



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

SOLERA HOLDINGS, INC.,

Plaintiff,

v.

XL SPECIALTY INSURANCE COMPANY,  
ACE AMERICAN INSURANCE COMPANY,  
ILLINOIS NATIONAL INSURANCE  
COMPANY, ARGONAUT INSURANCE  
COMPANY, HUDSON INSURANCE  
COMPANY, ENDURANCE AMERICAN  
INSURANCE COMPANY, ZURICH  
AMERICAN INSURANCE COMPANY,  
LIBERTY INSURANCE UNDERWRITERS  
INC., FEDERAL INSURANCE COMPANY,

Defendants.

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) C.A. No. \_\_\_\_\_ (CCLD)  
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**TRIAL BY JURY OF  
TWELVE DEMANDED**

**COMPLAINT**

Plaintiff Solera Holdings, Inc. (“Solera”) brings this Complaint against Defendants, as further identified below, and alleges as follows:

**NATURE OF THE ACTION**

1. By this action, Solera seeks insurance coverage under its directors and officers liability insurance policies (“D&O Policies”) for losses resulting from a securities price “appraisal” suit (the “Securities Appraisal Action”) filed in the Delaware Chancery Court by certain Solera stockholders, pursuant to 8 Del. C. § 262, objecting to the \$55.85 per share price offered for their securities in connection

with the March 3, 2016 acquisition of Solera by an affiliate of Vista Equity Partners (“Vista”) in a merger transaction (the “Merger”).

2. Solera paid substantial premiums to Defendants for the D&O Policies to protect against the potential risk of losses from lawsuits involving its securities. Thus, the D&O Policies the Defendants sold to Solera to protect against these risks specifically provide coverage for “Securities Claims,” including so-called “Bump-up Claims,” which the D&O Policies define in relevant part as claims “in any way involving an allegation that any Insured received or will receive inadequate consideration in connection with any merger or acquisition activity involving the Company.” The Securities Appraisal Action is exactly that – a securities claim alleging that the consideration agreed to in the Merger was inadequate and seeking the fair value of their shares.

3. While Defendants were happy to accept Solera’s premiums, however, they now refuse to provide Solera with the coverage they promised. In the Securities Appraisal Action, Solera has incurred significant defense expenses and has been ordered to pay damages in the form of statutory interest on the fair value of the petitioners’ shares of Solera common stock – all of which are covered by the D&O Policies. To date, however, Defendants have refused to honor their promises and have flatly denied coverage, declining to pay Solera’s defense expenses or any other amounts owed under the D&O Policies in connection with the Securities Appraisal

Action. Solera has therefore been forced to commence this action to enforce its insurance coverage rights.

4. Accordingly, this Complaint seeks declaratory relief, pursuant to Sections 6501, *et seq.*, of Title 10 of the Delaware Code, as well as damages for breach of contract and anticipatory breach of contract, resulting from Defendants' failure to fulfill their obligations to Solera under the D&O Policies in connection with the Securities Appraisal Action.

### **PARTIES**

5. Plaintiff Solera Holdings, Inc. is a Delaware corporation with its principal place of business in Texas.

6. On information and belief, Defendant XL Specialty Insurance Company ("XL") is an insurance company incorporated under Delaware law with its principal place of business in Connecticut, which conducts business in the State of Delaware.

7. On information and belief, Defendant ACE American Insurance Company ("ACE") is an insurance company incorporated under Pennsylvania law with its principal place of business in Pennsylvania, which conducts business in the State of Delaware. On information and belief, ACE is now operating under the name Chubb.

8. On information and belief, Defendant Illinois National Insurance Company (“Illinois National”) is an insurance company incorporated under Illinois law with its principal place of business in New York, which conducts business in the State of Delaware.

9. On information and belief, Defendant Argonaut Insurance Company (“Argonaut”) is an insurance company incorporated under Illinois law with its principal place of business in Texas, which conducts business in the State of Delaware.

10. On information and belief, Defendant Hudson Insurance Company (“Hudson”) is an insurance company incorporated under Delaware law with its principal place of business in New York, which conducts business in the State of Delaware.

11. On information and belief, Defendant Endurance American Insurance Company (“Endurance”) is an insurance company incorporated under Delaware law with its principal place of business in New York, which conducts business in the State of Delaware. On information and belief, Endurance is now operating under the name SOMPO.

12. On information and belief, Defendant Zurich American Insurance Company (“Zurich”) is an insurance company incorporated under New York law

with its principal place of business in Illinois, which conducts business in the State of Delaware.

13. On information and belief, Defendant Liberty Insurance Underwriters Inc. (“Liberty”) is an insurance company incorporated under Illinois law with its principal place of business in Massachusetts, which conducts business in the State of Delaware.

14. On information and belief, Defendant Federal Insurance Company (“Federal”) is an insurance company incorporated under Indiana law with its principal place of business in New Jersey, which conducts business in the State of Delaware. On information and belief, Federal is now operating under the name Chubb.

### **JURISDICTION AND VENUE**

15. This Court has subject matter jurisdiction pursuant to Article IV, § 7 of the Delaware Constitution and 10 Del. C. § 541. This case is properly designated for the Complex Commercial Litigation Division (CCLD) because the amount in controversy exceeds one million dollars.

16. This Court has personal jurisdiction over each Defendant because each Defendant either is a Delaware corporation or is authorized to sell or write insurance in Delaware and, at all material times, has conducted business within the State of

Delaware. The insurance policies at issue also provide coverage for Solera – a Delaware corporation – and its officers, directors and subsidiaries.

17. This Court has the power to declare the parties’ rights and obligations under 10 Del. C. §§ 6501, *et seq.*

### **FACTUAL BACKGROUND**

18. Solera is a leading provider of risk and asset management software and services to the automotive and property marketplace.

19. Solera was founded in 2005 by Tony Aquila and was publicly traded from May 2007 until March 3, 2016, when it was acquired by an affiliate of Vista in the Merger. The deal price for the Merger was \$55.85 per share.

### **The Shareholder Lawsuits Against Solera**

20. The Merger was announced on September 13, 2015. As is common for such transactions, the Merger announcement quickly resulted in a consolidated securities class action lawsuit filed in Delaware Chancery Court against Solera, various Solera directors and officers, and other companies involved in the Merger, titled *In Re Solera Holdings, Inc. Shareholder Litigation* (the “Securities Class Action”), C.A. No. 11524-CB. A copy of the Verified Amended Class Action Complaint filed in the Securities Class Action is attached as Exhibit 1.

21. Following closure of the Merger on March 3, 2016, a Solera stockholder filed the related Securities Appraisal Action in Delaware Chancery

Court against Solera seeking appraisal of its securities under 8 Del. C. § 262, styled *Muirfield Value Partners, LP v. Solera Holdings, Inc.*, C.A. No. 12080-CB, which was later consolidated with another appraisal lawsuit and re-captioned *In Re Appraisal of Solera Holdings, Inc.* A copy of the Verified Petition for Appraisal of Stock filed in the Securities Appraisal Action is attached as Exhibit 2.

22. At the time of the Merger, Delaware's appraisal statute provided in relevant part as follows:

(h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, and except as provided in this subsection, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. . . .

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. . . .

8 Del. C. § 262.

23. Pursuant to the statute, the Securities Appraisal Action sought a determination of the fair value of the petitioners' securities and an order that Solera, as the surviving corporation, pay that fair value, together with statutory interest.

24. Throughout the Securities Appraisal Action, the petitioners claimed that the Merger price was inadequate, and that the fair value of Solera's shares at the time of the Merger was \$84.65 per share – more than 50% over the agreed Merger price of \$55.85 per share.

25. The petitioners alleged that the inadequacy of the Merger price was the result of a flawed sales process that was unfair to Solera's stockholders for numerous reasons. The claimed deficiencies included Mr. Aquila's purported secret engineering of the sale to his preferred buyer, his alleged alignment with the interests of persons other than the public stockholders, and other alleged conflicts of interest that tainted the sales process.

26. The Securities Appraisal Action claimed that the Merger was a *de facto* management buyout. The Securities Appraisal Action also alleged that Solera's management intentionally withheld information about Solera from the public markets – information that was needed to properly value the company – and that, as a result, Solera traded at a sharp discount to its fair value, allowing management to take advantage of their greater knowledge in the sales process and profit from this hidden value.

27. Trial was held in the Securities Appraisal Action from June 26, 2017 to June 30, 2017. The parties filed post-trial briefs, and later submitted supplemental post-trial briefs to address two significant intervening appraisal decisions issued by the Delaware Supreme Court and Court of Chancery.

28. Following post-trial briefing, on July 30, 2018, Chancellor Bouchard issued a Memorandum Opinion rejecting the petitioners' arguments as to Solera management's alleged conflicts of interest and the Merger being a *de facto* management buyout. The Court further concluded that the fair value of petitioners' shares at the time of the Merger was \$53.95 per share, which is \$1.90 less per share than the actual Merger price agreed by Solera.

29. Despite Solera's successful defense of the Securities Appraisal Action, the Court nevertheless held that, pursuant to the statutory interest provisions in 8 Del. C. § 262, the petitioners were entitled to interest on the appraised fair value of their shares "accruing from the date the Merger closed, March 3, 2016, at the rate of 5% percent over the Federal Reserve discount rate from time to time, compounded quarterly" (the "Interest Award").

30. On August 20, 2018, the Court entered an Order and Final Judgment ordering Solera to pay a judgment amount of \$253,487,604.56 on or before September 7, 2018 consisting of: (1) the value of petitioners' shares at \$53.95 per

share totaling \$215,099,782.95; and (2) interest in the amount of \$38,387,821.61. A copy of said Order is attached as Exhibit 3.

31. Solera will make payment as required by the Order and Final Judgment.

32. Solera has incurred more than \$13 million in attorneys' fees and other costs defending the Securities Appraisal Action and will incur additional costs if the petitioners appeal.

### **Solera's D&O Policies**

33. The Defendants issued insurance policies to Solera providing primary and/or excess executive and corporate securities liability insurance coverage for claims made during the policy period from June 10, 2015 to June 10, 2016. A chart summarizing the attachment points and limits of those policies is attached as Exhibit 4.

34. XL issued primary policy no. ELU139451-15, a copy of which is attached as Exhibit 5, with an aggregate limit of \$10 million (the "Primary Policy").

35. The remaining Defendants issued excess policies as follows:

a. ACE issued excess policy no. DOX G23661950 007, a copy of which is attached as Exhibit 6, with an aggregate limit of \$5 million excess of \$10 million;

b. Illinois National issued excess policy no. 01-415-85-50, a copy of which is attached as Exhibit 7, with an aggregate limit of \$5 million excess of \$15 million;

c. Argonaut issued excess policy no. MLX 7600523-02, a copy of which is attached as Exhibit 8, with an aggregate limit of \$5 million excess of \$20 million;

d. Illinois National also issued excess policy no. 01-415-95-89, a copy of which is attached as Exhibit 9, with an aggregate limit of \$5 million excess of \$25 million;

e. Hudson issued excess policy no. HN-0303-3323-061015, a copy of which is attached as Exhibit 10, with an aggregate limit of \$5 million excess of \$30 million;

f. Endurance issued excess policy no. DOX10007197300, a copy of which is attached as Exhibit 11, with an aggregate limit of \$5 million excess of \$35 million;

g. Zurich issued excess policy no. DOC 9487017-04, a copy of which is attached as Exhibit 12, with an aggregate limit of \$5 million excess of \$40 million;

h. Liberty issued excess policy no. DO3S-554413-009, a copy of which is attached as Exhibit 13, with an aggregate limit of \$5 million excess of \$45 million; and

i. Federal issued excess policy no. 8240-7270, a copy of which is attached as Exhibit 14, with an aggregate limit of \$5 million excess of \$50 million.

36. The policies issued as excess of the Primary Policy are collectively referred to as the “Excess Policies” and, together with the Primary Policy, the “D&O Policies.”

37. Except as otherwise expressly provided in the Excess Policies, those policies “follow form” to the terms and conditions of the Primary Policy, meaning that they adopt those terms and conditions as if fully set forth in their policy language.

38. The limits of the D&O Policies include, and are eroded by, Defense Expenses.

39. Pursuant to the Insuring Agreement of the Primary Policy, the Defendants agreed to pay on behalf of Solera “**Loss**<sup>1</sup> resulting solely from any **Securities Claim** first made against the **Company** during the **Policy Period** for a **Wrongful Act.**” Primary Policy, § I(C).

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<sup>1</sup> Terms in **bold font** are defined in the Primary Policy and reflect the way they appear in the excerpts quoted from that Policy.

40. Under the Primary Policy, the terms “**Company**” and “**Insured**” both include Solera. Primary Policy, §§ II(D), (I).

41. The Primary Policy defines a “**Securities Claim**” to include a Claim:

- (1) made against any **Insured** for any actual or alleged violation of any federal, state or local statute, regulation, or rule or common law regulating securities, including but not limited to the purchase or sale of, or offer to purchase or sell, securities, which is:
  - (a) brought by any person or entity resulting from, the purchase or sale of, or offer to purchase or sell, securities of the **Company**; or
  - (b) brought by a security holder of the **Company** with respect to such security holder's interest in securities of the **Company** . . . .

Primary Policy, § II(S).

42. The Primary Policy applies a \$1,250,000 self-insured retention to Securities Claims. By endorsement, the Primary Policy also specifically provides coverage, subject to a higher \$2 million self-insured retention, for any “Bump-up Claim,” which the Primary Policy defines as:

[A]ny **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving an allegation that any **Insured** received or will receive inadequate consideration in connection with any merger or acquisition activity involving the **Company**.

Primary Policy, Endorsement No. 7.

43. The Primary Policy broadly defines “**Wrongful Act**” to include “any actual or alleged act, error [or] omission” by Solera. Primary Policy, § II(U).

44. “**Loss**” covered by the Primary Policy is also broadly defined as follows:

“**Loss**” means damages, judgments, settlements, pre-judgment and post-judgment interest or other amounts (including punitive, exemplary or multiplied damages, where insurable by law) that any **Insured** is legally obligated to pay and **Defense Expenses**, including that portion of any settlement which represents the claimant’s attorneys’ fees.

Primary Policy, § II(O).

45. “**Defense Expenses**” are further defined in the Primary Policy to include “reasonable and necessary legal fees, expenses and other costs (including experts’ fees) (1) incurred in the investigation, adjustment, settlement, defense and/or appeal of any **Claim** . . . ” Primary Policy, § II(F).

### **Defendants’ Denials of Solera’s Insurance Claim**

46. Solera notified the Defendants of the Securities Class Action and Securities Appraisal Action.

47. On or about November 6, 2015, XL advised Solera of its determination that the Securities Class Action was a “Bump-up Claim” and that the Primary Policy provided coverage for Solera’s indemnification of the individual director and officer defendants. However, XL took the position that the Securities Class Action was not

a “Securities Claim,” and therefore it would not provide coverage for Solera as a company defendant.

48. Solera disputed XL’s position and, on or about December 14, 2015, XL modified it, agreeing to allocate all Loss in the Securities Class Action to the Insured Persons and cover that Loss in full. However, the Securities Class Action was dismissed on January 5, 2017, and Solera’s Loss in the Securities Class Action did not exceed any applicable self-insured retention.

49. On or about April 17, 2018, XL advised Solera of its determination that the Securities Appraisal Action was a Bump-up Claim subject to a \$2 million self-insured retention. XL further advised Solera that the Securities Appraisal Action arose from the same allegation as the Securities Class Action and so was “related” to the Securities Class Action under the terms of the Primary Policy.

50. Despite these admissions, XL nonetheless denied coverage for the Securities Appraisal Action, arguing primarily that the Securities Appraisal Action purportedly was not a “Securities Claim.” XL also asserted that any settlement or judgment in the Securities Appraisal Action would not constitute “Loss” under the D&O Policies because the petitioners were seeking to recover the fair value of their shares. XL further reserved its rights as to whether the Appraisal Action was a Claim for a Wrongful Act.

51. Solera responded to XL on or about May 17, 2018, explaining that the Securities Appraisal Action was a “Securities Claim” because, among other things, the petitioners alleged violation of Delaware’s appraisal statute, which is a law regulating securities, and the petitioners claimed a host of supposed securities violations in connection with the sales process.

Solera also explained that the Securities Appraisal Action was a covered “Bump-up Claim” alleging “Wrongful Acts” under the Primary Policy’s broad definition of those terms.

52. XL continued to wrongly deny coverage for the Securities Appraisal Action and the other Defendants also adopted the positions set forth by XL and/or refused to accept coverage under their Excess Policies.

53. Even though the Defendants denied coverage, Solera continued to keep Defendants apprised of the progress of the Securities Appraisal Action, conducting regular calls on the progress of the litigation and settlement discussions, and at all times responding promptly to Defendants’ reasonable requests for information. Each of the Defendants has nonetheless continued to deny coverage for the Securities Appraisal Action, including coverage for the Interest Award and Solera’s Defense Expenses.

## **FIRST CAUSE OF ACTION**

### **(Declaratory Judgment: Duty to Indemnify Solera for the Interest Award)**

54. Solera repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

55. Pursuant to the terms of the D&O Policies, each Defendant is obligated to pay the Interest Award, subject to the attachment point and limits of their respective insurance policies.

56. Solera has complied with all terms, conditions and prerequisites to coverage under the D&O Policies, or is excused from doing so based on Defendants' coverage declination and/or other conduct.

57. Pursuant to 10 Del. C. §§ 6501, *et seq.*, Solera is entitled to a declaration by this Court of the Defendants' obligations to pay the Interest Award under the D&O Policies.

58. An actual controversy of a justiciable nature presently exists between Solera and the Defendants concerning the proper construction of the D&O Policies, and the rights and obligations of the parties thereto, with respect to indemnification of the Interest Award.

59. The issuance of declaratory relief by this Court is necessary to resolve the existing controversy among the parties.

60. Solera therefore seeks a declaratory judgment in favor of Solera and against each Defendant declaring that, upon the attachment of and up to the applicable limits of each Defendant's respective D&O Policy, each Defendant is obligated to pay Solera for the amount of the Interest Award.

### **SECOND CAUSE OF ACTION**

#### **(Breach of Contract or Anticipatory Breach of Contract: Indemnification for the Interest Award)**

61. Solera repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

62. Pursuant to the terms of the D&O Policies, each Defendant is obligated to pay the Interest Award, subject to the attachment point and limits of their respective insurance policies.

63. Defendants breached their obligations under the D&O Policies or anticipatorily breached their obligations under the D&O Policies by failing and refusing to pay that portion of the Interest Award falling within their coverage layers.

64. Solera has complied with all terms, conditions and prerequisites to coverage under the D&O Policies, or is excused from doing so based on Defendants' coverage declination and other conduct.

65. As a result of Defendants' breaches, Solera has been injured, and is entitled to judgment awarding it damages for breach of Defendants' insurance policies in an amount to be determined on summary judgment or at trial, but in no

event less than \$38,387,821.61, plus pre-judgment interest, its attorneys' fees, and any consequential damages arising from Defendants' failure to pay the Interest Award.

### **THIRD CAUSE OF ACTION**

#### **(Declaratory Judgment: Duty to Pay Defense Expenses in the Securities Appraisal Action)**

66. Solera repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

67. Pursuant to the terms of the D&O Policies, each Defendant is obligated to pay Solera's Defense Expenses in the Securities Appraisal Action, subject to the attachment point and limits of their respective insurance policies.

68. Solera has complied with all terms, conditions and prerequisites to coverage under the D&O Policies, or is excused from doing so based on Defendants' coverage declination and other conduct.

69. Pursuant to 10 Del. C. §§ 6501, *et seq.*, Solera is entitled to a declaration by this Court of the Defendants' obligations to pay Solera's Defense Expenses in the Securities Appraisal Action under the D&O Policies.

70. An actual controversy of a justiciable nature presently exists between Solera and the Defendants concerning the proper construction of the D&O Policies, and the rights and obligations of the parties thereto, with respect to payment of Solera's Defense Expenses in the Securities Appraisal Action.

71. The issuance of declaratory relief by this Court is necessary to resolve the existing controversy among the parties.

72. Solera therefore seeks a declaratory judgment in favor of Solera and against each Defendant declaring that, upon the attachment of and up to the applicable limits of each Defendant's respective D&O Policy, each Defendant is obligated to pay Solera for the amount of Solera's Defense Expenses in the Securities Appraisal Action.

#### **FOURTH CAUSE OF ACTION**

##### **(Breach of Contract or Anticipatory Breach of Contract: Payment of Defense Expenses)**

73. Solera repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

74. Pursuant to the terms of the D&O Policies, each Defendant is obligated to pay Solera's Defense Expenses in the Securities Appraisal Action, subject to the attachment point and limits of their respective insurance policies.

75. Defendants breached their obligations under the D&O Policies or anticipatorily breached their obligations under the D&O Policies by failing and refusing to pay that portion of Solera's Defense Expenses in the Securities Appraisal Action falling within their coverage layers.

76. Solera has complied with all terms, conditions and prerequisites to coverage under the D&O Policies, or is excused from doing so based on Defendants' coverage declination and/or other conduct.

77. As a result of Defendants' breaches, Solera has been injured, and is entitled to judgment awarding it damages for breach of Defendants' insurance policies in an amount to be determined on summary judgment or at trial, but in no event less than \$13 million, plus pre-judgment interest, its attorneys' fees, and any consequential damages arising from Defendants' failure to pay Solera's Defense Expenses in the Securities Appraisal Action.

### **PRAYER FOR RELIEF**

WHEREFORE, Solera prays for judgment as follows:

A. On the first cause of action, Solera requests that this Court enter declaratory judgment in favor of Solera and against each Defendant declaring that, upon the attachment of and up to the applicable limits of each Defendant's respective D&O Policy, each Defendant is obligated to pay Solera for the amount of the Interest Award.

B. On the second cause of action, Solera requests that this Court enter judgment against the Defendants for damages in an amount to be determined on summary judgment or at trial, but in no event less than \$38,387,821.61.

C. On the third cause of action, Solera requests that this Court enter

declaratory judgment in favor of Solera and against each Defendant declaring that, upon the attachment of and up to the applicable limits of each Defendant's respective D&O Policy, each Defendant is obligated to pay Solera for the amount of Solera's Defense Expenses in the Securities Appraisal Action.

D. On the fourth cause of action, Solera requests that this Court enter judgment against the Defendants for damages in an amount to be determined on summary judgment or at trial, but in no event less than \$13 million.

E. Solera also requests that this Court enter judgment in favor of Solera and against each Defendant, jointly and severally, for all costs incurred in bringing this action, including attorneys' fees, as permitted under applicable law.

F. Solera also requests that this Court enter judgment in favor of Solera and against each Defendant for pre-judgment interest and post-judgment interest on the amount of Loss incurred by Solera in connection with the Securities Appraisal Action owed by each Defendant, running from the date that Solera paid those amounts until the date that the Defendant reimburses those amounts.

G. Solera requests such other and further relief as this Court may deem just and proper.

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