

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

GREAT AMERICAN INSURANCE
COMPANY,

Plaintiff,

-against-

ARCH REAL ESTATE HOLDINGS, LLC
JEFFREY SIMPSON, JARED CHASSEN,
WIGGIN AND DANA LLP, GRIFFIN LLP,
and OFFIT KURMAN PA,

Defendants.

Index No. 653208/2024

ANSWER TO INTERPLEADER
COMPLAINT PURSUANT TO
STATUTORY INTERPLEADER CPLR
§1006

Defendant Arch Real Estate Holdings, LLC (“AREH” or “Defendant”), by and through its undersigned counsel, for its Answer to the Complaint of plaintiff, Great American Insurance Company (“GAIC” or “Plaintiff”), hereby states as follows:

I. NATURE OF THE ACTION

1. This is an Interpleader-Action brought pursuant to C.P.L.R. § 1006 against the above captioned Interpleader Defendants.

AREH states that the allegations set forth in paragraph 1 of the Complaint are legal conclusions to which no response is required.

2. GAIC is the insurer of Interpleader-Defendant Arch, and its directors and officers, as defined by and pursuant to the terms and conditions of an Asset Management Liability Policy, Policy Number PEPE246619 (the “Policy”). The Policy contains an aggregate limit of liability of \$ 3 million. The Policy is annexed hereto as **Exhibit A**.

AREH refers the Court to the referenced documents for their complete contents and otherwise denies the allegations set forth in paragraph 2 of the Complaint, except admits that GAIC is the insurer of Arch Real Estate Holdings, LLC.

3. Interpleader-Defendants Simpson and Chassen have sought, and Simpson has been extended, coverage under the Policy as **Insureds**.¹ The Insureds are currently engaged in a lawsuit in New York County Supreme Court filed under Index No.158055/2023) (“The New York County Lawsuit”); the lawsuit concerns the corporate dissolution of Arch and the pleadings filed by Simpson and Chassen in the Lawsuit are annexed hereto as **Exhibit B**.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint, except admits that it is a party to the lawsuit and refers the Court to the referenced legal pleadings for their complete contents.

4. Interpleader-Defendant Griffin was retained as counsel to JJ Arch LLC, a member in interest of the **Insured** (Arch), and debtor in the pending Chapter 11 Bankruptcy filed in the Southern District of New York filed under 1:24-BK-10381 (referred to herein as the “SDNY Bankruptcy”). The initial Chapter 11 filing by Griffin in the SDNY Bankruptcy matter is annexed hereto as **Exhibit C**. As a result, Griffin has incurred fees that are potentially covered under the Policy.

AREH admits that JJ Arch LLC is the debtor in the SDNY Bankruptcy and that Interpleader-Defendant Griffin represented JJ Arch LLC in that proceeding as proposed counsel. However, AREH denies that Griffin was retained as counsel to JJ

¹ Unless otherwise specified, capitalized and bolded terms used in this Interpleader Action have the same meaning that is ascribed to them in the Policy, **Exhibit A**.

Arch LLC because the bankruptcy court never approved Griffin's retention.

AREH denies that Griffin incurred fees which are potentially covered under the Policy, and refers the Court to the referenced legal pleadings for their complete contents.

5. Interpleader-Defendant Wiggin was retained as counsel to JJ Arch LLC, a member in interest of the **Insured** (Arch), and debtor in the pending Chapter 11 SDNY Bankruptcy; Wiggin is also counsel to JJ Arch LLC in an adversarial proceeding stemming from the SDNY Bankruptcy; the adversarial proceeding was commenced under Index No. 1:24-AP-01335 (referred to herein as the "adversarial proceeding"). The Appearances by Wiggin in the SDNY Bankruptcy matter and the adversarial proceeding are annexed collectively hereto as **Exhibit D**. As a result, Wiggin has incurred fees that are potentially covered under the Policy.

AREH admits that JJ Arch LLC is the debtor in the SDNY Bankruptcy and that Interpleader-Defendant Wiggin represented JJ Arch LLC in that proceeding as proposed counsel. However, AREH denies that Wiggin was employed as counsel to JJ Arch LLC because the bankruptcy court never approved Wiggin's employment as required by 11 U.S.C. § 327. AREH denies that Wiggin incurred fees which are potentially covered under the Policy, and refers the Court to the referenced legal pleadings for their complete contents.

6. Interpleader-Defendant Offit is counsel to interested party Simpson, who is also a member of JJ Arch LLC, the debtor in the pending Chapter 11 SDNY Bankruptcy. The Notice of Appearance by Offit in the SDNY Bankruptcy matter is annexed hereto as **Exhibit E**. As a result, Offit has incurred fees that are potentially covered under the Policy.

AREH admits that JJ Arch LLC is the debtor in the SDNY Bankruptcy and that Interpleader-Defendant Offit represented Simpson in that proceeding. AREH denies that Offit incurred fees which are potentially covered under the Policy, and refers the Court to the referenced legal pleadings for their complete contents.

7. As discussed in detail below, GAIC faces competing demands from at least two **Insureds** (Simpson and Chassen), each seeking coverage for the Policy's remaining available **Limit of Liability**. At the time of this filing, factoring in **Costs of Defense** advanced on behalf of Simpson, the remaining limit of liability is \$2,105,999.29.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the complaint.

8. As an offer of compromise, GAIC offered to divide the remaining policy proceeds equally between Simpson and Chassen. Simpson rejected the proposal unequivocally and has threatened to sue GAIC if GAIC advances any **Costs of Defense** incurred on Chassen's behalf.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint.

9. Upon information and belief, Simpson's and Chassen's claims for **Costs of Defense**, along with any anticipated indemnity payments made to resolve the Lawsuit, as well as claims made by the additional Interpleader-Defendants (Griffin, Wiggin, Offit) will exceed the remaining Policy proceeds.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the complaint.

10. GAIC has initiated this Interpleader Action to resolve multiple and competing demands to the proceeds of the Policy by the Interpleader-Defendants, which may expose GAIC to liability. GAIC seeks relief from liability as an uninterested stakeholder by depositing the remaining sum of the policy to the Court, which can then be distributed pursuant to the Court's equitable findings and determinations for the claimants.

AREH states that the allegations set forth in paragraph 10 of the Complaint are legal conclusions to which no response is required.

II. JURISDICTION AND VENUE

11. This Court has jurisdiction over this controversy under C.P.L.R §§ 301, 302, and 1006. This is a New York State civil statutory interpleader action, involving the Policy, and is raised due to multiple claims on the Policy by Interpleader-Defendants whose residence and/or principal place of business is in the State of New York.

AREH states that the allegations set forth in paragraph 11 of the Complaint are legal conclusions to which no response is required.

12. Venue is proper in this county pursuant to C.P.L.R § 503, in that this Interpleader-Action is brought in the same venue as the underlying New York County Lawsuit, and in which a substantial part of the events giving rise to the claim occurred.

AREH states that the allegations set forth in paragraph 12 of the Complaint are legal conclusions to which no response is required.

13. Pursuant to C.P.L.R § 1006, this Court may issue its process for all claimants to the Policy and enter an Order restraining Interpleader-Defendants from instituting or prosecuting

any proceeding in any State or United States Court affecting GAIC's obligations under the Policy.

AREH states that the allegations set forth in paragraph 13 of the Complaint are legal conclusions to which no response is required.

III. PARTIES

14. Interpleader-Plaintiff, GREAT AMERICAN INSURANCE COMPANY, is an insurance corporation existing under the laws of the State of Ohio and with its principal place of business in the State of Ohio. GAIC issued the Policy in the State of New York.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the complaint.

15. Interpleader-Defendant, ARCH REAL ESTATE HOLDINGS LLC, is an **Insured** under the Policy and upon information and belief has its principal place of business in the State of New York.

AREH admits the allegations set forth in paragraph 15 of the Complaint.

16. Interpleader-Defendant, JEFFREY SIMPSON, is an **Insured Person** under the Policy, subject to GAIC's reservation of rights, and upon information and belief is a citizen of the State of New York.

AREH states that the allegations set forth in paragraph 16 of the Complaint are legal conclusions to which no response is required. To the extent a response is necessary, AREH denies the allegations set forth in paragraph 16 of the Complaint.

17. Interpleader-Defendant, JARED CHASSEN, is an **Insured Person** under the Policy, subject to GAIC's reservation of rights, and upon information and belief is a citizen of the State of New York.

AREH states that the allegations set forth in paragraph 17 of the Complaint are legal conclusions to which no response is required. To the extent a response is necessary, AREH denies the allegations set forth in paragraph 17 of the Complaint.

18. Interpleader-Defendant, WIGGIN AND DANA LLP, on information and belief may be entitled to the Policy proceeds in connection with its representation of an interested member of the Insured; it is a limited liability partnership with its principal place of business in the State of New York.

AREH denies that Interpleader-Defendant WIGGIN AND DANA LLP may be entitled to Policy proceeds, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 18 of the Complaint.

19. Interpleader-Defendant, GRIFFIN LLP, on information and belief may be entitled to the Policy proceeds in connection with its representation of an interested member of the **Insured**; it is a limited liability partnership with its principal place of business in the State of New York.

AREH denies that Interpleader-Defendant GRIFFIN LLP may be entitled to Policy proceeds, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 19 of the Complaint.

20. Interpleader-Defendant, OFFIT KURMAN PA, on information and belief may be entitled to the Policy Proceeds in connection with its representation of Simpson; it is a professional association with its principal place of business in the State of New York.

AREH denies that Interpleader-Defendant OFFIT KURMAN PA may be entitled to Policy proceeds, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 20 of the Complaint.

IV. THE POLICY

21. The Policy Period runs from April 18, 2023, to April 18, 2024. The Policy provides a \$3 million aggregate Limit of Liability. A true and correct copy of the Policy is attached to this Complaint as **Exhibit A**.

AREH refers the Court to the referenced documents for their complete contents.

22. Subject to its complete terms and conditions, the Policy provides specified coverage to **Insureds** for **Loss** (including **Cost of Defense** expenses) resulting from **Claims** first made during the **Policy Period** for **Wrongful Acts**. See Exhibit A, Section I(A)-(C) Insuring Agreements.

AREH refers the Court to the referenced documents for their complete contents.

23. Section V of the Policy's General Terms and Conditions states, "The **Insurer** shall be liable to pay one hundred (100%) of Loss in excess of the applicable **Retention** amount. . . **Costs of Defense** shall be part of, and not in addition to, the Limit of Liability . . . and such **Costs of Defense** shall reduce the Limit of Liability . . . The **Insurer's** liability for all Loss shall

be the amount shown in item 3 of the Declarations [\$3 million] *which shall be the maximum aggregate Limit of Liability of the Insurer for the Policy Period.*" (emphasis added).

AREH refers the Court to the referenced documents for their complete contents.

24. Section VII(C) of the Policy's General Terms and Conditions states, "[t]he **Insurer** shall advance on behalf of the **Insureds**, excess of any applicable **Retention**, covered **Costs of Defense** which the **Insureds** have incurred in connection with covered **Claims** . . . Any amounts advanced by the **Insurer** shall serve to reduce the **Limit of Liability** stated in Item 3 [\$3 million]."

AREH refers the Court to the referenced documents for their complete contents.

25. Section VII(E)((4) of the Policy's General Terms and Conditions states, "[t]he exhaustion of the **Limit of Liability** by the payment of **Loss**, and the resulting end of the **Insurer's** duty to pay on behalf of the **Insureds**, will not be affected by the **Insurer's** failure to comply with and of the provisions of this Policy."

AREH refers the Court to the referenced documents for their complete contents.

26. Therefore, when GAIC has paid \$3 million in **Loss**, it shall have no further obligations under the Policy to pay any further **Cost of Defense** expenses or indemnify any **Insured**.

AREH states that the allegations set forth in paragraph 26 of the Complaint are legal conclusions to which no response is required. To the extent a response is necessary, AREH denies the allegations set forth in paragraph 26 of the Complaint.

27. The Policy defines **Loss**, as “compensatory damages, settlements, pre-judgment interest, post-judgment interest and **Cost of Defense** “ See Definition Section III(N) of the Policy.

AREH refers the Court to the referenced documents for their complete contents.

28. The Policy defines **Cost of Defense**, as “reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any **Claim** “ See Definition Section III(B) of the Policy.

AREH refers the Court to the referenced documents for their complete contents.

29. The Policy defines **Wrongful Act**, as “any actual or alleged **Employment Practices Wrongful Act** or any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty, or any actual or alleged error or omission in the rendering of or the failure to render **Professional Services**: (1) by the **Insured Persons**, in their capacity as such; (2) with respect to Insuring Agreement (B)(2), by the **Insured Organization**; or (3) with respect to Insuring Agreement (C), by the **Insured Persons** while serving in an **Outside Position**.” See Definition Section III(Z) of the Policy.

AREH refers the Court to the referenced documents for their complete contents.

30. Lastly, The Policy states under Section IX(B), “insolvency or bankruptcy of the **Insureds** . . . shall not release the **Insurer** from the payment of . . . **Loss** or **Costs of Defense** occasioned during the life of and within the coverage of this Policy.”

AREH refers the Court to the referenced documents for their complete contents.

V. **THE NOTICED MATTERS**

31. The Interpleader-Defendants have provided notice of three related matters for coverage under the Policy, which collectively stem from the corporate dissolution of the **Insured** (Arch) and the claims and cross claims between Simpson and Chassen. The three related matters are:

- i. New York County Lawsuit with claims and cross claims by **Insureds**, subject to GAIC's reservation of rights, filed under Index No. 158055/2023, filed on August 15, 2023, (annexed as **Exhibit B**);
- ii. Chapter 11 SDNY Bankruptcy filed by a member in interest (JJ Arch LLC) of the **Insured** company (Arch) under Index No. 1:24-BK-10381, filed on March 7, 2024 (annexed as **Exhibit C**);
- iii. Chapter 11 SDNY Bankruptcy Adversary Proceeding filed by Simpson, a member in interest of the debtor JJ Arch LLC, seeking to remove the matter to New York County Supreme Court under Index No 1:24-AP-01335, filed on April 3, 2024 (annexed as **Exhibit D**). (the New York County Lawsuit, the Bankruptcy and Adversary Proceeding are referred to collectively as the "Noticed Matters").

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the complaint.

32. The Interpleader-Defendants, Simpson and Chassen, have sought and continue to seek from GAIC advancement of **Loss**, including **Cost of Defense** expenses, in connection with the Noticed Matters. It is anticipated that Interpleader-Defendants Wiggin, Griffin, and Offit will demand from GAIC advancement of Loss in connection with fees on behalf of the **Insured**'s connection with the Bankruptcy and Adversary Proceeding.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the complaint.

33. As of the date of the filing of this declaratory judgment action, GAIC has advanced \$894,000.71 in **Costs of Defense** incurred by Simpson connection with the Noticed Matters.

AREH denies the allegations set forth in paragraph 33 of the Complaint.

34. Chassen has requested, and GAIC has acknowledged partial coverage for Chassen in connection with **Costs of Defense** Chassen has incurred in connection with the Noticed Matters. Upon information and belief, Chassen's **Costs of Defense** total at least \$500,000.00.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the complaint.

35. In light of the payments already made on Simpson's behalf, \$2,105,999.29 remains of the Policy's Limit of Liability.

AREH denies the allegations set forth in paragraph 35 of the Complaint.

VI. CURRENT LAWSUIT AGAINST GAIC

36. On June 7, 2024, GAIC was named as a defendant in an action brought by Arch Real Estate Holdings, LLC ("Arch"), filed in New York County Supreme Court under Index No. 652914/2024; Plaintiff alleges that GAIC is wrongfully misappropriating the Policy proceeds in connection with the SDNY Bankruptcy matter and adversarial proceeding. Arch seeks a Judgment and Order stating, inter alia, that GAIC extended coverage related to these matters does not erode the Policy Limit, breach of the Policy contract, as well as damages. The Summons and Complaint are annexed hereto as **Exhibit F**.

AREH admits that GAIC was named as a defendant in the action filed in New York County Supreme Court under Index No. 652914/2024, and refers the Court to the referenced legal pleadings for their complete contents.

VII. JEFFREY SIMPSON'S DEMAND

37. In the New York County Lawsuit, Simpson alleges that Chassen illegitimately sought to remove him as the managing member of Arch Real Estate Holdings (**the Insured**). Simpson's claims include breach of contract related to the Arch Operating Agreement; breach of fiduciary duty; conversion; tortious interference with contractual relations; and he demands money damages in an amount to be determined at trial.

AREH refers the Court to the referenced legal pleadings for their complete contents.

38. As noted above, GAIC has acknowledged coverage for, and Simpson has incurred at least \$894,000.71 in **Costs of Defense** in connection with the Noticed Matters. Simpson has demanded that GAIC continue to advance **Costs of Defense** on his behalf, and has insisted that no Costs of Defense payments be made on behalf of Chassen.

AREH denies that Simpson has incurred at least \$894,000.71 in Costs of Defense, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 38 of the complaint.

VIII. JARED CHASSEN'S DEMAND

39. In the New York County Lawsuit, Chassen asserted cross claims alleging, inter alia, that Simpson's business missteps led to his forced resignation under the Arch Operating

Agreement, and that he breached his fiduciary duty as a member of Arch; that the Arch operating agreement is void; and he seeks compensatory and equitable relief.

AREH refers the Court to the referenced legal pleadings for their complete contents.

40. Chassen seeks coverage for at least \$500,000 in **Costs of Defense** incurred in connection with the Noticed Matters, and has demanded that GAIC continue to advance Chassen's going-forward **Costs of Defense**. GAIC has acknowledged partial coverage for Chassen under the Policy.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the complaint.

IX. ADDITIONAL CLAIMS TO THE POLICY PROCEEDS

41. GAIC anticipates that Simpson will seek to enjoin GAIC from advancing any **Costs of Defense** on behalf of Chassen, and that Chassen will in turn sue GAIC in order to obtain coverage if GAIC does not advance on behalf of Chassen.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the complaint.

42. Upon information and belief, one or more Interpleader-Defendants Wiggin, Griffin, and Offit, which provided attorney's services to JJ Arch LLC, a member in interest of the **Insured** (Arch), in relation to its Chapter 11 Bankruptcy filing and adversarial proceeding, may be entitled to recover incurred costs and fees that are potentially covered under the Policy.

AREH denies the allegations set forth in paragraph 42 of the Complaint.

43. GAIC anticipates receiving a claim for compensation by the Interpleader-Defendants, Wiggin, Griffin, and Offit, for **Costs of Defense** incurred on Simpson's and/or JJ Arch's behalf.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the complaint.

X. NEED FOR INTERPLEADER

44. As set forth above, GAIC is subject to inconsistent obligations with respect to the remaining Policy limits. Further, GAIC is the subject of a pending lawsuit brought by Arch for its extended coverage (see Exhibit F).

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the complaint, except admits that GAIC is the subject of a pending lawsuit brought by AREH.

45. The claims for the remaining Policy proceeds will be exhausted by the **Cost of Defense** incurred by Simpson and Chassen. GAIC cannot pay continued **Cost of Defense** expenses to both Simpson and Chassen without being exposed to additional lawsuits alleging that it favors the rights of one Insured Interpleader-Defendant over the rights of another Insured Interpleader-Defendant.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the complaint.

46. Likewise, GAIC cannot refuse to pay either Simpson's or Chassen's continued **Cost of Defense** without exposing GAIC to yet another lawsuit that it favors the rights of one Insured Interpleader-Defendant over the rights of another Insured Interpleader-Defendant.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the complaint.

FIRST CLAIM FOR RELIEF

(Statutory Interpleader Against All Interpleader-Defendants pursuant to C.P.L.R. § 1006)

47. GAIC incorporates by reference all of the preceding paragraphs of this complaint as if fully set forth herein.

AREH states that the allegations set forth in paragraph 47 of the Complaint are legal conclusions to which no response is required.

48. GAIC is a disinterested stakeholder in the Policy.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the complaint.

49. GAIC faces conflicting adverse claims with respect to the Policy's proceeds thereby exposing GAIC to multiple litigations and liability, absent resolution of all such issues in one proceeding.

AREH denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the complaint.

50. GAIC has available and is prepared to deposit the remaining policy proceeds with the Court, which is the Policy's remaining Limit of Liability.

AREH denies that the purported remaining policy proceeds are the Policy's remaining Limit of Liability, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the complaint.

51. It is just and equitable that the Court declare the rights and legal obligations of the Parties to this lawsuit.

AREH states that the allegations set forth in paragraph 51 of the Complaint are legal conclusions to which no response is required.

SECOND CLAIM FOR RELIEF

(Preliminary Injunction and Temporary Restraining Order pursuant to C.P.L.R. § 6301)

52. GAIC incorporates by reference all of the preceding paragraphs of this complaint as if fully set forth herein.

AREH states that the allegations set forth in paragraph 52 of the Complaint are legal conclusions to which no response is required.

53. Arch Real Estate Holdings LLC commenced a lawsuit against Great American Insurance Company in New York County Supreme Court under Index No. 652914/2024; Plaintiff alleges that GAIC is wrongfully misappropriating the Policy proceeds in connection with the SDNY Bankruptcy matter and adversarial proceeding.

AREH admits that GAIC was named as a defendant in the action filed in New York County Supreme Court under Index No. 652914/2024, and refers to the Court to the referenced documents for their complete contents.

54. As a result of this lawsuit, as well as other potential lawsuits by adverse claimants named herein, GAIC will suffer imminent and irreparable harm defending itself against this lawsuit; further, based on the circumstances alleged in this Interpleader-Complaint, GAIC can establish a probable chance of success on the merits of this Interpleader Complaint brought pursuant to C.P.L.R. § 1006; lastly, the balance of equities is in GAIC's favor because it has

committed to depositing the remaining policy proceeds with the Court until the priority of the adverse claimants are established.

AREH denies the allegations set forth in paragraph 54 of the Complaint.

55. Thus, it is just and equitable to enjoin Arch Real Estate Holdings LLC from proceeding in its prosecution of the lawsuit styled as Arch Real Estate Holdings LLC against Great American Insurance Company, New York County Supreme Court (Index No. 652914/2024); and also issuing a temporary restraining order enjoining all other named Interpleader-Defendants from commencing a lawsuit against GAIC with respect to the Policy proceeds.

AREH denies the allegations set forth in paragraph 55 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiff and/or Interpleader Defendants Jeffrey Simpson, Wiggin and Dana LLP, Griffin LLP, Offit Kurman PA, and any other party that intervenes in this action (together, “Other Interpleader Defendants”) fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff fails to place the full remaining Limit of Liability provided by the Policy at issue. Plaintiff cannot be discharged absent deposit of the full Policy limits.

THIRD AFFIRMATIVE DEFENSE

Interpleader is premature because the propriety of prior payments by Plaintiff of certain costs must be determined by the Court in related litigation filed by AREH in New York County Supreme Court under Index No. 652914/2024.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's attempt to deduct \$894,000.71 from the Limit of Liability provided by the Policy is barred as a voluntary payment. Plaintiff cannot be discharged absent deposit of the full Policy limits.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's and/or Other Interpleader Defendants' claims are barred by the doctrine of Res Judicata.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's and/or Other Interpleader Defendants' claims are barred by the doctrine of Collateral Estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's and/or Other Interpleader Defendants' claims are barred by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's and/or Other Interpleader Defendants' claims are barred by the doctrine of ratification.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's and/or Other Interpleader Defendants' claims are barred by the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

Plaintiff and/or Other Interpleader Defendants are not entitled to relief because such relief is barred by their own improper, unlawful and inequitable conduct, and unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's and/or Other Interpleader Defendants' claims are barred by the applicable statute of limitations.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's and/or Other Interpleader Defendants' claims are barred by the doctrine of waiver.

THIRTEENTH AFFIRMATIVE DEFENSE

Other Interpleader Defendants' claims fail for lack of standing and/or absence of privity of contract.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff cannot be discharged because it is subject to independent liability to AREH in the related litigation filed by AREH in New York County Supreme Court under Index No. 652914/2024.

AREH reserves the right to assert additional affirmative defenses as such are developed or determined during the course of this litigation.

COUNTERCLAIM

Defendant and Counterclaim Plaintiff AREH asserts as Counterclaim against Plaintiff and Counterclaim Defendant GAIC as follows.

NATURE OF THE ACTION

1. This Counterclaim concerns GAIC's improper refusal to provide insurance coverage to AREH with respect to a lawsuit styled *435 Central Condo Dev. Holdings LLC v. Midtown Oaks JV Holdings LLC*, No. 652392/2024 (Sup. Ct. N.Y. Cnty.) (the "435 Litigation"). In a related proceeding brought in this Court under Index No. 652914/2024, AREH seeks remedies with respect to voluntary payment of certain attorneys' fees incurred in connection with a bankruptcy, including seeking (i) a declaration that those payments do not reduce the available limits under the insurance policy GAIC issued to AREH, (ii) a declaration with respect to the total limits available under the insurance policy, and (iii) compensatory and consequential damages from GAIC caused by GAIC's wrongful voluntary payments and breaches of contract and duties to AREH.

THE PARTIES

2. AREH is a limited liability company that manages a large real estate portfolio. It has two members: JJ Arch LLC ("JJ Arch") and 608941 NJ Inc. ("Oak"). JJ Arch recently filed an unauthorized, bad faith chapter 11 bankruptcy in an effort to paralyze AREH's business operations and circumvent the orders of the Supreme Court of the State of New York, which allowed AREH to continue to operate, but were adverse to it and one of JJ Arch's purported principals, Jeffrey Simpson ("Simpson").

3. Upon information and belief, Counterclaim Defendant GAIC is a corporation organized and existing under the laws of the state of Ohio and its principal place of business is in Cincinnati, Ohio.

JURISDICTION AND VENUE

4. This Court has jurisdiction over GAIC pursuant to CPLR § 301 because GAIC was, at all relevant times, a corporation authorized to transact business in the State of New York and/or conducted continuous and substantial business in the State of New York.

5. Venue is proper in this county pursuant to CPLR § 503 because the Policy was issued in New York to a New York insured and the Policy provides that New York law governs the Policy.

FACTUAL BACKGROUND

A. AREH And Its Members

6. AREH is a real estate investment management, construction management, property management and development company.

7. Under AREH's operating agreement (the "AREH Operating Agreement"), AREH has two Members: (1) (Managing Member) JJ Arch; and (2) (Investor Member) Oak.

8. Under JJ Arch's operating agreement, JJ Arch has two Members: (Managing Member) Jeffrey Simpson ("Simpson"); and Jared Chassen ("Chassen").

9. AREH, through several single purpose limited liability companies, manages a portfolio of real estate investments.

10. In addition to its status as an AREH member, Oak has invested \$50 million in properties/projects managed by AREH and has issued guarantees on loans related to these properties and projects.

B. GAIC's Policy With AREH

11. GAIC sold an Asset Management Liability Solution Policy No. PEPE246619 (defined herein as the "Policy"), to AREH. The Declarations page for the Policy lists Arch Real

Estate Holdings, LLC as the Named Insured. A true and correct copy of the Policy is attached hereto as Exhibit A.

12. The Policy is a contract as between GAIC and AREH, and it sets forth the terms and conditions that the parties agreed to follow.

13. The Policy is a “Claims Made” Policy with a policy period of April 18, 2023, to April 18, 2024.

14. The Policy has a \$3 million aggregate limit of liability, subject to a \$150,000 Retention for each Claim first made during the Policy Period under Insuring Agreement B, and no Retention for any Claim first made during the Policy Period under Insuring Agreements A and C.

15. The Policy’s insuring agreements provide, in part, that:

- A. Except for Loss which the insurer pays pursuant to [Insuring Agreement B or C] of this Policy, the Insurer will pay on behalf of the Insured Persons all Loss which the Insured Persons become legally obligated to pay ... for a Wrongful Act.
- B. The Insurer will pay on behalf of the Insured Organization:
 - (1) Loss which the Insured Persons become legally obligated to pay as a result of a Claim but only to the extent an Insured Organization is permitted or required to indemnify such Insured Persons; or
 - (2) Loss which the Insured Organization becomes legally obligated to pay as the result of a Claim ... for a Wrongful Act.

16. AREH is an “Insured Organization” under the Policy.

17. The Policy provides that the “Insurer shall be liable to pay one hundred percent (100%) of Loss in excess of the applicable Retention amount . . . up to the Limit of Liability stated in Item 3 of the Declarations.”

18. The term “Loss” is defined to include:

[C]ompensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, SOX 304/Dodd-Frank 954 Costs, Investigative

Costs, settlements, pre-judgment interest, post-judgment interest and Costs of Defense.

19. The Policy defines “Costs of Defense” as “reasonable legal fees, costs and expenses (including but not limited to attorneys, experts, consultants, mediator and arbitrator fees, costs and expenses, document production fees and expenses) incurred in the investigation, defense or appeal of any Claim including the costs of an appeal bond, attachment bond or similar bond (but without obligation on the part of the Insurer to apply for or furnish such bonds); provided, however, Costs of Defense shall not include salaries, wages, overhead or benefit expenses associated with any Insured Persons.”

20. The Policy further specifies that GAIC “shall advance on behalf of the Insureds, excess of any applicable Retention, covered Costs of Defense which the Insureds have incurred in connection with covered Claims made against them prior to disposition of such Claims and within ninety (90) days of receipt and review of the invoices containing such Insured’s Costs of Defense, provided that to the extent it is finally established that any such Costs of Defense are not covered under this Policy, the Insureds, severally according to their relative interests, agree to repay the Insurer such noncovered Costs of Defense. Any amounts advanced by the Insurer shall serve to reduce the Limit of Liability stated in Item 3 of the Declarations [\$3 million] to the extent they are not in fact repaid.”

21. Thus, “Costs of Defense” must be legal fees and other sums incurred by an actual Insured for costs of investigating, defending, or appealing a claim.

22. The Policy provides that all Claims, including potential future lawsuits, “involving the same Wrongful Act or Interrelated Wrongful Acts of one or more Insureds shall be considered a single Claim....” In such circumstance, “[a]ll such Claims constituting a single Claim shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any

such Claim was first made; or (2) the earliest date on which any such Wrongful Act or Interrelated Wrongful Acts was [sic] reported under this Policy or any other policy providing similar coverage.”

23. “Interrelated Wrongful Acts” include “Wrongful Acts which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.”

24. Therefore, litigation which arises out of a covered situation alleging Wrongful Acts and noticed to GAIC under the Policy, Loss (including Costs of Defense) incurred in connection with such litigation would be covered by the Policy and compensable through the available limits remaining in the Policy, even if the litigation arose after the expiration of the policy period.

C. Underlying Litigation Between AREH’s Members

25. Over the last several years, AREH and certain underlying properties have faced financial difficulties due to the actions of JJ Arch and JJ Arch’s then-Managing Member, Simpson. Disputes have arisen between AREH’s members (JJ Arch and Oak) as well as between JJ Arch’s members (Simpson and Chassen) and between Oak and Simpson.

26. In August 2023, Simpson filed a civil proceeding styled *Jeffrey Simpson, individually and derivatively, as managing member of JJ Arch LLC, suing derivatively as managing member of Arch Real Estate Holdings LLC and JJ Arch LLC, v. Jared Chassen, et al.*, Index No. 158055/2023, pending in the Supreme Court of the State of New York, County of New York (the “Simpson Action”). The Simpson Action involved internal corporate governance disputes between JJ Arch’s members regarding who rightfully controlled and remained a member of JJ Arch. A true and correct copy of the Summons and Complaint in the Simpson Action is attached hereto as Exhibit B.

27. Because of Simpson's actions and the effect the turmoil at JJ Arch was having on AREH, Oak subsequently intervened in the Simpson Action and filed a complaint alleging various causes of action against Simpson and JJ Arch, including breach of fiduciary duty, breach of contract, tortious interference with contract, tortious interference with prospective business advantage, defamation, fraud, declaratory judgment, equitable accounting, and derivative claims on behalf of AREH for breach of fiduciary duty. These claims centered around the mismanagement of AREH and the underlying properties. A true and correct copy of the Oak Complaint in the Simpson Action is attached hereto as Exhibit C.

28. Upon information and belief, GAIC has covered Simpson under the terms of the AREH Policy for some or all of the costs and attorneys' fees incurred in connection with the Simpson Action.

29. Since November 3, 2023, Oak has served as AREH's acting managing member by order of this Court. Neither Simpson nor JJ Arch has authorization to manage AREH or unilaterally deny consent to a Major Decision, although JJ Arch remains a member, pending resolution of the Simpson Action.

D. GAIC's Failure To Cover Other Insured Claims

30. AREH now has been named a defendant in a lawsuit that arises out of Simpson's mismanagement of the subject property and its eventual foreclosure involving a loan and property that were subject to an agreement in principle that was thwarted by the stay and prohibitions created by a voluntary chapter 11 bankruptcy petition filed by JJ Arch. Griffin LLP filed the petition on JJ Arch's behalf. Upon information and belief, GAIC funded the bankruptcy filing.

31. On May 3, 2024, a lawsuit was filed against AREH, styled *435 Central Condo Dev. Holdings LLC v. Midtown Oaks JV Holdings LLC*, No. 652392/2024 (Sup. Ct. N.Y. Cnty.). A true

and correct copy of the Complaint in that lawsuit (i.e. the 435 Litigation) is attached hereto as Exhibit D.

32. The 435 Litigation alleges that AREH, as well as Mr. Jeffrey Simpson, are liable for alleged Wrongful Acts in connection with certain properties located in Brooklyn, New York. In particular, the 435 Litigation alleges that AREH was complicit in the mismanagement of those properties.

33. These alleged Wrongful Acts are logically and causally connected by reason of common fact, circumstance, situation, transaction, casualty, event, and decision to those alleged Wrongful Acts underlying matters previously noticed pursuant to the Policy terms, including the Simpson Action.

34. Upon information and belief, GAIC has acknowledged its coverage obligations for those Wrongful Acts and already agreed to provide coverage with respect to the Simpson Action.

35. On July 5, 2024, AREH sent to GAIC notice of the 435 Litigation, along with copies of the Complaint. A true and correct copy of that notice is attached as Exhibit E.

36. To date, GAIC has provided no response to AREH's notice of claim and has not acknowledged its coverage obligations for the 435 Litigation.

37. GAIC has refused to make any coverage determination with respect to AREH's claim arising out of the 435 Litigation and failed to include AREH's claim in this Interpleader Action.

38. AREH has incurred Costs of Defense in connection with the 435 Litigation that are covered by the Policy and due and owing.

39. GAIC has breached its obligations under the Policy and New York law to timely acknowledge coverage for the 435 Litigation.

**FIRST CAUSE OF ACTION
(Declaratory Judgment)**

40. AREH repeats and realleges all the foregoing allegations as though fully set forth herein.

41. Pursuant to the terms of the Policy and GAIC's own admission, the allegations of Wrongful Acts underlying the Simpson Action fall within the coverage provided by the GAIC insurance policy. The Wrongful Acts alleged in the 435 Litigation constitute Interrelated Wrongful Acts as that term is defined in the Policy.

42. AREH is entitled to coverage for Loss, including Costs of Defense, arising from the alleged Wrongful Acts, including with respect to the defense of the allegations made in the 435 Litigation.

43. The Policy does not contain any exclusions or other restrictions that limit the coverage available for any Loss in connection with the 435 Litigation.

44. AREH has timely provided notice of the claim and has otherwise complied with all obligations, conditions, and requirements under the terms of the Policy.

45. GAIC has not amended its Interpleader Complaint or otherwise included AREH's claim with respect to the 435 Litigation in this Interpleader action.

46. An actual and justiciable controversy has arisen between AREH and GAIC with respect to whether AREH is entitled to coverage for the 435 Litigation.

47. AREH is entitled to a declaration by the Court that the Policy provides insurance coverage for AREH's Loss, including Costs of Defense and any future settlement or judgment, pursuant to the terms of the Policy in connection with the 435 Litigation and that AREH's Loss must be paid from Policy proceeds.

PRAYER FOR RELIEF

WHEREFORE, AREH demands judgment against GAIC as follows:

1. On the First Cause of Action, AREH requests:
 - a. A declaration that the GAIC Policy covers AREH with respect to Loss in connection with the 435 Litigation and that AREH's Loss must be paid from the Policy proceeds;
 - b. Reasonable attorneys' fees and costs incurred herein;
 - c. Costs of suit incurred herein; and
 - d. Any such other and further relief as the court may deem proper.

DEMAND FOR JURY TRIAL

AREH hereby demands a trial by jury on all issues so triable.

Dated: New York, New York
August 30, 2024

OLSHAN FROME WOLOSKY LLP

By: /s/ Jeremy M. King

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