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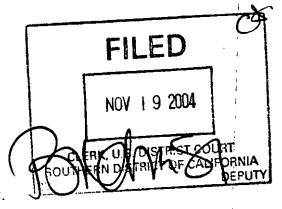
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DECL.

Michael Lipman (SBN 66605) COUGHLAN, SEMMER & LIPMAN, LLP 501 West Broadway, Suite 400 San Diego, CA 92101-3564 Tel: (619) 232-0800

Facsimile: (619) 232-0107

Attorney for Defendants L. DONALD GUESS, XÉLAN INVESTMENT SERVICES, INC., XÉLAN ANNUITY COMPANY, INC., AND XÉLAN ADMINISTRATIVE SERVICES, INC.



UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

L. DONALD GUESS; LESLIE S. BUCK; DAVID JACQUOT; MONTE T. MELLON; G. THOMAS ROBERTS; CHRIS G. EVANS; NIGEL BAILEY; DOCTORS BENEFIT INSURANCE COMPANY, LTD.; DOCTORS BENEFIT HOLDING COMPANY; DOCTORS INSURANCE SERVICES, INC.; XÉLAN INVESTMENT SERVICES, INC.; XÉLAN ANNUITY CO., LTD.; XÉLAN ADMINISTRATIVE SERVICES, INC.; XÉLAN OF TEXAS, INC.; XÉLAN, INC.; XÉLAN, THE ECONOMIC ASSOCIATION OF HEALTH PROFESSIONALS, INC.; PYRAMIDAL FUNDING SYSTEMS, INC.; dba XÉLAN INSURANCE SERVICES; XÉLAN PENSION

CASE No. 04-CV-2184 #(AJB)

Judge: Larry A. Burns

Date: November 18, 2004

Time: 10:30 a.m.

DECLARATION OF JAY H. ZIMBLER

DECLARATION OF JAY ZIMBLER-Page 1



I, Jay H. Zimbler, declare and state the following under penalty of perjury:

- 1. I am over 18 years of age and competent to make this declaration and do so from personal knowledge.
- of Sidley Austin Brown & Wood ("Sidley").
- 3. Earlier this year, I was retained by Gallagher Benefits Services, Inc., a long-time Sidley client, to represent one of its recently acquired divisions, commonly referred to as NIIS/Apex, in connection with summonses issued by the Internal Revenue Service (the "IRS") in the matter of a tax shelter investigation of xélan Incorporated ("xélan") (the "Representation"). The summonses had been issued to NIIS/Apex, Timothy Robinson, a current NIIS/Apex employee, and David Wilson, a former NIIS/Apex employee, all in their capacity as third party record keepers. NIIS/Apex, an actuarial consulting firm, and Messrs. Robinson and Wilson, actuaries, had provided actuarial services to one or more of Doctors Benefit Insurance Company, Ltd. ("DBIC"), xélan Annuity Company, Ltd. Inc. ("Annuity"), and Green Mountain Insurance Company ("Green Mountain"). Each of DBIC, Annuity, and Green Mountain has business relationships and/or common ownership with xélan. I do not represent xélan, DBIC, Annuity, Green Mountain, xélan affiliates or their customer/client/policy holders in any matter.
- 4. During the course of the Representation, I have worked cooperatively with IRS counsel and with counsel for DBIC, Annuity, and Green Mountain to assure that the IRS received on a timely basis all non-privileged material encompassed by the summonses. In this cooperative effort, counsel for one or more of DBIC, Annuity, and Green Mountain reviewed material in the possession of NIIS/Apex, Mr. Robinson, or Mr. Wilson on a prompt and efficient basis to determine if any of the DECLARATION OF JAY ZIMBLER- Page 2

documents were privileged. After this initial review, counsel determined that less than 20 pages should be withheld pending further consideration but that no privilege would be claimed with respect to the remaining documents (more than 4000 pages in the aggregate). I then promptly (and within the time frame suggested by the IRS) furnished to the IRS these remaining documents, which included detailed actuarial calculations and assumptions relating to the issue of whether certain products were insurance. Subsequently, counsel for one or more of DBIC, Annuity, and Green Mountain concluded that no privilege would be claimed even as to the few documents that had been withheld for further consideration. I have now furnished these documents as well to the IRS. In certain cases, names and other identifying information were redacted from the documents before their submission to the IRS but such names and information were not relevant to, and their redaction should have no impact on, the IRS's ability to evaluate the work performed by any of NIIS/Apex, Mr. Robinson, or Mr. Wilson.

- 5. On October 12, 2004, Mr. Robinson, and on October 13, 2004, Mr. Wilson, were made available to, and were interviewed without time limit by, the IRS in connection with the summonses. As arranged with and agreed to by IRS counsel beforehand, Steven Gaines and Darrell Hallett, counsel representing one or more of DBIC, Annuity, and Green Mountain, attended as silent observers. Their presence did not interfere with the process.
- 6. I am continuing to work cooperatively with the IRS to complete the verification of the transcripts from the interviews on October 12 and 13 and to provide any further information the IRS might request. None of Mr. Gaines, Mr. Hallett, or other counsel has made any request that would interfere with this process or suggested in any manner that I should do anything other than cooperate fully with the IRS in a manner consistent with the professional obligations of my client.

1	I declare under penalty of perjury under the laws of the United States and the State of Illinois	
2	that the foregoing is true and correct to the best of my knowledge	
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5	DATED this 19 day of November, 2004	
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	DECLARATION OF JAY ZIMBLER- Page 4	
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