**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF NEW YORK**

XAVIAN INSURANCE COMPANY and
XAVIAN HOLDINGS, INC.,

Plaintiffs,

v.

MARSH & McLENNAN COMPANIES, INC. and
MARSH USA, INC.,

Defendants.

Case No. __________________

**COMPLAINT**

Xavian Insurance Company and Xavian Holdings, Inc. (collectively "Xavian") file their Complaint against Defendants Marsh & McLennan Companies, Inc. and Marsh USA, Inc. (collectively, "Marsh") and respectfully allege as follows:

**INTRODUCTION**

1. This case involves trade secrets that truly were ahead of their time. Marsh gained access to Xavian's trade secrets through a Marsh affiliate's confidential contractual and agency relationship with Xavian and even aspired to act as worldwide insurance broker for Xavian's new product. Meanwhile, Boeing Corporation ("Boeing") also had a critical need to misappropriate those trade secrets and approached Marsh. The massive financial opportunity proved to be too compelling for Marsh to resist.

2. Commercial aircraft frequently sell for hundreds of millions of dollars each, and accordingly, a unique financing industry has developed in order to allow airlines to afford these jets. From 2001 through 2015, the Export-Import Bank of the United States ("Ex-Im") provided almost $100 billion in government-backed financial support for Boeing's sales of commercial

aircraft to foreign airlines with non-investment grade credit ratings. Xavian developed a new, alternative method for financing aircraft purchases. Beginning in 2006 and continuing for many years, Xavian invested approximately $5 million and countless hours in developing a novel, insurance-based guarantee for commercial aircraft financing that had the potential to receive a single-A credit rating from rating agencies like Standard & Poor's, Moody's, and Fitch. Among other things, Xavian's private development effort required identifying and collecting expensive, non-public data relating to airline defaults; directing and completing an actuarial study defining for the first time the risk of loss for such an insurance-based guarantee for aircraft; lengthy, detailed and private negotiations with the U.S. rating agencies that resulted in valuable, time-saving insight about how to obtain the necessary stellar credit rating for an insurance-based guarantee; and developing a "Plan B" business model for offering the insurance-based guarantee through a consortium of 3 to 4 large insurance companies sharing the risk directly, with the deal underwritten and arranged by Xavian's expert underwriting team.

3. Under the protection of a Proprietary Information Agreement signed in 2007, Xavian shared all of its trade secrets with Boeing Capital Corporation ("BCC"). For the next four to five years, BCC stayed in close contact with Xavian, asking for and receiving updates on Xavian's progress and developing a very close relationship. In 2009, a Marsh subsidiary signed an agreement to act as Xavian's agent in pursuing reinsurance opportunities. The Marsh subsidiary not only had a contractual duty to keep Xavian's trade secrets confidential, the Marsh subsidiary, as Xavian's agent, also owed Xavian a duty of loyalty. With Xavian's consent, the Marsh subsidiary later shared Xavian's trade secrets with its parent, Marsh, on a confidential basis to allow Marsh to evaluate the possibility of selling the Xavian insurance-based guarantee as a broker for Xavian.

4. Xavian had obtained a financial commitment up to $375 million from Lightyear Capital ("Lightyear"). BCC had repeatedly promised that Boeing would support Xavian once it reached a "tipping point." The situation changed dramatically in mid-2015, when Boeing and BCC realized that Ex-Im's financial support appeared likely to disappear completely due to lack of Congressional re-authorization. This development threatened Boeing's sales of commercial aircraft compared to rival Airbus, which still had access to an export credit program in Europe. In June 2015, BCC asked Xavian whether Xavian could resurrect the Xavian insurance-based guarantee (which Xavian had never offered publicly due to the fallout from the financial crisis and Boeing and BCC's tactical decision not to commit to the product). Even though Xavian responded positively to the inquiry, Boeing and BCC secretly began working with Marsh on a competing insurance-based guarantee. At that point, Marsh had three options: (1) decline to participate based on Marsh's inability to use Xavian's trade secrets; (2) otherwise agree with Xavian on reasonable compensation for its trade secrets; or (3) misappropriate Xavian's trade secrets and partner with Boeing to implement Xavian's "Plan B" business model without Xavian. Marsh chose the third option.

5. In June 2017, Marsh and Boeing announced that they had orchestrated the formation of the Aircraft Finance Insurance Consortium ("AFIC"), a group of four large insurance companies offering the insurance guarantee developed by Xavian. Marsh hired Xavian shareholder and former Ex-Im employee Bob Morin as the public face of AFIC. Several years earlier, Morin had agreed in principle to become Xavian's Senior Vice President of Marketing, a commitment that allowed him complete access to Xavian's trade secrets, subject to agreements that prohibited him from misappropriating them. In 2017 and 2018, Marsh and AFIC took a victory lap with Xavian's trade secrets, not only reaping enormous profits, but also receiving

prestigious insurance industry and aviation awards for the innovative, cutting-edge nature of the AFIC concept. AFIC's own public statements and the fact that no AFIC competitor has yet emerged leave no doubt about the proprietary nature of Xavian's trade secrets.

6. In this lawsuit, Xavian sues Marsh for misappropriation of trade secrets under the federal Defend Trade Secrets Act ("DTSA"). The DTSA provides for disgorgement of the profits that Marsh has improperly reaped by relying on an insurance-based guarantee that would not have been possible without the misappropriation of Xavian's trade secrets; recovery of Xavian's lost profits; an alternative reasonable royalty measure of damages; punitive damages; and Xavian's attorneys' fees. By January 2018, AFIC had issued insurance-based guarantees for approximately $1.5 billion in Boeing commercial aircraft sales. For 2018, Boeing has projected that up to 5% of its commercial aircraft sales will include AFIC's insurance-based guarantee. In addition, Marsh has now announced that it plans to offer the insurance-based guarantee in connection with Airbus aircraft financings. The sustainable first-mover advantage and the substantial barriers to entry will result in even larger numbers in future years. Xavian therefore anticipates that its damages in this case are substantial and will continue to grow.

**PARTIES**

7. Plaintiff Xavian Insurance Company is a Delaware corporation with its principal place of business in Virginia.

8. Plaintiff Xavian Holdings, Inc., the sole owner of Xavian Insurance Company, is a Delaware corporation with its principal place of business in Virginia.

9. Defendant Marsh & McLennan Companies, Inc. is a Delaware corporation with its principal place of business in New York. Marsh & McLennan Companies, Inc. may be served

with process by serving its registered agent: CT Corporation System, 111 Eighth Avenue, New York, New York 10011.

10. Defendant Marsh USA, Inc. is a Delaware corporation with its principal place of business in New York. Marsh USA, Inc. may be served with process by serving its registered agent: CT Corporation System, 111 Eighth Avenue, New York, New York 10011.

## JURISDICTION & VENUE

11. This Court has original jurisdiction over this lawsuit pursuant to 18 U.S.C. § 1836(c). The Southern District of New York is a proper venue for this lawsuit pursuant to 28 U.S.C. § 1391(b)(1) because this is the judicial district where Defendants maintain their principal places of business.

## FACTUAL BACKGROUND

### A. Background on the Aircraft Financing Industry.

12. Traditionally, Boeing and Airbus have depended heavily on government-backed guarantees by export credit agencies to enable foreign airlines with non-investment grade debt ratings to finance purchases of commercial aircraft. Because airlines have a volatile, capital-intensive business model, subject to geopolitical risk in some cases, a significant percentage of foreign airlines have credit ratings below investment grade. To induce banks and other lending sources to provide financing for sales of commercial aircraft like Boeing's, export credit agencies like Ex-Im provide billions of dollars in annual guarantees. Without those government-backed guarantees, traditional lenders either would charge extremely high and often prohibitive interest rates intended to compensate for the perceived high risk attributable to the transaction size, certain well-known risks of default, weak airline credit and other factors, or they would refuse to lend. Those negative consequences would impair Boeing's sales.

13. In a typical Ex-Im supported transaction, Ex-Im issues a government guarantee to a lender for up to 85% of the net cost of the aircraft being exported. If there is a default for any reason whatsoever, including insurance issues or geopolitical issues, Ex-Im pays and effectively takes over the transaction as subrogee.

14. The export credit agencies of the United States, Europe, and other countries entered into a detailed agreement — the Aircraft Sector Understanding ("ASU") — that governed the nature and extent of the export guarantees and loans that their respective export credit agencies could provide in support of aircraft transactions. This arrangement was intended to preserve competition among the manufacturers and to create a level playing field with respect to export credit agency financing.

**B. Xavian Develops its Trade Secrets.**

15. One of Xavian's founders is Thatcher Stone ("Stone"), a corporate attorney and law-school lecturer with decades of experience representing Ex-Im and handling sophisticated, multi-national transactions for billions of dollars of commercial aircraft sales worldwide. Stone began developing the idea for Xavian in 2006. He thought there was an opportunity in the market because future political support for Ex-Im was uncertain, and that uncertainty was preventing Ex-Im from meeting certain demands in the market.

16. In 2007, the international community amended the ASU for the first time in 30 years, limiting the government-backed guarantees for large commercial aircraft to exactly a 12-year term, and creating a more heavily risk-weighted system. These changes were prompted by European concerns about high-profile losses that the European export credit agency consortium (ECGD, Hermes, and COFACE) had incurred, as well as certain U.S. and European airlines that objected to competitors receiving export credit agency "subsidized" support for foreign airlines'

financing of Boeing and Airbus aircraft. Stone and his co-founder Frank D. Kittredge, Jr. ("Kittredge") officially formed Xavian in 2007 with the goal of providing airlines and airline manufacturers with a more flexible alternative to government-backed guarantees under the new ASU. Among other things, Xavian believed that many airlines with non-investment grade credit would prefer loans with longer terms than the uniform 12-year Ex-Im terms. (One advantage of the longer-term loan was that it would have a lower principal payment than an Ex-Im-supported loan, which allowed an airline to preserve cash and increase profits.) Xavian also believed that the low loss experience at Ex-Im suggested these foreign carriers were a unique market niche.

17. Many financial structures existed for commercial aircraft transactions, but Xavian developed a completely new product: a private, insurance-based guarantee. The development of this novel insurance product was expensive and time-consuming, in part because no one had ever done an insurance underwriting analysis of the relevant airline financing data, much less formed conclusions about that data that would explain some prior, high-profile losses or quantified the varying levels of risk in different segments of the industry.

18. Xavian also faced the even more imposing task of persuading U.S. rating agencies in the very conservative, post-financial crisis environment to change their traditional risk models for airline financing. To provide a credible alternative to a government-backed guarantee, Xavian needed to develop a business model and assemble a management team that could convince U.S. rating agencies that Xavian's model would result in at least a single-A credit rating. Xavian understood that a single-A credit rating would induce lenders to close loans quickly in reliance on Xavian's credit rating. (The alternative from the lender's perspective would be to (i) do a significant amount of time-consuming due diligence; (ii) charge a higher interest rate to the carrier; or (iii) decline to participate altogether. By guaranteeing a lender's transaction with an A-rated

guarantee, Xavian could ensure that interest costs dropped precipitously for low investment-grade foreign carriers. Xavian's insurance-based guarantee also had the potential to provide an alternative to the financing options that Airbus could provide through an Export Credit Consortium of English, French, and German Export Credit Agencies.

19. Xavian raised venture capital and spent approximately $5 million to develop the trade secrets necessary to provide the foundation for a private, commercial insurance-based guarantee for aircraft financing backed by at least a single-A credit rating. To preserve its trade secrets, Xavian limits the discussion of its trade secrets in this publicly-available Complaint to a very general description. After an appropriate protective order is entered that allows the parties to file trade secret information under seal, Xavian will provide Marsh with Xavian's trade secret designation. At a general level, the trade secrets Xavian developed include the following:

- identifying for the first time all relevant non-public data necessary for a full actuarial analysis to evaluate a private, insurance-based guarantee for aircraft financing;
- retaining and paying a world-renowned actuarial firm to perform a full actuarial analysis;
- providing the industry insights and direction necessary to enable the actuarial firm to complete a highly credible analysis;
- retaining additional consultants to provide the actuarial firm and Xavian with the privately collected data and proprietary insights necessary to fully perform the actuarial analysis;
- identifying specific employees at Ex-Im with knowledge, experience, and willingness to join Xavian;
- obtaining necessary Ethics in Government Act clearances for the Ex-Im employees who agreed to join Xavian and maintaining the necessary ethical wall to prevent them from having communications with Boeing;
- entering into extensive, private negotiations with U.S. rating agencies;
- deconstructing and comprehending the highly complex rating models that U.S. rating agencies developed that over-estimated the risk of aircraft financing;

- understanding the similarities and differences between Xavian's actuarial analysis of loss experience and U.S. rating agencies' models;
- through many months of negotiations, identifying the key inputs to the U.S. rating agencies' model that Xavian believed were inconsistent with Xavian's analysis of the actual risk of loss in the airline financing industry;
- establishing credibility with U.S. rating agencies through a fact-based analysis devoid of any concerns about the inherent bias of a manufacturer;
- successfully persuading a major U.S. rating agency to change its model with respect to the Xavian insurance-based guarantee;
- identifying specific people for employment by Xavian that the U.S. rating agencies deemed critical to obtaining the necessary rating;
- conducting financial modeling to determine the return on investment necessary to attract the necessary capital for a private, insurance-based guarantee;
- developing a business model that could successfully survive post-financial crisis stress-testing designed to simulate another financial crisis;
- meeting with airlines to determine exactly what the marketplace wanted as an alternative to Ex-Im financing;
- identifying the backup, or "Plan B," option of implementing the Xavian business model through a consortium of 3 to 4 large insurance companies;
- identifying an optimal structure for a consortium of 3 to 4 large insurance companies;
- identifying the reinsurance options that would enhance the Xavian business model;
- assembling a management team with deep experience and credibility in the airline financing industry; and
- participating in the private negotiations necessary to establish the U.S. rating agency that would be the best starting point from a ratings perspective.

20. Xavian's business plan also included hiring Bob Morin, who for many years was the Vice President of the Transportation Division of Ex-Im. Morin and two other Ex-Im employees agreed to join Xavian's executive management team. Specifically, upon the satisfaction of certain conditions, Morin agreed to become Xavian's Senior Vice President of Marketing. Morin signed

a Subscription Agreement and non-disclosure agreement with Xavian that required him to preserve and not use Xavian's trade secrets. Based on these agreements, Xavian gave Morin full access to all of Xavian's trade secrets.

21. In the process of developing its trade secrets, Xavian also established the financial viability of its business model. Xavian raised a total of almost $5 million in two private offerings. Further, in August 2008, Lightyear — a private equity firm founded by Don Marron, the former Chairman of the Board and CEO of PaineWebber — agreed on a term sheet and commitment to invest $100 million to $125 million in Xavian and to assist Xavian in raising capital of $300 million to $375 million, subject to certain closing conditions. Xavian also benefitted from the advice and counsel of John Shettle ("Shettle"), a Lightyear advisor who had served as a senior executive at several large insurance companies and had substantial industry connections. Shettle later accepted a fiduciary role as Xavian's Chief Executive Officer.

22. Xavian achieved Lightyear's critical closing condition of obtaining written rating agency approval for at least a single-A credit rating subject to raising enough capital and adopting concentration limits by airlines. Xavian also satisfied the condition of agreeing on employment terms for its executive team. Lightyear's commitment also had a market disruption clause that allowed Lightyear to cancel its commitment if the market for investments in new companies like Xavian faltered. BCC made frequent promises to Xavian that Boeing would support Xavian when it had a financial commitment, a rating, and potential customers — what BCC called the tipping point. The fallout from the financial crisis ultimately prevented Xavian from securing the necessary funding.

23. Xavian took appropriate measures to protect its trade secrets. Those measures included requiring officers and employees to sign agreements with confidentiality provisions;

requiring third parties to enter into non-disclosure agreements; being selective about how much information it shared with third parties; maintaining data on password-protected computer equipment; and usually requiring execution of an additional release for Xavian's actuarial firm that included Xavian as a third-party beneficiary.

**C. Xavian Shares its Trade Secrets with Boeing in a Confidential Relationship.**

24. In September 2007, Xavian and BCC entered into a Proprietary Information Agreement that broadly defined "Proprietary Information" as including "all proprietary, confidential, and/or trade secret information disclosed by either Party to the other and pertaining to business, marketing, operational, and financial matters." BCC agreed that it would "preserve in confidence, not disclose to others, and not use (except for the purpose set forth in paragraph A of this Agreement) any and all Proprietary Information received" from Xavian. The only permissible use of Xavian's Proprietary Information involved BCC and Xavian having discussions with each other about aviation finance, Boeing Customer Finance, ECA Finance, and aviation matters in general.

25. Later in September 2007, Xavian co-founders Stone and Kittredge had an initial meeting with BCC during which two things were abundantly clear: (1) BCC had never collected the data necessary to analyze the possibility of a private alternative to Ex-Im, much less done any actuarial work; and (2) BCC had tried in the past without any success to persuade the U.S. rating agencies to change their model for evaluating the risk of loss for aircraft financing. Indeed, BCC told Xavian that it would never secure the necessary credit rating from one particular U.S. rating agency, claiming that the key person there did not understand aircraft financing.

26. Over the next two years, Xavian and Boeing had additional formal and informal meetings and dozens of email exchanges and phone conversations. Under the protection of the

Proprietary Information Agreement, Xavian shared all of its trade secrets with BCC, including a detailed business plan with attachments such as Xavian's actuarial work and Xavian's rating agency submission. In April 2009, after many months of detailed negotiations, Xavian accomplished what BCC had claimed could not be done — it persuaded a major rating agency to significantly change its rating model for aircraft financing, resulting in that agency providing the detailed path on how Xavian could obtain a double-A or even triple-A credit rating. Importantly, Xavian also disclosed to BCC a "Plan B" business model for offering the Xavian insurance-based guarantee through a consortium of 3 to 4 large insurance companies. Indeed, in 2011, Shettle, acting on Xavian's behalf, shared detailed plans with Boeing about the proposed consortium, and Boeing stated that it would consider an investment in the project of $50 million. Access to Xavian's trade secrets gave BCC a complete roadmap of how to implement a private, insurance-based guarantee for aircraft financing.

**D. Xavian Retains a Marsh Subsidiary as Its Fiduciary Agent to Assist in Pursuing the Xavian Business Model.**

27. In May 2009, Xavian started talking to a Marsh subsidiary, Guy Carpenter ("Carpenter"), about Carpenter potentially serving as Xavian's agent to explore reinsurance opportunities for the Xavian business model. To protect its trade secrets during these preliminary discussions, Xavian and Carpenter entered into a Mutual Non-Circumvention and Non-Disclosure Agreement with an effective date of May 13, 2009 (the "NDA"). *See* Ex. 1. The NDA required Carpenter "to hold any Information furnished to it by [Xavian] in a fiduciary capacity, to keep secret and to treat confidentially and not to permit any other person or entity to, directly or indirectly, appropriate, divulge, disclose or otherwise disseminate . . . and not to use or aid others in using any such information in competition with [Xavian] [.]" *Id.* at ¶ 1.

28. Xavian and Carpenter later formalized Carpenter's fiduciary role as Xavian's agent, which provided even more protection for Xavian's trade secrets than the NDA. Effective August 10, 2009, Xavian and Carpenter entered into the Instrat Agreement attached hereto as Exhibit 2. The Instrat Agreement contains the following language that designated as confidential all information Xavian provided to Carpenter and that maintained such confidentiality unless Xavian provided prior written consent:

> As between the Client and [Carpenter], the Client owns and shall retain all rights, title, and interest including, without limitation, all intellectual property rights, in and to any and all data, information, content, and other materials provided by Client and its consultants in connection with this Agreement (collectively, the "Client Materials") . . . . [Carpenter] agrees that any Client Materials provided by the Client to [Carpenter] under this Agreement shall remain confidential and shall not be disclosed by [Carpenter] to any third party without the prior written consent of the Client.

*Id.* at ¶ 2.

29. The Instrat Agreement also confirmed that Carpenter would serve as Xavian's agent, specifically noting that Carpenter would "perform actuarial, financial, and/or catastrophic modeling services for [Xavian] *in connection with [Carpenter's] provision of reinsurance intermediary services.*" (emphasis added).[1] To assist Xavian with such reinsurance intermediary services, Carpenter had to understand Xavian's entire business model. Xavian therefore gave its proprietary business plan and highly confidential attachments, such as the actuarial analysis and

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[1] Carpenter initially gave Xavian a draft Reinsurance Intermediary Services Agreement, which contemplated that the parties also would execute the Instrat Agreement and a Reinsurance Intermediary Authorization. Xavian has a signed copy of the Instrat Agreement, but has not been able to locate signed copies of the other agreements. In an August 5, 2009 email, Carpenter's Spencer Gluck stated that his "understanding is that the ceding insurer within the Xavian group will be domiciled in Switzerland," and that, "[i]f that is the case, we do not need the RIA [Reinsurance Intermediary Agreement] at all." It thus appears that the parties may not have executed the Reinsurance Intermediary Services Agreement and the Reinsurance Intermediary Authorization. Regardless of whether the parties signed the Reinsurance Intermediary Services Agreement and the Reinsurance Intermediary Authorization, the Instrat Agreement and the services performed by Carpenter make clear that Carpenter acted as Xavian's agent. *Id*. at ¶ 1.

Xavian's rating agency submission, to Carpenter. In furtherance of the agency relationship, Carpenter contacted certain insurance companies on behalf of Xavian and reported back to Xavian about potential reinsurance opportunities.

### E. Carpenter's Agency Relationship Expands, and Carpenter Sets Up Meetings Between Xavian and Marsh.

30. By early 2010, Carpenter's agency representation of Xavian had expanded to include the pursuit of a potential third-party investment. Carpenter arranged for a meeting between Xavian and high-level executives in the Marsh corporate family because Marsh was considering selling the Xavian insurance guarantee to airlines. On January 8, 2010, Xavian had an initial meeting with Norman Brown ("Brown"), who had previously served as Managing Director, Head of Strategic Development for Marsh, Inc., and then was serving as a Managing Director for Carpenter's securities group, GC Securities. That same day, Stone gave Brown the following information so he could evaluate the opportunity for Marsh to act as a broker for Xavian's insurance-based guarantee: (1) Xavian's business plan and the attachments thereto; and (2) the private, highly confidential rating evaluation of Xavian by a major U.S. rating agency. Xavian's business plan prominently notes the proprietary nature of the information contained therein. Carpenter's contractual relationship and agency relationship with Xavian and Marsh's knowledge of those relationships provided robust legal protection for Xavian's trade secrets. Nonetheless, in an abundance of caution, Stone also reminded Carpenter in a January 8, 2010 email that the rating evaluation "is trade secrets and highly proprietary," and that "[i]t should not be disclosed to anyone outside the Marsh family." Stone included similar language when he sent Xavian's business plan and other proprietary materials to Carpenter.

31. As a next step, Brown recommended that he introduce Xavian to David Priebe ("Priebe"), a high-level executive serving as the Vice Chairman of Carpenter and as a member of

Carpenter's Board of Managers. In a January 28, 2010 email, Brown confirmed that Priebe had received Xavian's materials and would be reviewing them in preparation for an upcoming meeting with Xavian. Priebe's publicly available biographical information on the LinkedIn website reflects that he serves in those same roles today.

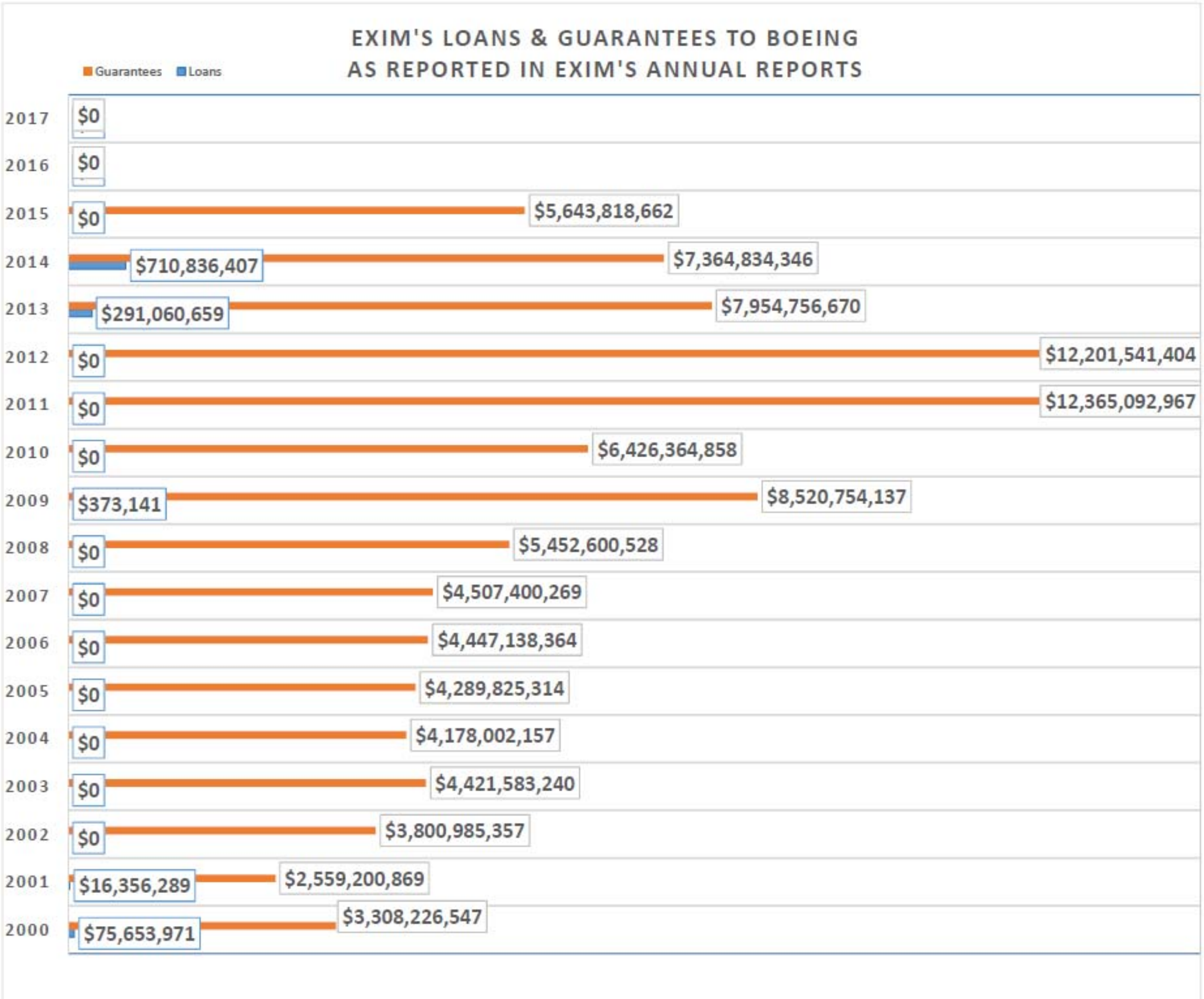
32. On February 3, 2010, Xavian and Marsh had a follow up meeting at Marsh's corporate headquarters in New York City. Attendees included Stone, Shettle (whose career included a past senior leadership role with Marsh), Brown, Priebe, and several other Marsh-affiliated attendees who were knowledgeable about the aviation industry. Xavian also met Andrew Gardner ("Gardner"), a Senior Vice President at Marsh based out of London, probably at the February 3, 2010 meeting, but possibly on another date. During the lengthy meeting, the Marsh-affiliated attendees asked several informed questions that demonstrated knowledge of the trade secret information that Xavian had provided in advance of the meeting. Gardner later followed up on behalf of Marsh, expressing Marsh's interest in selling Xavian's insurance-based guarantee, albeit with Marsh proposing to take an exorbitant percentage of each Xavian premium. More than one year later, Brown attended a meeting with Shettle, Stone, and others in which they discussed Xavian's Plan B to form a consortium of large insurance companies.

33. Throughout these months, Marsh was aware that the arrangement between Xavian and Carpenter required Xavian's information to be kept confidential. The Xavian information that Marsh obtained in advance of their meeting likewise put Marsh on notice of a relationship between Xavian and Boeing that required Boeing to keep Xavian's information confidential. For example, Xavian's business plan disclosed that Xavian and BCC had ongoing discussions; that BCC had access to certain Xavian data and agreed with one of Xavian's conclusions about such data; that Xavian and BCC had discussed the possibility of Xavian taking over certain BCC financing

commitments; that Xavian and BCC had discussed target customers for the Xavian insurance-based guarantee; and that Xavian and BCC had a good relationship. With respect to Xavian's financial projections, Xavian's business plan also disclosed that it had worked "in close consultation" with BCC. The Xavian business plan also identified Morin as a key person for Xavian's business plan. Further, in a PowerPoint that Xavian provided to Marsh one week before a February 3, 2010 meeting at Marsh's headquarters in New York City, Xavian disclosed that "Boeing is cooperating with Xavian in addressing a variety of joint marketing ideas and underwriting issues." As a result, Marsh not only had direct knowledge of the proprietary nature of Xavian's trade secrets, but it also knew or should have known that BCC and Morin had access to Xavian's trade secrets on a confidential basis.

**F. The Motives for Boeing and Marsh to Steal Xavian's Trade Secrets.**

34. From 2000 through 2015, Ex-Im provided almost $100 billion in loan guarantees in connection with the sale of Boeing commercial aircraft. Boeing repeatedly warned the market that the lack of availability of Ex-Im financial support could have a material impact on Boeing's sales. Analysts similarly understood that Ex-Im's financial support was critical to Boeing's ability to sell commercial aircraft to foreign airlines with credit ratings below investment grade. Meanwhile, Congressional critics in the United States claimed that Ex-Im's financial support constituted corporate welfare to entities like Boeing and should be discontinued. Airbus, however, faced no such political uncertainty about the continued support of Europe's equivalent to Ex-Im, leaving Boeing with a potential competitive disadvantage. The chart below, which is derived from Ex-Im's annual reports, summarizes the financial support that Ex-Im provided for Boeing commercial aircraft sales:




35. By mid-2015, BCC was acutely aware that Congress planned to eliminate Ex-Im's financial support of Boeing's commercial aircraft sales, thereby threatening to drastically reduce Boeing's sales. Before 2015, BCC was clearly interested in having Xavian's insurance-based guarantee available to complement Ex-Im's financial support. The loss of Ex-Im's financial support, however, created a critical need for the Xavian insurance-based guarantee to be available as a complete replacement for billions in annual Ex-Im financial support. Indeed, by February 2016, Boeing's stock price had dropped precipitously to approximately $108, down from a stock price frequently above $150 throughout 2015. BCC's Scott Scherer summarized Boeing's state of mind in a June 12, 2015 email to Stone:

Hi Thatcher,

I hope you are well.

As you know, it looks like Ex-Im's reauthorization will lapse on June 30.

It [sic] Xavian resurrectable?

Best,

Scott

Ex. 3.

36. During their follow-up telephone conversation, Stone reminded Scherer that Xavian's "Plan B" business plan consisted of offering the Xavian insurance-based guarantee through a consortium of 3 to 4 large insurance companies and could easily be accomplished. Scherer never followed up after that conversation. Instead, Boeing and BCC secretly decided to conspire with Marsh to resurrect Xavian on their own and as their own.

37. The desperation of Boeing and BCC to quickly create an Ex-Im alternative also provided a once-in-a-lifetime market opportunity for Marsh. With Ex-Im's financial support set to disappear, Marsh had the opportunity to misappropriate Xavian's trade secrets and create a new insurance market for billions of dollars in annual aircraft financings. Because Marsh had the opportunity to study Xavian's business plan, actuarial data, and the rating evaluation of Xavian, Marsh knew how to profitably exploit this opportunity far more quickly than any potential competitor. And by teaming up with Boeing and hiring Morin, Marsh was able to further accelerate the time to market by fully leveraging trade secrets that Xavian had developed over many years and at the cost of millions of dollars. In addition, Boeing's status as a market-leading manufacturer gave Marsh a substantial and enduring first-mover advantage.

**G. Marsh and Boeing Proactively Use Xavian's Proprietary Information to Form the AFIC Insurance Consortium.**

38. In June 2017, Marsh and Boeing announced the formation of AFIC, a consortium of four large insurance companies offering an insurance-based guarantee developed by Xavian. Marsh announced that it had hired Morin, and Morin became the public face of AFIC. At an industry conference in January 2018, Morin stated that AFIC had already provided $1.5 billion in financing for 16 aircraft for 4 airline clients and 1 leasing company. Boeing and Marsh predict further strong growth of AFIC, with Boeing projecting that AFIC will guarantee up to 5% of its commercial aircraft sales in 2018.

39. Press coverage and Boeing's own public statements suggest that Boeing approached Marsh about creating AFIC. Without Xavian and the roadmap provided by its trade secrets, Marsh and Boeing would have been unable to do the necessary work to organize and launch AFIC in June 2017. It is certainly not a coincidence that Boeing teamed up with Marsh (an insurance broker that BCC knew had complete access to Xavian's trade secrets through its relationship with Xavian); or that Marsh hired Morin (who also had access to all of Xavian's trade secrets, but no permission to use or share those trade secrets). Even though Marsh already had full access to Xavian's trade secrets, Morin, Boeing, and BCC could not reasonably have formed AFIC and provided financing so quickly without inevitably disclosing Xavian's trade secrets to Marsh.

40. Publicly available information shows that Defendants Marsh USA, Inc. ("Marsh USA") and Marsh & McLennan Companies, Inc. ("Marsh McLennan") have been involved in the AFIC consortium that has misappropriated Xavian's trade secrets. Marsh McLennan's SEC filings describe Marsh USA as the Marsh entity that provides insurance broker and risk management services. The LinkedIn page for Bruce Fine, who has served as AFIC's Global Leader, identifies Mr. Fine as being employed by Marsh McLennan and Marsh USA. Gabriell

Olkoski identifies himself as a Vice President at Marsh USA working on the AFIC team. The United Kingdom version of Marsh's website includes an AFIC brochure that contains logos for both Marsh USA and Marsh McLennan.

41. According to Morin, Marsh and Boeing worked together for two years to prepare for the launch of AFIC, approaching approximately 40 different insurance companies about their interest in AFIC. Morin also confirmed the critical importance of having the necessary data to enable the insurance companies to evaluate the risk of loss and decide whether to participate in the consortium. The insurance companies also would have needed to rely on the data necessary to make presentations to the U.S. rating agencies about how the issuance of guarantees for expensive commercial aircraft would potentially impact their future overall ratings. Without Xavian's trade secrets, Marsh and Boeing could not have done all the work necessary to launch AFIC from scratch in just two years (most of which appears to have been spent negotiating with approximately 40 insurance companies — the final step necessary to putting together the consortium of large insurance companies under Xavian's Plan B).

42. Given Priebe's leadership positions at Carpenter, it is reasonable to infer that (1) Priebe participated on a regular basis in strategic planning and operational meetings with senior executives at Marsh; (2) senior executives throughout the Marsh corporate family were informed about Marsh's plans to join forces with Boeing to pursue a very large, new market opportunity; and (3) Priebe participated in meetings or other communications that discussed Marsh's decision to join forces with Boeing to develop AFIC.[2] It is also reasonable to infer that Gardner (the Senior

[2] Marsh & McLennan's Form 10-K for the fiscal year ending December 31, 2017 discloses that Marsh Limited and Carpenter have been the subject of investigations in Europe and the United Kingdom about potentially sharing competitively sensitive information within the aviation insurance and reinsurance broking sector. A Carpenter representative also has participated in Marsh & McLennan's quarterly earning conference calls.

Vice President at Marsh) and the attendees of the February 2010 meeting with knowledge and experience in the aviation industry were later involved in the development of AFIC with Boeing.

43. After stealing Xavian's trade secrets and publicly announcing AFIC, the AFIC product has received a number of industry awards that confirm the proprietary, trade secret nature of Xavian's ideas and analysis:

- The AFIC product was nominated as a finalist for the 2017 European Risk Management Awards under the category of "Broker Innovation of the Year."
- A company of insurance industry figures called Ishka awarded AFIC as the "Most Innovative Deal 2017" for its use of Xavian's insurance-based guarantees in connection with a jet refinancing for Korea Air . Ishka stated that "We had to recognize this deal as it was exceptional."
- In January 2018, AFIC received Airline Economics' "Editor's Deal of the Year for Innovation" award.
- Also in January 2018, Global Transport Finance awarded AFIC its "Aircraft Finance Unique Leasing Deal of the Year" and "Aircraft Finance Deal of the Year — Asia" awards.
- Airline Economics recognized AFIC for three awards, including the "Deal of the Year for Innovation" for the first insurance-based guarantees, and the "Aviation Finance Person of the Year" for Morin.
- At the 2018 Reaction London Markets Awards, Marsh received the award for "Global Achievement of a London Market Broker" for the AFIC concept.

44. Industry awards confirm that the concept AFIC stole from Xavian was not generally known in the industry and qualified as a cutting-edge innovation in 2017 and 2018. Marsh not only intentionally misappropriated Xavian's trade secrets to form AFIC, but it has basked in the industry glory of receiving such prestigious awards touting the innovative and brilliant nature of Xavian's trade secrets.

45. Like any defendant that intentionally misappropriates trade secrets, Marsh presumably will try to claim that Xavian's trade secrets really were not novel or innovative. This potential argument is not only disproved by the industry reaction to AFIC; it is flatly contradicted

by Morin's public presentations about the AFIC concept. For example, during a 2018 presentation in Dublin, Ireland, Morin explained that "There are probably half a dozen points in developing this product where we said, "ah ha, that's why this hasn't been done before. But somehow, we figured out a way around those issues or get over those issues, or sometimes through those issues." Morin also stated that AFIC approached 40 insurers about the insurance-based guarantee, with Morin representing that the insurers responded to the actuarial data by saying "they couldn't believe it" and "you must be cooking the data, Bob." Yet the AFIC program effectively is Xavian's Plan B.

46. Even though Marsh and Boeing launched AFIC in early June 2017, no competitor has emerged to challenge AFIC. In responding to a question at the Dublin conference about whether a competitor might emerge to offer a similar insurance guarantee to Airbus, Morin responded that it was possible, but explained that "this was under development for two years. I mean you people are now seeing sort of like an iceberg. You can see the tip. You don't get to see everything that went on underneath it." Soon thereafter, Marsh announced Project Balthazar, a Marsh-formed consortium offering an insurance-based guarantee for the sale of Airbus aircraft. By misappropriating Xavian's trade secrets, Marsh and Boeing have gained a substantial and sustainable first-mover advantage, with Boeing's ability to refer business to AFIC creating additional barriers of entry for any potential competitor.

**H. Xavian's Discovery of Marsh and Boeing's Misconduct.**

47. In June 2016, Xavian learned that an aviation lawyer had requested a conflict waiver from Ex-Im to represent Boeing on an insurance guarantee matter that would compete with Ex-Im. That was the first hint Xavian received that Boeing might have misappropriated Xavian's trade secrets. After hearing this news, Stone called Scherer, who had recently retired from BCC. In sharp contrast to their previous dealings, Scherer refused to say anything and told Stone only

that he needed to call Kostya (a reference to BCC's Kostya Zolotusky). Stone left voicemails for Mr. Zolotusky, who had received Xavian's trade secrets under the Proprietary Information Agreement and had discussed them with Stone and Kittredge. But despite previous interest and cooperation from BCC, he received no response from Mr. Zolotusky. In addition, at the time, Stone had a friendly relationship with Boeing's general counsel, who Stone had contacted based on their University of Virginia School of Law connection and frequent conversations about the Ex-Im situation in Congress. Yet Boeing's general counsel failed to return three separate phone calls from Stone, thereby confirming that the misappropriation of Xavian's trade secrets reached the highest levels of Boeing. Xavian discovered Marsh's involvement in June 2017, when Marsh and Boeing announced the formation of AFIC.

48. The Defend Trade Secrets Act requires that claims be brought within three years of the discovery of the basis for the claim. 18 U.S.C. § 1836(d). Xavian is timely bringing its claims within the applicable limitations period.

## CAUSES OF ACTION

### A. First Cause of Action: Misappropriation of Trade Secrets in Violation of the Defend Trade Secrets Act, 18 U.S.C. § 1836.

49. As the factual basis for its allegations, Xavian incorporates the prior paragraphs of its Complaint as if set forth fully here.

50. As described above, Xavian alleges that the proprietary and confidential information it shared with Marsh constitutes Xavian's "trade secrets" as that term is defined in 18 U.S.C. § 1839(3). Xavian further alleges that it took reasonable measures to keep its proprietary and confidential information secret; and that the information derives economic value from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

51. Xavian alleges that Marsh misappropriated Xavian's trade secrets by acquiring those trade secrets through improper means and by disclosing and using those trade secrets without the express or implied consent of Xavian. Specifically, Marsh acquired, disclosed and used Xavian's trade secrets by breaching or inducing a breach of a contractual duty to Xavian to maintain secrecy and the duty of loyalty owed by an agent in violation of 18 U.S.C. § 1839(5)(A)–(B) and 18 U.S.C. § 1839(6). In addition, at the time it used or disclosed Xavian's trade secrets, Marsh knew or had reason to know that its knowledge of Xavian's trade secrets was acquired under circumstances giving rise to a duty to maintain the secrecy of Xavian's trade secrets or limit their use, or was derived from or through persons at Carpenter who owed a duty to Xavian to maintain secrecy of Xavian's trade secrets or limit their use, in violation of 18 U.S.C. § 1839(5)(A)–(B). Further, Morin, Boeing, and BCC could not reasonably have formed AFIC and provided financing so quickly without inevitably disclosing Xavian's trade secrets to Marsh. Moreover, Marsh continues to use the misappropriated trade secrets by selling the AFIC guarantee in connection with commercial aircraft financing transactions and by actively promoting the use of the AFIC guarantee.

52. As remedies for Marsh's misappropriation of its trade secrets, Xavian seeks an award of damages for its actual loss caused by the misappropriation, as well as damages for unjust enrichment caused by the misappropriation of the trade secrets that is not addressed in computing damages for actual loss, as provided by 18 U.S.C. § 1836(b)(3)(B)(i). As an alternative to lost profits, Xavian seeks an award of damages caused by the misappropriation measured by imposition of liability for a reasonable royalty for Marsh's unauthorized disclosure and use of the trade secret, as authorized by 18 U.S.C. § 1836(b)(3)(B)(ii).

**DISCOVERY RULE**

53. Xavian pleads that the discovery rule applicable to misappropriation claims brought under 18 U.S.C. § 1836(d) applies in this case and that this lawsuit has been brought within three years after the misappropriation was discovered or by the exercise of reasonable diligence should have been discovered.

**JURY DEMAND**

54. Xavian demands a trial by jury.

**PRAYER FOR RELIEF**

55. Based on the foregoing allegations, Xavian prays that the Court enter judgment in Xavian's favor on its claims against Marsh and award Xavian the following remedies against Marsh:

a. Actual damages for misappropriation;

b. Unjust enrichment for misappropriation;

c. Reasonable royalty for misappropriation;

d. Reasonable attorney's fees;

e. Exemplary damages;

f. Prejudgment and postjudgment interest as permitted by law;

g. Costs; and

h. Any other legal or equitable relief that Xavian may be entitled to recover.

DATED: September 11, 2018
New York, New York

Respectfully submitted,

XAVIAN INSURANCE COMPANY AND
XAVIAN HOLDINGS, INC.

By: *_/s/ Brendon DeMay_*
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