

SUPPLEMENTAL INFORMATION PURSUANT TO RULE 31(A)
OF THE RULES OF THE COURT OF CHANCERY

EFiled: Aug 19 2024 12:09PM EDT
Transaction ID 74084980
Case No. 2024-0866-



The information contained herein is for the use by the Court for statistical and administrative purposes. Notl document shall be deemed binding for purposes of the merits of the case.

1. Case caption: **The Kili/Bikini/Ejit Local Government Council, on behalf of The People of Bikini, Tommy Jibok, Rodney Lewis, Hemri Lajdrik, and Senator Jess Gasper, Jr. In Their Individual Capacities as Intended Beneficiaries of The Trusts At Issue, Plaintiffs v. Arden Trust Company, Defendant**

2. Date filed: **August 19, 2024**

3. Name and address of counsel for plaintiff(s):
Michael L. Vild (No. 3042)
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4. Short statement and nature of claim(s) asserted:

Claims for breach of fiduciary duty and breach of trust against trustee

5. Substantive field of law involved (check one):
 Administrative law Labor law Trusts, Wills and Estates
 Commercial law Real Property Consent trust petitions
 Constitutional law 348 Deed Restriction Partition
 Corporation law Zoning Rapid Arbitration (Rules 96,97)
 Trade secrets/trade mark/or other intellectual property Other

6. Identify any related cases, including any Register of Wills matter. This question is intended to promote jurisdiction efficiency by assigning cases involving similar parties or issues to a single judicial officer. By signing this form, an attorney represents that the attorney has done reasonable diligence sufficient to respond to this question. **None.**

7. State all bases for the court’s exercise of subject matter jurisdiction by citing to the relevant statute. Specify if 8 *Del. C.* § 111, 6 *Del. C.* § 17-111, or 6 *Del. C.* § 18-111. State if the case seeks monetary relief, even if secondarily or in the alternative, under a merger agreement, asset purchase agreement, or equity purchase agreement.

This Court has jurisdiction pursuant to 10 *Del. C.* § 341. Plaintiffs seek monetary relief for breach of trust.

8. If the complaint initiates a summary proceeding under Sections 8 *Del. C.* §§ 145(k), 205, 211(c), 220, or comparable statutes, check here _____. (If #8 is checked, you must either (i) file a motion to expedite with a proposed form of order identifying the schedule requested or (ii) submit a letter stating that you do not seek an expedited schedule and the reason(s)—e.g., you have filed to preserve standing and do not seek immediate relief.)

9. If the complaint is accompanied by a request for a temporary restraining order, a preliminary injunction, a status quo order, or expedited proceedings other than in a summary proceeding, check here _____. (If #9 is checked, a motion to expedite must accompany the transaction with a proposed form of order identifying the schedule requested.)

10. If counsel believe that the case should not be assigned to a Magistrate in the first instance, check here and attach a statement of good cause. _____

/s/ Michael L. Vild (No. 3042)
Signature of Attorney of Record & Bar ID



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE KILI/BIKINI/EJIT LOCAL)	
GOVERNMENT COUNCIL, on)	
behalf of THE PEOPLE OF BIKINI,)	
TOMMY JIBOK, RODNEY LEWIS,)	
HEMRI LAJDRIK, and SENATOR)	C.A. No.
JESS GASPER, JR. IN THEIR)	
INDIVIDUAL CAPACITIES AS)	
INTENDED BENEFICIARIES OF)	
THE TRUSTS AT ISSUE,)	
)	
Plaintiffs,)	
)	
v.)	
)	
ARDEN TRUST COMPANY, NA, a)	
Delaware corporation,)	
)	
Defendant.)	
)	

VERIFIED COMPLAINT

Plaintiffs Kili/Bikini/Ejit Local Government Council (“Council”), on behalf of the People of Bikini, and the following individuals in their individual capacities as intended beneficiaries of the trusts at issue—Tommy Jibok, the Mayor of the Council; Rodney Lewis, the Council Clerk; Hemri Lajdrik, the Assistant Treasurer of the Council; and Senator Jess Gasper, Jr.—by their undersigned attorneys, as and for their Verified Complaint, against defendant Arden Trust Company (“Arden”), allege that Arden breached the trust instruments and its fiduciary duties as trustee of

the Resettlement Trust Fund for the People of Bikini (“Resettlement Trust”) and the Bikini Claims Trust Fund Agreement (“Claims Trust”).

NATURE OF THE ACTION

1. On March 7, 1946, the U.S. Navy moved the People of Bikini in the Marshall Islands off their atoll in order to use it as a testing ground for nuclear bombs. The U.S. Government moved the Bikinians four more times in the next four decades, even carelessly back to their own radioactive atoll until the islanders themselves had to sue the United States to be moved off. For 40 years, the Bikinians were wards of the United States, which had pledged to the United Nations to care for them and “protect [them] against the loss of their land and resources.” Thanks in large part to the nuclear testing program it conducted at Bikini Atoll, the United States fought the Soviet Union to a nuclear testing stalemate and eventually won the Cold War, but it never discharged its fiduciary obligations to the nuclear nomads of Bikini before it got sued by the Bikinians themselves. The Bikinians brought three lawsuits against the U.S. Government from 1975 through 1984 for making Bikini Atoll uninhabitable due to the nuclear tests conducted there by the United States. Two of these lawsuits were settled pursuant to Congressional legislation in the mid-1980s that created two trust funds for the benefit of the People of Bikini: the Resettlement Trust and the Claims Trust.

2. The Resettlement Trust was established by Congress under Pub. L. No 97-257, which established a \$19.6 million trust fund “for the relocation and resettlement of the Bikini people in the Marshall Islands.” In 1988, Congress appropriated an additional \$90 million under Pub. L. No. 100-446 for the Resettlement Trust, settling two of the lawsuits the Bikinians had brought against the U.S. Government.

3. The Claims Trust was established in 1986 pursuant to the “Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association” (“Section 177 Agreement”) approved under Pub. L. No. 99-239. Pursuant to the Section 177 Agreement, \$2.6 million was paid into the Claims Trust annually over a 15-year period, creating an initial corpus of \$39 million. That agreement contained very strict guidelines for the distribution of Claims Trust income and corpus to the beneficiaries. The trustee could distribute, at maximum, between 15%– 70% of income to the People of Bikini, but it had to reinvest the remainder in the trust. It could also make, at maximum, a 3% distribution of the corpus of the trust every three years in case of hardship experienced by the Bikinians.

4. Arden served as trustee of the Claims Trust from May 31, 2018 until October 6, 2023, when it transferred the Claims Trust assets to its appointed successor, Comerica. It became trustee of the Resettlement Trust on November 30,

2018, and remains trustee today. As detailed below, shortly after Arden took over both trusts it began disbursing massive amounts of trust income and corpus from them—far beyond what the trust instruments or the U.S. laws establishing them allowed or what was prudent. To take but one example, Arden was allowed to distribute only about \$1,594,000 to the Bikinians in 2018 from the Claims Trust. Instead, it disbursed nearly ten times that amount—about \$15,700,000.

5. Under Arden’s egregious mismanagement, the Resettlement Trust was obliterated, and the Claims Trust was gutted. Instead of acting as a prudent trustee and limiting requests by the beneficiaries for funds, Arden flagrantly violated the trust instruments and Congressional statutes establishing the two trusts by making extravagant disbursements, never questioning drawdown requests, never seeking accountability for or documentation of how drawdowns were disbursed, and then coercing the Council into signing an Arden-serving purported release of liability, leaving the Bikini community in severe financial distress and enduring hardship.

6. The market value of the Resettlement Trust has fallen from approximately \$60 million when Arden became trustee to \$89,002 as of June 30, 2024, a decline of more than 99%. The market value of the Claims Trust declined from approximately \$59.1 million to around \$28.7 million during Arden’s tenure as trustee—a decline of more than 50%.

7. As detailed below, Arden's egregious mismanagement of these trust funds breached numerous sections of the trust instruments governing the Resettlement Trust and the Claims Trust.

8. Beneficiaries of trust funds frequently want more money from the trust than they are allowed to have, but it is the role of the trustee to obey and enforce the terms of the trust, which sometimes means saying, "No." For the nearly 32 years that other financial institutions served as trustee of the Claims Trust from 1986-2018, the Council regularly asked trustees to make distributions in excess of what was allowed. Those trustees, knowing that they were bound by the strict rules of the Claims Trust instrument, turned down these requests. By limiting distributions to what was legally allowed, they not only preserved the corpus but actually grew it from the \$39 million that was appropriated by the U.S. Government to over \$60 million. When Arden took over as trustee of the two trust funds, it put no restraints on requests for distributions. For five straight years, it never said "No." Arden simply saw its role as being to spew out tens of millions of dollars from the two trusts, with no questions asked, no oversight, no accountability, and absolutely no concerns about the prudence of its actions or the rules of the trust instruments.

9. Plaintiffs bring this action for Arden's breaches of trust and breaches of its fiduciary duties. Arden violated the terms of the two trusts by disbursing tens of millions of dollars with no accountability and by engaging in willful misconduct

through coercing the Council into signing a purported release highly favorable to Arden once Arden realized the extent of its wrongdoing. These actions have caused lasting damage to the People of Bikini and their representatives.

PARTIES

10. The People of Bikini (or “Bikinians”) are individuals who are either (a) members of the Bikini community in 1946—a community which at that point was under control of the United States by military occupation and then evacuated prior to “Operation Crossroads,” the first American atomic bomb tests at Bikini; (b) direct descendants of such members; or (c) other persons who by traditional law and custom are recognized by the People of Bikini as members of their community. All such persons are the intended beneficiaries of the Resettlement Trust and the Claims Trust.

11. The Council, the governing body for the People of Bikini, is a recognized political subdivision within the Republic of the Marshall Islands. Members of the Council are voted into office by the People of Bikini in accordance with the Council’s constitution. The Council consists of a mayor, treasurer, assistant treasurer, clerk, assistant clerk, and 18 Council members. The Council is authorized to bring suit on behalf of the People of Bikini as it has done on previous occasions.

12. Plaintiff Tommy Jibok was elected mayor of the Council in in November 2023 and assumed the office of mayor in December 2023. He is a citizen

of Bikini Atoll and the Marshall Islands, as are plaintiffs Council Clerk Rodney Lewis and Council Assistant Treasurer Hemri Lajdrik. Senator Jess Gasper, Jr. represents the Bikinians in the Marshall Islands Parliament. Messrs. Jibok, Lewis, Lajdrik and Gasper bring this suit in their individual capacities as intended beneficiaries of the Resettlement Trust and the Claims Trust.

13. Defendant Arden is a Delaware corporation with its principal place of business at 2751 Centerville Road, Suite 400, Wilmington, Delaware 19808. On information and belief, Arden is a wholly owned subsidiary of Kestra Financial, Inc., a broker-dealer headquartered in Austin, Texas. Arden's predecessor company was named Reliance Trust Company of Delaware. On September 10, 2019, Reliance Trust Company announced its renaming as Arden Trust Company. All references in this complaint to Arden that refer to events prior to September 10, 2019 apply to Reliance Trust Company.

JURISDICTION

14. This court has jurisdiction over the subject matter of this action pursuant to 10 *Del. C.* § 341 because it contains an equitable claim for breach of fiduciary duty.

15. This court has personal jurisdiction over the defendant Arden pursuant to 10 *Del. C.* § 3111.

FACTUAL BACKGROUND

A. Historical Background and U.S. Nuclear Testing Program

16. Bikini Atoll is one of 29 atolls and five islands comprising the Marshall Islands, located approximately 2,200 miles southwest of Hawaii just north of the equator. Bikini Atoll's 26 islands have a combined land area of 2.32 square miles and enclose a large lagoon of 245 square miles. The Marshall Islands, together with two other archipelagoes, the Carolines and the Marianas, comprise Micronesia, a group of about 2,100 islands and atolls dispersed throughout the central Pacific in an ocean area approximately the size of the continental United States.

17. Micronesia was seized by Japan during World War I and thereafter became a League of Nations Mandate administered by Japan until 1944, when U.S. forces captured the islands from the Japanese in some of the bloodiest battles of World War II.

18. On January 10, 1946, President Harry Truman approved the use of Bikini Atoll for nuclear testing. Two months later, on March 7, 1946, the U.S. Navy moved the Bikinians off their atoll to Rongerik Atoll, 125 miles east of Bikini, leaving them with a few weeks' supply of food and water. Within two months, the Bikinians experienced severe food shortages. After an anthropologist sent by the U.S. Government found that starvation conditions existed on Rongerik, the U.S. Navy moved the Bikinians to Kwajalein Atoll in March 1948 and then moved them

again six months later, this time to Kili Island, about 400 miles southeast of Bikini Atoll.

19. Kili is an island, not an atoll, with a land area only one-sixth that of Bikini Atoll. The lagoon-centered fishing skills that had sustained the people of Bikini on their atoll for generations were of no use on Kili, which has neither a lagoon nor a protected anchorage. For most months of the year, access to the island by boat is extremely hazardous and fishing is nearly impossible.

20. Numerous severe food shortages occurred on Kili. The situation in 1952 was so severe that the United States airdropped food to the island. Food shortages in 1958 resulted from a devastating typhoon that killed much of the vegetation.

21. Of the approximately 7,000 Bikinians living today, only a few hundred reside on Kili. This number is down from a one-time high of approximately 1,200 people in the 1980s. Because of Arden's sudden freeze on all trust fund expenditures (see paragraphs 55-57, below), the exodus from Kili has increased due to inconsistent and inadequate power and food supply. Healthcare on Kili is deficient, housing is sub-standard, and the Bikinians have little cash-producing activity, so the local economy remains severely depressed.

22. On July 18, 1947, the Marshall Islands, together with the rest of Micronesia, were brought under the United Nations trusteeship system, with the

United States as administering authority. That trusteeship relationship lasted until 1985, when Congress passed the Compact of Free Association Act, which President Ronald Reagan signed into law on January 14, 1986 as Pub. L. No. 99-239. At that point, the Marshall Islands became a sovereign state in a political relationship called “free association” with the United States.

23. From 1946 to 1958, the United States detonated 23 atomic and hydrogen bombs at Bikini Atoll, causing extensive and long-lasting damage to the atoll. The 1954 “Bravo” hydrogen bomb shot—the largest nuclear weapon ever detonated by the United States and at least 750 times more powerful than the atomic bomb dropped on Hiroshima—vaporized three of Bikini’s 26 islands and portions of others, left a one-mile, 200-foot-deep hole in the atoll’s reef, and moved concrete buildings located 24 miles across the lagoon. Radioactive fallout covered an area of 50,000 square miles, with serious-to-lethal radioactivity falling over an area almost equal in size to the entire state of Massachusetts.

24. The “Bravo” shot was just one of 67 nuclear tests the U.S. Government conducted in the Marshall Islands from 1946 to 1958. The total yield of those tests was 108 megatons, which is equivalent to more than 7,000 Hiroshima-sized bombs. It is as if about one and a half Hiroshima bombs were set off every single day in the Marshall Islands for the twelve years between 1946-1958.

25. President Lyndon Johnson announced on August 12, 1968 that a return to Bikini would “not offer a significant threat to [the Bikinians’] health and safety,” and the next year the United States began moving Bikinians back to Bikini Atoll, which had been completely decimated by the nuclear tests.

26. However, limited radiological measurements in the early 1970’s led U.S. scientists to urge the Bikinians to limit their intake of locally grown foods, such as coconuts, breadfruit, and pandanus. U.S. doctors examining the Bikinians in April 1978 described what they called an “incredible” one-year 75 percent increase in their body burdens of radioactive cesium-137, leading them to conclude that the Bikinians had likely ingested the largest amounts of radiation of any known population. As a result, in August 1978, the United States again evacuated the Bikinians from their atoll, sending some to Ejit Island in Majuro Atoll and others back to Kili Island.

27. Radiological surveys of Bikini have concluded that the atoll was—and still is—not safe for human habitation. The Bikinians are barred from returning to their homeland, have not lived together as a community for more than 56 years, and remain scattered throughout the Marshall Islands, the United States, and other areas of the Pacific.

B. Establishment and Administration of the Resettlement Trust

28. In 1982, Congress appropriated \$19.6 million to establish the Resettlement Trust “for the relocation and resettlement of the Bikini people in the Marshall Islands, principally on Kili and Ejit Islands: Provided further, that such sum shall be paid to a trustee selected by the Council subject only to the disapproval of the Secretary of the Interior to be held in trust pursuant to the provisions of [a] trust agreement . . . approved by the Bikini/Kili Council subject only to the disapproval of the Secretary of the Interior. . . .” Pub. L. No. 97-257. There was no mention of Bikini Atoll in the statute, because resettlement there was out of the question, with the Bikinians having just been moved off the atoll four years earlier.

29. Pursuant to Pub. L. No. 97-257, on October 16, 1982, the Council and the U.S. Secretary of the Interior, Donald Hodel, signed a trust agreement for the establishment of the Resettlement Trust.

30. In 1988, Congress appropriated an additional \$90 million over a five-year period into the Resettlement Trust pursuant to Pub. L. No. 100-446, and on October 28, 1988, the Council and Interior Secretary Hodel signed an amended trust agreement for the Resettlement Trust (“1988 Amended Resettlement Trust Agreement”) to reflect the changes mandated by Pub. L. No. 100-446. A copy of the 1988 Amended Resettlement Trust Agreement is attached hereto as Exhibit A. In contrast to Pub. L. No. 97-257, which authorized the Resettlement Trust to expend

resettlement funds at Kili and Ejit, without mentioning Bikini, Pub. L. No. 100-446 focused on Bikini Atoll resettlement, but allowed expenditures of up to \$2,000,000 to be used at Kili and Ejit annually if approved by the U.S. Secretary of the Interior.

31. Provisions of the 1988 Amended Trust Agreement reflect virtually word for word all the provisions of the two Congressional statutes that established the Resettlement Trust. Key provisions of that agreement include the following:

Section 8.1: “The Trustee shall, with respect to any and all monies and property at the time held by him and constituting a part of the Trust Fund, invest and reinvest in such investments as he shall deem appropriate, reasonable and prudent to carry out the purposes of the Trust as set forth under this Agreement.”

Section 8.2: “The Trustee shall disburse trust income or corpus only pursuant to the conditions set forth in Article IX.” Article IX’s three subsections specify how trust income and corpus are to be disbursed. Section 9.1 states: “All proposed distributions of Trust income or corpus shall be for use and benefit of the people of Bikini pursuant to the provisions of Public Laws Nos. 97-257 and 100-446. Corpus and income may be expended for rehabilitation and resettlement of Bikini Atoll. The Secretary [of Interior] or his designee may approve expenditures not to exceed \$2,000,000 in any fiscal year from income for projects on Kili or Ejit.”

Section 8.3: “Subject to the approval of the Council, the Trustee shall annually purchase a security bond payable to the Trust in an amount sufficient to cover the income of the Trust.”

Section 8.5: “The Trustee shall provide an annual report and account to the Council and to the Secretary [of Interior] or his designee within 120 days after the close of the Trust’s fiscal year on the investments and expenditures of this Trust Fund, reporting on the management of the Trust from year to year.”

Section 8.7: “The Trustee shall meet with the Council at least once a year to report on the management of the Trust from year to year.”

Section 8.8: “Subject to the approval of the Council, the Trustee shall be entitled to reasonable fees and expenses as compensation for his services as Trustee hereunder, provided that such fees shall not exceed \$70,000 per annum without the prior written approval of the Council and the Secretary [of Interior] or his designee.”

Section 9.3: “Upon approval of the Council, the Trustee shall make individual distributions of income in excess of \$100,000 or of corpus of any amount to such payee or payees as the Council shall authorize with the written approval of the Secretary or his designee.”

32. From 1982 through 2016, the Resettlement Trust paid out over \$221 million in income for the benefit of the people of Bikini. Expenditures covered a wide range of needs, including supplemental food purchases, health care, student scholarships, wages for Council employees, numerous construction and maintenance projects on Bikini, Kili and Ejit (houses, school, dock, power plant, pier, warehouse, etc.), and the establishment of a world-class scuba diving program at Bikini Atoll. Over this 34-plus year period, the Council submitted proposed annual budgets to the U.S. Department of the Interior for approval, and the Interior Department, after negotiations with the Council, approved these budgets, usually after modifications were made.

33. On August 18, 2017, the Council, acting under the leadership of former Mayor Anderson Jibas, passed a resolution entitled “2017 Rescript of the KBE Resettlement Trust” (“Rescript Resolution”), which stated that the Council “no longer recognizes the authority of the Department of the Interior...to approve the annual budget of the KBE Local Government from the Trust,” and that “any agreement or provisions . . . regarding the Department of the Interior’s oversight of the [Council’s] fiscal year budgets . . . are deemed null and void.” Under the Rescript Resolution, the Resettlement Trust trustee “no longer retains any rights to question drawdown requests from the Trust,” and the Mayor . . . is “duly authorized to initiate drawdown requests to the Trustee for funds from the Trust.” Other than this provision, nothing in the Rescript Resolution purported to amend the other numerous obligations of the trustee outlined in paragraph 31, above.

34. By letter dated November 16, 2017, U.S. Assistant Secretary of the Interior for Insular Areas Douglas Domenech informed former Mayor Anderson Jibas that the Interior Department accepted the Rescript Resolution as a valid amendment to the 1988 Amended Resettlement Trust Agreement. The letter, however, emphasized that the Rescript Resolution could not affect or amend any statutory provisions concerning the Interior Department’s actions with respect to the Resettlement Trust, including approving expenditures from Resettlement Trust income for projects on Kili or Ejit not to exceed \$2,000,000 in any one year.

35. Several U.S. senators were deeply disturbed by the Interior Department's approval of the Rescript Resolution. On February 2, 2018, Senate Energy and Natural Resources Committee Chairman Sen. Lisa Murkowski (R-AK) chaired a committee hearing to review the Interior Department's decision. All of the senators who spoke at the hearing were critical of the Interior Department. "While I agree we must respect the Bikini's desire to spend their money in certain ways, the Department of the Interior has a responsibility to ensure the [Resettlement Trust] remains for years to come," said the committee's ranking Democrat, Sen. Maria Cantwell (D-WA).

36. The trustee of the Resettlement Trust at the time of the Rescript Resolution was Wilmington Trust. During the previous 15 years that Wilmington Trust had served as trustee, it had insisted that every request from the Council for the expenditure of funds from the trust had to be accompanied by a written statement from the person making the request certifying that (1) the requested expenditure belonged in one of 20 or more approved budget categories and was directly related to the purpose described by such budget category; (2) the person had received and submitted all documentation available to support the request; and (3) the requested expenditure and underlying documentation were, to the best of the person's knowledge and belief, true, correct, complete, and appropriate. Indeed, from the date of the Interior Department's approval of the Rescript Resolution—November

16, 2017—until November 30, 2018, when Arden succeeded Wilmington Trust as trustee, Wilmington Trust, as a prudent trustee, continued to insist on Council resolutions detailing the categories and needs for trust expenditures despite the Rescript Resolution’s provision that the Resettlement Trust trustee “no longer retains any rights to question drawdown requests from the Trust.”

37. Arden was contacted about serving as trustee for the Resettlement Trust 13 days after the Department of the Interior approved the Rescript Resolution. A prudent trustee, knowing that the Resettlement Trust had been created by U.S. law, would have inquired about the trust’s history and learned that, despite the Rescript Resolution, the approval of the Secretary of the Interior was needed for any expenditures of Resettlement Trust income for projects on Kili or Ejit and that expenditures on such projects were not to exceed \$2,000,000 in any one year. A prudent trustee would have insisted on an accounting or explanation from the Council detailing the use of funds it wired to the Council, as had the prior trustee. A prudent trustee, knowing that the Resettlement Trust had been created by U.S. law and funded by U.S. taxpayers, would have sought U.S. Government guidance before draining 99% of the trust’s assets. Arden did none of these. Instead, it proceeded over the next five years to thoroughly deplete the Resettlement Trust from a level of approximately \$60 million when it became trustee to \$89,002 as of June 30, 2024.

38. Despite the requirement in both Pub. L. No. 100-446 and the 1988 Amended Resettlement Trust Agreement to obtain approval from the Secretary of the Interior or his designee (“Secretarial Approval”) for projects on Kili or Ejit in an amount not to exceed \$2,000,000 in any fiscal year from income, Arden never sought such approval or otherwise monitored expenditures from the Resettlement Trust on its own to ensure that the \$2,000,000 limit was not exceeded.

39. Despite the obligation detailed in paragraph 31, above, Arden never sought Secretarial Approval for expenditures of corpus of any amount or for expenditures in excess of \$100,000 to payees authorized by the Council, nor did it monitor or keep an accounting of these expenditures on its own to ensure that such expenditures did not count against the \$2,000,000 annual limit for expenditures on Kili and Ejit.

40. Despite the obligations detailed in paragraph 31, above, Arden never purchased a security bond payable to the Trust, did not meet with the Council annually as required, and charged fees beyond the authorized \$70,000 per year without giving any notice to the Council.

41. Despite the obligations detailed in paragraph 31, above, Arden provided no annual reports to the Council or the Secretary of the Interior. Indeed, by letter dated April 17, 2023, Carmen Cantor, Assistant Secretary of the Interior for

Insular and International Affairs, requested that Arden provide those annual reports, but Arden did not do so.

42. When the Resettlement Trust balance fell to \$100,000 in or about August 2022, Arden informed the former Mayor that it would make no more distributions from the Resettlement Trust, but it has continued to charge monthly fees of between \$400–\$500 to serve as trustee. The balance of the trust on June 30, 2024, was \$89,002.51, and Arden’s monthly fee to administer the trust, from which it has made no distributions whatsoever since August 2022, was \$458.33.

43. Due to Arden’s lack of prudence and gross mismanagement of the Resettlement Trust in overseeing its decimation from a beneficial \$60 million trust fund that supported many Council activities to a paltry \$89,000 trust whose value had decreased so significantly that the trust’s original purpose was frustrated, prior counsel for plaintiffs asked Arden multiple times to terminate the Resettlement Trust, beginning on April 12, 2023, and to pay out to the Bikinians the remaining funds in the trust. Counsel pointed out that Arden had made no distributions since the balance fell to \$100,000 and would not make any more distributions, but Arden was continuing to charge the Resettlement Trust \$5,000–\$6,000 annually just to serve as trustee. Arden still has not responded to this request.

C. Establishment and Administration of the Bikini Claims Trust

44. The Claims Trust was established in 1986 pursuant to the Section 177 Agreement under Pub. L. No. 99-239 (see paragraph 3, above), which established the Claims Trust as well as three other trust funds for nuclear-affected people in the Marshall Islands. The Agreed Minutes to the Section 177 Agreement (“Agreed Minutes”) spell out in detail the guardrails of how the Claims Trust is to be managed. The Agreed Minutes provide that, starting in 2001, the trustee must reinvest 30 to 85 percent of income earned by the Claims Trust, with the remainder being distributed to the people of Bikini. They also state that the Claims Trust “shall provide for (1) invasion of corpus only in the event of an unforeseen natural disaster or other similar circumstance making it necessary to distribute corpus in order to prevent hardship to the people of Bikini; (2) maximum invasion of three percent of corpus; and (3) invasion of corpus no more frequently than once every three years.” The Section 177 Agreement also provides that its terms can be amended only by the consent of both the U.S. Government and the Government of the Marshall Islands.

45. The Section 177 Agreement makes three separate references to the requirement that the four trust funds it established for the nuclear-affected atolls be perpetual. First, Article I, Section 1(d) refers to the Marshall Islands Government’s goal “to achieve its desire to provide a perpetual means of addressing the special needs and unique circumstances of the people of the Marshall Islands resulting from

the Nuclear Testing Program” Second, Article II, Section 8 states that the four trust funds “shall be designed to provide a perpetual source of income for its respective recipients. . . .” Third, the Agreed Minutes state that “[a]ll trusts . . . shall be established so as to provide a perpetual source of income for eligible recipients provided, however, that the creation of such trusts shall be consistent with the Rule Against Perpetuities.”

46. Pursuant to the terms of the Section 177 Agreement, on October 23, 1986, the Council entered into a trust agreement with Alex. Brown & Sons to create the Claims Trust. Security Trust Company was appointed successor trustee by the Council on April 21, 1989 pursuant to the terms of an amended trust instrument (“1989 Amended Claims Trust Agreement”), a copy of which is attached hereto as Exhibit B. On May 31, 2018, Arden was appointed successor trustee to Wilmington Trust, and on July 3, 2023, Comerica Bank & Trust, N.A. was appointed as successor trustee to Arden, although Arden did not relinquish control until October 6, 2023.

47. The 1989 Amended Claims Trust Agreement, which is in effect today, incorporates all the terms of the Section 177 Agreement and Agreed Minutes outlined in paragraphs 44-45, above, including the mandate that that the trust be perpetual. Article 4.1 of the 1989 Amended Claims Trust Agreement states: “It is the intention of the parties that this Trust shall be established to provide a perpetual source of income for eligible recipients, provided, however, that the creation of this

Trust shall be consistent with the Rule Against Perpetuities.” Until Arden took over as trustee in 2018, all disbursements of Claims Trust income were distributed on a per capita basis to all members of the Bikini community.

48. Other key provisions of the 1989 Amended Claims Trust Agreement include the following (the term “Bikini Distribution Authority” is defined in the agreement to be the Council):

Article 6.1 (H) empowers the trustee to “make distributions of Trust income, as set forth under Article VII, below.” Article 7.2 (2), in turn, explains how those distributions are to be made: “Commencing one calendar quarter after the final Fund payment is received [which occurred in 2001], the Trustee shall retain and add to the corpus of the Trust not less than 30% nor more than 85%. . . of the net income arising from the corpus of this Trust, and shall pay to the Bikini Distribution Authority the balance of the net income at least annually.”

Article 8.1: “There shall be no invasion of the corpus of this Trust, provided, however, that in the event of an unforeseen natural disaster or other similar circumstance as determined in the sole discretion of the Bikini Distribution Authority as necessary in order to prevent hardship to the people of Bikini, the Trustee is authorized to pay to the Bikini Distribution Authority a sum of money from the corpus of this Trust, which sum shall not exceed 3% of the then corpus of the Trust.” Article 8.2 goes on to state that “[s]uch invasion of corpus shall occur no more frequently than once every three years.”

Article 9.1: “The Trustee shall provide a written annual account to the Bikini Distribution Authority on the investments and disbursements of this Trust.”

Article 11.1 preserves the need for a perpetual trust fund by providing that “under no circumstances may the terms of Articles . . . 7.2 or VIII be amended.”

49. Arden knew or should have known that distributions under the Claims Trust were strictly governed by the Section 177 Agreement and the 1989 Amended Claims Trust Agreement, and that the main purpose of the Claims Trust, as noted above, was to “provide a perpetual source of income for its . . . recipients.” To the extent that Arden was unclear about what types and amounts of distributions it should have made, it could well have followed Article 11.3 of the 1989 Amended Claims Trust Agreement, which states: “The Bikini Distribution Authority recognizes that this Trust is intended to extend over a period of many years and that unanticipated conflicts in the management and distribution of the Trust property may occur. In the event of any conflict or any doubt or apprehension of the Trustee in the management or distribution of the Trust property, the Trustee is authorized to seek and obtain the judicial determination of such issue in the courts of the situs of this Trust; and such judicial determination shall be final and conclusive on all parties in interest.” Arden failed to seek such judicial determination.

50. For five years—from 2018 to 2022—Arden failed to meet its mandate to reinvest 30% to 85% of net income earned by the Claims Trust. For example, in 2018 the Claims Trust earned about \$2,277,000 in gross income (interest, dividends, capital gains), meaning that Arden could have disbursed up to 70% of that, or about \$1,594,000, to the Bikinians. Instead, it disbursed nearly ten times that amount—about \$15,700,000. (Plaintiffs are unable to compute net income, but if it

were calculated, this discrepancy would be even greater.) Similarly, in 2022, when the gross income was about \$4,585,000, a 70% disbursement would have been about \$3,210,000, but Arden disbursed \$12,000,000—nearly four times the allowed amount.

51. Despite the directive in the Agreed Minutes and Article 8.1 of the 1989 Amended Claims Trust Agreement that the Claims Trust shall provide for a maximum invasion of 3% of corpus no more frequently than once every three years in the event of an unforeseen natural disaster to prevent hardship to the people of Bikini, Arden in just one year—2018—disbursed a total of \$11,000,000 million “for hardship needs” of the Bikini people. The market value of the Claims Trust was approximately \$45 million during 2018, so a 3% invasion of corpus could have been no more than about \$1,350,000, not \$11,000,000, which is more than eight times that amount.

52. The market value of the Claims Trust was approximately \$59.1 million when Arden became trustee. By the time it was removed as trustee, the value had declined to approximately \$28.7 million, a decline of more than 50%. This six-year decline was not due to the Claims Trust’s investments. Indeed, the Standard & Poor’s average annual return for the six years from 2018–2023 was 11.33%. Arden did make the per capita distributions authorized under the Section 177 Agreement; those totaled \$14,742,567. But over those six years it also made the following

additional illegal distributions totaling \$35,990,735, which were not authorized under either the Section 177 Agreement or the 1989 Amended Claims Trust Agreement:

Disbursements totaling \$18,000,000 labeled “Special Distribution”

Disbursements totaling \$17,848,650 labeled “Operations Budget”

Disbursements totaling \$2,594,300 labeled “Loan Payment”

Disbursements totaling \$76,133 labeled “Elderly”

53. Under the terms of the Section 177 Agreement and the 1989 Amended Claims Trust Agreement, Arden should have added tens of millions of these dollars to the trust fund corpus. It did not. Rather, it improperly invaded the corpus for many of these distributions.

54. On June 21, 2021, Arden illegally entered into a “Modification by Consent Creating 2021 Bikini Claims Trust Fund Agreement” (“2021 Claims Trust Amendment”) with the Council, which provided for an annual 3% invasion of corpus of the trust. This modification was expressly prohibited by Article 11.1 of the 1989 Amended Claims Trust Agreement and the Section 177 Agreement. The preamble to the 2021 Claims Trust Amendment also erroneously stated that the U.S. Government “is not ‘an Interested Party’ to the Trust,” thus circumventing the U.S. Government when Arden had no legal basis to conclude as such. Arden itself recognized that the 2021 Claims Trust Amendment was illegal in March 2023,

stating that the 2021 Claims Trust Amendment was no longer valid and that the controlling trust document was the 1989 Amended Claims Trust Agreement, which allows 3% invasions of corpus only every three years. Later that year, the U.S. Department of State confirmed the illegality of the 2021 Claims Trust Amendment, stating that the Claims Trust is governed by the Section 177 Agreement, which can be amended only by the consent of both the U.S. Government and the Government of the Marshall Islands.

55. On January 7, 2023, Arden, with no explanation, suddenly froze all disbursements from the Claims Trust, even though the balance of the fund at that time was approximately \$28.7 million. Council members sought to meet with Arden to understand why it had taken this action, but Arden refused to meet or even respond to emails. Finally, on March 2, 2023, Arden’s lawyer wrote to the Council’s lawyer stating that “any modifications to the Trust’s governing instrument—in particular, to the instrument’s distribution provisions—must be approved by the U.S. Congress,” adding that Arden is “doing its due diligence, following company policies and procedures, and trying to accommodate the Islands as beneficiary under a very restrictive governing instrument.”

56. Arden knew that its sudden freeze of expenditures from the Claims Trust would have immediate and serious consequences for the Bikini community. On March 24, 2023, the former Bikini mayor wrote to Doug Sherry, president of

Arden, stating: “My people and I are being blocked access by your trust officers in Wilmington Delaware to the Bikini Claims Trust,” adding that Arden’s failure to continue funding the plaintiffs’ needs means that “the exiled population [that] currently lives on Kili Island will run out of diesel for our power plant, shutting down air conditioning and power to our freezers and refrigerators making food storage impossible, leading to spoiling food, and sick people without any relief from the tropical heat.” That is exactly what happened. Food shipments to Kili Island came to a halt. The Kili power plant only had enough fuel to provide electricity for a few hours each day and eventually ran out of fuel altogether. Arden even stopped making the distributions that were required under the 1989 Amended Claims Trust Agreement. Arden therefore went from illegally making large distributions from the Claims Trust to illegally making no distributions at all, not even the ones it was required to make.

57. Arden’s freeze on all Claims Trust funds led plaintiffs to hire outside counsel to seek a new trustee and negotiate a termination agreement with Arden. By resolution dated June 9, 2023, the Council voted to replace Arden with Comerica Bank & Trust, N.A., and on July 3, 2023, Comerica accepted appointment as successor trustee. Arden, however, did not agree to relinquish control of the Claims Trust until August 21, 2023 and did not transfer assets to Comerica until October 6, 2023. By August 2023, the Council was desperate to get out from under Arden’s

trusteeship because there had been no food or fuel shipments to Kili for nearly eight months, no wage payments to the Bikinians, and not even the mandated per capita distributions under the Claims Trust. Arden, knowing that it had been making unlawful expenditures from the Claims Trust, used the leverage of the Council's desperate need for ongoing funding and its desire to change trustees to coerce the Council into signing a Claims Trust Release, Refunding and Indemnification and Waiver of Account Agreement ("Claims Trust Release") on August 21, 2023, purporting to release Arden from liability from its administration of the Claims Trust before it would agree to relinquish its role as trustee. Moreover, it was not until four days later, on August 25, 2023, that Arden supplied each Council member with trust statements from January 1, 2018 through June 30, 2023. The Council thus signed the Claims Trust Release without knowing the full extent of the accounts and the state of the Claims Trust.

58. Arden knew that the Council had been placed in receivership on May 22, 2023 by the Marshall Islands Government Cabinet, which formally suspended the Council's operations. Under the laws of the Marshall Islands, during the time that the Council was placed in receivership, the administrator of the receivership, not the Council, had the authority to act as the local government. Thus, Arden knew that the Council lacked the legal authority to sign the Claims Trust Release and bind

the Bikinians in August 2023, yet it still insisted that the Council sign it. The receivership ended on December 28, 2023.

59. The full extent of Arden’s wrongdoing did not come to light until much later, in 2024, as Arden provided little to no accounting of either trust fund to the Council and the people of Bikini throughout its tenure as trustee. Of the 7,000 members of the Bikinian community, very few have a degree beyond that of high school. A May 12, 2023 article, headlined “Report: KBE Trust Fund Gone” stated that “there has been no information available publicly—or to the Bikini community—about the status of the Resettlement Trust Fund.” It was not until August 25, 2023, when Arden wrote to each Council member concerning its removal as trustee of the Claims Trust and attached account statements of that trust from January 1, 2018 through June 30, 2023, that the Council members began to become aware of the financial status of the Claims Trust. In December 2023, plaintiff Tommy Jibok came into office to replace former Mayor Anderson Jibas. Further investigation at the direction of Mayor Jibok and other newly elected Council members was necessary to ascertain the mismanagement and misconduct alleged by plaintiffs in this Complaint.

60. “Your legacy. Our duty” is the tagline of defendant Arden. It goes on to state: “Our primary mission is to ensure our clients’ vision is met and their needs are fulfilled.” That tagline does not apply to Arden’s gross mismanagement,

imprudence, illegal and unlawful actions with respect to the two funds it held in trust for the more than 7,000 members of the Bikini Atoll community—trust funds that were established by U.S. statutes and funded by U.S. taxpayers with appropriations from Congress. Arden took no action to stop the depletion of the Resettlement Trust from \$60 million when it took over as trustee down to under \$89,000, where it stands today, and instead of growing the Claims Trust, it illegally depleted its value from \$59.1 million, when it took over as trustee, to \$28.7 million.

COUNT I

Breach Of Trust Instrument as Trustee of The Resettlement Trust

61. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 60 as if set forth fully herein.

62. In allowing the corpus of the Resettlement Trust to be drained by approximately \$60 million, Arden failed to hold the Resettlement Trust corpus for the use and benefit of the People of Bikini pursuant to Pub. L. Nos. 97-257 and 100-446 and the 1988 Amended Resettlement Trust Agreement.

63. In violation of Section 8.1 of the 1988 Amended Resettlement Trust Agreement Arden failed to prudently invest and manage the trust assets.

64. In violation of Section 8.2 of the 1988 Amended Resettlement Trust Agreement, Arden failed to obtain approval of the Secretary of the Interior or his designee and failed to ensure that expenditures did not exceed \$2,000,000 in any fiscal year from income for projects on Kili or Ejit.

65. In violation of Section 9.3 of the 1988 Amended Resettlement Trust Agreement, Arden failed to seek Secretarial approval of distributions of income in excess of \$100,000 or of corpus of any amount to payees authorized by the Council and to ensure that such expenditures did not count against the \$2 million limit for expenditures on Kili and Ejit.

66. In violation of Section 8.3 of the 1988 Amended Resettlement Trust Agreement, Arden failed to purchase an annual security bond sufficient to cover the trust's income.

67. In violation of Section 8.5 of the 1988 Amended Resettlement Trust Agreement, Arden neglected to provide an annual report and account to the Council and the Secretary of the Interior within 120 days after the close of the Trust's fiscal year, reporting on investments and expenditures.

68. In violation of Section 8.7 of the 1988 Amended Resettlement Trust Agreement, Arden did not meet with the Council at least once a year to report on the management of the Trust.

69. In violation of Section 8.8 of the 1988 Amended Resettlement Trust Agreement, Arden exceeded the \$70,000 per annum fee limit for trustee services without the prior written approval of the Council and the Secretary of the Interior.

70. In committing the breaches alleged above of the 1988 Amended Resettlement Trust Agreement, Arden was in default of, or was negligent in the

performance of, its obligations, duties, and responsibilities under the 1988 Amended Resettlement Trust Agreement, and it failed to act in good faith in its performance of those obligations, duties, and responsibilities.

COUNT II

Breach Of Fiduciary Duty as Trustee Of The Resettlement Trust

71. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 60 as if set forth fully herein.

72. As trustee of the Resettlement Trust, Arden owed fiduciary duties to plaintiffs as beneficiaries.

73. Arden owed a duty to preserve the Resettlement Trust's property and a duty of care.

74. In allowing the Resettlement Trust assets to drain by over 99%, Arden failed to act with the care, skill, prudence and diligence under the circumstances then prevailing as would a prudent trustee acting in a like capacity and familiar with such matters.

75. Arden also knew or should have known that Congress had concerns about the 2017 Rescript Resolution and the Interior Department's approval of it. Arden knew or should have known that the Resettlement Trust was created by U.S. statutes and funded by U.S. taxpayers. Arden failed to follow the intent of Congress as expressed in the trust instrument to carry out the basic purposes of the Resettlement Trust. A prudent trustee, knowing that the Resettlement Trust was

created by U.S. law, would have understood the requirement of securing the approval of the Secretary of the Interior for annual expenditures not to exceed \$2,000,000 for projects on Kili or Ejit and would have sought U.S. Government guidance before depleting 99% of the Resettlement Trust's assets.

76. Arden's gross mismanagement of the Resettlement Trust left the Bikinians without sufficient resources for essential needs, including supplemental food purchases, healthcare, student scholarships, and the maintenance of critical infrastructure on Bikini, Kili, and Ejit Islands, which undermined the trust's original purpose of ensuring their resettlement and rehabilitation.

77. Arden owed a duty of impartiality to all of the beneficiaries of the Resettlement Trust.

78. Arden breached its duty to administer the Resettlement Trust with impartial consideration for the interests of all the beneficiaries and to account for principal and income so that the trust would produce a stream of income reasonably appropriate to the purposes of the trust.

79. Arden owed a duty of loyalty to the beneficiaries of the Resettlement Trust.

80. Arden's self-serving behavior leveraged its position as dual trustee, in clear breach of its duty of loyalty and duty of good faith and fair play in its dealings with the beneficiaries.

81. Despite the Resettlement Trust's original purpose being frustrated by the significant depletion of its assets, Arden illegally failed to wind down the trust and distribute the remaining funds to the beneficiaries and has since continued to charge monthly fees.

82. Arden owed a duty of disclosure to plaintiffs.

83. In failing to meet with the Council, failing to report on the management of the trust, and ignoring beneficiaries' requests for liquidation of the Resettlement Trust, Arden failed in its fiduciary duty to keep the beneficiaries informed and to account to them.

84. In committing the breaches of fiduciary duties alleged above, Arden was in default of, or negligent in the performance of, its obligations, duties, and responsibilities with respect to the Resettlement Trust, and it failed to act in good faith in its performance of those obligations, duties, and responsibilities.

COUNT III

Breach Of Trust Instrument as Trustee Of The Claims Trust

85. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 60 as if set forth fully herein.

86. In violation of Article 4.1 of the 1989 Amended Claims Trust Agreement and the principles articulated in the Section 177 Agreement and Agreed Minutes, Arden made numerous illegal distributions that undermined the purpose of the Claims Trust to provide a "perpetual source of income for eligible recipients."

87. In violation of Article 6.1(H) of the 1989 Amended Claims Trust Agreement, Arden failed to properly make distributions of trust income as required, depleting the Claims Trust of tens of millions of dollars that should have been added to the trust's corpus.

88. In violation of Article 7.2(2) of the 1989 Amended Claims Trust Agreement, Arden failed to retain and add to the corpus of the trust not less than 30% nor more than 85% of the net income arising from the corpus.

89. In violation of Article 8.1 of the 1989 Amended Claims Trust Agreement, Arden made unauthorized invasions of the trust corpus beyond the trustee's powers under the Agreement.

90. In violation of Article 9.1 of the 1989 Amended Claims Trust Agreement, Arden failed to provide written annual accounts to the Council on the investments and disbursements of the trust.

91. In violation of Pub. L. No. 99-239 and Article 11.1 of the 1989 Amended Claims Trust Agreement, which stated that Articles 7.2 or VIII cannot be amended, including invasion of corpus no more than once every three years, Arden illegally agreed to the 2021 Claims Trust Amendment allowing for annual 3% invasions of corpus.

92. In violation of Article 11.3 of the 1989 Amended Claims Trust Agreement, Arden failed to seek judicial determination when there was any doubt or apprehension regarding the management or distribution of the trust property.

93. In committing the breaches of the 1989 Amended Claims Trust Agreement alleged above, Arden was in default of, or negligent in the performance of, its obligations, duties, and responsibilities under that trust agreement, and failed to act in good faith in the performance of those obligations, duties, and responsibilities.

COUNT IV
Breach Of Fiduciary Duty as Trustee Of The Claims Trust

94. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 60 as if set forth fully herein.

95. As trustee of the Claims Trust, Arden owed fiduciary duties to plaintiffs as beneficiaries.

96. Arden owed a duty to preserve the Claims Trust's property and a duty of care.

97. Arden breached its fiduciary duty of care with respect to the Claims Trust by improperly invading the corpus of the trust and allowing its market value to decline by more than 50%. Arden failed to reinvest the required income earned by the Claims Trust, instead distributing millions of dollars.

98. Arden failed to administer the Claims Trust with impartial consideration for all beneficiaries by failing to preserve the corpus and failing to provide a perpetual source of income for the people of Bikini.

99. Arden failed to act with the care, skill, prudence and diligence under the circumstances then prevailing as would a prudent trustee acting in a like capacity and familiar with such matters.

100. Arden owed the beneficiaries of the Claims Trust a duty of impartiality.

101. Arden breached its duty to administer the trust with impartial consideration for the interests of all the beneficiaries and to account for principal and income so that the trust estate would produce a stream of income reasonably appropriate to the purposes of the trust. By failing to preserve the corpus for its beneficiaries, it failed to balance the interests of its beneficiaries in a manner that shows due regard for the beneficial interests of the Bikinians and the terms and purposes of the trust.

102. Arden owed the beneficiaries of the Claims Trust a duty of loyalty.

103. In 2021, Arden illegally modified the 1989 Amended Claims Trust Agreement.

104. Arden engaged in self-dealing by exploiting plaintiffs' financial desperation and improperly delaying the termination of the Resettlement Trust.

Arden also withheld key financial information, misleading the Council and obscuring the extent of its mismanagement.

105. Arden owed a duty to furnish information to plaintiffs upon reasonable request, but it repeatedly refused to meet with the Council, provide information, or in general respond to the Council's communications.

106. Arden committed bad faith and acted with indifference to the fiduciary duties of the trustee, the terms or purposes of the trust, or the interests of the beneficiaries.

107. In committing the breaches of fiduciary duties identified above, Arden was in default of, or negligent in the performance of, its obligations, duties, and responsibilities with respect to the Claims Trust, and it failed to act in good faith in performing those obligations, duties, and responsibilities.

COUNT V
Willful Misconduct as Trustee Of The Claims Trust

108. Plaintiffs repeat and reallege the allegations of paragraphs 85 through 106 as if set forth fully herein.

109. The actions, breaches, and violations identified in paragraphs 85-106 above constituted willful misconduct on Arden's part in the performance of its duties, responsibilities, or obligations in the administration of the Claims Trust.

110. In addition, Arden's freezing of the Claims Trust, coupled with its coercion of the Council into signing the Claims Trust Release purporting to protect

Arden from responsibility and its deliberate failure to provide the required financial statements to Council members prior to demanding their release of claims against Arden, was willful misconduct intentionally designed to seek an unconscionable advantage, per *12 Del. C. § 3301(g)*.

RELIEF REQUESTED

WHEREFORE, plaintiffs respectfully ask this Court to grant the following relief:

- (a) An order declaring that Defendant Arden has breached its obligations as trustee of the Claims Trust and trustee of the Resettlement Trust;
- (b) An order declaring that the Claims Trust Release is void and setting aside such Release;
- (c) Holding Arden personally liable for its breach of trust and requiring Arden to restore the value of the trust property, including both principal lost and lost appreciation in principal that reasonably would have been realized if the Claims Trust assets and the Resettlement Trust assets had not been wrongfully dissipated, pursuant to *12 Del. C. §§ 3581(3) & 3582* and D.C. Code § 19–1310.02;

- (d) Compelling Arden to provide a full and complete accounting to the Council with respect to all details of the Resettlement Trust's administration beginning on the date it became trustee up to the present;
- (e) Compelling Arden to provide a full and complete accounting to the Council with respect to all details of the Claims Trust's administration beginning on the date it became trustee up to October 6, 2023;
- (f) Awarding plaintiffs' attorneys fees pursuant to 12 *Del. C.* §§ 3584 and any expert fees;
- (g) Requiring disgorgement of any and all fees received by Arden after 2018, to be paid to the trust funds;
- (f) Such other and further relief as this Court deems just and equitable.

Dated: August 19, 2024

CROSS & SIMON, LLC

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Exhibit A

AMENDED RESETTLEMENT TRUST FUND
FOR THE PEOPLE OF BIKINI

The Resettlement Trust Fund for the People of Bikini, established October 16, 1982, pursuant to the provisions of Public Law No. 97-257, is hereby amended to read as follows:

This Amended Trust Agreement is made this 26th day of October, 1988, by the Government of the United States as Settlor by and through the Secretary of the Department of the Interior (the "Secretary"), and at the approval of the Bikini/Kili Council, for the benefit of the people of Bikini pursuant to the provisions of Public Laws Nos. 97-257 and 100-446,

WITNESSETH:

PREAMBLE

WHEREAS, the purpose of this Amended Agreement is to implement the purposes of the U.S. Congress in Public Laws Nos. 97-257 and 100-446,

NOW, THEREFORE, there shall be created this Amended Resettlement Trust Fund Agreement:

I. PARTIES

1.1 The Bikini/Kili Council or its successor (the "Council") is a party to this Agreement.

1.2 The United States Government, acting by and through the Secretary or his designee, is a party to this Agreement.

II. FUNDING

2.1 The Trust created hereunder shall consist initially of the sum of \$20,600,000, pursuant to the provisions of Public Law No. 97-257.

2.2 Additional sums shall be added to the corpus of this Trust for the use and benefit of the people of Bikini pursuant to the provisions of Public Law No. 100-446.

III. SITUS OF TRUST, CHOICE OF LAW

3.1 The situs of this Trust is the District of Columbia. This Agreement shall be governed by the laws of the District of Columbia.

IV. DURATION AND TERMINATION OF THE TRUST

4.1 Pursuant to the terms of Public Law No. 100-446, one year prior to completion of the rehabilitation and resettlement program at Bikini Atoll, the Secretary of the Interior shall report to Congress on future funding needs on Bikini Atoll. Unless otherwise determined by Congress, following completion of the rehabilitation and resettlement program, funds remaining in this Trust in excess of the amount identified by the Secretary as required for future funding needs shall be deposited in the U.S. Treasury as miscellaneous receipts. Upon completion of those needs, this Trust shall be extinguished

and all remaining funds shall be deposited in the U.S. Treasury as miscellaneous receipts.

V. TRUSTEE

5.1 Subject to the approval of the Secretary or his designee, the Council shall appoint a Trustee. Subject to the approval of the Secretary or his designee, the Council shall be empowered to remove any Trustee acting hereunder or to reappoint or select a successor Trustee. Any Trustee hereunder may, at any time, for good cause, be removed by the Secretary or his designee by giving 30 days written notice to the Trustee and the Council.

5.2 Charles W. Brodhead, Vice President, Alex. Brown & Sons, Inc., 500 Washington Building, 1440 New York Avenue, N.W., Washington, D.C. 20005, is hereby appointed as the initial Trustee, to serve until such time as a successor Trustee may be appointed pursuant to the terms of this Article.

5.3 Upon the appointment of a successor Trustee, the resigning or removed Trustee shall transfer and deliver the trust fund and any such records pertaining thereto to the successor Trustee after reserving, as Trustee, such reasonable amount from the income of the Trust as he shall deem necessary to provide for his expenses in the settlement of the Trust account and

the amount of any compensation due to him. Any such amounts so reserved by and eventually paid to the resigning or removed Trustee shall be subject to the approval of the Council, the successor Trustee, and the Secretary or his designee.

5.4 The Trustee may resign his duties hereunder by filing with the Council, the Trust Liaison Agent and the Secretary or his designee his written resignation. No such resignation shall take effect until a successor Trustee shall have been appointed by the Council and approved by the Secretary or his designee.

VI. TRUST LIAISON AGENT

6.1 The Council shall appoint a Trust Liaison Agent, who shall reside in the Marshall Islands and who is fluent in both Marshallese and English. The Council shall be empowered to remove any Trust Liaison Agent acting hereunder or to reappoint or select a successor Trust Liaison Agent.

6.2 The general duties of the Trust Liaison Agent shall be to review and to keep the Council and the Secretary or his designee informed about the management of this Trust fund and the expenditures made therefrom. The duties of the Trust Liaison Agent shall specifically include, but not be limited, to the following:

(A) The Trust Liaison Agent shall meet from time to time with the people of Bikini, through the Council,

not less frequently than every six months, to discuss expenditures from the Trust and to review plans for the proposed expenditure of Trust income and/or corpus.

(B) The Trust Liaison Agent shall meet from time to time with the Trustee, not less frequently than every six months, to be advised of the investment portfolio and rate of return and to inform the Trustee of any needs of the people of Bikini with respect to the management of the Trust.

(C) The Trust Liaison Agent shall meet from time to time with the Secretary or his designee, not less frequently than every twelve months, to discuss expenditures from the Trust and to review plans for the proposed expenditure of Trust income and/or corpus.

(D) The Trust Liaison Agent shall consult from time to time, not less frequently than every twelve months, with appropriate staff members of Congressional committees with interest in the resettlement and relocation of the Bikini people, to review the status of resettlement and relocation efforts.

6.3 The Trust Liaison Agent may resign by filing with the Trustee or the Council his written resignation. No such resignation shall take effect until 90 days from the date thereof unless prior thereto a successor Trust Liaison Agent shall have been appointed by the Council.

6.4 The Trust Liaison Agent shall use reasonable and prudent care and reasonable and prudent diligence in the exercise of his powers and the performance of his duties as Trust Liaison Agent. The Trust Liaison Agent shall not be liable for any mistake of judgment or other action taken in good faith, or for any loss, unless resulting from his own default or negligence; nor shall the Trust Liaison Agent be liable for any act or omission mandated by the process or final order of any court of appropriate jurisdiction; nor shall the Trust Liaison Agent be liable for any act, omission or default of any Trustee acting hereunder.

6.5 The Trust Liaison Agent shall be entitled to reasonable fees and expenses, to be set by the Council, as compensation for his services as Trust Liaison Agent.

6.6 No Trust Liaison Agent shall represent the Council or the Bikini people in any actual or threatened legal action, claim, suit or proceeding before any court or before any legislative body that is related in any way to the administration, operation or distribution of the trust fund created by this Agreement.

VII. POWERS OF THE TRUSTEE IN THE INVESTMENT, ADMINISTRATION, DISBURSEMENT OF TRUST FUND

7.1 With respect to the Trust, the Trustee shall have the following powers, in addition to and not in limitation of the powers granted or conferred by law, all of which shall be exercised in a fiduciary capacity:

(A) To make reasonable and prudent investments and reinvestments in such bonds, common or preferred stocks, money market funds, certificates of indebtedness, or other securities or property, real or personal, as he deems advisable, and including without limitation of the generality of the foregoing, in any common trust fund or funds, in the shares of any mutual investment fund or funds.

(B) To sell any property, at any time, held by him at either public or private sale for cash or on credit, to exchange such property and grant options for the purchase or exchange thereof.

(C) To consent to and participate in any plan of reorganization, consolidation, merger, combination or other similar plan; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to such plan and to accept and retain any property issued under any plan or reorganization even though it would not be eligible as a new investment under the provisions of subdivision (A) of this section.

(D) To collect and receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the trust fund and to give full discharge and acquittance therefor, and to extend for a reasonable period of time, the time of payment of any obligation at any time owing to the trust fund.

(E) To exercise all voting rights with respect to any investment held for the Trust and in connection therewith to grant proxies, discretionary or otherwise.

(F) To cause any security or other property to be registered or held in the name of one or more of its nominees, or in the name of the Trustee, without disclosing any fiduciary capacity, and without increase or decrease of liability with respect to such security or other property so registered or held.

(G) In accordance with Article IX, below, to expend from the corpus of the Trust such portion thereof as shall be deemed to be necessary because of an emergency, natural disaster or similar circumstance.

(H) To make individual distributions of Trust income, as set forth under Article IX, below.

(I) To retain one or more custodians for the purpose of holding funds, securities or any other Trust property.

(J) To employ, in connection with the fulfillment of his powers as enumerated in this Article, agents, attorneys, accountants, brokers, investment counsel, clerical assistants or others, whether individuals or corporations, and to pay their reasonable compensation and expenses pursuant to the conditions set forth in Article IX, below.

(K) To allocate, in his discretion, any receipts as between income and principal for the purpose of determining

the amount of Trust income available for distribution, notwithstanding any contrary rules of construction, including, by way of example but without limitation, all gain from the sale or disposition of any Trust asset. For purposes of this clause, gain shall be defined as the amount realized on such sale or other disposition less the basis of the asset for fiduciary accounting purposes.

(L) Generally, and without limitation by any specific enumeration herein, to manage, develop, control, operate, convert, reconvert, invest, reinvest, sell, exchange, lease, mortgage, create a security interest in, pledge, pool, unitize, or otherwise encumber and deal with the property of this Trust, as any individual would have in respect of his own property and funds.

VIII. DUTIES OF THE TRUSTEE

8.1 The Trustee shall hold the corpus of the Trust, IN TRUST, for the use and benefit of the people of Bikini pursuant to the provisions of Public Laws Nos. 97-257 and 100-446. The Trustee shall, with respect to any and all monies and property at any time held by him and constituting a part of the Trust Fund, invest and reinvest in such investments as he shall deem appropriate, reasonable and prudent to carry out the purposes of the Trust as set forth under this Agreement.

8.2 The Trustee shall disburse trust income or corpus only pursuant to the conditions set forth in Article IX, below.

8.3 Subject to the approval of the Council, the Trustee shall annually purchase a security bond payable to the Trust in an amount sufficient to cover the income of the Trust. The cost of such security bond shall be paid from the annual Trust income.

8.4 The Trustee shall use reasonable and prudent care and reasonable and prudent diligence in the exercise of his powers and the performance of his duties as Trustee, including his investment powers and duties. The Trustee shall not be liable for any mistake of judgment or other action taken in good faith, or for any loss, unless resulting from his own default or negligence; nor shall the Trustee be liable for any act or omission mandated by the process or final order of any court of appropriate jurisdiction.

8.5 The Trustee shall provide an annual report and account to the Council and to the Secretary or his designee within 120 days after the close of the Trust's fiscal year on the investments and expenditures of this Trust Fund, reporting on the management of the Trust from year to year.

8.6 The Trustee shall permit the inspection and review of his books and records by the Council or the Secretary or his designee.

8.7 The Trustee shall meet with the Council at least once a year to report on the management of the Trust from year to year.

8.8 Subject to the approval of the Council, the Trustee shall be entitled to reasonable fees and expenses as compensation for his services as Trustee hereunder, provided that such fees shall not exceed \$70,000 per annum without the prior written approval of the Council and the Secretary or his designee. Such fees and expenses shall be paid pursuant to the terms of Article IX, below.

IX. DISTRIBUTION OF TRUST INCOME AND
CORPUS BY THE TRUSTEE

9.1 All proposed distributions of Trust income or corpus shall be for the use and benefit of the people of Bikini pursuant to the provisions of Public Laws Nos. 97-257 and 100-446. Corpus and income may be expended for rehabilitation and resettlement of Bikini Atoll. The Secretary or his designee may approve expenditures not to exceed \$2,000,000 in any fiscal year from income for projects on Kili or Ejit.

9.2 Upon the approval of the Council, the Trustee shall make individual distributions of income not in excess of \$100,000 per distribution to each such payee or payees as the Council shall authorize.

9.3 Upon the approval of the Council, the Trustee shall make individual distributions of income in excess

of \$100,000 or of corpus of any amount to such payee or payees as the Council shall authorize with the written approval of the Secretary or his designee.

X. AMENDMENT

10.1 The Council may amend this Amended Agreement in writing at any time subject only to the disapproval of the Secretary or his designee.

XI. EFFECTIVE DATE

11.1 This Amended Agreement shall take effect as of the date the Secretary or his designee has indicated his written approval, after having first been duly approved by the Council. Recognizing the difficulties of written communication with the Council at Kili Island, the Council may cause its execution to be subscribed by procedures presently in effect for Council action for radio-telephone communications.

XII. MISCELLANEOUS

12.1 In the event the Trustee is a party, or is threatened to be made a party, to any action, claim, suit or proceeding by reason of the fact that he is or was Trustee hereunder, the Trust shall indemnify and hold harmless the Trustee from any and all costs, expenses and attorneys' fees incurred by the Trustee with respect to such action, claim, suit or proceeding, except that no such indemnification shall be made where, in such action, claim, suit or proceeding, it is determined

by a court of competent jurisdiction (or it is admitted in settlement or compromise of the same) that he was in default of, or was negligent in, the performance of his duties, responsibilities or obligations hereunder. Except in the case of such default or negligence of the Trustee, such costs, expenses and attorneys' fees shall be paid pursuant to the provisions of Article IX, above.

12.2 In the event the Trust Liaison Agent is a party, or is threatened to be made a party, to any action, claim, suit or proceeding by reason of the fact that he is or was Trust Liaison Agent hereunder, the Trust shall indemnify and hold harmless the Trust Liaison Agent from any and all costs, expenses and attorneys' fees incurred by the Trust Liaison Agent with respect to such action, claim, suit or proceeding, except that no such indemnification shall be made where, in such action, claim, suit or proceeding, it is determined by a court of competent jurisdiction (or it is admitted in settlement or compromise of the same) that he was in default of, or was negligent in, the performance of his duties, responsibilities or obligations hereunder. Except in the case of such default or negligence of the Trust Liaison Agent, such costs, expenses and attorneys' fees shall be paid pursuant to the provisions of Article IX, above.

The terms and conditions of this Amended Trust Agreement are hereby approved pursuant to the authority invested in me by Public Law No. 97-257.



Donald P. Hodel
Secretary of the Interior

Dated: October 26, 1988

APPROVED BY THE KILI/BIKINI/EJIT COUNCIL THIS 6 DAY OF OCTOBER, 1988, BY:

x KILAN BOON
COUNCILMAN KILON BAUNO

x Moses Lewis
COUNCILMAN MOSES LEWIS

x Jacob Johnson
COUNCILMAN JACOB JOHNSON

x Nathan Note
COUNCILMAN NATHAN NOTE

Dretin Jokdru
COUNCILMAN DRETIN JOKDRU

x Lucky Juda
COUNCILMAN LUCKY JUDA

Minus Samuel
COUNCILMAN MINUS SAMUEL

x Boas Kilon
COUNCILMAN BOAS KILON

x Pero Joel
COUNCILMAN PERO JOEL

x Rubon Juda
COUNCILMAN RUBON JUDA

x Jamore Aitap
COUNCILMAN JAMORE AITAP

x Sorry Jelang
COUNCILMAN SORRY JELANG

Kathaejar Jibas
COUNCILMAN KATHAEJAR JIBAS

x Uraia Jibas
COUNCILMAN URAIA JIBAS

Uraki Jibas
COUNCILMAN URAKI JIBAS

x Billy Jakeo
COUNCILMAN BILLY JAKEO

x Jormaia Liviticus
COUNCILMAN JORMAIA LIVITICUS

Aji Lewis
COUNCILMAN AJI LEWIS

Andy Bill
SECRETARY ANDY BILL

Tomaki Juda
MAYOR TOMAKI JUDA



Exhibit B

AMENDED BIKINI CLAIMS TRUST FUND AGREEMENT

The Bikini Claims Trust Fund Agreement, entered into on October 23, 1986 to establish the Bikini Claims Trust Fund (Trust) pursuant to the Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association (Compact Section 177 Agreement), is hereby amended to read as follows:

This Amended Trust Agreement is made this 21 day of April, 1989, between the Bikini/Kili/Ejit Local Government Council (the Bikini Distribution Authority) and Security Trust Company, N.A., 730 - 15th Street, N.W., Washington, D.C. 20013 (Trustee or Bikini Fund Manager),

W I T N E S S E T H:

PREAMBLE

WHEREAS, the purpose of this Trust Agreement is to implement the Agreed Minutes of the Compact Section 177 Agreement that addresses the people of Bikini ("Agreed Minute") and to implement Article II, Sections 2 and 8 of the Compact Section 177 Agreement, to provide compensation to the Bikini Distribution Authority "in payment of claims arising out of the Nuclear Testing Program for loss or damage to property and person of the people of Bikini,"

NOW, THEREFORE, there shall be created this Amended Bikini Claims Trust Fund Agreement:

I. DEFINITIONS

1.1 The Bikini Distribution Authority, as provided in Article III, Section 1 of the Compact Section 177 Agreement, is the Bikini/Kili/Ejit Local Government Council.

1.2 Trustee (or Bikini Fund Manager) is Security Trust Company, N.A., 730 - 15th Street, N.W., Washington, D.C. 20013, and successors, as appointed, from time to time, by the Bikini Distribution Authority.

1.3 Fund Manager, initially Irving Trust Company of New York, is the entity retained pursuant to the provisions of Article I, Section 2(b) and Article II, Section 2 of the Compact Section 177 Agreement.

1.4 Fund Payment is a disbursement made by the Fund Manager to the Trustee pursuant to Article I, Section 2(b) of the Compact Section 177 Agreement.

1.5 Net Income is the ordinary income including capital gains arising from the investment of the principal of this Trust, and after the payment or provision for the compensation and reimbursement of expenses to the Trustee and any governmental levies.

II. FUNDING

The Trustee shall receive and accept from the Fund Manager, pursuant to Article II, Section 2 of the Compact Section 177 Agreement, the sum of \$75,000,000.00 in 60 quarterly amounts of \$1,250,000.00, which shall be held and administered, in trust, by the Trustee in accordance with the terms of this Trust Agreement.

III. SITUS OF TRUST

The situs of this Trust and the governing law of this Trust shall be the jurisdiction of the principal office of the Trustee. The initial situs and governing law of the Bikini Claims Trust Fund is the District of Columbia.

IV. DURATION AND TERMINATION OF THE TRUST

4.1 It is the intention of the parties that this Trust shall be established to provide a perpetual source of income for eligible recipients, provided, however, that the creation of this Trust shall be consistent with the Rule Against Perpetuities.

4.2 Assuming that the duration of the Trust shall be limited by the Rule Against Perpetuities, the Bikini Distribution Authority reserves the right, prior to the termination of this Trust to designate, with the approval of the Government of the Marshall Islands, the final distribution of the assets held

by the Trustee, and upon the failure of the Bikini Distribution Authority to make such designation, the Trustee shall, with the approval of the Government of the Marshall Islands, pay over and distribute such assets to the Bikini Distribution Authority, or in absence thereof, to the Local Government Council of Bikini/Kili/Ejit, or in absence thereof, to the Fund Manager.

V. QUALIFICATION OF THE TRUSTEE AND APPOINTMENT OF SUCCESSOR TRUSTEE

5.1 Security Trust Company, N.A., 730 - 15th Street, N.W., Washington, D.C. 20013 is appointed as the initial Trustee or Bikini Fund Manager, to serve as such time as a successor Trustee or Bikini Fund Manager may be appointed pursuant to the terms of this Agreement. Security Trust Company, N.A. is a financial institution with assets exceeding \$500 million, with substantial experience in the administration of trusts, and with funds under management in excess of \$1 billion.

5.2 No institution shall qualify as a successor Trustee hereunder unless such institution shall be organized under the laws of one of the States of the United States, have its main office in the United States, have substantial experience in the administration of trusts and management of investments, and have funds under management in excess of \$250,000,000.00.

5.3 The Bikini Distribution Authority reserves the right to remove any Trustee upon not less than 90 days' prior written notice and to appoint a successor Trustee from time to time thereafter, provided only that such successors shall qualify under the requirements of Section 5.2 of this Trust.

5.4 Any Trustee may resign at any time upon 90 days' prior written notice to the Bikini Distribution Authority. The Bikini Distribution Authority shall thereupon appoint a successor Trustee.

5.5 Upon the appointment of a successor Trustee, the resigning or removed Trustee shall transfer and deliver the Bikini Claims Trust Fund and any records pertaining thereto to the successor Trustee after retaining, as Trustee, such reasonable amount from the income of the Trust as it shall deem necessary to provide for its expenses in the settlement of the Trust account and the amount of any compensation due to it.

5.6 In case the Trustee shall at any time or times hereafter become consolidated with any other corporation or corporations, or in case at any time hereafter the Trustee shall reorganize or reincorporate and the corporation so formed shall acquire the assets and succeed to the business of the Trustee, then the

corporation so formed by such consolidation or consolidations or the corporation which shall so acquire the assets and succeed to the business of the Trustee shall become the Trustee with the same force and effect and with the same duties, powers, titles, discretions, and privileges as if it had been originally appointed as Trustee.

VI. POWERS OF THE TRUSTEE IN THE INVESTMENT AND ADMINISTRATION OF TRUST FUND

6.1 The Trustee shall hold the corpus of the Bikini Fund in trust, for the use and benefit of the people of Bikini. The Trustee shall, with respect to any and all monies and property at any time held by it and constituting a part of the Bikini Fund, invest and reinvest in such investments as it shall deem appropriate, reasonable and prudent to carry out the purposes of the Trust as set forth under this Amended Agreement, subject to the limitations set forth in the Compact Section 177 Agreement. With respect to the Trust, the Trustee shall have the following powers, in addition to and not in limitation of the powers granted or conferred by law or the statutes of the situs of the Trust, all of which shall be exercised in a fiduciary capacity;

(A) To make reasonable and prudent investments and reinvestments in such bonds, common or preferred

stocks, money market funds, certificates of indebtedness, or other securities or property, real or personal, as he deems advisable, and including without limitation of the generality of the foregoing, in any common trust fund or funds, in the shares of any mutual investment fund or funds.

(B) To sell any property, at any time, held by him at either public or private sale for cash or on credit, to exchange such property and grant options for the purchase or exchange thereof.

(C) To consent to and participate in any plan of reorganization, consolidation, merger, combination or other similar plan; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to such plan and to accept and retain any property issued under any plan or reorganization even though it would not be eligible as a new investment under the provisions of subdivision (A) of this section.

(D) To collect and receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the Trust Fund and to give full discharge and acquittance therefor, and to extend for a reasonable period of time, the time of payment of any obligation at any time owing to the Trust Fund.

(E) To exercise all voting rights with respect to any investment held for the Trust and in connection therewith to grant proxies, discretionary or otherwise.

(F) To cause any security or other property to be registered or held in the name of one or more of its nominees, or in the name of the Trustee, without disclosing any fiduciary capacity, and without increase or decrease of liability with respect to such security or other property so registered or held.

(G) In accordance with Article VIII below, to expend from the corpus of the Trust such portion thereof as shall be deemed to be necessary because of a natural disaster or similar circumstance.

(H) To make distributions of Trust income, as set forth under Article VII, below.

(I) To retain one or more custodians for the purpose of holding funds, securities or any other Trust property.

(J) To employ, in connection with the fulfillment of his powers as enumerated in this Article, agents, attorneys, accountants, brokers, investment counsel, clerical assistants or others, whether individuals or corporations, and to pay their reasonable compensation and expenses.

(K) Generally, and without limitation by any specific enumeration herein, to manage, develop, control, operate, convert, reconvert, invest, reinvest, sell, exchange, lease, mortgage, create a security interest in, pledge, pool, unitize, or otherwise encumber and deal with the property of this Trust, as any individual would have in respect of his own property and funds.

6.2 In the event that the Bikini Distribution Authority directs the Trustee to engage the services of one or more investment advisor(s) duly registered under the Investment Advisors Act of 1940 to direct investment matters pertaining to this Trust, such as the retention, sale, purchase, investment or reinvestment of securities or other property, then such investment advisor's compensation shall be paid in addition to and independently of the compensation and other expenses of the Trustee as a charge against gross income. The Trustee shall invest as directed by the investment advisor(s) and shall have no duty to question the action or direction of the investment advisor(s) or any failure to give direction, or to review the securities which are held pursuant to the investment advisor's directions, or to make any suggestions to the investment advisor(s) as to the investment and reinvestment of,

or the disposition of, such assets. The Trustee shall not have any liability or responsibility for diversification of such assets, or for any loss to or depreciation of such assets because of a purchase, retention, or sale of assets in accordance with the investment advisor's instructions.

VII. DISTRIBUTION OF FUND PAYMENTS AND NET INCOME

7.1 The Trustee, upon receipt of each of the 60 quarterly payments of \$1,250,000, shall pay within ten business days therefrom 48% (\$600,000) of such payment to the Bikini Distribution Authority, subject to any assignment, and shall retain and add to the corpus of this Trust 52% (\$650,000) of such payment.

7.2 (1) In the period during which the Trustee is receiving quarterly fund payments, the Trustee shall retain and add to the corpus of this Trust not less than 65% nor more than 85%, as may be instructed in writing not more frequently than once annually by the Bikini Distribution Authority, of the net income arising from the corpus of this Trust, and the Trustee shall pay to the Bikini Distribution Authority the balance of the net income at least annually.

(2) Commencing one calendar quarter after the final Fund payment is received, the Trustee shall

retain and add to the corpus of the Trust not less than 30% nor more than 85%, as may be instructed in writing not more frequently than once annually by the Bikini Distribution Authority of the net income arising from the corpus of this Trust, and shall pay to the Bikini Distribution Authority the balance of the net income at least annually.

7.3 The Trustee shall be protected and held harmless in making all payments required to be made hereunder made in good faith and without actual notice or knowledge of the changed condition or status of the entity receiving payment. The Trustee has no obligation to follow the application or distribution of payments made to the Bikini Distribution Authority. The Trustee has no obligation to take any action against the Fund Manager in the event of a failure to make a quarterly payment.

7.4 The Trustee shall be entitled to payment of its reasonable fees and expenses incurred in the management of the Trust Assets as a charge against the income and principal of the Trust.

VIII. INVASION OF TRUST CORPUS

8.1 There shall be no invasion of the corpus of this Trust, provided, however, that in the event

of an unforeseen natural disaster or other similar circumstance as determined in the sole discretion of the Bikini Distribution Authority as necessary in order to prevent hardship to the people of Bikini, the Trustee is authorized to pay to the Bikini Distribution Authority a sum of money from the corpus of this Trust, which sum shall not exceed 3% of the then corpus of the Trust.

8.2 Such invasion of corpus shall occur no more frequently than once every three years.

IX. TRUSTEE ACCOUNTING

9.1 The Trustee shall provide a written annual account to the Bikini Distribution Authority on the investments and disbursements of this Trust.

9.2 The records and accounts of this Trust maintained by the Trustee shall be available for inspection at all times by the Bikini Distribution Authority and its agents or employees and after notice to the Bikini Distribution Authority, the Government of the Marshall Islands and the agents and employees.

X. LIABILITY OF TRUSTEE

10.1 The Trustee shall not be liable hereunder except for the willful violation of its duties as herein presented; and no liability shall accrue to

the Trustee from its good faith exercise of any discretion vested in it hereunder in the investment, administration, and distribution of the Trust.

10.2 In the event that the Trustee is a party or is threatened to be made a party, to any action, claim, suit or proceeding by reason of the fact that it is or was serving hereunder, the Trust shall indemnify and hold harmless the Trustee from any and all costs, expenses and attorneys' fees incurred by it with respect to such action, claim, suit, or proceeding, except that no such indemnification shall be made where, in such action, claim, suit, or proceeding it is determined by a court of competent jurisdiction (or it is admitted in settlement or compromise of the same) that it was in default of or was negligent in the performance of its duties, responsibilities, or obligations hereunder.

10.3 Except as provided in Article 5.6, above, if the Trustee is acting as a successor Trustee with respect to the Trust, the Bikini Distribution Authority hereby agrees to hold the Trustee harmless from and against all taxes, expenses (including attorneys' fees), liabilities, claims, damages, actions, suits or other charges incurred by or assessed against it as successor Trustee, as a direct or indirect result

of any act or omission of a predecessor Trustee or any investment advisor charged under any agreement affecting Trust assets for investment responsibility with respect to such assets.

XI. AMENDMENT AND RESOLUTION

11.1 The Bikini Distribution Authority and the Trustee may, by mutual consent and with the approval of the Government of the Marshall Islands, amend any part of this Amended Agreement, provided, however, that under no circumstances may the terms of Articles 7.1, 7.2 or VIII be amended.

11.2 Any such modification shall be in writing, duly executed and filed with the Trustee, provided that any such modification shall be binding upon the Trustee only after its acceptance in writing by the Trustee.

11.3 The Bikini Distribution Authority recognizes that this Trust is intended to extend over a period of many years and that unanticipated conflicts in the management and distribution of the Trust property may occur. In the event of any conflict or any doubt or apprehension of the Trustee in the management or distribution of the Trust property, the Trustee is authorized to seek and obtain the judicial determination

of such issue in the courts of the situs of this Trust;
and such judicial determination shall be final and
conclusive on all parties in interest.

XII. EFFECTIVE DATE

The effective date of this Agreement shall be
April 21, 1989.

IN WITNESS WHEREOF, the parties hereto have affixed
their hands and seals as of the date and year set
out above.

Done at Washington, D.C., this 7th day of April,
1989, and at Kili, Marshall Islands, this 21 day
of April, 1989.

THE PEOPLE OF BIKINI, BY AND
THROUGH THE BIKINI/KILI/EJIT
LOCAL GOVERNMENT COUNCIL and
THE BIKINI DISTRIBUTION AUTHORITY

BY: *Tomaki Juda*
TOMAKI JUDA, Mayor

RECEIPT AND ACCEPTANCE OF
THE BIKINI CLAIMS TRUST FUND
SECURITY TRUST COMPANY, N.A.

BY: *Kathy A. Jackson*
KATHY A. JACKSON, Senior Vice
President and Trust Officer



VERIFICATION

I, Tommy Jibok, in my individual capacity and as Mayor of the Kili/Bikini/Ejit Local Government Council, hereby verify that the foregoing *Verified Complaint* and the facts recited therein are true and correct to the best of my knowledge, information and belief. This verification is made under penalty of perjury.

Tommy Jibok

REPUBLIC OF THE MARSHALL ISLANDS)

SWORN TO AND SUBSCRIBED before me this 14th day of August, 2024.

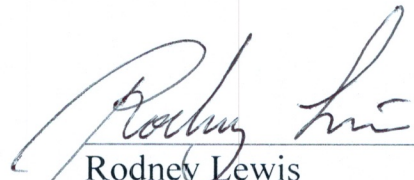
Notary Public
My Commission Expires:





VERIFICATION

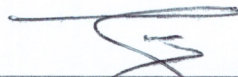
I, Rodney Lewis, in my individual capacity and as Clerk of the Kili/Bikini/Ejit Local Government Council, hereby verify that the foregoing *Verified Complaint* and the facts recited therein are true and correct to the best of my knowledge, information and belief. This verification is made under penalty of perjury.



Rodney Lewis

REPUBLIC OF THE MARSHALL ISLANDS)

SWORN TO AND SUBSCRIBED before me this 14th day of August, 2024.



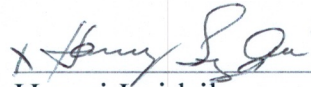
Notary Public
My Commission Expires: N/A





VERIFICATION

I, Hemri Lajdrik, in my individual capacity and as Assistant Treasurer of the Kili/Bikini/Ejit Local Government Council, hereby verify that the foregoing *Verified Complaint* and the facts recited therein are true and correct to the best of my knowledge, information and belief. This verification is made under penalty of perjury.



Hemri Lajdrik

REPUBLIC OF THE MARSHALL ISLANDS)

SWORN TO AND SUBSCRIBED before me this 14th day of August, 2024.



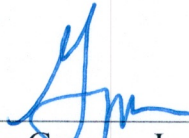
Notary Public
My Commission Expires: N/A





VERIFICATION

I, Jess Gasper, Jr., in my individual capacity and as the senator representing the people of Bikini in the Marshall Islands Parliament, hereby verify that the foregoing *Verified Complaint* and the facts recited therein are true and correct to the best of my knowledge, information and belief. This verification is made under penalty of perjury.



Jess Gasper, Jr.

REPUBLIC OF THE MARSHALL ISLANDS)

SWORN TO AND SUBSCRIBED before me this 15th day of August, 2024.



Notary Public
My Commission Expires: N/A





EFiled: Aug 19 2024 12:09PM EDT
Transaction ID 74084980
Case No. 2024-0866-



1105 NORTH MARKET STR
SUITE 5
WILMINGTON, DELAWARE 19801

MAILING ADDRESS:
P.O. Box 1380
WILMINGTON, DE 19899-1380

MICHAEL L. VILD
MVILD@CROSSLAW.COM
(302) 777-4200, EXT. 112

August 19, 2024

BY FILE & SERVEXPRESS

Delaware Court of Chancery
Attn: Register in Chancery
Leonard L. Williams Justice Center
500 N. King Street
Wilmington, DE 19801

*Re: The Kili/Bikini/Ejit Local Government Council, on behalf of The People of Bikini, Tommy Jibok, Rodney Lewis, Hemri Lajdrik, and Senator Jess Gasper, Jr. In Their Individual Capacities as Intended Beneficiaries of The Trusts At Issue v. Arden Trust Company
Summons Instruction Letter*

Dear Register in Chancery:

Pursuant to 10 *Del. C.* § 3111 and Chancery Court Rule 4(d), please prepare summonses for service of the *Verified Complaint* by D.M. Professional Services, Inc. upon the following Defendant at the addresses listed below.

Arden Trust Company
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Arden Trust Company
2751 Centerville Road, Suite 400
Wilmington, DE 19808

Respectfully,

/s/ Michael L. Vild

Michael L. Vild (No. 3042)
(Words: 63 of 1,000)

cc: File Copy