

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re) Case No. 22-11403-B-7
)
STANFORD CHOPPING, INC.,)
)
Debtor.)
)
_____)
)
LISA HOLDER, in her capacity as) Adv. Proc. No. 24-01023-B
the Chapter 7 Trustee of the)
Bankruptcy Estate of Stanford) Docket Control #RHV-2
Chopping, Inc.,)
Plaintiff,) Date: January 15, 2025
Time: 11:00 a.m.
v.) Place: U.S. Courthouse
2500 Tulare Street
Courtroom 13, Fifth Flr.
Fresno, California
AUGUSTAR LIFE ASSURANCE)
CORPORATION formerly known as) Honorable René Lastreto II
OHIO NATIONAL LIFE ASSURANCE)
CORPORATION, a subsidiary of)
CONSTELLATION INSURANCE, INC.;)
and DOES 1 through 25,)
Defendant.)
_____)

MEMORANDUM ON DEFENDANT'S MOTION TO DISMISS

Estela O. Pino, attorney for Lisa Holder, Plaintiff.

Ryan Hunter Voss, CHITTENDEN, MURDAY & NOVOTNY LLC, for AuguStar
Life Assurance Corporation, Defendant.

RENÉ LASTRETO II, Bankruptcy Judge:

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ALAC's motion to dismiss the complaint asserts that Stanford received adequate consideration for the premium payments; that ALAC (or its predecessor) was discharged from liability by the state court when it interpleaded the insurance policy funds; and that Trustee failed to name other necessary parties under Fed. R. Civ. Proc. 19 (Fed. R. Bank. Proc. 7019).

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1 The following is generally from the allegations in the
2 complaint.

3 During her tenure as Chapter 7 Trustee, Holder filed the
4 complaint in this adversary proceeding against ALAC seeking to
5 avoid certain transfers from Debtor to ALAC totaling \$207,500.00
6 alleging that the transfers were either actually fraudulent or
7 constructively fraudulent under 11 U.S.C. § 548 and the
8 California Uniform Voidable Transactions Act (C.C.C. § 3439, *et*
9 *seq.*) ("the CUVTA"). Because the IRS and Small Business
10 Administration ("SBA") have claims that are debts to the United
11 States, Holder also asserts that the premium payments are
12 recoverable under Federal Debt Collection Procedures (28 U.S.C. §
13 3304) and 11 U.S.C. § 550(a)(1). The transfers were premium
14 payments on a life insurance policy paid by Stanford.

15 To understand the gravamen of the Complaint, it is helpful
16 to review the dramatis personae, which includes three relatives
17 of the Stanford family. According to the Complaint and so far
18 undisputed by ALAC, Jack Stanford ("Jack") was Stanford's CEO as
19 of the petition date. Jack's son, Alex Stanford ("Alex"), was the
20 Secretary and a director of Stanford. Larry Stanford ("Larry"),
21 Jack's brother and Alex's uncle, was, prior to his death, the CFO
22 and a director of Stanford. Jack, Alex, and Larry were all
23 insiders of Stanford, with Jack owning 37.10% of the company
24 stock, Larry owning 50%, and Alex owning 12.90%.

25 The Complaint alleges that, on August 8, 2014, ALAC's
26 predecessor, Ohio National Life Assurance Corporation ("ONLAC"),
27 issued a life insurance policy ("the Policy") insuring Larry's
28 life with a death benefit of \$1 million, with Alex in his

1 individual capacity as the owner of the Policy and the sole
2 beneficiary. The \$2,500 monthly premium was paid by Stanford.
3 The policy was ostensibly for the purpose of providing funds for
4 Alex to purchase Larry's shares in the event of Larry's death.
5 The total amount of the transfers (premiums) made by Stanford was
6 \$207,500.00 paid to both ONLAC and ALAC. The Policy accumulated a
7 cash value which was not disclosed as Debtor's asset. On July 7,
8 2021, about a year before the petition date, Larry died in an auto
9 accident.

10 The Complaint further alleges that Stanford was insolvent
11 while it was paying the premiums for the Policy. Stanford, Holder
12 alleges, was pursuing an expansion plan whereby it purchased a
13 considerable amount of expensive equipment ("the Expensive
14 Equipment") that it could not afford and so financed the
15 purchases through a series of promissory notes and security
16 agreements specified in the complaint.

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18 **B.**

19 Jurisdiction is founded on 28 U.S.C. § 1334(b) and §157(a).
20 This is a proceeding that the Bankruptcy Court can hear and
21 finally determine under 28 U.S.C § 157 (b) (2) (H).
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23 **II.**

24 **A.**

25 Rule 12(b)(6) and (7) state in relevant part:

26 (b) How to Present Defenses. Every defense to a claim
27 for relief in any pleading must be asserted in the
28 responsive pleading if one is required. But a party may
assert the following defenses by motion:

1 ...

2 (6) failure to state a claim upon which relief can be
3 granted; and

4 (7) failure to join a party under Rule 19.

5 Fed. Rules Civ. Proc. 12(b)(6)-(7) (incorporated by Fed. R. Bankr.
6 P. 7012(b)).

7 Under Federal Rule of Civil Procedure 12(b)(6), a party
8 may move to dismiss a complaint for "failure to state a
9 claim upon which relief can be granted." "A Rule
10 12(b)(6) dismissal may be based on either a lack of a
11 cognizable legal theory or the absence of sufficient
12 facts alleged under a cognizable legal theory."

13 The Supreme Court has established the minimum
14 requirements for pleading sufficient facts. "To
15 survive a motion to dismiss, a complaint must contain
16 sufficient factual matter, accepted as true, to 'state
17 a claim to relief that is plausible on its face.'" "A
18 claim has facial plausibility when the plaintiff
19 pleads factual content that allows the court to draw
20 the reasonable inference that the defendant is liable
21 for the misconduct alleged."

22 In ruling on a Rule 12(b)(6) motion to dismiss, the
23 court accepts all factual allegations as true and
24 construes them, along with all reasonable inferences
25 drawn from them, in the light most favorable to the
26 non-moving party. The court need not, however, accept
27 legal conclusions as true. "A pleading that offers
28 'labels and conclusions' or 'a formulaic recitation of
the elements of a cause of action will not do.'" *Id.*

29 *Consol. Res., Inc. v. Dro Barite, LLC (In re Don Rose Oil, Inc.)*,
30 614 B.R. 358, 366 (Bankr. E.D. Cal. 2020) (citations omitted).

31 The court need not accept conclusory allegations as true;
32 rather it must "examine whether conclusory allegations follow
33 from the facts as alleged by the plaintiff." *Holden v. Hagopian*,
34 978 F. 2d 1115, 1121 (9th Cir. 1992)

35 As a threshold matter, ALAC's motion does not dispute the
36 facts as outlined above, but rather argues that those facts do
37 not state a claim against ALAC for the following reasons:

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1. The Complaint fails to plead facts that indicate the presence of any of the factors listed in 28 U.S.C. § 3304(b)(2) which might demonstrate "actual intent to hinder, delay, or defraud a creditor."
2. The facts alleged show that the Policy is a "Key Man Policy," and consequently, Stanford received consideration for the insurance premiums it paid.
3. ALAC was discharged from liability by reason of an order issued on December 6, 2021, by the Madera County Superior Court in the case of *Callie Styles et al v. Jack Stanford, et al.*, Case No. MCV085835 ("the Madera County Case"), which discharged ALAC's predecessor from liability relating to the policy proceeds or arising out of the policy. Doc. # 53.

1.

The complaint includes sufficient allegations as to actual intent to defraud. The Trustee's response delineates the relevant 28 U.S.C. § 3304(b)(2) factors as follows:

(b) Transfers without regard to date of judgment.

(1) Except as provided in section 3307 [28 USCS § 3307], a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation—

(A) with actual intent to hinder, delay, or defraud a creditor; or

(B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor—

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (1), consideration may be given, among other factors, to whether—

(A) the transfer or obligation was to an insider;

1 (B) the debtor retained possession or control of the
2 property transferred after the transfer;

3 (C) the transfer or obligation was disclosed or
4 concealed;

5 (D) before the transfer was made or obligation was
6 incurred, the debtor had been sued or threatened with
7 suit;

8 (E) the transfer was of substantially all the debtor's
9 assets;

10 (F) the debtor absconded;

11 (G) the debtor removed or concealed assets;

12 (H) the value of the consideration received by the
13 debtor was reasonably equivalent to the value of the
14 asset transferred or the amount of the obligation
15 incurred;

16 (I) the debtor was insolvent or became insolvent
17 shortly after the transfer was made or the obligation
18 was incurred;

19 (J) the transfer occurred shortly before or shortly
20 after a substantial debt was incurred; and

21 (K) the debtor transferred the essential assets of the
22 business to a lienor who transferred the assets to an
23 insider of the debtor.

24 28 U.S.C.S. § 3304 (emphasis added); See Doc. #55 (Plaintiff's
25 Response).

26 ALAC argues that the Complaint is bereft of pleadings
27 regarding the § 3304(b)(2) factors other than (b)(2)(H). The
28 court disagrees. The complaint, in the court's view, contains
facially plausible allegations that:

1. Debtor owed a debt to the IRS, an agency of the
Government of the United States of America, thereby bringing
this matter into the ambit of § 3304(b), a fact which ALAC
does not dispute.

2. Debtor received no value in exchange for its premium
payments as the policy was owned by Alex, who was also the
sole beneficiary.

1 3. The premium payments made by Debtor were for the
2 benefit of Alex, an insider.

3 4. The premium payments were made by Debtor shortly before
4 or during the time that Debtor was incurring substantial
5 debt.

6 5. There was no public record of the premium payments, nor
7 was the cash value of the Policy disclosed as an asset of
8 the Debtor, which made all the premium payments despite
9 having no obligation to do so.

10 ALAC argues that consideration was given to Stanford because
11 the policy was a "Key Man" policy that are uniformly provided by
12 corporations for key personnel. In support of its "Key Man"
13 argument, ALAC relies on *Manning v. Wallace (In re First Fin.*
14 *Assocs., Inc.)* 371 B.R. 877,905 (Bankr. N.D. Ind. 2007) ("*First*
15 *Financial*").

16 In *First Financial*, the debtor-corporation, at the direction
17 of its principal Darrell E. Shults ("Shults"), took out several
18 term life insurance policies on himself which were paid for by
19 the debtor-corporation with the company as beneficiary on some
20 policies and insiders as beneficiaries on others. *First*
21 *Financial*, 371 B.R. at 888-90. After the company became
22 insolvent, Shults modified one policy so that 60% of the benefits
23 would go to Dorothy Wallace ("Wallace"), Shults' live-in fiancé
24 who was also an officer in the debtor-corporation. *Id.* Shults
25 took his own life a few months later, and Wallace duly collected
26 the proceeds. *Id.* The trustee brought an adversary proceeding
27 against Wallace seeking, *inter alia*, recovery from Wallace of all
28 the premiums paid by the company. *Id.*

 Following a two-day trial, and some years of litigation,
the *First Financial* court issued its findings of fact and
conclusions of law and ruled in favor of Wallace in part as to

1 the issue of the premiums. *Id.* at 905-07. In particular, the
2 court rejected the trustee's position that a closely-held
3 corporation that is undercapitalized and insolvent "hinders,
4 delays or defrauds" its creditors whenever it pays premiums for a
5 life insurance policy which insures the life of its principal for
6 the benefit of beneficiaries other than the corporation or its
7 creditors. *Id.*

8 As Holder notes, *First Financial* is distinguishable for
9 several reasons. First, the opinion is from an Indiana bankruptcy
10 court and thus is not binding on this court. Second, the premium
11 payments at issue in *First Financial* totaled just over \$17,000.00
12 in the aggregate for five separate policies, all of which were
13 term policies with no cash value. *Id.* at 905-12. In the present
14 case, the Complaint alleges, and ALAC does not dispute, that the
15 premiums which Debtor paid for the Policy totaled \$207,500.00 for
16 a universal life insurance policy with a substantial cash value.
17 Third, the *First Financial* opinion presented findings of fact and
18 conclusions of law at the end of a two-day trial. In the context
19 of this motion, however, no facts have been decided, and the
20 court is obligated to accept all factual allegations as true and
21 construe them, along with all reasonable inferences drawn from
22 them, in the light most favorable to Holder. Fourth, in *First*
23 *Financial*, the trustee sought to recover premium payments from
24 the beneficiary who collected the insurance proceeds. *Id.* Here,
25 however, Trustee seeks to recover from the insurance company to
26 whom the Debtor made the fraudulent transfer. Accordingly, *First*
27 *Financial* is distinguishable.

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1 ALAC neglects to mention that not all policies involved in
2 *First Financial* were found as supporting sufficient consideration
3 to the debtor corporation. One policy involved was applied for
4 and owned by an insider and had the president as the beneficiary.
5 The court in *First Financial* engaged in a factual analysis to
6 determine if the owner was indeed a "key person." See, *First*
7 *Financial* pg. 908-909. Such analysis is beyond the scope of the
8 analysis necessary on this motion.

9 Finally, in the court's view, ALAC's "Key Man" arguments
10 misapprehend the nature of "Key Man" insurance policies. While
11 not a controlling case, *Estate of Harris v. Abbott Acquisition*
12 *Co., LLC* from a Pennsylvania District Court ably describes the
13 concept:

14 A key man insurance policy is a common vehicle used by
15 companies, corporations, and partnerships to provide
16 funds for expenses occasioned on the death of the key
17 man, such as a buy out of a partner or member's share
18 in the entity. See BLACK'S LAW DICTIONARY at p. 869 (6th
19 ed. 1990) (defining "key man insurance" as a "[t]ype of
20 insurance coverage purchased by companies to protect
21 them on the death or disability of a valued employee or
22 by partnership to provide for funds with which to buy
23 out the interest of such partner on his death or
24 disability."); Rev. Rul. 2008-42, 2008-30 I.R.B. 175
(2008) ("X purchases an employer-owned life insurance
contract on the life of one of its employees in order
to cover expenses the company would incur as a result
of the death of the employee (also known as a key-man
policy)."); see also *Anthony v. Perose*, 455 Pa. 233,
312 A.2d 360, 362 (Pa. 1973) (referring to the non-
deductibility of premium payments made by an entity for
a "key man insurance" policy insuring the life of an
employee where the entity is a beneficiary)[.]

25 No. 16-243, 2017 U.S. Dist. LEXIS 133843, at *31-33 (W.D. Pa.
26 Aug. 22, 2017).

27 The insurance law treatises consulted by the court seem to
28 agree. 2 BUSINESS INSURANCE LAW AND PRACTICE GUIDE §12.04 (Matthew

1 Bender 2024) [“‘Key man’ insurance is designed to protect a
2 business from the loss of one of its most valuable assets, human
3 capital. Thus, it is meant to benefit the business and not the
4 insured individual.”]; INSURANCE COVERAGE DISPUTES §12-05 (Law Journal
5 Press 2024) [“Key man insurance [is] life insurance purchased by
6 a corporation on the most essential of its officers/employees.”]

7 As the foregoing clarifies, an important aspect of a true
8 Key Man policy is that the *company* (in this case, the Debtor)
9 purchased the policy, made the payments, *and is the beneficiary*.
10 Holder argues persuasively that the fact that Debtor paid for a
11 policy for which the beneficiary was an insider removes it from
12 the scope of a Key Man policy. Accordingly, taking the
13 allegations as true and viewing them in the light most favorable
14 to the non-movant, the court accepts for 12(b)(6) purposes that
15 the insurance premiums paid by Debtor were paid without
16 consideration.

17 At oral argument, Trustee’s counsel cited a recent Supreme
18 Court decision which was not included in the briefs, *Connelly v.*
19 *United States*, 602 U.S. 257 (2024). The court gave both parties
20 the opportunity to submit a very short brief discussing the
21 *Connelly* case. Both parties complied with the court’s order and
22 timely submitted briefs.

23 The issue addressed by the Court in *Connelly* was whether
24 life insurance proceeds that will be used to redeem a decedent’s
25 shares must be included when calculating the value of those
26 shares for purposes of federal estate tax. *Id.* at 263. The
27 Court held a corporation’s contractual obligation to redeem an
28 insider’s shares did not diminish the value of those shares upon

1 decedent's death. *Id.* at 267. The Court noted in dicta that the
2 principals in *Connelly* could have structured a stock redemption
3 differently. *Id.* The Court reasoned that because redemption
4 obligations are not necessarily liabilities that reduce a
5 corporation's value for purposes of the federal estate tax, the
6 value of the corporation would be unaffected by the payment of
7 the policy proceeds since the corporation purchased the policy.
8 There is no holding by the Supreme Court that is germane to the
9 issue of creditor loss by corporate premium payment on an asset
10 that is not beneficial to the corporation.

11 Both parties assert *Connelly* is distinguishable and not
12 controlling here. Plaintiff Trustee focuses on "the
13 juxtaposition" of the insurance/redemption structure in *Connelly*
14 compared to the allegations here. But *Connelly* says nothing
15 about the flow of consideration in traditional or unusual "keyman
16 insurance" scenarios.

17 Defendant ALAC attempts to contend that *Connelly* supports
18 "the legitimacy of the interest" of the family wanting to
19 maintain stock ownership. *Connelly* made no such judgment.
20 Indeed, ALAC's argument hinges on an unproven premise: the life
21 insurance was purchased to ensure the corporation could continue
22 in the family. Doc. #61, p. 3. Now, that fact is undetermined.

23 Proof at trial may reveal a different scenario than what is
24 plead by Holder here. But for purposes of this motion, and
25 construing the allegations as we must, there are sufficient facts
26 here to establish an actual fraudulent conveyance.

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2.

ALAC does not directly challenge Holder's second through seventh claims which include allegations of constructive fraud and limit recovery to four and two year "reach backs." Since the court has found sufficient allegations for actual fraudulent transfers based on lack of consideration to the debtor corporation and other factors, the remaining claims survive this motion to dismiss.

B.

ALAC also argues that the complaint should be dismissed because Holder did not properly join other parties as defendants. The rationale offered by ALAC is based on the effect of ONALAC's interpleading policy proceeds with the Madera County Superior Court through a cross-complaint in an action brought by and between members of the Stanford family. There is no basis to dismiss the complaint based on non-joinder.

ALAC's 12(b)(7) arguments arise from the disposition of the Madera Court Case, which was a suit brought by Callie Styles and Lacey Stanford against Larry, Alex, and ONLAC seeking the proceeds of the Policy. (Doc. #49, ##52-53.) In an order dated December 6, 2021 (Doc. 52), the Madera Superior Court entered an Order discharging ONLAC from any further liability arising out of the Life Insurance Policy pending the deposit of the disputed funds into the Court's registry. ALAC argues:

Once a person who is subject to conflicting claims for money files an interpleader action and admits liability and deposits the money with the court, they are discharged from liability. *Principal Life Ins. Co. v. Peterson*, 156 Cal. App. 4th 676, 682, 67 Cal. Rptr. 3d

584, 588 (2007). Thus, to the extent Trustee's claim rests on the Life Insurance Policy, ALAC has been discharged to that liability and Trustee is barred under the Madera County Order and CA Civ. Pro. § 386 from pursuing her claims against ALAC in this action. Moreover, having deposited the funds, California Insurance Code § 10172 fully discharges ALAC for any and all claims under the Life Insurance Policy.

Doc. #53. ALAC's arguments are unavailing.

First, ALAC wants the court to take judicial notice of two orders of the Madera County Superior Court but does not specify what facts or facts are properly subject to judicial notice.

Judicial notice under Fed. R. Evid 201 permits a court to notice an adjudicative fact if it is "not subject to reasonable dispute." Fed. R. Evid. 201 (b). A fact is "not subject to reasonable dispute" if it is "generally known" or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. *Id.* "Accordingly, a court may take judicial notice of a matter of public record (the orders here) without converting a motion to dismiss to a motion for summary judgment." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988,999 (9th Cir. 2018) quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

But accuracy does not end the inquiry. The court must consider - and identify - which fact or facts it is noticing. Just because the document itself is subject to judicial notice, does not mean every assertion of fact within that document is judicially noticeable for its' truth. *Khoja* at pg. 1001. The orders do discharge ONLAC from claims to the proceeds deposited. The orders also state how the proceeds are to be divided among the parties to the litigation. But the factual assumption that

1 ALAC is discharged from liability to the Trustee here as a result
2 is absent.

3 Second, Debtor was not a party to the Madera Superior Court
4 Action, which was apparently brought by the administrator of
5 Larry's estate against Jack, Alex, and the insurance company. *Id.*
6 During the State Court Action, ONLAC filed a motion for
7 interpleader which the state court granted. Doc. #52, #53. ONLAC
8 deposited \$1 million (the amount of the insurance proceeds) minus
9 its attorneys' fees into an interest-bearing account pending
10 resolution of the claims against the other parties. *Id.* The state
11 court later issued an order discharging ONLAC from liability "to
12 any party to this action relating to the proceeds or arising out
13 of Policy number C7105600." Doc. #52 (Exhibit C - Order
14 Discharging ONLAC).

15 Those facts distinguish this case from that cited by ANLAC,
16 *Principal Life Insurance Co. v. Peterson*, 156 Cal. App. 4th 676
17 (2007). There, an insurance company brought an interpleader
18 action against a decedent's husband and the administrator of
19 decedent's estate. Decedent's husband was convicted of murdering
20 the decedent. The actual holding of the case was affirming a
21 summary judgment ruling in favor of the administrator that the
22 judgment of first degree murder against decedent's husband was
23 evidence that he intentionally and feloniously killed the
24 decedent. *Id.* at 696. So, decedent's husband is excluded from
25 recovery under the terms of the policy. *Id.* The court in
26 *Peterson* did discuss that the interpleader action was resolved by
27 a stipulated order. The stipulation also provided that
28 decedent's husband and the administrator "will settle or litigate

1 amongst themselves the respective rights and claims to proceeds
2 under the Policy..." *Id.* at 682. So, the relief granted in
3 *Peterson* was limited to the parties to the interpleader action
4 and the proceeds of the policy at issue. *Peterson* neither
5 discussed nor held any party liable for collection of insurance
6 premiums.

7 Third, and more germane, Trustee is not seeking any funds
8 connected with the *proceeds* of the Policy. Rather, Trustee seeks
9 recovery of the *premiums* paid by the Debtor for the Policy which
10 did not benefit the Debtor. Thus, the discharge of ONLAC through
11 interpleader is simply irrelevant.

12 ALAC also cites Cal. Inc. Code § 10172 to argue that since
13 ONLAC paid the proceeds of the policy it no longer has liability.
14 That section is of no assistance to ANLAC here. That provision
15 discharges an insurer when the proceeds of, or payment under a
16 policy become payable; and the insurer makes payment in
17 accordance with the policy terms. The payment fully discharges
18 the insured from all claims under the policy. Again, this is not
19 a claim for insurance policy proceeds.

20 ALAC argues that "[t]o the extent Trustee's Complaint
21 indicates fraudulent conduct, it does so as to Jack Stanford and
22 Alex Stanford, both of whom were parties in the Madera County
23 action." Doc. #53. ALAC also notes that the insurance proceeds
24 were distributed amongst Krone, N.A., Inc.; Debbie Stanford
25 (Alex's mother); and Callie Styles in her capacity as
26 administrator of Larry's estate. *Id.* ALAC suggests without
27 reference to anything in the record that "[o]n information and
28 belief, these individuals and/or their attorneys participated in

1 portions of the Bankruptcy action underlying Trustee's adversary
2 claim." There is nothing in the allegations of the complaint
3 supporting that factual assertion by ALAC in the motion.

4 To reiterate, however, the Trustee does not seek recovery of
5 any funds from the insurance proceeds. The dispute is over the
6 premiums which were paid by Debtor to ALAC (or its predecessor
7 entities). The court is not persuaded that any other parties are
8 necessary to this action such that it is subject to dismissal
9 under Rule 12(b)(7). ANLAC is free to add parties it feels need
10 to be added by way of third-party complaint should it choose to
11 do so.

12
13 **C.**

14 ANLAC offhandedly argued Holder purposely delayed in
15 bringing this action such that the estate's recovery should be
16 barred. Without pointing to any facts alleged in the complaint,
17 ANLAC states in their argument that the Trustee "knew" of the
18 interpleaded insurance proceeds in the Madera Superior Court
19 action as early as August 2022 when Holder was originally
20 appointed. That was after the 2021 order of the Superior Court
21 discharging ONLAC from any further liability concerning the
22 policy proceeds and before disbursement of those funds by the
23 Superior Court last year. ANLAC provides no factual basis for
24 such a claim even if it was appropriate on a motion to dismiss
25 under Fed. R. Civ. P. 12(b)(6). It is not. Any argument
26 asserted by ANLAC is more appropriately considered through an
27 affirmative defense under Fed. R. Civ. P. 8(c) (Fed. R. Bankr. P.
28 ///

1 7008). It is not appropriate to examine on a motion such as
2 this.

3 4 CONCLUSION

5 In the case's current posture (i.e. consideration of a
6 12(b)(6) motion), the only relevant question is whether the
7 complaint contains factual assertions that, if accepted as true,
8 "state a claim to relief that is plausible on its face." *Consol.*
9 *Res., Inc.*, 614 B.R. at 366. Whether Alex and Jack have engaged
10 in fraudulent conduct in their individual capacities is not
11 germane at this juncture to the question of whether *the Debtor*
12 made the transfer to ALAC in the form of \$207,500.00 in premium
13 payments without receiving a reasonably equivalent value in
14 exchange and while Debtor was or was about to become
15 substantially insolvent.

16 An ancillary question is whether, for 12(b)(6) purposes, the
17 complaint alleges the existence of § 3304(b)(2) factors which may
18 determine the presence of actual intent under § 3304(b)(1). Per
19 the allegations in the Complaint, these transfers were made for
20 the benefit of an insider, that neither the transfers nor the
21 cash value of the insurance policy were disclosed, that there was
22 no consideration received by Debtor for the premium payments, and
23 that the premium payments were made against the backdrop of a
24 substantial acquisition of new debt. Accepting the allegations as
25 true, the court accepts that § 3304(b)(2) factors appear to
26 exist.

27 The Trustee has joined the necessary parties, thus there is
28 no merit to the joinder challenge under Civ. Rule 12 (b)(7).

Accordingly, ALAC has failed to meet its heavy burden under Rule 12(b). The motion to dismiss is **DENIED**.¹ The court will issue a conforming order.

Dated: February 7, 2025

By the Court

/s/ René Lastreto II
 René Lastreto II, Judge
 United States Bankruptcy Court

1 The foregoing are the court's findings of fact and conclusions of law under Fed. R. Civ. P. 52 (Fed. R. Bankr. P. 7052). If any factual finding is deemed a conclusion of law or vice versa, it is adopted as such. See also Fed. R. Civ. Proc. 52(a)(3) (Providing the court is not required to state findings or conclusions on a Rule 12 motion.)