

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

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GREAT AMERICAN INSURANCE COMPANY,)
)
) Index No.: 653208/2024
Interpleader-Plaintiff,)
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)
-against-)
)
ARCH REAL ESTATE HOLDINGS, LLC, JEFFREY)
SIMPSON, JARED CHASSEN, WIGGIN AND DANA)
LLP, GRIFFIN LLP, and OFFIT KURMAN PA,)
)
)
)
Interpleader-Defendants.)
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JARED CHASSEN, individually, and derivatively on)
behalf of JJ ARCH LLC,)
)
)
Interpleader-Defendant/Counter-Claim Plaintiff,)
)
)
-against-)
)
GREAT AMERICAN INSURANCE COMPANY,)
)
)
Interpleader-Plaintiff/Counter-Claim Defendant)
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AMENDED ANSWER WITH COUNTERCLAIMS

Interpleader-Defendant Jared Chassen (“Chassen”), by and through his undersigned counsel, for his answer and for his counterclaims, individually and derivatively on behalf of JJ Arch LLC (“JJ Arch”), against Great American Insurance Company (“GAIC”) alleges 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.

Answer: Chassen admits the allegation.

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**.

Answer: Chassen refers the Court to the original documents for their true contents, and otherwise denies the allegations.

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**.

Answer: Chassen admits that Simpson was extended coverage under the Policy, that Chassen was approved for coverage under the Policy, and that they Simpson and Chassen have been engaged in the New York County Lawsuit and refers the Court to the pleadings in that proceeding for their true contents, and otherwise denies the allegations.

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.

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**.

Answer: Chassen admits that JJ Arch LLC was a debtor in the SDNY Bankruptcy and that Interpleader-Defendant Griffin purported to appear as counsel to JJ Arch LLC in that proceeding, but denies that Griffin was counsel to JJ Arch LLC, or that Griffin's fees are potentially covered under the Policy. Chassen refers the Court to the original documents for their true contents, and otherwise denies the remaining allegations.

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.

Answer: Chassen admits that JJ Arch LLC was a debtor in the SDNY Bankruptcy and that Interpleader-Defendant Wiggin purported to appear as counsel to JJ Arch LLC in the SDNY Bankruptcy and the adversary proceeding, but denies that Wiggin was counsel to JJ Arch LLC, or that Wiggin's fees are potentially covered under the Policy. Chassen refers the Court to the original documents for their true contents, and otherwise denies the remaining allegations.

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.

Answer: Chassen admits that Interpleader-Defendant Offit appeared in the SDNY Bankruptcy on behalf of Simpson, or that Offit's fees are potentially covered under the Policy, refers the Court to the original documents for their true contents, and otherwise denies the remaining allegations.

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.

Answer: Chassen admits that GAIC faces demands under the Policy from Chassen and Simpson, and otherwise denies the allegations.

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.

Answer: Chassen admits the allegations.

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.

Answer: Chassen lacks information sufficient to form a belief as to the truth of the allegations.

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.

Answer: The allegations in paragraph 10 are legal conclusions for which no responsive pleading 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.

Answer: The allegations in paragraph 11 are legal conclusions for which no responsive pleading 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.

Answer: The allegations in paragraph 12 are legal conclusions for which no responsive pleading 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.

Answer: The allegations in paragraph 13 are legal conclusions for which no responsive pleading 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.

Answer: Chassen lacks information sufficient to form a belief as to the truth of the allegations.

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.

Answer: The allegations in paragraph 15 as to ARCH REAL ESTATE HOLDINGS LLC's legal status as an Insured under the Policy is a legal conclusion for which no responsive pleading is required. Further, Chassen refers the Court to the Policy for its true contents and otherwise denies the allegations, except that he admits that ARCH REAL ESTATE HOLDINGS LLC has its principal place of business in the State of New York.

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.

Answer: The allegations in paragraph 16 as to JEFFREY SIMPSON's legal status as an Insured under the Policy is a legal conclusion for which no responsive pleading is required. Further, Chassen refers the Court to the Policy for its true contents and otherwise denies

the allegations, except that he admits that JEFFREY SIMPSON is a citizen of the State of New York.

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.

Answer: The allegations in paragraph 17 as to Chassen's legal status as an Insured under the Policy is a legal conclusion for which no responsive pleading is required. Further, Chassen refers the Court to the Policy for its true contents, and otherwise admits that he is an Insured under the Policy, and that he is a citizen of the State of New York.

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.

Answer: The allegations in paragraph 18 as to WIGGIN AND DANA LLP's entitlement to policy proceeds is a legal conclusion for which no responsive pleading is required. Further, Chassen refers the Court to the Policy for its true contents, lacks information to form a belief about WIGGIN AND DANA LLP's principal place of business, and otherwise denies the allegations.

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.

Answer: The allegations in paragraph 19 as to GRIFFIN LLP's entitlement to policy proceeds is a legal conclusion for which no responsive pleading is required. Further, Chassen refers the Court to the Policy for its true contents, lacks information to form a belief about GRIFFIN LLP's principal place of business, and otherwise denies the allegations.

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.

Answer: The allegations in paragraph 20 as to OFFIT KURMAN PA's entitlement to policy proceeds is a legal conclusion for which no responsive pleading is required. Further, Chassen refers the Court to the Policy for its true contents, lacks information to form a belief about OFFIT KURMAN PA's principal place of business, and otherwise denies the allegations.

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**.

Answer: Chassen refers the Court to the original document for its true 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.

Answer: Chassen refers the Court to the original document for its true 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).

Answer: Chassen refers the Court to the original document for its true 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]."

Answer: Chassen refers the Court to the original document for its true 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."

Answer: Chassen refers the Court to the original document for its true 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**.

Answer: Chassen refers the Court to the original document for its true contents.

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.

Answer: Chassen refers the Court to the original document for its true 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.

Answer: Chassen refers the Court to the original document for its true 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.

Answer: Chassen refers the Court to the original document for its true 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.”

Answer: Chassen refers the Court to the original document for its true 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").

Answer: Chassen admits that he has provided notice of the three related matters, but otherwise lacks information sufficient to form a belief as to the truth of the allegations.

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.

Answer: Chassen admits that he has sought and continues to seek from GAIC advancement of Loss, including Cost of Defense expenses, in connection with the Noticed Matters, and otherwise lacks information sufficient to form a belief as to the truth of the allegations.

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.

Answer: Chassen denies the allegations.

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.

Answer: Chassen admits the allegations.

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

Answer: Chassen denies the allegations.

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**.

Answer: Chassen refers the Court to the original document for its true 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.

Answer: Chassen refers the Court to the original document for its true 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.

Answer: Chassen denies that Simpson has incurred the amount of \$894,000.71 in Costs of Defense, and otherwise admits the allegations.

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.

Answer: Chassen refers the Court to the original document for its true contents and otherwise denies the allegations.

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.

Answer: Chassen admits the allegations.

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.

Answer: Chassen lacks information sufficient to form a belief as to the truth of the allegations in paragraph 41.

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.

Answer: Chassen denies the allegations.

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.

Answer: Chassen lacks information sufficient to form a belief as to the truth of the allegations in paragraph 41, except admits that Offit has sought compensation in this proceeding.

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).

Answer: Chassen lacks information sufficient to form a belief as to the truth of the allegations in paragraph 44, and otherwise refers the Court to the original document for its true contents.

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.

Answer: Chassen lacks information sufficient to form a belief as to the truth of the allegations in paragraph 45.

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.

47. **Answer: Chassen lacks information sufficient to form a belief as to the truth of the allegations in paragraph 46.**

FIRST CLAIM FOR RELIEF

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

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

Answer: This allegation does not require a responsive pleading, but to the extent such response is required, the allegations are denied.

49. GAIC is a disinterested stakeholder in the Policy.

Answer: This allegation does not require a responsive pleading, but to the extent such response is required, the allegations are denied.

50. 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.

Answer: Chassen lacks information sufficient to form a belief as to the truth of the allegations in paragraph 49.

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

Answer: Chassen lacks information sufficient to form a belief as to the truth of the allegations in paragraph 50.

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

Answer: This allegation states a legal conclusion for which no responsive pleading is required, but to the extent a responsive pleading is required, the allegations are denied.

SECOND CLAIM FOR RELIEF

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

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

Answer: This allegation does not require a responsive pleading, but to the extent such response is required, the allegations are denied.

54. 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.

Answer: Chasen refers the Court to the original document for its true contents.

55. 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.

Answer: This allegation states a legal conclusion for which no responsive pleading is required, but to the extent a responsive pleading is required, the allegations are denied.

56. 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.

Answer: This allegation states a legal conclusion for which no responsive pleading is required, but to the extent a responsive pleading is required, the allegations are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Chassen has viable claims against GAIC which cannot and should not be enjoined and which Chasen may assert against GAIC, including for, inter alia, aiding and abetting breach of fiduciary duty, tortious interference with contract, bad-faith, and declaratory relief.

Second Affirmative Defense

Plaintiff's claims fail because of a defense based on documentary evidence.

Third Affirmative Defense

Plaintiff's claims fail because of its unclean hands.

Fourth Affirmative Defense

Plaintiff's claims fail because the payments to Simpson for the JJ Arch LLC bankruptcy were voluntary payments and do not qualify towards the limits of the Policy.

Fifth Affirmative Defense

Plaintiff's claims fail because the payments to Simpson for the JJ Arch LLC bankruptcy were unlawful.

Sixth Affirmative Defense

Plaintiff's claims fail without placing the full remaining Limit of Liability provided by the Policy. Any payments made in connection with the bankruptcy were voluntary payments. Plaintiff cannot be discharged without placing the full amount into the Court.

Seventh Affirmative Defense

Plaintiff's claims are premature until the adjudication of the claims in the litigation between Simpson and Chassen.

Eighth Affirmative Defense

Plaintiff's claims are barred by the doctrine of res judicata and collateral estoppel.

Ninth Affirmative Defense

Plaintiff's claims are barred by the doctrine of ratification.

Tenth Affirmative Defense

Plaintiff's claims are barred by the doctrine of laches.

Eleventh Affirmative Defense

Plaintiff's claims are barred by the doctrine of waiver.

Twelfth Affirmative Defense

Plaintiff's claims fail for lack of standing.

Thirteenth Affirmative Defense

Plaintiff's claims fail because it is not a disinterested stakeholder but has instead favored Simpson, including, but not limited to, by funding the bad-faith JJ Arch LLC bankruptcy.

Chassen reserves the right to assert additional affirmative defenses as such are developed or determined during this litigation. In the event the Court grants Plaintiff the right to interplead the funds, Chassen intends to assert claims to those funds and to contest claims to those funds by the interpleader defendants.

VERIFIED COUNTER-CLAIMS

Interpleader Defendant Jared Chassen (“Chassen”), individually and derivatively on behalf of JJ Arch LLC (“JJ Arch”) by and through his undersigned counsel, alleges the following counterclaims against Plaintiff Great American Insurance Company (“GAIC”):

I. Introduction

1. Chassen seeks to recover against GAIC for aiding and abetting breaches of fiduciary duty by Jeffrey Simpson (“Simpson”) in connection with the Chapter 11 bankruptcy filing Simpson purported to file on behalf of JJ Arch, for tortiously interfering with Chassen’s rights under the JJ Arch LLC Operating Agreement and court orders, and for acting in bad faith towards Chassen by favoring Simpson over Chassen. The JJ Arch bankruptcy was filed in defiance of court orders, in breach of Simpson’s fiduciary duties, and in violation of Chassen’s contractual rights under the JJ Arch Operating Agreement.

2. Simpson’s bankruptcy filing has now been adjudged by the bankruptcy court to have been filed in subjective and objective bad faith and to have caused a substantial or continuing loss to or diminution to JJ Arch. *In re JJ Arch LLC*, 2024 Bankr. LEXIS 2505, at *35-53 (Bankr. S.D.N.Y. Oct. 11, 2024) (dismissing bankruptcy for, inter alia, bad faith and gross mismanagement).

3. While determining that JJ Arch was not entitled to coverage, GAIC knowingly induced and participated in the Simpson’s breach of fiduciary duty, and gave Simpson substantial assistance, by paying for and assisting in the JJ Arch bankruptcy, and tortiously interfered with Chassen’s consent rights under the JJ Arch LLC Operating Agreement because it was aware of those rights and the court orders in the Corporate Control Action and intentionally procured Simpson’s breach of his contractual obligations. GAIC, in fact, reviewed and approved

Simpson's bankruptcy filing before Simpson filed it. Indeed, GAIC and Simpson hatched the bad-faith bankruptcy in full collaboration with each other.

4. Chassen also seeks a declaratory judgment that any payments by GAIC towards the bad-faith bankruptcy were not legitimate Costs of Defense; instead, they constitute voluntary payments that do not count towards the policy limits.

II. Parties

5. Chassen is a member of JJ Arch, which in turn is a member of Arch Real Estate Holdings, LLC ("AREH"), the Named Insured under an insurance policy issued by GAIC. Until November 2023, JJ Arch acted as the managing member of AREH, which, in turn, manages a large real estate portfolio. The other member of JJ Arch is Simpson.

6. AREH, for its part, has two members, 608941 NJ LLC ("Oak") and JJ Arch. Since November 2023, and pursuant to court order, Oak has acted as managing member of AREH, with Chassen authorized and empowered to consent on behalf of JJ Arch for Major Decisions made by AREH.

7. GAIC is an insurance company which provided insurance coverage to AREH under Policy Number PEPE246619 in the total amount \$3,000,000.00, inclusive of Costs of Defense (the "Policy"). The Policy was a "claims made" policy with a policy period between April 18, 2023 and April 14, 2024.

III. The GAIC Policy's Coverage Terms

8. AREH is the Named Insured under the Policy.

9. The Policy provides coverage in Section I as follows:

- A. Except for Loss which the Insurer pays pursuant to Sections I.B and I.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 as a result of a Claim first made during the Policy Period or Discovery Period, if applicable, 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 by law to indemnify such Insured Persons;
- (2) Loss which the Insured Organization becomes legally obligated to pay as a result of a Claim; provided that such Claim is first made during the Policy Period or Discovery Period, if applicable, for the Wrongful Act.

C. Except for Loss which the Insurer pays pursuant to Sections 1.A and I.B and subject to all of this Policy's terms and conditions, the Insurer will pay on behalf of the Insured Persons serving in an Outside Position all Loss which the Insured Persons become legally obligated to pay as a result of a Claim first made against the Insured Persons during the Policy Period or Discovery Period, if applicable, for a wrongful act.

Id.

10. The Policy defines an "Insured Person" to mean, in relevant part, either:

- (1) any natural person who was, is, or shall become a director, officer, general partner, manager, managing member, member of the board of managers, management committee member, equivalent executive or employee (including any part-time, seasonal, temporary or leased employees) of an Insured Organization.

- (4) any natural person other than a director, officer, general partner, manager, equivalent executive or employee; provided, however, the Insured Organization has agreed to indemnify such natural person for any Wrongful Act(s).

Id. at III.J.

11. "Insured Organization" means "the Named Insured and any Operating Entity.

Insured Organization shall not include any Portfolio Company." *Id.* at Section III.I. The "Named Insured" is the "entity named in Item of the Declarations," i.e., AREH. *Id.* at Section III.O.

12. "Operating Entity," in turn, means "any Organization (including any Investment Fund and its General Partner(s)) created or acquired prior to or during the Policy Period of which an Insured or several Insureds collectively possess, directly or indirectly, the power to control, manage or direct by reason of an Insured's: (1) ownership of greater than 50% voting securities

in such Organization; (2) right to elect or appoint” control persons, or (3) rights pursuant to a written agreement governing “such Organization.” *Id.* at III.Q. The definition of “Insured” means “the Insured Persons and the Insured Organization.” *Id.* at III.K.²

13. The Policy provides that while an “Operating Entity” includes “any entity . . . formed to hold a direct or indirect interest in a Portfolio Company,” it does not include “any Organization created or acquired by any Insured Person(s) where such Organization: (i) was not created or established in connection with or to support an Investment Fund; and (ii) the Named Insured is not responsible for the financial reporting and tax filings of such Organization.”³ In any event, an Operating Entity that was formed to hold a Portfolio Company is excluded from the definition of “Insured Organization” as provided in Section III.I.

14. The Policy defines “Loss” to include “Costs of Defense.” *Id.* at III.N. “Costs of Defense” include “reasonable legal fees, costs, and expenses incurred in the investigation, defense, or appeal of any Claim . . .” *Id.* at III.B. “Claim,” in turn, means, *inter alia*, “a written demand for momentary, non-monetary, or injunctive relief against an Insured . . . or civil proceeding . . . against any Insured . . . commenced by . . . complaint . . .” *Id.* at III.A.

² Thus, the definition of “Insured Organization” incorporates the definition of the term “Insured,” but the term “Insured” is itself defined by reference to “Insured Organization.”

³ “Investment Fund” means “an Organization which is created or established prior to or during the Policy Period by an Insured Organization consisting of a sum of money whose principal is invested pursuant to the objectives set forth in such Organization’s private placement, prospectus, or similar document.” *Id.* at III.M.

A “Portfolio Company” means any entity in which any Investment Fund has or had or proposes to have a financial interest pursuant to the investment objections set forth in any private placement memorandum, prospectus or similar document issued by an Insured Organization” or “any entity in which an Insured Organization other than an Investment Fund has or had or proposes to have a financial interest provided that such financial interest was acquired in connection with an investment in such entity by an Investment Fund.” *Id.* at III.U.

IV. The JJ Arch Corporate Control Litigation

15. In early August 2023, both of JJ Arch's members, Simpson and Chassen, attempted to forcibly resign each other.

16. With Chassen in control of JJ Arch, on August 15, 2023, Simpson commenced an action in New York County Supreme Court at Index No. 158055/2023 against Chassen, and sought, *inter alia*, injunctive relief to restore him to membership and managerial control (the "**Corporate Control Action**"). Chassen, in turn, asserted counterclaims seeking, *inter alia*, a declaratory judgment removing Simpson from JJ Arch.

17. On August 21, 2023, the Court issued an Order Regarding Interim Operating Procedures which among other things ruled that "the August 2023 instruments sent by Simpson and Chassen to the other purportedly resigning or terminating the other as member or managing member of JJ Arch are hereby void and of no force or effect." Corporate Control Action, NYSCEF No. 36.

18. The Court also ordered that during the pendency of the proceeding "the business, affairs, and assets of JJ Arch shall be managed by Simpson, subject to the limitations set forth in Section 3.2 of the JJ Arch Operating Agreement, which provides among other things that any Company Major Decision, as defined in the JJ Arch Operating Agreement, shall be undertaken only with the prior written consent of Chassen." *Id.* One of those Company Major Decisions requiring Chassen's consent was the decision to file bankruptcy. *Id.* at NYSCEF No. 395, Amended JJ Arch Operating Agreement at § 3.2(b). The Court further directed them to cooperate in good faith in their respective roles. *Id.* at NYSCEF No. 36.

19. On September 1, 2023, days after being expressly directed to cooperate in good faith with Chassen, Simpson again purported to terminate Chassen and shut off his access to company systems, and his bank account viewing access. *Id.* at NYSCEF No. 87. On September

15, 2023, the Court ordered that Simpson “shall reinstate Chassen” and that “neither Simpson nor Chassen shall purport to terminate or ‘resign’ the other from membership in the company without court permission.” *Id.* at NYSCEF No. 86, Sept. 15, 2023 Signed Order to Show Cause. The Court expressly reiterated that its “Order Regarding Interim Operating Procedures (NYSCEF 36) remains in effect.” *Id.*

20. On September 29, 2023, the Court granted Simpson’s motion to be restored as managing member, in part, “to the extent set forth in the Court’s Interim Order (NYSCEF 36) and Order to Show Cause entered in Mot. Seq. 003 (NYSCEF 86), which shall remain in effect until further Order of the Court.” *Id.* at NYSCEF No. 159.

21. On November 22, 2023, the Court granted a preliminary injunction which provided that “Simpson’s [September 1, 2023] purported termination letter to Chassen is void and shall not take effect.” *Id.* at NYSCEF No. 419, Nov. 22, 2023 Decision and Order. Further, “Simpson and Chassen are enjoined from unilaterally seeking to terminate or force the resignation of the other member without permission of the Court.” *Id.* The Court again expressly reiterated that its “Order Regarding Interim Operating Procedures (NYSCEF 36) remains in effect.” *Id.*

22. On October 17, 2023, AREH’s investor member, Oak, intervened in the Corporate Control Action and filed an emergency application seeking to appoint a temporary receiver over JJ Arch, submitting evidence showing that Simpson had engaged in rampant breaches of fiduciary duty and misappropriation of assets and detailing the dire state affairs at AREH, with numerous loans defaulting as a result of Simpson’s misconduct. *Id.* at NYSCEF Nos. 225-266. By virtue of CPLR 6401 and Oak’s application for a temporary receiver, Oak was joined as a party to the action.

23. On October 31, 2023, Oak delivered JJ Arch a notice that it was terminating JJ Arch as the managing member of AREH pursuant to Section 7.1.4 of the AREH Operating Agreement for numerous Cause Events. *Id.* at NYSCEF No. 303. On November 3, 2023, Oak moved for a temporary restraining order and preliminary injunction barring JJ Arch from acting as managing member of AREH and enforcing the removal. *Id.* at NYSCEF Nos. 296-318.

24. On November 3, 2023, the Court entered a temporary restraining order that provided “pending the hearing of this Order to Show Cause, Defendants be, and they hereby are, restrained and enjoined from acting as the managing member of AREH.” *Id.* at NYSCEF No. 321. On November 22, 2023, the Court issued an Amended Decision and Order which enjoined Simpson and JJ Arch from, among other things, “[d]enying prompt consent to any Major Decision proposed by Oak as Managing Member under Section 7.1.3 of the Operating Agreement unless both JJ Arch members (Jeffrey Simpson and Jared Chassen) jointly agree to deny such consent (or alternatively, either JJ Arch member may convey consent) . . . *Id.* at NYSCEF No. 418.

V. GAIC Gave Simpson the Green Light and Funding to Put JJ Arch into Bankruptcy in Breach of His Fiduciary Duties

25. On or about November 22, 2023, GAIC provided coverage to Simpson under the Policy finding that Simpson qualified as the de facto managing member of AREH by virtue of his role as managing member of JJ Arch. GAIC expressly denied coverage to JJ Arch. In late 2023, Chassen sought coverage under the Policy, which GAIC approved on or about April 25, 2024.

26. After receiving an adverse ruling on his motion to vacate the removal of JJ Arch as managing member of AREH, on February 12, 2024 Simpson sent an email to the Deputy Chief Administrative Judge of the New York City Courts attacking the court.

27. On February 21, 2024, Simpson filed an emergency application to the Appellate Division, First Department seeking to stay that part of the injunction that allowed Chassen to consent on behalf of JJ Arch to Major Decisions made by AREH. *See* Appeal No. 2024-01021. After oral argument and briefing, the application was denied and referred to a “full bench for disposition.” App. Div. NYSCEF No. 9.

28. On March 6, 2024, Simpson wrote Kevin Weiner, an Oak principal the following email showing his intent to file bankruptcy, forum shop, and breach his fiduciary duties:

YOU DON’T KNOW ANYTHING, GO BACK TO CANADA AS YOU ARE PLANNING TO DO ANYWAY AFTER YOU ARE FINISHED RUINING THE BUSINESS THAT I BUILT. THE GROWN UPS WILL HANDLE IT. YOU WILL NEVER BE ALLOWED BACK IN THE US WHEN WE ARE DONE WITH THIS NONSENSE. DON’T SEND ME ANYTHING MORE, YOU WILL BE PROVEN GUILTY ON ALL RESPECTS – GOOD THAT YOU DUPED ONE JUDGE, YOU WON’T DUPE OTHERS. WHAT HAPPENED WITH CARTER? YOU DIDN’T LIKE WHAT HE SAID SO YOU WITHDREW? LIKE A COWARD THAT YOU ARE. THIS ISNT A VIDEO GAME KEVIN.

(emphasis in original).

29. On March 7, 2024, Simpson filed a Chapter 11 Bankruptcy Petition (the “**Petition**”) for JJ Arch as purported “sole member.” In his List of Equity Security Holders attached to the Petition, Simpson swore that he was the sole member, saying that:

Jared Chassen of 55 Manor Pond Lane, Irvington, NY 10533, previously owned a 49% percent membership interest in the Debtor JJ Arch LLC . . . Mr. Chassen was deemed to have resigned as a member of JJ Arch as of August 5, 2023, pursuant to the definition of ‘Resignation’ as set forth in the Limited Liability Company Agreement of JJ Arch LLC, dated December 11, 2017, as amended and restated on May 21, 2021 . . . and Section 7.5 of the Operating Agreement.

30. According to Simpson’s publicly available email filings, GAIC through its counsel reviewed and approved of the Chapter 11 Petition the day Simpson filed it. According to Simpson’s publicly available email filings, the plan to file the bad-faith bankruptcy was hatched

together with GAIC's counsel and Scott Griffin, Esq. beginning in or about January 2024. GAIC was thereafter involved in the decision-making in connection with the bad faith bankruptcy.

31. GAIC testified to the Bankruptcy Court that "Great American determined to provide chapter 11 funding to the Debtor in order to mitigate against any claims against the Policy."

32. GAIC's funding of the bankruptcy did not, and would not mitigate any claims against the Policy, as it only moved the forum of the Corporate Control Action to the bankruptcy court, while adding an additional layer of cost and expense in connection with litigating bankruptcy issues. GAIC could not, and did not, reasonably believe that the bankruptcy filing would mitigate claims against the Policy.

33. GAIC has testified to the Bankruptcy Court that it had paid, and was intending to further pay, for the bankruptcy because "the Debtor lacks the funding to pay for the commencement and prosecution of the Chapter 11 Case." In other words, without GAIC's funding, JJ Arch was unable to file and prosecute the bad-faith bankruptcy.

34. GAIC was aware of the orders in the Corporate Control Action, and that the bankruptcy was being filed in bad faith and that the filing would be a breach of Simpson's fiduciary duties to Chassen and JJ Arch.

35. By paying for the bankruptcy and approving of the filing as "sole member" without Chassen's consent, and then assisting Simpson in the bad-faith bankruptcy, GAIC knowingly rendered substantial assistance to Simpson, enabled him to breach his fiduciary duties, and tortiously interfered with Chassen's consent rights under the JJ Arch LLC Operating Agreement.

VI. Simpson's Improper Removal of the Corporate Control Action

36. On March 25, 2024, Chassen moved for an order confirming that the automatic stay did not apply to the Corporate Control Action or to lift the automatic stay. On April 1, 2024, Simpson removed the Corporate Control Action to the Bankruptcy Court, arguing that this mooted the motion to lift the automatic stay. Chassen then moved to remand the Corporate Control Action.

37. On June 10, 2024, the Bankruptcy Court granted Chassen's remand and lift-stay motions. *See Simpson v First Republic Bank et. al.*, 2024 Bankr. LEXIS 1347 (Bankr S.D.N.Y. June 10, 2024) (granting remand motion); *In re JJ Arch LLC*, No. 24-10381 (JPM) 2024 Bankr LEXIS 1349 (Bankr. S.D.N.Y. June 10, 2024) (granting lift-stay motion). Simpson then challenged those decisions to the United States District Court for the Southern District of New York, further delaying the remand of the Corporate Control Action, and achieving his purpose of paralyzing AREH, and stealing from JJ Arch, by prolonging the bankruptcy.

38. In its remand decision, the Bankruptcy Court found that Simpson engaged in improper forum shopping. *See Simpson*, 2024 Bankr. LEXIS 1347, at *46-47 ("The Court believes that the record recited above establishes that the tenth factor—forum shopping."). On October 11, 2024, the Bankruptcy Court dismissed the bankruptcy finding, *inter alia*, that Simpson filed it in subjective and objective bad faith, breached his fiduciary obligations, and grossly mismanaged the estate. *JJ Arch*, 2024 Bankr. LEXIS 2505, at *35-53.

39. GAIC is liable to Chassen for all damages he suffered as a result of its aiding and abetting Simpson's breaches of fiduciary duty, for its tortious interference with Chassen's contractual rights, and for its bad faith conduct towards Chassen whereby it favored Simpson over Chassen.

VII. GAIC's Bankruptcy Payments Were Voluntary Payments

40. In addition to Chassen's claims for affirmative damages, GAIC is not entitled to set-off any payments made in connection with the bad-faith bankruptcy because the bankruptcy payments were not a Cost of Defense. The JJ Arch bankruptcy was filed in bad faith, for an improper and frivolous purpose and in derogation of court orders. It was not an actual cost-of-defense, but a voluntary payment for affirmative litigation that is not covered under the Policy. As such, it was not a "Cost of Defense" within the meaning of the Policy.

CAUSES OF ACTION

First Cause of Action (Aiding and Abetting Breach of Fiduciary Duty-Direct Claim)

41. Chassen repeats each of the preceding allegations as if fully set forth herein.

42. As the managing member of JJ Arch, Simpson owes Chassen fiduciary duties, which include a duty of undivided and undiluted loyalty to those whose interests the fiduciary is to protect. This is a sensitive and inflexible rule of fidelity, barring not only blatant self-dealing, but also requiring avoidance of situations in which a fiduciary's personal interest possibly conflicts with the interest of those owed a fiduciary duty.

43. Simpson breached his fiduciary duties by filing the bankruptcy as purported sole member of JJ Arch in derogation of court orders and the JJ Arch Operating Agreement. Simpson filed the bankruptcy in subjective and objective bad faith. And in filing bankruptcy, Simpson obtained no bankruptcy protections for the assets indirectly owned by JJ Arch that Simpson put into foreclosure or that were otherwise distressed. During the bankruptcy, Simpson further breached his fiduciary duties by grossly mismanaging the estate and caused a substantial diminution in the value of JJ Arch.

44. Simpson's breaches of fiduciary duty have damaged Chassen.

45. GAIC knowingly induced and participated in Simpson's breaches of fiduciary duty by encouraging Simpson to file bankruptcy, substantially assisting him, and by funding the bankruptcy.

46. Chassen has suffered damages as result of GAIC's conduct.

47. Accordingly, the Court should enter judgment against GAIC for Chassen's damages, including consequential damages, in an amount to be determined at trial.

**Second Cause of Action
(Tortious Interference with Contract-Direct Claim)**

48. Chassen repeats each of the preceding allegations as if fully set forth herein

49. By virtue of the JJ Arch Operating Agreement and court orders entered in the Corporate Control Action, Simpson was obligated to seek and obtain Chassen's consent before any Major Decisions, which include a bankruptcy filing.

50. GAIC was aware of Simpson's contractual obligations under the JJ Arch Operating Agreement and under the court orders entered in the Corporate Control Action.

51. In funding and assisting the bankruptcy, GAIC intentionally procured Simpson's breach of his contractual obligations.

52. Chassen has been damaged as a result of the bankruptcy that was filed in derogation of his consent rights.

53. Accordingly, the Court should enter judgment against GAIC for Chassen's damages, including consequential damages, in an amount to be determined at trial.

**Third Cause of Action
(Breach of the Implied Covenant of Good Faith and Fair Dealing/Bad Faith-Direct Claim)**

54. Chassen repeats each of the preceding allegations as if fully set forth herein

55. GAIC acted in bad-faith towards Chassen and favored Simpson over its other insured, Chassen, by funding the bad-faith JJ Arch bankruptcy, which was filed without Chassen's consent or knowledge and for an improper and bad-faith purpose.

56. Chassen has been damaged as a result of GAIC's bad faith conduct.

57. Accordingly, the Court should enter judgment against GAIC for Chassen's damages, including consequential damages, in an amount to be determined at trial

**Fourth Cause of Action
(Declaratory Judgment-Direct Claim)**

58. Chassen repeats each of the preceding allegations as if fully set forth herein.

59. An actual and justiciable controversy exists between Chassen and GAIC regarding whether payments made by GAIC in connection with the bankruptcy qualify as Costs of Defense.

60. GAIC is not entitled to set-off payments made in connection with the bankruptcy against the Policy limits because the bankruptcy payments were not a legitimate Cost of Defense. The JJ Arch bankruptcy was filed in bad faith and in derogation of court orders and was unlawful and improper. As such, it was not a legitimate "Cost of Defense" within the meaning of the Policy.

61. Chassen lacks an adequate remedy at law.

62. Chassen seeks a declaratory judgment that any payments by GAIC made or incurred in connection with the bankruptcy do not qualify as "Costs of Defense" under the Policy and are voluntary payments which do not affect the remaining Policy limits.

**Fifth Cause of Action
(Aiding and Abetting Breach of Fiduciary Duty-Derivative Claim on behalf of JJ Arch)**

63. Chassen repeats each of the preceding allegations as if fully set forth herein.

64. As the managing member of JJ Arch, Simpson owes JJ Arch fiduciary duties, which include a duty of undivided and undiluted loyalty to those whose interests the fiduciary is to protect. This is a sensitive and inflexible rule of fidelity, barring not only blatant self-dealing, but also requiring avoidance of situations in which a fiduciary's personal interest possibly conflicts with the interest of those owed a fiduciary duty.

65. Simpson breached his fiduciary duties to JJ Arch by filing the bankruptcy as purported sole member of JJ Arch in derogation of court orders and the JJ Arch Operating Agreement. Simpson filed the bankruptcy in subjective and objective bad faith. And in filing bankruptcy, Simpson obtained no bankruptcy protections for the assets indirectly owned by JJ Arch that Simpson put into foreclosure or that were otherwise distressed. During the bankruptcy, Simpson further breached his fiduciary duties by grossly mismanaging the estate and caused a substantial diminution in the value of JJ Arch.

66. Simpson's breaches of fiduciary duty have damaged JJ Arch.

67. GAIC knowingly induced and participated in Simpson's breaches of fiduciary duty by, among other things, encouraging and assisting Simpson to file bankruptcy and by funding the legal fees incurred in the bankruptcy.

68. JJ Arch has suffered damages as result of GAIC's conduct.

69. Pre-suit demand is futile because Simpson, as interim managing member of JJ Arch, committed the underlying breaches of fiduciary duty and cannot be expected to sue based upon his own tortious conduct.

70. Accordingly, the Court should enter judgment against GAIC for JJ Arch's damages, including consequential damages, in an amount to be determined at trial.

CLAIMS FOR RELIEF

WHEREFORE, Chassen demands judgment as follows:

- A. On the First Cause of Action, entering judgment against GAIC for Chassen's damages, including consequential damages, in an amount to be determined at trial.
- B. On the Second Cause of Action, entering judgment against GAIC for Chassen's damages, including consequential damages, in an amount to be determined at trial.
- C. On the Third Cause of Action, entering judgment against GAIC for Chassen's damages, including consequential damages, in an amount to be determined at trial.
- D. On the Fourth Cause of Action, entering a declaratory judgment against GAIC that any payments by GAIC in connection with the bankruptcy do not qualify as "Costs of Defense" under the Policy and are voluntary payments which do not affect the remaining Policy limits.
- E. On the Fifth Cause of Action, entering judgment against GAIC for JJ Arch's damages, including consequential damages, in an amount to be determined at trial.
- F. Awarding Chassen his costs and attorney's fees.
- G. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 19, 2024

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