no
25 BP 117 321 (*In the Estate of Michael Joseph*
26 *Jackson, Deceased*), is attached to
27 Underwriters' Request for Judicial Notice as

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

EX-100-200

1 exhibit 7 and incorporated herein by
2 reference; attached as "Exhibit B" to Exhibit
3 7 hereto is the "First Amendment"
4 Agreement referred to by Mr. Weitzman in
5 his February 2, 2010 letter.

6 13. In his February 2, 2010 letter, Mr.
7 Weitzman responded to Underwriters'
8 request that AEG provide a proof of loss by
9 stating that "[with] respect to the total
10 quantum of loss suffered, we can represent to
11 you that AEG spent far more than \$17.5
12 million in preparation for the O2 shows."

13 Evidence:

14 Schrieffler dec., ¶ 6; Exhibit "6."

15 14. In his February 2, 2010 letter, Mr.
16 Weitzman also stated:
17 "These expenses included substantial
18 production costs incurred in building the set,
19 as well as salaries for back-up performers and
20 an advance for Mr. Jackson. We are
21 compiling documentary evidence supporting
22 AEG's investment and will forward it under
23 separate cover, again subject to your
24 agreement to maintain the confidentiality of
25 all such information."

26 Evidence:

27 Schrieffler dec., ¶ 6; Exhibit "6."

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

01/26/2010

1 15. Following the February 2, 2010 letter,
2 (ex. 6), AEG continued to maintain that it had
3 a right to recover under the policy.

4 Evidence:

5 Schrieffer dec., ¶ 6, 7; A true and correct
6 copy of the June 16, 2010 email from
7 attorney Patricia Millett on AEG's behalf is
8 attached hereto and incorporated herein as
9 Exhibit "8." (The attachments referenced in
10 the email are not included in the exhibit.)

11 16. Following the February 2, 2010 letter,
12 (ex. 6), AEG continued to maintain that it had
13 a right to recover under the policy.

14 Evidence:

15 Schrieffer dec., ¶ 6, 7; A true and correct
16 copy of attorney Patricia Millett's further
17 email of June 17, 2010 on AEG's behalf is
18 attached hereto and incorporated herein as
19 Exhibit "9." (The attachments referenced in
20 the email are not included in the exhibit.)

21 17. Following its February 2, 2010 (ex. 6),
22 AEG continued to maintain that it had a right
23 to recover under the policy.

24 Evidence:

25 Schrieffer dec., ¶ 6, 7; A true and correct
26 copy of attorney Patricia Millett's letter of
27 April 4, 2011 is attached hereto and

P.K. SCHRIEFFER LLP
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

07/25/11

1 incorporated herein by reference as Exhibit
2 "10". The letter states, in part: "In response
3 to your requests, we have provided ...
4 financial records establishing that AEG
5 suffered losses far in excess of the policy
6 limits..."

7 18. On June 6, 2011, Underwriters filed their
8 complaint for declaratory relief naming, *inter*
9 *alia*, AEG, and alleging causes of action for
10 declaratory relief – rescission; declaratory
11 relief – non-assignment clause; and
12 declaratory relief – duty to indemnify.

13 Evidence:

14 Request for Judicial Notice, no. 1. A true and
15 correct copy of Underwriters' complaint for
16 declaratory relief is attached to Underwriters'
17 Request for Judicial Notice as Exhibit 11 and
18 incorporated herein by reference.

19 19. On July 22, 2011, following the filing of
20 this action, Underwriters served on AEG their
21 first sets of discovery, including first set of
22 requests for admission, first set of special
23 interrogatories, first set of form
24 interrogatories and first set of requests for
25 production of documents.

26 Evidence:

27 Schrieffler declaration, ¶ 2, 8; A true and
28

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

EX-100-20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

correct copy of the relevant pages of Underwriters' first set of requests for admissions, first set of special interrogatories and first set of form interrogatories are attached hereto and incorporated herein as Exhibits 12, 13 and 14, respectively.

20. Following the service of Underwriters' discovery, AEG requested multiple extensions of time within which to respond to the discovery, ultimately obtaining extensions taking the deadline to November 2011.

Evidence:
Schrieffer dec., ¶ 9.

21. On November 7, 2011, when Underwriters finally refused additional extensions of time to respond to their discovery, AEG filed a motion to stay discovery and trial pending the outcome of the *Katherine Jackson* case, with no attempt to first meet and confer with Underwriters' counsel.

Evidence:
Schrieffer dec., ¶ 10; A true and correct copy of the motion to stay and for protective order is attached to Underwriters' request for judicial notice as Exhibit 15 and incorporated herein by reference.

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

1 22. The court denied the motion to stay
2 discovery on January 5, 2012 and later took
3 the motion to stay trial off calendar as moot
4 on January 6, 2012.

5 Evidence:

6 Schrieffer dec., ¶ 10; A true and correct copy
7 of the court's orders are attached to
8 Underwriters' Request for Judicial Notice as
9 Exhibit 16 and incorporated herein by
10 reference.

11 23. AEG filed a petition for writ of mandate
12 as to the court's order denying its motion to
13 stay with the Second Appellate District Court
14 of Appeal.

15 Evidence:

16 Schrieffer dec., ¶ 10; A true and correct copy
17 of the cover, page and proof of service of the
18 petition for writ of mandate is attached to
19 Underwriters' Request for Judicial Notice as
20 Exhibit 17 and incorporated herein by
21 reference.

22 24. The Second District rejected AEG's
23 petition for writ of mandate on February 21,
24 2012.

25 Evidence: Schrieffer dec., ¶ 10

26 A true and correct copy of the Second
27 District's order of February 21, 2012 is

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

1 attached to Underwriters' Request for
2 Judicial Notice as Exhibit 18 and
3 incorporated herein by reference.
4

5 25. AEG also sought to limit Underwriters'
6 access to its documents and to avoid
7 responding to Underwriters' written
8 discovery via a motion for protective order,
9 which was referred by the Court to the Court-
10 appointed discovery referee, Justice John
11 Zebrowski (Ret.).

12 Evidence:
13 Schrieffler dec., ¶ 11; Exhibit 15, 16.

14 26. Justice Zebrowski ordered AEG to
15 respond to the discovery within forty-five
16 (45) days of his order.

17 Evidence:
18 Schrieffler dec., ¶ 11
19 True and correct copies of Justice
20 Zebrowski's report of April 4, 2012 and of
21 the court's order adopting the report are
22 attached to Underwriters' Request for
23 Judicial Notice as Exhibit 19 and
24 incorporated herein by reference.

25 27. Justice Zebrowski's report to the court
26 stated in part:
27 [I]t appears most likely that at least some of
28

P.K. SCHRIEFFER LLP
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

07/25/12

1 the information compiled to respond to
2 Katherine Jackson's discovery requests
3 would also provide responses to some of the
4 Underwriters' discovery requests. In fact,
5 AEG itself, in its motion to stay, has argued
6 that the nature of the subject matter is
7 overlapping. . . [t]he date of the Declaration
8 of Stebbins [one of AEG's counsel] in which
9 the claim of overburden appears is November
10 7, 2011. Hence, almost five months have
11 passed since the date of this declaration [as of
12 Justice Zebrowski's April 4, 2012 report to
13 this court].

14 Evidence:
15 Exhibit 19.

16 28. Justice Zebrowski's report, adopted by
17 the Court, also noted that AEG's "motion
18 process, the proceedings in the Court, and the
19 start-up of this discovery reference
20 proceeding has already afforded AEG many
21 additional months in which to clear its work
22 logjam... AEG's preparation on issues
23 arising out of the death of Michael Jackson
24 should therefore be much advanced as
25 compared to last November."

26 Evidence:
27 Exhibit 19.

P.K. SCHRIEFFER LLP
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

87225428

1 29. On June 4, 2012, nearly one year after
2 Underwriters served their discovery requests,
3 AEG served its verified responses.

4 Evidence:

5 Schrieffler dec., ¶ 2, 12; Exhibit 2 (AEG's
6 responses to Underwriters first set of requests
7 for admission); True and correct copies of the
8 cited and relevant pages of AEG's responses
9 to Underwriters' special interrogatories and
10 form interrogatories are attached hereto and
11 incorporated herein as Exhibits 20 and 21,
12 respectively.

13 30. Underwriters' Form Interrogatory No. 8.1
14 stated:

15 **FORM INTERROGATORY NO. 8.1**

16 Do you attribute any loss of income or
17 earning capacity to the incident?

18 AEG's response to Form Interrogatory was as
19 follows:

20 **RESPONSE TO FORM**

21 **INTERROGATORY NO. 8.1:**

22 AEG LIVE incorporates each of its General
23 Objections as though fully set forth in
24 response to this Form Interrogatory. AEG
25 LIVE also objects to the definition of
26 "INCIDENT" as ambiguous in this
27 declaratory relief insurance action, and

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

1 defines "INCIDENT" for purposes of this
2 Interrogatory only to mean "cancellation of
3 the planned 'This Is It' concert series
4 featuring Michael Jackson scheduled to being
5 in summer 2009." [¶] Subject to and without
6 waiving its objections, AEG LIVE responds
7 as follows: While AEG LIVE does contend
8 that AEG LIVE is covered by the Policy and
9 that the Policy is valid, AEG LIVE no longer
10 contends that it has suffered a loss
11 compensable by the Policy. At the time AEG
12 LIVE tendered the claim under the Policy,
13 AEG LIVE had suffered losses in excess of
14 thirty million dollars in connection with the
15 cancellation of the "This Is It" Tour. The
16 majority of these losses were production costs
17 advanced to Michael Jackson and to The
18 Michael Jackson Company, AETG LIVE's
19 co-assured under the Policy. These losses
20 now lie solely with The Michael Jackson
21 Company, AEG LIVE's co-assured, and no
22 longer with AEG LIVE.

23 Evidence:

24 Schrieffler dec., ¶ 12; Ex. 21.

25 31. Underwriters' special interrogatory no. 1
26 stated:

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

87/20726

1 **SPECIAL INTERROGATORY NO. 1:**

2 Do YOU contend that AEG Live LLC
3 is entitled to coverage under policy
4 no. B0638C091985, issued to AEG
5 Live LLC by UNDERWRITERS and
6 effective from April 24, 2009 to
7 January 19, 2010, with respect to
8 YOUR claim of loss with respect to
9 the cancellation of the CONCERTS?

10 ...

11 In its response to Special
12 Interrogatory no. 1, AEG states as
13 follows:

14 **RESPONSE TO SPECIAL**
15 **INTERROGATORY NO. 1:**

16 AEG LIVE has yet to complete its
17 discovery, investigation, and
18 preparation for trial... AEG LIVE
19 incorporates each of its General
20 Objections as though fully set forth in
21 response to this Interrogatory. [¶]
22 Subject to, and without waiving any
23 objections, AEG LIVE responds as
24 follows: No. While AEG LIVE does
25 contend that AEG LIVE is covered by
26 the Policy and that the Policy is valid,
27 AEG LIVE no longer contends it has

P.K. SCHRIEFFER LLP
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

01/26/2016

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>suffered a loss compensable by the Policy. ... Evidence: Schrieffer dec., ¶ 12; Ex. 20.</p>	
<p>32. Underwriters' special interrogatory no. 2 stated: <u>SPECIAL INTERROGATORY NO. 2:</u> If YOU contend that AEG Live LLC is entitled to coverage under policy no. B0638C091985, issued to AEG Live LLC by UNDERWRITERS . . . , with respect to YOUR claim of loss with respect to the cancellation of the CONCERTS, please state all facts upon which YOU base that contention. <u>RESPONSE TO SPECIAL INTERROGATORY NO. 2:</u> AEG LIVE has yet to complete its discovery... AEG LIVE incorporates each of its General Objections as though fully set forth in response to this Interrogatory. [¶] Subject to and without waiving any of its objections, AEG LIVE responds as follows: While AEG LIVE does contend that AEG LIVE is covered by the Policy and that the Policy is valid, AEG LIVE no longer contends it has suffered a loss compensable</p>	

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

01/22/2018

1 by the Policy.

2 Evidence:

3 Schrieffter dec., ¶ 12; Ex. 20.

4 33. Underwriters' request for admission no.

5 142 stated:

6 **REQUEST FOR ADMISSION NO. 142:**

7 Admit that to date, YOU have not
8 provided information to
9 UNDERWRITERS substantiating
10 YOUR total quantum of losses
11 sustained which YOU maintain are
12 covered under the policy.

13 In response to request for admission
14 no. 142, AEG stated as follows:

15 **RESPONSE TO REQUEST FOR**
16 **ADMISSION NO. 142:**

17 AEG LIVE objects to this request.... [¶]

18 Subject to, and without waiving any of its
19 objections, AEG LIVE responds as follows:

20 Admitted in part. As explained in AEG
21 LIVE's concurrently served response to
22 plaintiffs' Special Interrogatory No. 1, AEG
23 LIVE suffered a substantial loss of funds
24 advanced on behalf of the Michael Jackson
25 Company, but does not presently contend that
26 it continues to suffer a loss compensable by
27 the policy.

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

01/08/06

1 Evidence:
2 Schrieff dec., ¶ 12; Ex. 2.

3 34. In its request for admission no. 146,
4 Underwriters stated:
5 **REQUEST FOR ADMISSION NO. 146:**
6 Admit that to date, YOU have not provided
7 information to UNDERWRITERS regarding
8 efforts to mitigate your loss under the policy.
9 In response to request for admission no. 146,
10 AEG stated:
11 AEG LIVE objects to this Request to the
12 extent that it seeks information protected by
13 the attorney-client privilege . . . [¶] Subject to
14 and without waiving any of its objections,
15 AEG LIVE responds as follows: Admitted in
16 part. As explained in AEG LIVE's
17 concurrently served response to plaintiffs'
18 Special Interrogatory No. 1, AEG LIVE
19 suffered a substantial loss of funds advanced
20 on behalf of the Michael Jackson Company,
21 but does not presently contend that it
22 continues to suffer a loss compensable by the
23 Policy.
24 Evidence:
25 Schrieff dec., ¶ 2,12; Ex. 2.

26 35. In request for admission no. 149,
27 Underwriters stated:

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

1 **REQUEST FOR ADMISSION NO. 149:**

2 Admit that to date, YOU have not provided
3 information to UNDERWRITERS with
4 access to source documents regarding YOUR
5 claimed and substantiated losses, including
6 profit and loss statements regarding the
7 insured production, balance sheets, income
8 statements and source documents
9 substantiating each.

10 In its response to request for admission no.
11 149, AEG stated as follows:

12 **RESPONSE TO REQUEST FOR**
13 **ADMISSION NO. 149:**

14 AEG LIVE objects to this Request to the
15 extent that it seeks information protected by
16 the attorney-client privilege ... [¶] Subject to
17 and without waiving any of its objections,
18 AEG LIVE responds as follows: Admitted in
19 part. As explained in AEG LIVE's
20 concurrently served response to plaintiffs'
21 Special Interrogatory No. 1, AEG LIVE
22 suffered a substantial loss of funds advanced
23 on behalf of the Michael Jackson Company,
24 but does not presently contend that it
25 continues to suffer a loss compensable by the
26 Policy.

P.K. SCHRIEFFER LLP
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

ELJ/ELJ

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Evidence:
Schrieffler dec., ¶ 2,12; Ex. 2.

36. In request for admission no. 158,
Underwriters stated:
REQUEST FOR ADMISSION NO. 158:
Admit that to date, YOU have not provided
UNDERWRITERS with documentary
evidence to support YOUR claim, including
the total ticketing income, secondary
ticketing income, plus merchandising income,
less the AEG Live promoter profit.
In its response to request for admission no.
158, AEG responded as follows:
**RESPONSE TO REQUEST FOR
ADMISSION NO. 158:**
Subject to and without waiving any of its
objections, AEG LIVE responds as follows:
Admitted in part. As explained in AEG
LIVE's concurrently served response to
plaintiffs' Special Interrogatory No. 1, AEG
LIVE suffered a substantial loss of funds
advanced on behalf of the Michael Jackson
Company, but does not presently contend that
it continues to suffer a loss compensable by
the Policy.
Evidence:
Schrieffler dec., ¶ 2,12; Ex. 2.

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

1 37. Underwriters' request for admission no.

2 180 stated:

3 **REQUEST FOR ADMISSION NO. 180:**

4 Admit that YOUR total monetary loss
5 claimable under the POLICY as a result of
6 the cancellation of the Michael Jackson tour
7 dates at the O2 Arena in London cannot
8 exceed \$17,500,000.

9 In response to request for admission no. 180,
10 AEG stated:

11 **RESPONSE TO REQUEST FOR**
12 **ADMISSION NO. 180:**

13 . . . Subject to and without waiving any of its
14 objections, AEG LIVE responds as follows:

15 Admitted in part. As explained in AEG
16 LIVE's concurrently served response to
17 plaintiffs' Special Interrogatory No. 1, AEG
18 LIVE suffered a substantial loss of funds
19 advanced on behalf of the Michael Jackson
20 Company, but does not presently contend that
21 it continues to suffer a loss compensable by
22 the Policy.

23 Evidence:

24 Schrieffer dec., ¶ 2,12; Ex. 2.

25 38. Underwriters' request for admission no.

26 181 stated:

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

1 **REQUEST FOR ADMISSION NO. 181:**

2 Admit that YOUR total monetary loss
3 claimable under the POLICY as a result of
4 the cancellation of the Michael Jackson tour
5 dates at the O2 Arena in London are less than
6 \$17.5 million.

7 **RESPONSE TO REQUEST FOR**
8 **ADMISSION NO. 181:**

9 . . . Subject to and without waiving any of its
10 objections, AEG LIVE responds as follows:

11 Admitted in part. As explained in AEG
12 LIVE's concurrently served response to
13 plaintiffs' Special Interrogatory No. 1, AEG
14 LIVE suffered a substantial loss of funds
15 advanced on behalf of the Michael Jackson
16 Company, but does not presently contend that
17 it continues to suffer a loss compensable by
18 the Policy.

19 Evidence:

20 Schrieffer dec., ¶ 2,12; Ex. 2.

21 39. On June 12, 2012, after reviewing AEG's
22 discovery response, Underwriters demanded
23 AEG , through counsel, to withdraw its claim
24 under the policy by no later than June 19,
25 2012.

26 Evidence:

27 Schrieffer dec., ¶ 13; A true and correct copy

P.K. SCHRIEFFER L L P
100 No. Barranca Ave., Suite 1100
West Covina, California 91791
Telephone: (626) 373-2444
Facsimile: (626) 974-8403

67288228

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

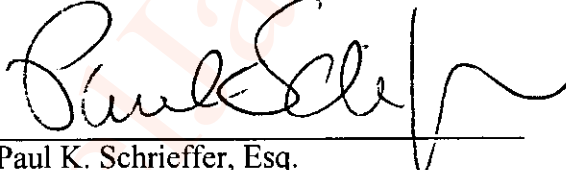
of the June 12, 2012 letter is attached hereto
and incorporated herein as Exhibit 22.

40. To the date of the filing of this motion,
AEG has refused to withdraw its claim under
the policy.

Evidence:
Schrieffer dec., ¶ 13.

Date: June 29, 2012

P. K. SCHRIEFFER LLP

By: 
Paul K. Schrieffer, Esq.
Rena M. Stone, Esq.
Wayne H. Hammack, Esq.
Attorneys for Plaintiffs/Cross-Defendants, CERTAIN
UNDERWRITERS AT LLOYD'S OF LONDON
SUBSCRIBING TO CONTINGENCY NON-
APPEARANCE AND CANCELLATION POLICY
NO. B0638C091985

1 **PROOF OF SERVICE**

2 Assigned for all purposes to Hon. Malcolm H. Mackey, Dept. 55 Los Angeles Superior Court, Central District, 111
3 No. Hill St., Los Angeles, CA 90012; Phone# (213) 974-5683

4 Certain Underwriters v. AEG Live LLC, et al., Case No.: BC462973

5 I am employed in the county of Los Angeles, State of California. I am over the age of eighteen
6 years and not a party to the within entitled action; my business address is 100 N. Barranca Avenue, Suite
7 1100, West Covina, California 91791.

8 On June 29, 2012 I served the foregoing document(s) described as **PLAINTIFFS AND
9 CROSS-DEFENDANTS CERTAIN UNDERWRITERS AT LLOYD'S, LONDON
10 SUBSCRIBING TO CONTINGENCY NON-APPEARANCE POLICY NO.
11 B0638C091985's SEPARATE STATEMENT OF MATERIAL UNDISPUTED FACTS IN
12 SUPPORT OF MOTION FOR ADJUDICATION OF ISSUES** placing the true copies thereof
13 enclosed in sealed envelopes addressed as follows:

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Howard Weitzman Patricia A. Millett
Kinsella Weitzman Iser Kump & Aldisert LLP
808 Wilshire Blvd., 3rd Floor
Santa Monica, CA 90401
Tel: (310) 566-9800
Fax: (310) 566-9850
Attorneys for Defendants, The Michael Jackson
Company LLC and third party The Estate of
Michael Jackson

Marvin Putnam, Esq. Jessica L. Stebbins, Esq.
O'Melveny & Myers LLP
1999 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
Tel: (310) 553-6700
Fax: (310) 246-6779
Attorneys for Defendant, AEG Live LLC

Marc J. Shrake
Anderson, McPharlin & Conners LLP
444 South Flower Street, 31st Floor
Los Angeles, CA 90071
Telephone: 213-236-1691
Facsimile: 213-622-7594
Attorneys for Defendants/Cross-Complainants,
NORTH AMERICAN CAPACITY
INSURANCE COMPANY and HOMELAND
INSURANCE COMPANY OF NEW YORK

() BY MAIL: I am "readily familiar" with the firm's practice of collection and processing
correspondence and processing correspondence for mailing. Under that practice it would be
deposited with the U.S. postal service on that same day with postage thereon fully prepaid at
West Covina, California in the ordinary course of business.

(XX) BY PERSONAL SERVICE: I delivered such envelope(s) by hand to the office(s) of the
addressee(s) noted above.

() BY FEDERAL EXPRESS: I caused said envelope(s) to be sent by Federal Express to

02/28/12

1 the address(s) noted above.

2 () BY FACSIMILE: I caused said document(s) to be transmitted by facsimile during

3 () BY ELECTRONIC EMAIL: Based on a court or an agreement of the parties to accept service by
4 e-mail or electronic transmission, I caused the documents to be sent to the persons at the email
5 addresses listed in the service list below. I did not receive, within a reasonable time after the
6 transmission, any electronic message or other indication that the transmission was unsuccessful
7 during normal business hours of 8:00 a.m. to 5:00 p.m. to the addressee(s) noted above.

8 Executed on **June 29, 2012** at West Covina, California.

9
10 (XX) STATE I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


R&R Messenger