

1 STEPHEN S. KENT, ESQ.
Nevada State Bar No. 1251
2 KENT LAW
201 W. Liberty St., Ste. 320
3 Reno, Nevada 89501
775/324-9800
4 ATTORNEYS FOR
QBE INSURANCE CORPORATION
5

6
7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

9
10 QBE INSURANCE CORPORATION,

Case No. _____

11 Plaintiff,

12 vs.

13 STARWOOD MANAGEMENT, LLC, doing
business as, STARWOOD MANAGEMENT,
14 INC., and DOES I through X, inclusive.
_____ /

**COMPLAINT FOR
RECISSION OF INSURANCE
CONTRACT AND FOR
DECLARATORY RELIEF**

15
16 **INTRODUCTION**

17 1. This is an action for declaratory judgment and further relief pursuant to 28 U.S.C.
18 §§2201 and 2202 and for rescission of a contract of insurance pursuant to Nevada Revised Statutes
19 (NRS) 687B.110 and declaratory relief pursuant to NRS 30.010, et seq.

20 2. This action is brought in connection with a QBE Insurance Corporation (“QBE”)
21 aviation insurance policy (the “Starwood Policy”) issued to defendant “Starwood Management,
22 Inc.” insuring defendant’s 1977 Hawker 700 aircraft, FAA registration number N98FT. A true and
23 correct copy of the QBE Starwood Policy is attached to this complaint as Exhibit “A”.

24 **THE PARTIES**

25 3. Plaintiff, QBE Insurance Corporation (“QBE”) is a corporation organized and
26 existing under the laws of the State of New York and has its principal place of business in New
27 York, New York. At all times relevant to this action QBE was and is an admitted property-casualty
28 insurer in the State of Nevada.

1 4. Defendant Starwood Management, LLC (“Starwood”), is a limited liability
2 company organized and existing under laws of the State of Nevada, and has its principal place of
3 business at 3540 West Sahara Avenue, Suite 202, Las Vegas, Nevada 89102-5816. Starwood
4 Management, LLC, also uses and does business under the fictitious name, Starwood Management,
5 Inc.

6 5. QBE is informed and believes, and on the basis of that information and belief,
7 alleges that Ed Nunez, also known as Eduardo Nunez, also known as Christian Esquino, is the alter
8 ego of Starwood and that there is such a unity of interest in operation, assets and ownership that
9 Nunez is inseparable from Starwood and that adherence to the fiction of Starwood as an entity
10 separate from Nunez would, under the circumstances, sanction a fraud or promote an injustice.
11 Starwood did not describe its business in the application for the QBE policy of insurance.

12 **JURISDICTION AND VENUE**

13 6. This court has jurisdiction pursuant to 28 U.S.C. §1332 and 1441(a). There is
14 complete diversity of citizenship between QBE (a New York corporation principally located in
15 New York), and Starwood (a Nevada limited liability company principally located in Las Vegas,
16 Nevada). The amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.

17 7. Venue is proper in the District of Nevada pursuant to 28 U.S.C. §1391, because the
18 Policy was issued to Starwood at its Las Vegas, Nevada address, the 1977 Hawker 700 aircraft was
19 registered to Starwood at its Las Vegas, Nevada address and was represented to be principally kept
20 in Nevada.

21 8. The Plaintiff herein is a citizen of a state different than each defendant (disregarding
22 defendants designated by fictitious names).

23 9. The amount in controversy which includes alleged liability arising from alleged
24 property damage and confiscation of aircraft, exceeds \$75,000.

25 **GENERAL ALLEGATIONS**

26 10. QBE issued its Comprehensive Corporate Aircraft Policy No. QAV0000661 to]
27 Starwood Management, Inc., as the named insured effective July 27, 2012 to July 27, 2013 (the
28 QBE Policy).

1 11. Extended Coverage Endorsement WAR RISK FOR PHYSICAL DAMAGE
2 COVERAGE, EXTORTION AND HIJACKING EXTRA EXPENSE COVERAGE of the Policy
3 changed the policy. A true and accurate copy of the QBE Policy containing this endorsement is
4 attached to this Complaint as Exhibit "A".

5 12. The Starwood Policy afforded Physical Damage Coverage covering three Scheduled
6 Aircraft. Additional aircraft were added by endorsements dated July 31, 2012, and August 14,
7 2012, a Gulfstream GII and Beechjet 400A. One of these three Scheduled Aircraft was the Subject
8 Aircraft, N98FT, a Hawker 700 jet aircraft with a stated value of \$1,000,000. A correct copy of
9 the Starwood Policy is attached to this complaint as "A" and incorporated by reference as though
10 fully set forth here. A true, authentic and correct copy of the Federal Aviation Administration
11 Aircraft Registration Report for N98FT is attached to this complaint as Exhibit "C" and
12 incorporated by reference as if set forth here.

13 13. QBE sent premium invoices for its policy to the agent in the amount of \$37,420.74.
14 No amount has been paid or received.

15 14. The QBE Policy Physical Damage Coverage explained physical damage in pertinent
16 part as "physical damage means accidental, direct physical loss or damage to scheduled aircraft,
17 spare engines or spare parts during the policy period.

18 15. The QBE Policy's Physical Damage Coverage as to Scheduled Aircraft provided that,
19 "a scheduled aircraft shall be considered missing under disappearance or stolen under theft, if such
20 aircraft is unable to be located for fifteen (15) days after reported missing or stolen".

21 16. The QBE Policy included Form AVN48B (05-11), HI-JACKING AND OTHER
22 PERILS EXCLUSION CLAUSE (AVIATION), which amended the exclusions applicable to the
23 Physical Damage Coverage to provide that the Policies do not cover claims caused by: "(f)
24 confiscation, nationalization, seizure, restraint, detention, appropriation, requisition for title or use
25 by or under the order of any Government (whether civil, military or de facto) or public or local
26 authority . . ."

27 ///

28 ///

1 17. For an additional premium and at the request of Starwood, the QBE Policy also
2 included Form QBAV-2124 (05-11) EXTENDED COVERAGE ENDORSEMENT, WAR RISK
3 FOR PHYSICAL DAMAGE COVERAGE, EXTORTION, AND HI-JACKING EXTRA
4 EXPENSE COVERAGE. This endorsement had the effect of deleting the confiscation exclusion
5 alleged in paragraph 17 of this complaint and stated in pertinent part: "The company will pay for
6 the physical loss of or physical damage to any scheduled aircraft (unless excluded by Exclusion (G)
7 below that is caused by an occurrence during the policy period arising out of the following perils:
8 ... (e) confiscation, nationalization, seizure, restraint, detention, appropriation, requisition for title,
9 use by, or under the order of any government, public or local authority, whether civil, military or
10 de facto . . ."

11 18. SECTION IV GENERAL POLICY CONDITIONS, of the basic policy form
12 (GLD02) (1/05) included in the Policies states as follows:

13 In consideration of the payment of the premium and in reliance upon the truth of the
14 statements, representations and the declarations made by the **Named Insured** and
15 subject to all of the terms of the Policy including the applicable Limits of the
16 Company's Liability under Item 5., the Company agrees with the **Named Insured**
17 with respect to the coverages stated in the Declarations as follows:

16 ****

17 N. Acceptance of Policy

18 By acceptance of the Policy, the **named insured** agrees that the statements in the
19 Declarations are its representations, that the Policy is issued in reliance upon the
20 truth of the representations and that the Policy embodies all agreements by and
21 between the **named insured** and the company or any of its agents.

21 19. Coverage was bound prior to Starwood's actual submission of the required written
22 application for the Policy. QBE made submission of a completed written application a condition
23 of continued coverage under the Policies. Starwood submitted to QBE an application dated August
24 10, 2012, for the Policy that was signed on Starwood's behalf by "Ed Nunez." A true and correct
25 copy of this application is attached to this complaint as Exhibit "D" and is incorporated by
26 reference as though fully set forth here. On page 2 of Exhibit "D", there appears the questions:

- 27 D. Do you anticipate aircraft to be operated outside the continental United
28 States?
 J. Has applicant had any aircraft/aviation losses/claims during the last three
 years?

- 1 K. Has any insurer canceled, declined or refused to renew any aviation insurance for the applicant?
- 2 M. Has any named pilot had any convictions, suspensions, or revocations for FAR violations, use or possession of drugs, or reckless or drunk driving?
- 3 N. Has any named pilot ever been involved in any accident or incident?
- 4 O. Has applicant or any named pilot ever been convicted of a felony?

5 These questions were all answered "No" by Ed Nunez of Starwood.

6 20. Ed Nunez of Starwood signed the QBE insurance application after the following language which is partially quoted here:

7 I/We certify all statements or representations contained on both sides of this application are true and correct and that I/We have read, understand and agree with all particulars contained herein. I/We agree that the terms and conditions of this application and the policy currently in use by the insurance shall be the basis of any contract between me/us and the insurance company.

8
9
10 21. The QBE policy, on page two, expressly made the application part of the policy.

11 The policy also provides:

12 In consideration of the payment of the premium and in reliance upon the truth of the statements, representations and the declarations made by the **Named Insured** and subject to all of the terms of the Policy including the applicable Limits of the Company's Liability under Item 5., the Company agrees with the **Named Insured** with respect to the coverages stated in the Declarations as follows:

13
14
15 22. Ed Nunez, also known as Christian Esquino, was one of thirteen defendants in United States District Court for the Middle District of Florida Case No. 90-163-Cr-Orl-19, entitled *United States Of America v. Damian Tedone, et al.* The docket and indictment for this case show that:

- 16 a. An arrest warrant was issued for Christian Esquino on April 18, 1991;
- 17 b. Christian Esquino was arrested April 23, 1991;
- 18 c. Christian Esquino was arraigned on May 9, 1991;
- 19 d. Christian Esquino was indicted on one count of CONSPIRACY TO POSSESS WITH INTENT TO DISTRIBUTE (COCAINE (SCHED II), in violation of 21 U.S.C. §§ 848 & 846, on April 18, 1991;
- 20 e. A superseding information was filed on March 22, 1993; and

21
22
23
24
25
26
27
28 ///

1 f. Christian Esquino pled guilty and was sentenced on the superseding information on
2 August 30, 1993.

3 23. True and correct copies of the April 18, 1991 indictment and documents from the
4 court's docket in United States of America v. Tedone, et al., are attached to this complaint as
5 Exhibit "E" and incorporated by reference as though fully set forth at length. Exhibit "E" shows
6 that on March 22, 1993, a superseding information was filed against Christian Esquino charging
7 him with CONSPIRACY TO COMMIT OFFENSE: CONCEALMENT FROM THE IRS OF THE
8 EXISTENCE, SOURCE AND TRANSFER OF CASH. Exhibit "D" shows that as a result of this
9 information, Christian Esquino was convicted, sentenced to five years in prison and served prison
10 time.

11 24. The answer of Ed Nunez a/k/a Christian Esquino to the question "o" on the application
12 for the Policy (Exhibit "D"), was false, in that he in fact had been indicted on drug related criminal
13 charges prior to the date of the application. Had Nunez/Esquino answered the application question
14 truthfully, QBE would have declined to issue a policy to Starwood and/or would have rescinded
15 the Policies upon receipt of Starwood's truthful application.

16 25. On September 12, 2012, United States Marshals, acting on behalf of the United States
17 Department of Drug Enforcement Administration, confiscated the Starwood Hawker 700 Aircraft
18 after it landed at the McAllen, Texas airport on a flight from Mexico.

19 26. After confiscation of the Subject Aircraft, Starwood submitted a claim to QBE under
20 the Starwood Policy's Physical Damage Coverage.

21 27. While conducting its investigation of the claim for the seized Starwood aircraft, QBE
22 learned that Starwood's aviation insurer prior to QBE was Commerce & Industry Insurance
23 Company (CIIC). CIIC has brought a declaratory relief action in the United States District court,
24 District of Nevada, Case No. 2:12-cv-01219-MMD-CWH seeking to rescind CIIC's aviation
25 insurance policy because Starwood gave false answers to questions asked on Starwood's
26 application for insurance to CIIC and Starwood had an aircraft, a Gulfstream G-1159A, N39LF,
27 seized by the United States Marshals acting on behalf of the United States Department of Drug
28 Enforcement Administration in Tucson, Arizona on February 12, 2012.

1 28. Starwood Management, LLC, answered the CIIC Complaint on August 24, 2012,
2 stating it lacked “sufficient knowledge or information to form a belief about the truth of the CIIC
3 allegations that Ed Nunez a.k.a. Christian Esquino was convicted of crimes. Starwood
4 Management, LLC’s answer admitted that a 1984 Gulfstream N39LF owned by it, was confiscated
5 on February 3, 2012, by U. S. Marshals acting on behalf of the DEA after the aircraft landed in
6 Tucson, Arizona on a flight from Mexico.

7 29. The information in CIIC’s Complaint, the exhibits thereto, and Starwood Management,
8 LLC’s answer establish that Starwood Management, LLC and Ed Nunez, provided false
9 information in their application to QBE in several significant material respects. First, the applicant,
10 Ed Nunez, was convicted of several felonies. Also, an insurer canceled Starwood’s aviation
11 insurance. Also, Starwood had an aircraft loss/claim in the three years prior to its QBE application.
12 In addition, the insured’s aircraft will be operated outside of the continental United States. Also,
13 a named pilot had been involved in an incident. Most importantly, Starwood did not disclose any
14 of this important information reflected in the CIIC Complaint of the existence of the CIIC lawsuit
15 to QBE.

16 30. Ed Nunez, also known as Christian Esquino, was a defendant in United States District
17 Court, Southern District of California Case No. 3:02 CR 333, *United States of America v. Christian*
18 *Esquino, et al.* This case involved a conspiracy by which Christian Esquino purchased aircraft from
19 the Mexican government, falsified their log books and other items, registered them with the Federal
20 Aviation Administration and re-sold them at inflated prices based on the falsified log books and
21 other items. QBE is informed and believes, and on the basis of that information and belief, alleges
22 that in 2004 Christian Esquino pled guilty to a single count of conspiracy to commit fraud involving
23 an aircraft, was sentenced to and served a 24-month prison sentence, and was immediately deported
24 to Mexico upon his release from prison. QBE further is informed and believes and on the basis of
25 that information and belief, alleges that in a hearing in this criminal case on a motion seeking
26 Christian Esquino’s release from custody on bail, prior to his guilty plea, his attorney stated in open
27 court that Christian Esquino was then aware that he had been under investigation by the United
28 States Department of Drug Enforcement Administration for drug trafficking for a period of in

1 excess of a year.

2 31. Starwood concealed from QBE the information regarding the false identity of Christian
3 Esquino a/k/a Ed Nunez, his 1991 indictment and 1993 conviction in *United States v. Tedone, et*
4 *al.*, his 2004 conviction in *United States v. Esquino*, and his deportation to Mexico following the
5 completion of his prison sentence in *United States v. Esquino*.

6 32. QBE was unaware of these facts until after September 5, 2012, when it conducted its
7 investigation of Starwood's claim arising from the confiscation of the Subject Aircraft by the
8 United States Marshals.

9 33. These facts entitle QBE to recind the Policy pursuant to NRS 687B.110, because
10 Nunez's concealment of his false identity and his convictions for these crimes arise out of acts
11 increasing the hazard insured against, and constitute fraud and material misrepresentation in
12 obtaining the QBE Policy and in the presentation of Starwood's QBE claim under the Starwood
13 Policy arising from the confiscation of the Hawker 700 Aircraft by the United States Marshals.

14 **FIRST CAUSE OF ACTION FOR RECISSION OF THE POLICY**

15 34. QBE incorporates by reference the allegations of paragraphs 1 through 33 above into
16 its first cause of action as if fully set forth here.

17 35. NRS 687B.110 states:

18 **687B.110. Representations in applications.**

19 All statements and descriptions in any application for an insurance policy
20 or annuity contract, by or on behalf of the insured or annuitant, shall be deemed to
21 be representations and not warranties. Misrepresentations, omissions, concealment
of facts and incorrect statements shall not prevent a recovery under the policy or
contract unless either:

- 22 1. Fraudulent;
- 23 2. Material either to the acceptance of the risk, or to the hazard
24 assumed by the insurer; or
- 25 3. The insurer in good faith would either not have issued the policy or
26 contract, or would not have issued it at the same premium rate, or
27 would not have issued a policy or contract in as large an amount, or
28 would not have provided coverage with respect to the hazard
resulting in the loss, if the true facts had been made known to the
insurer as required either by the application for the policy or contract
or otherwise.

1 36. Starwood's answers to the questions on the application as to any convictions or
2 indictments of the applicant, whether Starwood had made a previous claim, whether Starwood had
3 a policy canceled, whether Starwood operates its aircraft outside the continental U.S., and whether
4 a Starwood pilot had been involved in an incident were knowingly false.

5 37. Starwood's false answers to these questions in the application for the OBE Policy was
6 material to QBE's evaluation whether to agree to insure Starwood.

7 38. Had Starwood answered the questions on the application alleged above truthfully, QBE
8 would have declined to insure Starwood altogether and/or would have immediately rescinded the
9 QBE Policy upon receipt of the true facts.

10 39. On September 14, 2012, QBE by letter to Starwood, Exhibit "B", hereto rescinded the
11 QBE Policy and confirmed that Starwood had not paid any premium to QBE.

12 40. An actual controversy exists between QBE and Starwood in that QBE contends that the
13 QBE Policy is rescinded effective September 14, 2012, based on Starwood's misrepresentation and
14 concealment of facts material to QBE's decision whether to agree to insure Starwood. QBE also
15 contends that as a result of that rescission, Starwood has no benefits available under th QBE policy
16 and that QBE has no obligation whatsoever toward Starwood. QBE is informed and believes, and
17 on the basis of that information and belief alleges, that Starwood contends the contrary.

18 41. This court's judicial declaration as to whether QBE's Policy rescinded effective
19 September 14, 2012, is necessary at this time so that the parties may ascertain their respective rights
20 and obligations.

21 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF**

22 **Lack of Coverage Under the Policy**

23 42. QBE incorporates by reference the allegations of paragraphs 1 through 41 above into
24 its second cause of action as though fully set forth here at length.

25 43. The QBE policy of insurance for physical damage coverage to the insured Scheduled
26 Aircraft provides insurance coverage for an aircraft that is physically damaged or lost in part stating
27 as follows:

28 ///

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

Section Three - **Physical Damage** Coverages

Coverage 19- **Physical Damage** Coverage for **Scheduled Aircraft** (including **Ingestion** and Emergency Landing)

The Company will promptly pay for any **physical damage** to a **scheduled aircraft** that occurs during the policy period including its disappearance or theft, less any applicable deductible. A **scheduled aircraft** that occurs during the policy period including its disappearance or theft, less any applicable deductible. A **scheduled aircraft** shall be considered missing under disappearance or stolen under theft, if such **aircraft** is unable to be located for fifteen (15) days after reported missing or stolen. In addition, if an unexpected event causes a **scheduled aircraft** to make a landing in a location where it cannot safely depart and there is no **physical damage**, the Company will pay the reasonable costs of transporting the **scheduled aircraft** to the nearest suitable airport.

* * * *

“Insured” means:

A. for all coverage:

1. the **named insured**;
2. any director, officer, partner, employee, agent or stockholder of the **Named Insured** while that person is acting within their official capacity as such;

* * * *

“Occurrence” means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or **property damage** neither expected nor intended by the **insured**. However, the definition includes **bodily injury** or **property damage** resulting from the efforts to prevent dangerous interference with any **aviation operations**.

* * * *

“Physical damage” means accidental, direct physical loss of or damage to **scheduled aircraft, spare engines** or **spare parts** during the policy period including ingestion, but it does not include the loss of use or any residual depreciation in value either before or after any repairs have been made.

* * * *

“Scheduled aircraft” means any **aircraft** listed under Coverage 1 - Liability for **Scheduled Aircraft** and Coverage 10 - **Physical Damage** Coverage for **Scheduled Aircraft** in the Declarations or any **aircraft** covered under Coverage 28 - Automatic Insurance for Newly Acquired **Aircraft**.

* * * *

“Total loss” means any **physical damage** loss for which the cost to repair when added to the **salvage value** equals or exceeds:

- A. the insured value of a **scheduled aircraft**, or

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

B. the actual cash value of any other insured property.

Theft or disappearance of the entire **aircraft** is considered a **total loss**.

Section Seven - Exclusions

The insurance provided by the Policy shall not apply:

* * * *

D. to illegal, criminal or dishonest acts or activities, alleged or otherwise, committed by or at the direction of or with the knowledge and consent of directors or officers of the **insured** and with the knowledge at the time that such act was illegal or criminal, but with respect to the **named insured** this exclusion shall apply only if such activities or acts are with the knowledge and consent of an officer or director of the **named insured**;

* * * *

J. claims or damage resulting from:

1. war, whether declared or undeclared, invasion, acts of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power;

2. confiscation, nationalization, seizure, restraint, detention, appropriation, requisition for title, used by or under the order of any government, public or local authority, whether civil, military or *de facto*;

3. claims arising while the insured property is outside the control of the **insured** because of any of the above perils;

* * * *

M. caused by the embezzlement, secretion or conversion of the insured property; or

* * * *

44. The QBE Policy contained a War, Hi-jacking and other Perils Exclusion Clause (Aviation) excluding coverage for seizure or confiscation, stating in part as follows:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
WAR, HI-JACKING AND OTHER PERILS EXCLUSION CLAUSE (AVIATION)**

This policy is amended as follows:

In the event of any of the provisions of this endorsement are in conflict with any provisions, exclusions, conditions or terms forming part of this policy, this endorsement shall take precedence.

This policy does not cover claims caused by:

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

(a) War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power;
* * * *

(d) Any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional;

(e) Any malicious act or act of sabotage;

(f) Confiscation, nationalization, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any Government (whether civil, military or defacto) or public or local authority;
* * * *

(g) Hi-jacking or any unlawful seizure or wrongful exercise of control of the aircraft or crew in flight (including any attempt at such seizure or control) made by any person or persons on board the aircraft acting without the consent of the insured.

Furthermore, this policy does not cover claims arising whilst the aircraft is outside the control of the Insured by reason of any of the above perils.

The aircraft shall be deemed to have been restored to the control of the insured on the safe return of the aircraft to the Insured at an airfield not excluded by the geographical limits of this policy, and entirely suitable for the operation of the aircraft (such safe return shall require that the aircraft be parked with engines shut down and under no duress).

All other terms and conditions of this policy remain unchanged.

45. The QBE policy also included an Extended Coverage Endorsement War Risk for Physical Damage Coverage, Extortion, and Hi-Jacking Extra Expense Coverage that was purchased by Starwood, that nullified the war hi-jacking exclusion and provided insurance coverage for some seizures and confiscations which stated in part:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. EXTENDED COVERAGE ENDORSEMENT WAR RISK FOR PHYSICAL DAMAGE COVERAGE, EXTORTION, AND HI-JACKING EXTRA EXPENSE COVERAGE

In consideration of \$600 additional premium, this policy is amended as follows:

This coverage is subject to all the terms and conditions shown both in this policy as well as this endorsement. It does not change any coverage or terms except as specifically stated below. The insured is responsible for using all reasonable efforts to ensure that all required permits for aircraft operations as well as all state and local laws are complied within the county of operation or the country where a loss or expense is incurred.

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

SECTION ONE

WAR RISK COVERAGE FOR AIRCRAFT PHYSICAL DAMAGE

The Company will pay for the physical loss of or **physical damage** to any **scheduled aircraft** (unless excluded by Exclusion G. below) that is caused by an occurrence during the policy period and arising out of any of the following perils:

* * * *

(c) any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional;

* * * *

(e) confiscation, nationalization, seizure, restraint, detention, appropriation, requisition for title, use by or under the order of any government, public or local authority, whether civil, military or de facto;

(f) hi-jacking or any unlawful seizure or wrongful exercise of control of a **scheduled aircraft** or crew **in-flight** (including any attempt at such seizure or control) made by any person or persons on board the **scheduled aircraft** acting without the consent of the **insured**.

This section also covers the physical loss of or **physical damage** to a **scheduled aircraft** while that scheduled aircraft is outside the control of the **insured** because of any of the above perils. The **aircraft** will be covered until its safe return to the **insured**.

The **scheduled aircraft** shall be deemed to have been restored to the control of the **insured** on the safe return of the **scheduled aircraft** to the **insured** at an airfield not excluded by the geographical limits of this endorsement and entirely suitable for the operation of the **aircraft** (such safe return shall require that the **aircraft** be parked with engines shutdown and under no duress).

SECTION TWO

“EXTORTION, HI-JACKING AND CONFISCATION EXPENSE COVERAGE”

Extortion, Expense Coverage

Subject to the limits described below, the Company will reimburse the **named insured** for ninety percent (90%) of any payment properly made for threats made during the policy period against any **scheduled aircraft** covered by this endorsement.

Hi-jacking and Confiscation Expenses Coverage

Subject to the limits described below, the Company will reimburse the **named insured** for ninety percent (90%) of any required extra expenses incurred following any type of confiscation or hi-jacking that takes place during the policy period as described in paragraphs(e) and (f) of **SECTION ONE** of this endorsement.

46. The policy also included an Extended Coverage Endorsement which provided in

pertinent part:

///

///

1 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

2 **EXTENDED COVERAGE ENDORSEMENT -**
3 **QBAV-2340**
4 **(AVIATION LIABILITIES FORM B)**

5 In consideration of an additional premium of \$966, this policy is amended as follows:

6 The policy of which this Endorsement forms part included War, Hi-jacking and Other Perils Exclusion Clause AVN48B:

7 1. With effect from 07/27/12, all sub-paragraphs other than (b) of War, Hi-jacking and Other Perils Exclusion Clause AVN48B are deleted SUBJECT TO all terms and conditions of this Endorsement.

9 2. EXCLUSION applicable only to any coverage extended in respect of the deletion of sub-paragraph (a) of War, Hi-jacking and Other Perils Exclusion Clause AVN48B:

11 3. LIMITATION OF LIABILITY

12 The limit of the Company's liability in respect of the coverage provided by this Endorsement shall be US \$10,000.00 or the applicable policy limit, whichever the lesser, any one occurrence and in the annual aggregate (the "sub-limit"). This sub-limit shall apply within the full policy limit and not in addition thereto.

15 47. On information and belief, the seizure of the Hawker 700 aircraft by the DEA on September 5, 2012, was not as a result of an accident or occurrence, but as a result of intentional acts by the insured which as quoted above, under the QBE Policy, insurance coverage is excluded. Therefore, there is no insurance coverage available under the QBE Policy for the seizure/confiscation of the Hawker 700 by the DEA.

20 **THIRD CLAIM FOR RELIEF**

21 48. QBE incorporates by reference the allegations of paragraphs 1 through 43 as if fully set forth here at length.

23 49. On information and believe, the seizure of the Hawker 700 aircraft by the DEA on September 5, 2012, was not as a result of an accident or occurrence, but as a result of illegal or criminal or dishonest acts by the insured which under the provision of the QBE policy, quoted above, is excluded from coverage. Therefore, there is no insurance coverage available under the QBE Policy for the seizure/confiscation of the Hawker 700 by the DEA.

28 ///

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

PRAYER

WHEREFORE, QBE prays for judgment against Starwood as follows:

On the First Cause of Action:

1. For declaratory judgment that the Policy is rescinded effective September 14, 2012;
2. For declaratory judgment that there is no insurance coverage under the QBE Policy and that QBE is not obligated to seek recovery of the seized aircraft, nor indemnify Starwood for the seized aircraft nor defend Starwood in any legal proceeding.


On All Causes of Action:

3. For attorney's fees;
4. For costs of suit; and

For such other further legal or equitable relief as the Court deems just and proper.

DATED this 12th day of October, 2012.

KENT LAW

BY: 
STEPHEN S. KENT
201 W. Liberty Street, Suite 320
Reno, Nevada 89501
ATTORNEYS FOR PLAINTIFF QBE

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

LIST OF EXHIBITS

Exhibit No.	Description	No. Of Pages
A	QBE Policy	81
B	QBE's September 14, 2012 letter to Starwood	3
C	FAA Registration Report	2
D	QBE Application	3
E	April 18, 1991 Indictment and Related Documents	15