

JUDGE BUCHWALD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

09 CIV 5927

PELICAN EQUITY, LLC,

Plaintiff,

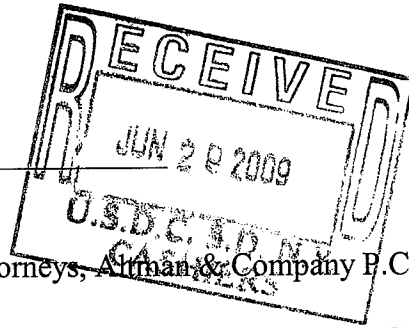
09 Civ. ()

-against-

COMPLAINT

ROBERT V. BRAZELL, STEPHEN L. NORRIS,
TALOS PARTNERS, LLC, RAMA RAMACHANDRAN,
DARL McBRIDE, and BRYAN CAVE LLP,

Defendants.



Pelican Equity, LLC, by its attorneys, ~~Altman & Company P.C.~~, for its Complaint against defendants Robert V. Brazell, Stephen L. Norris, Talos Partners, LLC, Rama Ramachandran, Darl McBride and Bryan Cave LLP, alleges as follows:

NATURE OF THIS ACTION

1. This action arises out of the defendants' theft of extremely valuable trade secrets, breaches of the fiduciary duties owed by business partners and company employees pursuant to written agreements, misappropriation and unfair competition, violation of the Computer Fraud and Abuse Act, malpractice by a major international law firm, and fraud and deceit. Defendant Robert Brazell, the self described Co-Chairman and Managing Partner of non-party American Institutional Partners LLC ("AIP"), together with defendants Stephen Norris, Rama Ramachandran and Darl McBride a/k/a "Skyline Cowboy" (collectively, the "Individual

Defendants”), conspired to and did steal AIP’s proprietary stock loan product¹ (the “Confidential Business Information”) and virtually AIP’s entire business from AIP and its founder, Mark Robbins. Plaintiff Pelican Equity, LLC (“Pelican”) owns all right, title and interest in and to the Confidential Business Information and AIP’s stock loan business and all rights to sue on the claims asserted in this action, having acquired them for fair value from AIP and Mr. Robbins.

2. The defendants repeatedly acknowledged the extraordinary commercial value of the Confidential Business Information. So excited was Brazell in November 2008 about his “partnership” in AIP and the future of AIP’s stock loan business, that he described his state of mind to Robbins via email in the following colorful terms:

I came home and [performed a certain sexual act] to the stock agreement. I humped the Prudential brochure. I am leaving on our new f**king plane to hire the best f**king banker in NYC and open an office so that we are banking deals by this time next week. Now do you think I am excited! ;)

In other emails, most written from his rbrazell@aipcapital.com email address, Brazell admitted that Robbins had spent more than four years at AIP developing its stock loan product and that “Equitap [the product he later stole] is an AIP business.” Brazell wrote a prospective hire that AIP “ha[d] a lot of legal opinion work and millions have been spent on the documentation and process.” He repeatedly told Robbins that they would “write billions of dollars in [stock] loans” and together “become billionaires.”

3. Brazell masterminded the conspiracy. He and his partner Stephen Norris – in flagrant breach of their fiduciary duties to AIP – formed Talos Partners, LLC (“Talos”) with

¹ The AIP stock loan product sometimes bore the trade names “Equitap,” “Synthetic Secured Lending” or “Smart Hedge.”

the aid and substantial assistance of AIP's lawyers at Bryan Cave, for the very purpose of using and exploiting the Confidential Business Information for their own financial gain. While still acting as an AIP officer, Brazell solicited AIP employees to work for his new competing venture. AIP employee Rama did so even while still employed at AIP.

4. Brazell and his accomplices also mis-used their access to AIP's computers to copy the website that AIP was developing and used it for the website they created to promote Talos. They were so sloppy about the copy job that early iterations of the (stolen) Talos website contained references to AIP. It did not take the defendants long to capitalize on their misdeeds. In the last 90 days Talos, acting through and by the Individual Defendants, has closed more than \$500 million in stock loans and has amassed a balance sheet of at least \$350 million, all using the Confidential Business Information. In closing those loans they used detailed transaction documents, including but not limited to the form of Master Loan Agreement prepared specifically for AIP by AIP's former counsel, Bryan Cave.

5. Bryan Cave and its attorneys breached their fiduciary duties to AIP and committed malpractice. While actively representing AIP, and without obtaining a conflicts waiver from it, Bryan Cave attorneys assisted Brazell in forming Talos and setting up its business at a time when he was still acting as Managing Partner of AIP. Remarkably, after aiding Brazell in his breaches of his fiduciary duties to AIP, Bryan Cave belatedly sought to protect itself from its client's claims against it by asking Mr. Robbins to sign a conflicts waiver and release letter. Robbins refused to sign that letter, but Bryan Cave nevertheless brazenly continued with Brazell and Talos. To add insult to intentionally wrought injury, Bryan Cave not only prepared Talos's Certificate of Formation, but they charged AIP for it and were paid for that work by Pelican.

6. Finally, in a heinous effort to obliterate AIP's business and deflect their misdeeds, the Individual Defendants, particularly Messrs. Brazell and McBride, have over approximately the last 60 days littered the Internet with scurrilous postings on www.skylinecowboy.com, a website they used primarily for that purpose, and on Yahoo, Twitter and other message boards.

7. Pelican seeks money damages from all of the defendants, preliminary and permanent injunctive relief against the Individual Defendants and Talos prohibiting them from using the Confidential Business Information in any way, and the return of all Confidential Business Information from all of the defendants.

PARTIES

8. Plaintiff Pelican Equity, LLC is a limited liability company formed and existing pursuant to the laws of the State of Delaware with its principal place of business in the State of California. Pelican owns (a) all of the intellectual property, business plans, models and other information in and pertaining to the former AIP stock lending business, including but not limited to the "Confidential Business Information" (as that term is defined below), and (b) all rights and claims against Talos and/or its principals for theft or misappropriation (or similar or related claims) of business plans, models and information, and other unlawful conduct.

9. Robert V. Brazell ("Brazell") is, on information and belief, an individual residing in New York, New York. Mr. Brazell, who was the founder and former President and CEO of Overstock.com, is the Chairman and Managing Partner of Talos. From approximately November 2008 through January 2009, Brazell was a partner in and the Co-Chairman of AIP.

10. Stephen L. Norris ("Norris") is, on information and belief, an individual

residing in the District of Columbia and/or the State of Florida. He is a member of Talos' Board of Managers and its Investment Committee. Prior to his involvement with AIP and Talos, Norris was a founder of The Carlyle Group. In early 2007 and through and including late January 2009, Norris was a partner in other Robbins ventures. Beginning in late 2008, Norris was a consultant to AIP and a member of AIP's Investment Committee.

11. Talos Partners, LLC ("Talos") is, on information and belief, a Delaware limited liability company which maintains its principal place of business in the State, City and County of New York. Talos was formed in January 2009 by defendant Bryan Cave at the behest of Messrs. Brazell and Norris and with the participation and assistance of defendants Rama and McBride. Talos's principal business is the stock lending business it stole from AIP. On information and belief, Talos transacts substantial business in the State of New York and in this District.

12. Rama Ramachandran ("Rama") is, on information and belief, an individual residing in San Francisco, California. He is Senior Vice President, Research & Analytics of Talos and was until January 2009 an employee of AIP.

13. Darl McBride ("McBride") is, on information and belief, an individual residing in Salt Lake City, Utah. From early 2008 through early 2009, McBride sought to become a partner with Robbins in AIP in its stock loan business.

14. Bryan Cave LLP is, on information and belief, a limited liability partnership engaged in the practice of law which maintains a large office in the State, City and County of New York. It transacts substantial business in the State of New York and in this District. The wrongs it committed, which are described in this Complaint, were performed

principally by Bryan Cave attorneys Bartley F. Fisher and Alan S. Pearce in the State of New York and in this District.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1331 because Pelican's claim pursuant to the Computer Fraud and Abuse Act ("CFAA") arises under the laws of the United States. It has supplemental jurisdiction over Pelican's state law claims pursuant to 28 U.S.C. § 1367(a).

16. This Court has personal jurisdiction over the Individual Defendants because all or substantially all of them were and are employed by Talos in New York, New York. All or substantially all of the Individual Defendants performed their job responsibilities and committed many of the illicit acts hereinafter described within the State of New York with both the knowledge and intention that such acts would cause injury within the Southern District of New York. This Court has personal jurisdiction over Talos and Bryan Cave because they transact business, and the wrongs they committed were performed and caused injury, in New York.

17. Venue is proper in New York County pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred with the Southern District of New York.

FACTS

AIP's Proprietary Stock Loan Business

18. During the period 2004 through early 2009, AIP developed a novel and potentially immensely profitable program through which it would arrange for persons who own marketable securities to pledge those assets as security for loans in amounts constituting

substantial percentages of their market value under circumstances in which they could not obtain financing in comparable amounts from traditional lenders. Under AIP's stock loan program, borrowers would have the benefit of certain unique and innovative insurance coverage. From 2005 to 2008, AIP made numerous loans using its novel stock loan program.

19. The AIP stock lending program met a need among potential borrowers that became particularly intense after the credit markets radically tightened in early 2008. As the defendants recognized, the program's promise was astounding. Because the pent-up demand that it met was so great, it could lead to the generation of literally billions of dollars in profits for AIP.

20. AIP's development of its stock loan program required the work of financial industry professionals and attorneys over a period of years, the expenditure of millions of dollars in professional fees, the development and nurturing of relationships with substantial insurers and banking firms, and the creation of detailed models and methodologies. Lawyers at Bryan Cave, which AIP retained for its stock lending program, assisted AIP in structuring that program, consulted with AIP's principals regarding regulatory considerations affecting it, and drafted documents necessary to carry out the program, including a Master Loan Agreement specifically devised for AIP for use in its stock loan business.

21. The AIP stock lending program, the structure of the transactions effected in it, the model contracts and other documents created for it, the substance of the discussions and agreements in principle with insurers and financial institutions, the names of the institutions and persons in them with which AIP conducted those discussions, and the models and methodologies relating to the AIP stock lending program, all constituted trade secrets. Those items individually and collectively constituted AIP "Confidential Business Information." AIP maintained the

secrecy of its Confidential Business Information by, among other things, limiting detailed knowledge of it to its principals.

Brazell Becomes a Partner in AIP

22. In early November 2008, Robbins met defendant Brazell for lunch in Salt Lake City, Utah, at Brazell's request. During that meeting Brazell asked Robbins about AIP's stock loan business. Brazell was familiar with the business as Robbins had facilitated a stock loan transaction for Brazell several years earlier. Brazell told Robbins that he was looking for a new business opportunity as he was no longer working at Overstock.com. He said he was keenly interested in AIP's stock loan business and convinced Robbins that he could contribute greatly to it. Brazell and Robbins followed up that meeting with additional discussions about AIP's business and Brazell's potential involvement in it. Brazell sought to become an AIP principal and Robbins was eager to have a man with Brazell's experience, connections and talents join the company. At Brazell's request, and based on his promise to keep the materials and information AIP provided in them strictly confidential, Robbins sent certain documents to Brazell including but not limited to the Master Loan Agreement, a detailed summary of the AIP stock loan product, and an overview explaining in detail the process by which AIP structured and sold its stock loan product.

23. On or about November 8, 2008, Brazell contacted Robbins and told him that he believed that the AIP stock loan product was "the best opportunity he has seen in his lifetime." Brazell told Robbins that he "wants to become partners with him" and open offices in New York as soon as possible. He implored Robbins to stay in New York for a month to get the partnership going and asked Robbins to give him extensive due diligence materials on AIP,

including but not limited to its organizational documents. Rama, who was an AIP employee at the time, sent that confidential information to Brazell. Brazell almost immediately started introducing potential borrowers to AIP, including (1) Sandie Tillotson, the co-founder of Nu Skin Enterprises, for whom Brazell claimed to act as a financial advisor, and (2) Sheldon Adelson, the founder of the Las Vegas Sands Corp., with whom Brazell claimed to have a seat on the board of directors of another company. Brazell also claimed to be able to introduce AIP to many other very high net worth and influential people with whom he purportedly had significant personal relationships.

24. In a November 12, 2008 email to Robbins, Brazell stated that their proposed collaboration “could be a billion [dollar] pay day for both of us.” On or about that date, Robbins and Brazell agreed to a 50/50 equity split and agreed that AIP would be the entity through which they would together commercially exploit the AIP stock loan business. Brazell subsequently asked for and was provided with additional Confidential Business Information. On November 17, 2008, Brazell asked Robbins for access to the computer files containing the website AIP was developing so changes could be made to it to reflect his (Brazell’s) participation. A little more than 24 hours later, at 12:05 a.m. on November 19, 2008, Brazell sent Robbins the enthusiastic, expletive-laced email quoted in paragraph 2, above. In a subsequent email at 2:25 a.m., Brazell told Robbins that “[w]e will be on the billionaire list by 2110 (sic).”

25. Brazell subsequently asked for and was granted permission to take over all of the AIP information technology functions. Accordingly, Rama gave Brazell passwords for all of AIP’s information technology platforms and Brazell began using an AIP email account. By

November 23, 2008, Brazell had committed in an email to Robbins to contribute assets worth approximately \$500 million in exchange for his equity share in AIP. Contracts confirming that agreement were drafted and executed by both Robbins and Brazell.

26. Brazell's purported \$500 million in assets to be contributed to AIP was to include Brazell's ownership in InStore Broadcasting Network ("IBN"), of which Brazell was a principal. In or about November 2008, Brazell suggested to Robbins that AIP use the anticipated profits from its stock loan business by capitalizing on Brazell's personal "insider" knowledge of IBN to acquire additional ownership in IBN and aggressively dilute the other existing IBN shareholders. Brazell also told Robbins that AIP should capitalize on Brazell's personal "insider" knowledge of another company, MD Enterprises, owned by his close "friend" Von Whitby, to "steal" that business from its owners.

Norris Joins AIP and Brazell Sets up Shop in New York

27. In late November 2008, Robbins arranged a meeting for Brazell with Stephen Norris, with whom Robbins had done business since 2006. Norris told Robbins that he too wanted to participate in AIP's stock lending business and was eager to work with him and Brazell. By November 25, 2008, Norris was working full time with Brazell, Rama and others at AIP deploying AIP's stock loan product. By November 27, 2008, Brazell had sent out emails to AIP's email provider identifying himself as Co-Chairman and Managing Director of AIP, and Norris was identified as a member of AIP's Board of Directors. Brazell requested business cards be printed for him and Norris with those titles.²

² Written agreements confirming Norris' participation in AIP were negotiated and prepared in final though never signed.

28. In November 2008, Brazell also told Robbins that he had identified office space in New York for AIP and began negotiating the terms of a lease for it. Ultimately Brazell secured space for AIP on the 37th floor at 540 Madison Avenue in New York City, using AIP's Salt Lake-based counsel to negotiate the lease. Brazell also started interviewing and hiring staff. In an email dated November 27, 2008 to a prospective AIP hire, Brazell explained the need for non-compete language in that person's employment agreement in the following terms:

By now you understand the unique differences in our product and business practices. The issue here will be simply to preclude AIP employees from leaving and duplicating our business or to advise others in doing the same.

29. In another email sent to a prospective hire on or about December 13, 2008, a draft of which he sent to Robbins, Brazell stated:

I have been interviewing someone to be our president of our lending business. Equitap is an AIP business. * * * I have not found the right person thus far. Initially, the key work is to take loans as they come in from board members and brokers; put them through our analytics process, generate a term sheet, walk the other attorneys and accountants through the deal, get loan docs out, then process the transaction. * * *

We have a renown board including Steve Norris the Founder of Carlyle Group. Steve is full time with AIP.

Mark [Robbins] and I are the only two equity holders.

30. Norris had years prior introduced AON, a major insurer, and its senior executive Pamela Newman, to Robbins in connection with AIP's stock loan product. Robbins worked directly with Newman, Peter Densen and other AON personnel from 2006 to 2009 to develop proprietary modeling, analytics and methodologies for AIP.

31. In a December 15, 2008 email to Pamela Newman at AON, Norris wrote: “Mark [Robbins, whom as stated Ms. Newman knew already] has gotten his loan product up and running and we want to discuss. Also, I have formed an association with a terrific businessman and I want you to meet him-Rob Brazell.” Two days later, on December 17, 2008, Brazell sent an email to Robbins stating:

Great meeting with Pam Newman today.
We are meeting with Peter [Densen] and their team this week,
She believes they can underwrite all of our re-delivery risk
immediately.
If we can get this underwriting, we are done!

32. In December 2008, Brazell and AIP moved into offices at 540 Madison Avenue. In a December 18, 2008 email to Robbins, which contained Brazell’s then-standard signature as “Co-Chairman Managing Partner AIP LLC,” Brazell told Robbins that:

We are meeting with the AON team Friday morning at our AIP offices. We are hoping that we can get an insurance product for our loans. We [he and Steve Norris] are both encouraged with the potential here. Our goal is to get a pricing matrix from them that allows us to bundle loans or do individual loans. We plug in the terms and dynamics and we get a price. If we get this done we will write billions of dollars in loans.

33. Brazell and Norris continued to work full time with AIP through the end of December 2008. On December 28, 2008, Brazell sent Robbins a text message stating that Norris is “very focused on AON and hitting the loan business hard.” Brazell followed that text message with an email to Robbins in which he laid out AON’s requirements for agreeing to an “insurance wrap” for AIP’s stock loan product and stated that they will “dust off” the AIP stock lending model (developed with AON and specifically Peter Densen’s assistance) which “[w]e

own.”

34. On December 29, 2008, Brazell asked Rama to prepare a “new term sheet” for prospective AIP client Sheldon Adelson. He specifically instructed Rama to “add the AIP logo somehow to the term sheet or put Equitap an AIP company” on it and to “use the NYC address.” In an email dated January 7, 2009, Brazell told Robbins:

We are killing it. I have never worked this hard. We will have the plan and process fully functional by next week. * * * We will write \$1B in loans in our first wave of marketing. This is all I am focused on. This is all that matters. You will see it when you are here.

On January 9, 2009, Brazell reported to Robbins that “[w]e have worked out all the bugs, problems, sales challenges, legal impediments, operational elements, and marketing needs.”

35. Robbins continued during December 2008 and January 2009 to devote his full-time attention and efforts to the development and promotion of AIP’s stock loan business. He essentially lived on the road, travelling for weeks without returning to his home in Utah, in order to advance the development and promotion of AIP’s stock loan business in New York and other major financial centers. Then-AIP associate A.J. Discala described Robbins’ meeting with Dave Russell, a representative of Ted Wait, the founder of Gateway Computers, in a January 16, 2009 email to Brazell and others as follows:

Guys just out of the meeting and I have to tell you mark kicked f***ing ass. Sat toe to toe with a guy with a 3.5 billion dollar balance sheet hit it off like they were college roomies and it may have been the best meeting I’ve been a part of. With what just occurred we can be where we hoped wed be in 18 months within 60 days. It truly was awesome!!! I truly think if mark gets ted info and references he asked for I believe we can have ourselves a done deal within 2 weeks. Let’s all focus and continue what mark did today and knock the ball out of the park.

36. Though Brazell and Norris were continuing to work full-time at AIP and although Brazell had agreed to contribute assets to AIP worth approximately \$500 million for his equity share, both Brazell and Norris refused to contribute any money or property to fund AIP's operations and the development and promotion of AIP's stock loan business. Robbins thus continued to shoulder that entire financial burden as he had done for years.

37. During this time period (December 2008 and January 2009), Robbins and Brazell had discussions with Douglas Anderson, a principal at Pacific Group, regarding the formation of a fund that would effect a substantial investment and/or collaboration by Pacific Group or an entity related to it in support of or otherwise in connection with AIP's stock loan business. Anderson expressed considerable interest in that investment or collaboration, and discussions continued in earnest with AIP into January 2009.

38. In early January 2009, Brazell and Norris (purportedly on behalf of AIP) negotiated a new arrangement with AON regarding the stock loan business. They informed AON that Norris should be the signatory for AIP. AON prepared a draft agreement based on those instructions identifying Norris as the signer for AIP, in his purported capacity as "principal" of AIP.

The World Changes: The Defendants Form Talos and Steal AIP's Stock Loan Business

39. In or before January 2009, Brazell and Norris schemed to move forward with AIP and its stock loan product without Robbins. To effect that plan the Individual Defendants, among other things, caused AIP's confidential computer and email system to be sabotaged and its service interrupted. Acting at his brother's request and under his direction, Brazell's brother Steve, on information and belief, intentionally caused AIP's website and email

server to crash and destroyed evidence of his wrongdoing. As a result, AIP's email service was interrupted for an extended period of time and many emails, though not all, were lost.

40. Brazell instructed Bryan Cave to form a new company named Talos Partners in Delaware, which they did. Brazell told Bryan Cave partner Bart Fisher in an email dated January 19, 2009 that Norris and he would be Managers of Talos and Norris would be Co-Chairman. Rama knowingly participated in the scheme by, among other things, securing Talos' website addresses and performing trademark searches. In his January 19, 2009 email to Fisher, Brazell told Fisher: "Please let me know what I need to do to facilitate this. I don't know how long Mark [Robbins] will remain friendly."

41. Bryan Cave not only actively participated in the formation of Talos, but also prepared corporate agreements for it at Brazell's direction and pursuant to his request. It, for example, prepared employment agreements between Talos and individuals (such as Rama) who were either existing employees of AIP and/or persons whom AIP had recruited for positions in its stock loan business. Bryan Cave also prepared an agreement between Talos and Pacific Group relating to an investment by that company in certain Talos activities connected with its stock loan business. Ultimately, that legal work led to the formation of a joint venture between Talos and Pacific Group named Talos Pacific Real Estate Partners, LLC.

42. Bryan Cave's Fisher and his partner, Alan Pearce, did not report to Robbins or AIP the defendants' preparations to steal AIP's secrets and form a competing business. Rather, they actively assisted them with their misconduct. However, as January 2009 drew to a close, Fisher apparently came to understand that the illicit activities of Brazell and his confederates, and also his own assistance of their misconduct, would not be hidden from AIP and

Robbins forever. He therefore belatedly prepared an astonishing conflict-of-interest waiver for Robbins' signature and sent it to Robbins. That document, dated January 31, 2009, read:

As you are aware, American Institutional Partners, LLC ("AIP"), Mark Robbins and various entities related to AIP and Mr. Robbins (collectively, the "AIP Parties") have been engaged in various business activities related to the formation and operation of a lending business. Bryan Cave LLP has represented the AIP Parties in connection with such business activities.

We understand that Robert V. Brazell intends to pursue such business activities and we hereby consent to Mr. Brazell and any entities formed by him (the "RB Parties") pursuing such business activities and we hereby agree that we shall have no claim against the RB Parties for pursuing such business activities or against Bryan Cave LLP for advising and assisting the RB Parties in that endeavor. Moreover, we also consent to the RB Parties using the work product of Bryan Cave LLP resulting from its representation of the AIP Parties. Finally, we consent to Bryan Cave LLP representing the RB Parties in connection with the previously referred to business activities, to Bryan Cave's disclosure to the RB Parties of any of the AIP Parties' confidences or secrets, and to Bryan Cave LLP's use of the aforementioned work product therewith. In providing this consent, we have sought and received the advice of counsel.

That letter shocked Robbins. He of course never signed it.

43. On or before February 11, 2009, the Individual Defendants began a smear campaign against Robbins and AIP seeking to capitalize on Robbins' then difficult financial position which they exacerbated by refusing to pay any money to fund AIP. Brazell made false statements to AIP vendors about Robbins in order to harm his reputation and drive AIP out of business. McBride, at Brazell's direction, established a website named skylinecowboy.com, the sole purpose of which was to make false and misleading statements about Robbins and discredit him. The object of those efforts was to assist the Individual Defendants in their effort to destroy

AIP while they started up Talos and competed against it. Individual Defendants McBride and Brazell, together with A.J. Discala, also posted false and inflammatory messages concerning Robbins, his associates, and AIP and its stock loan business, on a Yahoo.com message board. Many such postings urged parties not to do business with Robbins or his associates. Brazell and another working with him very recently had the unmitigated audacity to publicly state that: “by the time we get done with Robbins he will commit suicide” and brag about using “our little ‘Bulldog Puppet’ McBride to take him [Robbins] down.”

44. Talos is today conducting business from the same offices at 540 Madison Avenue Brazell purported to secure for AIP a few months previously. Talos hired or engaged numerous individuals who previously were AIP employees or whom AIP recruited to work in or consult on the AIP stock loan business, including Peter Densen (formerly of AON and who is currently listed on Talos’ website as its Chief Risk Officer and Chairman of its Underwriting Committee), Senator Robert W. Kasten, Brian Nord, Larry Russell Jr., Todd Bergeron, Derek Cornaby, Douglas Anderson and Robert M. Daughtry. On information and belief, the defendants (other than Bryan Cave) closed or sought to close loans with Sandie Tillotson and Sheldon Adelson. On information and belief, they also consummated an arrangement with AON on terms substantially similar to those negotiated by Brazell and Norris for AIP in January 2009. According to a current employee, Talos has closed more than \$500 million in loans in the last 90 days using the stolen Confidential Business Information.

FIRST CLAIM FOR RELIEF

**Violation of the Computer Fraud and Abuse Act
(Against the Individual Defendants)**

45. Pelican incorporates by reference the allegations contained in paragraphs 1 through 44 of this Complaint.

46. The email and computer system developed and used by AIP was at all relevant times used in interstate and foreign commerce and communication, and is thus a “protected computer” under CFAA, 18 U.S.C. § 1030(e)(2).

47. By engaging in the conduct described herein, the Individual Defendants knowingly and with intent to defraud accessed protected computers and data without authorization or in excess of their authorization, and by means of such conduct furthered the intended fraud and obtained things of value (that is, AIP’s website, software and Confidential Business Information) in violation of 18 U.S.C. § 1030(a)(4).

48. By engaging in the conduct described herein, the Individual Defendants knowingly caused the transmission of a program, information, code or command, and as a result of such conduct, recklessly and intentionally caused damage without authorization, and/or intentionally accessed a protected computer without authorization, and as a result of such conduct, caused damage and loss, in violation of 18 U.S.C. §§ 1030(a)(5)(A)-(C).

49. The actions of the Individual Defendants have caused Pelican’s predecessor in interest, AIP, to suffer compensable loss in an amount to be determined at trial, but which in any event exceeds the statutory annual threshold of at least \$5,000 in value in the aggregate, as required by 18 U.S.C. §§ 1030(a)(4) and 1030(c)(4)(A)(i)(I). Such loss includes

the unauthorized copying, transmittal of Confidential Business Information and other data by the Individual Defendants from AIP's computer system, and includes more than \$5,000 in losses caused by Internet and email service interruption and/or related repair costs.

50. In addition to compensatory damages, Pelican and its predecessor in interest, AIP, has suffered, are now suffering and, absent immediate and permanent injunctive relief, will continue to suffer injury from the Individual Defendants' violation of the CFAA that cannot be adequately or fully remedied at law or by the assessment of damages against them.

SECOND CLAIM FOR RELIEF

Misappropriation of Trade Secrets (Against the Individual Defendants)

51. Pelican incorporates by reference the allegations contained in paragraphs 1 through 50 of this Complaint.

52. Pelican and its predecessor in interest, AIP, and it possess certain confidential and proprietary business information and trade secrets, including without limitation the Confidential Business Information, which the Individual Defendants, as former employees and officers and directors of AIP, were at all relevant times under a common law duty not to disclose or use in competition with or to the detriment of AIP or its successor in interest, Pelican.

53. The Individual Defendants have disclosed and used, and are continuing to disclose and use, such Confidential Business Information for their own benefit and that of Talos, in competition with and to the detriment of Pelican, AIP's successor in interest. The Individual Defendants, so long as they are employed by Talos, will inevitably continue to disclose and use

such Confidential Business Information for their own benefit and the benefit of Talos.

54. As a result of the Individual Defendants' actual and inevitable disclosure and use of the Confidential Business Information, Pelican, as AIP's successor in interest, has been and continues to be damaged, in an amount to be determined at trial but which is on information and belief in excess of \$100,000,000, for which the Individual Defendants are each jointly and severally liable.

55. Because the Individual Defendants committed the wrongful acts described herein willfully, wantonly and maliciously, with reckless and callous disregard for the rights of AIP and Pelican as its successor in interest, and with the intent of crippling Robbins and AIP's business, Pelican is also entitled to punitive damages against each of the Individual Defendants in an amount to be determined at trial.

56. In addition to the foregoing, Pelican, as AIP's successor in interest, has suffered injury from the Individual Defendants' misappropriation of Confidential Business information that cannot be adequately or fully remedied at law, or by the assessment of damages against them.

THIRD CLAIM FOR RELIEF

Breach of Duty of Loyalty (Against the Individual Defendants)

57. Pelican incorporates by reference the allegations contained in paragraphs 1 through 56 of this Complaint.

58. As trusted employees and/or officers of AIP, the Individual Defendants owed AIP fiduciary duties of undivided loyalty, utmost good faith and complete honesty with

respect to all matters affecting or potentially affecting AIP's business affairs. The fiduciary duties owed by each of the Individual Defendants to AIP existed throughout the term of their affiliations with AIP and survive their termination.

60. As a consequence of the conduct described herein, the Individual Defendants have breached their fiduciary duties by, among other things:

(a) secretly planning and carrying out, individually and in concert with one another, a course of conduct designed to disrupt and destroy AIP's stock loan business by appropriating the Confidential Business Information and AIP's website for their competing venture, Talos;

(b) on Brazell's part, soliciting the other Individual Defendants to violate their duties to AIP and to work for a competing venture and ultimately to leave AIP's employ;

(c) taking advantage of and diverting to themselves and to Talos tangible business opportunities and expectancies developed during their affiliations with AIP, which would have come to and profited AIP but for the Individual Defendants' wrongful acts;

(d) misappropriating, disclosing and using, for their own benefit and the benefit of Talos, in competition with and to the detriment of AIP, valuable confidential and proprietary business information, including without limitation the Confidential Business information, that the individual Defendants would not have acquired but for the position of trust and confidence they held within AIP; and

(e) failing to act solely and exclusively in the best interests of AIP while they were employed by and affiliated with AIP in positions of trust and confidence.

61. As a result of these breaches of fiduciary duty, AIP's goodwill and standing in the market was decimated and effectively destroyed. Pelican, as AIP's successor in

interest has also suffered and continues to suffer other damages and injury, including lost profits and profit opportunities in an amount to be determined at trial but which is on information and belief in excess of \$100,000,000.

62. Because the Individual Defendants committed the wrongful acts described herein willfully, wantonly and maliciously, with reckless and callous disregard for the rights of AIP and Pelican as its successor in interest, and with the intent of crippling Robbins and AIP's business, Pelican is also entitled to punitive damages against each of the Individual Defendants in an amount to be determined at trial.

63. In addition to the foregoing, as a direct and proximate result of the Individual Defendants' breaches of fiduciary duties, Pelican has suffered injury that cannot be adequately or fully remedied at law, or by assessment of damages against them.

FOURTH CLAIM FOR RELIEF
Tortious Interference With Fiduciary Duties and Duty of Loyalty
(Against Brazell)

64. Pelican incorporates by reference the allegations contained in paragraphs 1 through 63 of this Complaint.

65. As described above, defendants Norris, Rama and McBride owed AIP fiduciary duties and duties of undivided loyalty. Brazell, with knowledge of the other Individual Defendants' relationships with and duties owed to AIP, intentionally induced the others to violate those duties and participated with him and the other Individual Defendants in their breaches of trust by misappropriating AIP's Confidential Business Information and its website and software, causing a wholesale abandonment of AIP, and otherwise engaging in conduct designed to destroy

AIP's business and appropriate it for their own venture.

66. In consequence of Brazell's tortious interference with the other Individual Defendants' fiduciary duties to AIP, AIP and through it Pelican, its successor in interest, has been damaged in an amount to be determined at trial but which is on information and belief in excess of \$100,000,000.

FIFTH CLAIM FOR RELIEF

Unfair Competition (Against All Defendants)

67. Pelican incorporates by reference the allegations in paragraphs 1 through 66 of this Complaint.

68. Since at least sometime in January 2009, defendants acting individually and in active concert and cooperation with one another, have competed and continue to actively and directly compete against AIP by unfair and wrongful means that include, among other things:

(a) planning, participating in and ultimately executing on their plan to steal the Confidential Business Information, set up a competing stock loan business, destroy AIP and the stock loan business it and Robbins spent years and millions of dollars developing;

(b) breaching the fiduciary duties that each of the Individual Defendants owed to AIP;

(c) misappropriating and wrongfully disclosing and/or using AIP's confidential and proprietary business information, in competition with and to the detriment of Pelican as AIP's successor in interest;

(d) disparaging and defaming Robbins to Talos's customers and prospective customers

and the general public; and

(e) diverting for the benefit of themselves and of Talos tangible business opportunities and expectancies developed during their employment with AIP that they were obligated to pursue and secure for AIP.

69. As a direct and proximate result thereof, defendants have cause AIP to lose market standing, business and business opportunities, profit and opportunities for profit that Pelican would have had but for the defendants' wrongful acts and unfair competition.

70. As a result of the wrongful conduct described herein, Pelican has been and will continue to be damaged in an amount to be determined at trial but which is on information and belief in excess of \$100,000,000.

71. Because the defendants committed the wrongful conduct described herein willfully, wantonly and maliciously, with reckless and callous disregard for the rights of AIP and those of Pelican as AIP's successor in interest, and with the intent of crippling AIP, Pelican is also entitled to punitive damages against them.

72. In addition, as a direct and proximate result of the defendants' unfair competition, Pelican has suffered injury that cannot be adequately or fully remedied at law or by the assessment of damages against them.

SIXTH CLAIM FOR RELIEF

**Tortious Interference with Prospective Business Relationships
(Against All Defendants)**

73. Pelican incorporates by reference the allegations contained in paragraphs 1 through 72 of this Complaint.

74. AIP had prospective business relations with various entities with which defendants have intentionally interfered.

75. As described herein, defendants have used wrongful, dishonest, unfair and improper means to interfere with AIP's prospective business relations.

76. As a direct and proximate result of defendants' use of wrongful, dishonest, unfair and improper means, Pelican has been and will continue to be injured in an amount to be determined at trial but which is on information and belief in excess of \$100,000,000.

77. Because, in tortiously interfering with AIP's prospective business relationships, the defendants acted intentionally and deliberately, and with willful and wanton disregard for AIP's rights, plaintiff is entitled to punitive damages against defendants.

78. In addition, AIP has suffered injury from the defendants' tortious interference with its prospective business relationships that cannot be adequately or fully remedied at law or by the assessment of damages against defendants.

SEVENTH CLAIM FOR RELIEF

Breach of Fiduciary Duties (Against Bryan Cave)

79. Pelican incorporates by reference the allegations contained in paragraphs 1 through 78 of this Complaint.

80. As AIP's attorneys, Bryan Cave and its members Bartley Fisher and Alan Pearce owed AIP fiduciary duties of due care and undivided loyalty in performing their work as attorneys for AIP. Bryan Cave breached those duties by, among other things, (a) failing to inform AIP promptly when they learned that Brazell and/or other of his accomplices were preparing to compete with AIP while acting as AIP principals and/or employees and owed fiduciary duties to AIP, (b) actively providing legal counsel to Brazell and Talos, (c) assisting Brazell in the formation and establishment of a competing business, Talos, without previously obtaining an informed waiver of their obvious conflict of interests from AIP, (d) working for Brazell and the competing venture both before and after his and his confederates' departures from AIP while Bryan Cave possessed AIP's Confidential Business Information and information regarding its development and use, and even billing AIP for work they performed for Brazell and Talos, (e) providing Brazell with AIP work product and disclosing to Brazell and Talos AIP's confidences and secrets, and (f) seeking a release from AIP and Robbins on behalf of Brazell and Talos of all claims against them.

81. Because Bryan Cave possessed AIP's Confidential Business Information and information regarding its development and use, which information was, and Bryan Cave knew to be, highly useful to the Individual Defendants and their competing venture, they

necessarily used that information to the other defendants' advantage when providing legal advice and performing work for them. On information and belief Bryan Cave actually consciously considered and used Confidential Business Information that they had learned from and created for AIP in their representation of those defendants.

82. Bryan Cave's foregoing breaches of fiduciary duties damaged AIP and through it Pelican. Bryan Cave's failures to promptly inform AIP of the preparations to compete with AIP and the conspiracy to steal its secrets prevented AIP from immediately terminating the access of Brazell and any existing confederates to its computer system and Confidential Business Information, preventing him from enticing other of the Individual Defendants to breach their duties to AIP and join him in his illicit activities, preventing any others who had at the time joined him from stealing information and undermining its business, and from taking other measures to limit the damages it suffered as a result of those activities. The assistance Bryan Cave provided to Brazell and the other defendants in the commencement and operation of their competing business, which they were in a uniquely good position to provide due to their access to and creation (at AIP's expense) of much of the Confidential Business Information, also allowed the other defendants more effectively to establish and operate their competing business to AIP's detriment and to destroy AIP's business than they would otherwise have been able to do.

83. In consequence of those breaches of fiduciary duties, AIP, and through it Pelican, has been damaged in an amount to be determined at trial but which is on information and belief in excess of \$100,000,000.

EIGHTH CLAIM FOR RELIEF

Malpractice (Against Bryan Cave)

84. Pelican incorporates by reference the allegations contained in paragraphs 1 through 83 of this Complaint.

85. Bryan Cave by and through its partners, Bartley Fisher and Alan Pearce, were attorneys for AIP. Bryan Cave agreed to provide its legal services to AIP pursuant to a written engagement letter dated April 30, 2008. In its engagement agreement Bryan Cave acknowledged that it was creating an “attorney-client relationship” with AIP and that the relationship was to be “one of mutual trust and confidence.” Bryan Cave’s engagement agreement specifically provided that AIP’s consent to conflicting representation would be required “where as a result of our representation of you we have obtained sensitive, proprietary or other confidential information of a non-public nature that, if known to such other client of ours, could be used in any such other matter by such client to the disadvantage of [AIP].”

86. Bryan Cave possessed confidences and secrets of AIP and AIP Confidential Business Information as a consequence of its engagement. Bryan Cave owed AIP duties of loyalty and trust and confidence not to use, facilitate the use of or aid and abet in the use by others of AIP’s sensitive, proprietary and other confidential information and its confidences and secrets. In January 2009, Bryan Cave recognized and acknowledged that it had such duties to AIP.

87. Sometime in or before January 2009, defendant Brazell told Bryan Cave that he and others were intending to continue AIP’s stock loan business excluding Robbins.

Bryan Cave partner Fisher knew at that time that he and his firm would be in breach of their engagement agreement with AIP, and of their professional and ethical obligations to AIP, absent a written conflict of interest waiver executed by Robbins and AIP. Fisher consequently prepared and presented to Robbins a letter dated January 21, 2009 (the “Waiver Letter”), which specifically sought, among other things, AIP’s consent to waive conflicts of interest Bryan Cave acknowledged existed between Robbins and AIP on one side and Brazell and “entities formed by him” on the other.

88. Bryan Cave’s Waiver Letter sought written consent from AIP and Robbins to (i) represent Brazell and his entities’ in the formation and operation of a lending business (the precise business in which AIP was engaged in and Bryan Cave was engaged to serve and had served as its counsel), (ii) disclose AIP’s confidences and secrets to Brazell and his entities, and (iii) disclose Bryan Cave work product to Brazell and his entities. Bryan Cave and Fisher knew or should have known at the time that Brazell and others intended to use AIP’s Confidential Business Information, confidences and secrets and attorney work product in forming and operating a competing lending business. AIP and Robbins refused to sign the Waiver Letter.

89. The Waiver Letter was astounding in that it also buried in it a release on behalf of Brazell and his “entities.” At no time did Bryan Cave advise or even seek to advise Robbins and AIP concerning their claims against Brazell and his “entities” arising out of their theft of AIP’s stock loan business. Bryan Cave did not even begin to explain the consequences of the release they were seeking on behalf of Brazell and his companies. Nor did they address at all with Robbins and AIP the importance of securing independent legal advice concerning those matters.

90. Notwithstanding the refusal by AIP and Robbins to sign the Waiver Letter, Bryan Cave lawyers Fisher and Pearce and, on information and belief other partners and associates at the firm, represented Brazell and entities formed by him to compete against AIP's stock lending business. Indeed, Bryan Cave lawyers personally formed one or more of those entities. Bryan Cave lawyers also disclosed AIP confidences and secrets, including but not limited to Confidential Business Information, to Brazell and his entities, and provided Brazell with AIP attorney work product. Bryan Cave knew or should have known when it disclosed AIP's confidences and secrets and its work product to Brazell and his entities that the information would be used in commerce to AIP's detriment.

91. Bryan Cave's conduct was an extreme departure from the duty of care and undivided loyalty it owed AIP as its counsel, and was at least negligence on its part and/or a breach of its engagement agreement. Bryan Cave's wrongful conduct included but was not limited to (a) its substantial assistance and participation with defendants Brazell and Norris in the formation and conduct of Talos and the conduct of its business, (b) disclosure of AIP confidences and secrets, Confidential Business Information and attorney work product to Talos, and (c) its remarkable request from AIP and Robbins of a release in favor of Brazell and his "entities" and failure to fully advise AIP of the consequences of that requested release.

92. Bryan Cave violated numerous ethical rules in so doing. They engaged in attorney misconduct by violating New York State Disciplinary Rule DR 1-102(A)(1),(4) and (7). Particularly, Bryan Cave among other ethical breaches violated Disciplinary Rule 4-101(B) by revealing AIP client confidences and secrets, using those confidences and secrets to the disadvantage of AIP, and to the advantage of third parties (the other named defendants) without

consent of AIP and surely without full disclosure to it. Bryan Cave also violated Disciplinary Rule 5-105(A) and (B) and DR 5-108(A) by simultaneously representing AIP and defendants Brazell, Norris and Talos in virtually the identical matter in circumstances in which their interests were clearly adverse. Bryan Cave further violated Disciplinary Rule 7-102(A)(3) and (7) by concealing, knowingly failing to disclose and assisting the other defendants in their fraudulent conduct. Bryan Cave indeed violated Disciplinary Rule 7-102(B) by not calling on the defendants to rectify their fraud and in failing that in the absence of reporting that misconduct themselves to Robbins and AIP. Bryan Cave also violated Disciplinary Rule 9-102 by misappropriating AIP's Confidential Business Information first for themselves and then for the benefit of the other defendants.

93. As a direct and proximate result of Bryan Cave's wrongful conduct, AIP, and through it, Pelican, have been damaged in an amount to be determined at trial but which is on information and belief in excess of \$100,000,000. But for Bryan Cave's wrongful conduct Talos and the Individual Defendants could not have effected their scheme to steal AIP's stock loan business.

94. Bryan Cave deceived AIP by, among other things, colluding with Brazell in forming and assisting in the conduct of Talos' business. By doing so in the face of the refusal of Robbins and AIP to sign the Waiver Letter, Bryan Cave clearly acted with the intent to deceive AIP and Robbins. Accordingly, Bryan Cave is additionally liable to Pelican for treble damages in an amount equal to three times the amount of the actual damages resulting from its acts of deceit and collusion.

NINTH CLAIM FOR RELIEF

Fraud and Deceit (Against the Individual Defendants)

95. Pelican incorporates by reference the allegations contained in paragraphs 1 through 94 of this Complaint.

96. Beginning in or around February 2009, as part of their scheme to misappropriate the Confidential Business Information and steal AIP's stock loan business, the Individual Defendants, particularly Brazell and McBride, commenced a strategic effort to financially ruin Robbins and AIP. The object of the plan was break Robbins so he could not protect himself and AIP and fight back against the defendants. The Individual Defendants knew that Robbins was having financial difficulties, in large part due to his continued funding of AIP's business operations and the refusal by defendants Brazell and Norris to assist in carrying any of that financial burden.

97. Brazell and on information and belief other Individual Defendants made false and misleading statements to AIP vendors, AON and others with whom Robbins and AIP had and were doing and seeking to do business. McBride at Brazell's direction created a website named www.skylinecowboy.com, the sole purpose of which was to malign AIP, Robbins and anyone with whom they sought to do business. The Individual Defendants also posted false, misleading and/or inflammatory messages on a Yahoo.com message board and, on information and belief, elsewhere on and via the Internet. Each of the Individual Defendants either directly participated in making the fraudulent and deceitful statements and/or aided and abetted other Individual Defendants in making them. Each of the false and misleading statements constituted a

fraud and deceit which caused damage to AIP and through it Pelican.

98. As a result of the fraud and deceit perpetrated by the Individual Defendants, AIP and Pelican as its successor in interest has suffered and continues to suffer damages and injury in an amount to be determined at trial but which is on information and belief in excess of \$100,000,000.

99. The Individual Defendants perpetrated the fraud and deceit willfully, wantonly and maliciously and with reckless and callous disregard for the truth. They designed and directed their fraud and deceit to harm Robbins, AIP and those associated with them, but also aimed it toward the public at large by disseminating it willy nilly over the Internet, including by means of almost daily "Twitter" updates by "skylinecowboy.com." On information and belief, one or more members of the public relied on the misrepresentations disseminated by the Individual Defendants. As a result, Pelican is additionally entitled to punitive damages against each of the Individual Defendants in an amount to be determined at trial.

TENTH CLAIM FOR RELIEF

Fraud and Deceit (Against All Defendants)

100. Pelican incorporates by reference the allegations contained in paragraphs 1 through 99 of this Complaint.

101. Beginning in or around January 2009, the Individual Defendants concealed their intent to steal the Confidential Business Information and AIP's stock loan business from Robbins and AIP. That concealment operated as a fraud and deceit on AIP and as a result

Pelican. Brazell sought to cover up the fraud by breaching and renegeing the agreements he had reached and signed with AIP and falsely concocting a claim that Robbins had acted improperly. The fact is that Brazell had misled Robbins and defrauded AIP, not vice versa as Brazell falsely claimed.

102. As detailed in AIP's counsel's January 27, 2009 letter to Brazell's counsel, Robbins had then "recently become aware of certain statements and representations made by Mr. Brazell with respect to the assets which he had agreed to contribute to AIP which are not correct." The truth was that the assets Brazell promised to contribute to AIP were worth far less than the \$500 million Brazell had claimed. Brazell was accordingly instructed to:

- (i) immediately cease using all AIP assets;
- (ii) turn over all tangible materials and property of AIP in his possession;
- (iii) delete all electronic materials which are the property of AIP, without saving or making copies of them; and
- (iv) cease pursuing any activities which are competitive with the business of AIP in association with parties first introduced to him by AIP.

103. Brazell did not heed any of these admonitions. He instead, together with the substantial assistance of all of the other defendants, including Bryan Cave, continued to perpetrate their scheme to defraud and steal AIP's stock loan business.

104. As a result of the fraud and deceit perpetrated by the defendants, AIP and Pelican as its successor in interest has suffered and continues to suffer damages and injury in an amount to be determined at trial which is on information and belief in excess of \$100,000,000.

WHEREFORE, plaintiff respectfully requests that this Court issue and order:

- A. Preliminarily an permanently enjoining defendants from using, disclosing, communicating, copying, deleting, destroying or removing any of Pelican's confidential and proprietary business materials and information in their possession custody or control, including without limitation the Confidential Business Information;
- B. Compelling defendants to immediately deliver to Pelican all confidential and proprietary business materials and information in their possession custody or control, including without limitation the Confidential Business Information;
- C. Enjoining defendants from disparaging Pelican and all persons associated with it, and from interfering with Pelican's prospective business relationships;
- D. Establishing a constructive trust for all of membership interests of defendant Talos Partners, LLC and all profits obtained by the defendants as a result of their wrongful conduct;
- E. Awarding Pelican compensatory damages in an amount to be determined at trial but which is on information and belief in excess of \$100,000,000;
- F. Awarding Pelican punitive damages in an amount to be determined at trial,
- G. Awarding Pelican their attorneys' fees and the costs and expenses of this litigation; and
- H. Granting Pelican such other and further relief as this Court may deem just and proper.

JURY DEMAND

Pelican demands a trial by jury on all issues to the fullest extent permitted under applicable law.

New York, New York
June 29, 2009

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