UNITED STATES DISTRICT COURT
SOURTHERN DISTRICT OF NEW YORK

GREAT AMERICAN INSURANCE COMPANY, *Plaintiff,* —against— ARCH REAL ESTATE HOLDINGS, LLC, JEFFREY SIMPSON, JARED CHASSEN, WIGGIN AND DANA LLP, GRIFFIN LLP, JJ ARCH LLC, and OFFIT KURMAN PA, *Defendant.*	1:25-cv-02375 New York Supreme Index No.: 653208/2024

GREAT AMERICAN INSURANCE COMPANY'S MEMORANDUM OF LAW IN REPLY TO MR. SIMPSON'S OPPOSITON TO REMAND THE REMOVAL PROCEEDING

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Great American Insurance Company ("GAIC") respectfully submits this Memorandum of Law in Reply of Interpleader Defendant Simpson's Opposition to GAIC's Motion to Remand the Interpleader Action to its original forum in New York State Court. Simpson's opposition papers fail to refute or cure the statutorily deficient removal such that removal remains: (1) untimely by months per 28 U.S.C. § 1446(b)(1); (2) No other Interpleader Defendant consented to removal per 28 U.S.C. § 1446(b)(2)(A) and; (3) Simpson has not established subject matter jurisdiction over the Interpleader Action via a federal question per 28 U.S.C. § 1331 or diversity of jurisdiction because the interpleader defendants' residence and/or principal place of business is in New York per 28 U.S.C. § 1441(b)(2). (Doc. No. 9-2, Argument Sections A-C).

These bases in support of GAIC's remand motion remain true and uncontested. Simpson's effort to circumvent the statutory requirements by consolidation does not cure the original deficiencies to his untimely removal. GAIC's remand motion should be granted.

ARGUMENT IN REPLY

Simpson has not and cannot overcome the statutory impediments to remove this state court action to federal court per 28 U.S.C. §§ 1441, 1446, *et. seq.*. Simpson's opposition to GAIC's remand seeks to circumvent the statutory requirements to removal by hedging the opposition on consolidation with other matters. Simpson has not moved to consolidate and, even if he had, such a basis for removal fails.

A. Simpson's Opposition Fails to Cure His Statutorily Deficient Removal.

Failure to satisfy the statutory requirement is an automatic bar to removal. *Murray v. Deer Park Union Free Sch. Dist.,* 154 F. Supp. 2d 424, 425-26 (E.D.N.Y. 2001) (remanding to state court because "removal was not filed within the required period of time." The Court held, "[a] case that has been removed other than in accordance with the requirements of the removal statute should

be remanded to state court . . . The burden of establishing that a case has been properly removed is solely on the removing party."); *Bertrand v. Vingan,* 899 F. Supp. 1198 (S.D.N.Y. 1995); *see also Jones v. City of Buffalo*, 867 F. Supp. 1155, 1165 (W.D.N.Y. 1994) ("[i]t would seem that these [statutory] defects in Jones' removal of the identified state court actions necessitate remand to state court.").

Simpson has not met his burden as the re-moving party. First, he untimely filed the removal motion by nearly three months, far exceeding the 30-day requirements per 28 U.S.C. § 1446(b)(1). *See* Attorney Affirmation ¶¶ 4-5, 12-15 (Doc. No. 9-2); Second, Simpson failed to obtain consent to removal per 28 U.S.C. § 1446(b)(2)(A); Lastly, Simpson failed to cure the jurisdictional and subject matter defect by virtue of his legal residence in New York State such that this Court does not have jurisdiction per 28 U.S.C. § 1441(b)(2). The opposition papers do not refute or explain the statutory deficiencies. For these reasons, and those articulated in GAIC's memorandum of law in support of its remand motion, this matter should be remanded to the state court.

B. <u>Consolidation of the New York Supreme Court Interpleader Lawsuit Does Not Cure Simpson's Statutorily Deficient Removal Motion.</u>

Simpson's opposition papers are nothing more than a guise to turn a removal motion into a motion to consolidate. Such circumvention to 28 U.S.C. §§ 1441, 1446, *et. seq.* does not cure the statutory defects of removal. Simpson's effort to consolidate the state court Interpleader Action should not be entertained because it is procedurally and substantively improper and would significantly prejudice not only GAIC, but all parties to the Interpleader Action.

Consolidation is governed by Fed. R. Civ. P. 42 ("If actions before the court involve a common question of law or fact, the court may" consolidate the actions.). Courts have held that insurance coverage matters—and the interpleader lawsuit *is* just that except GAIC does not contest coverage and has committed to exhaust the Policy—do not share common questions of law and

fact from the underlying matters for which coverage is requested. *See W. Waterproofing Co., Inc. v. Zurich Am. Ins. Co.,* 2022 WL 329225 at *19 (S.D.N.Y. Feb. 3, 2022) ("the factual and legal questions at issue in each case are distinct.") (*citing Hershfeld v. JM Woodworth Risk Retention Grp., Inc.*, 164 A.D.3d 1423, 1424-25 (2d Dep't 2018) (holding that a malpractice action and a coverage action "do not involve common questions of law or fact" because one involved "the alleged negligence . . . and the alleged damages suffered" and the other "alleged contractual obligation to provide insurance coverage"); *Gristede's Foods, Inc. v. Poospatuck (Unkechauge) Nation*, 2009 WL 3644159 at *3 (E.D.N.Y. Oct. 27, 2009) (finding consolidation inappropriate where two actions had "some overlap in facts" but the claims "involve[d] different theories of liability and require[d] establishing distinct elements"); *KGK Jewelry LLC v. ESDNetwork*, 2014 WL 7333291, at *2 (S.D.N.Y. Dec. 24, 2014) ("Courts have routinely denied consolidation motions where there is a stark difference in the procedural posture of the actions, finding that judicial economy would not be served by consolidating two actions at disparate stages of litigation."); *McGinty v. Structure-Tone*, 140 A.D.3d 465, 466 (1st Dept. 2016) ("a personal injury action and an insurance coverage action, do not involve common questions of law or fact . . . they involve different contract, different parties, and different factual issues.").

Even if consolidation were to happen—GAIC submits that it should not—consolidation in federal court does not confer supplemental jurisdiction per 28 U.S.C. § 1367 to the state court interpleader lawsuit because the claims of distinct matters remain independent. *See Johnson v. Manhattan Ry. Co.,* 289 U.S. 479, 496–97 (1933) (consolidation "does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another"); *Cole v. Schenley Industries, Inc.,* 563 F.2d 35, 38 (2d Cir.1977) ("we must therefore consider the jurisdictional basis of each complaint separately."); *McKenzie v. United States,* 678

F.2d 571, 574 (5th Cir.1982) (vacating and remanding the action back to state court because consolidation of two separate actions did not confer subject matter jurisdiction over one of the actions.); *International Soc'y for Krishna v. City of Los Angeles,* 611 F.Supp. 315, 319 (C.D.Cal.1984) ("[a]ll circuits which have considered the question have said that consolidated cases retain their separate identities").

Here, the Interpleader Action, meant to resolve competing claims to the remaining Policy stake, stems from one discrete contract (the Policy) and is significantly different in theory and liability than the underlying litigations regarding a portfolio of property investments to which Simpson alleges could be compiled into an "omnibus complaint" alleging state and federal RICO claim. As was the case in *KGK Jewelry LLC,* the interpleader action can be significantly "streamlined" and "focuses on a discrete" contract that should not be hampered by the other Simpson actions. *KGK Jewelry LLC v. ESDNetwork*, 2014 WL 7333291, at *3 (S.D.N.Y. Dec. 24, 2014).

Additionally, it is in the interest of judicial economy to permit the Interpleader Action to continue independently in state court considering the extensive resources already expended by the state court and the parties to the interpleader action that have resulted in a positive step toward resolution following the March 12, 2025, bench ruling.[1] *See Gristede's Foods, Inc. v. Poospatuck*

[1] The honorable Judge Cohen issued the ruling with instructions to provide a conforming Order, stating in relevant part:

> GAIC moves monies with the court and then to be discharged pursuant to CPLR 1006(f) from all liability to the various claimants, along with an accompanying preliminary injunction against any claims being asserted by those claimants in other courts. That's going to be granted in part in that I will . . . proceed with depositing monies with the court . . . it is likely at the end of the day that that would come with discharge of any liability with respect to that amount [reserving its decision to discharge GAIC of liability following resolution of the Interpleader Defendants' claim(s) for the stake and independent liability alleged against GAIC and enjoining]

(Unkechauge) Nation, 2009 WL 3644159, at *3 (E.D.N.Y. Oct. 27, 2009) (declining "to exercise its discretion to consolidate these actions based on convenience or judicial economy."); 28 U.S.C. § 1367(c) ("The district courts may decline to exercise supplemental jurisdiction. . ."); *see UBS Securities LLC v. Dondero*, 705 F. Supp. 3d 156, 169-171 (S.D.N.Y. 2023) ("the Court considers the familiar factors of judicial economy, convenience, fairness and comity." Declining conferral of subject matter jurisdiction, finding it is a "doctrine of discretion, not of plaintiffs' right" and that the work already established by the state court, and prejudice to the parties in removing to federal court was a basis to remand and not confer subject matter jurisdiction over a consolidated matter.). To the extent Simpson's opposition suggests that this Court can grant removal in this instance due to a hypothetical consolidation, the Court has discretion to decline supplemental jurisdiction, and GAIC urges the court to so rule as such.

CONCLUSION

GAIC argued in detail the statutory deficiencies that Simpson failed to satisfy when he removed this matter from the original state court venue nearly three months after the statutorily prescribed time period of thirty days. His opposition papers do not meet his burden as the moving party, and he has not cured the statutory defects in any way. Instead, Simpson's arguments regarding consolidation do not cure his improper removal. GAIC respectfully submits this matter

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> "all claims that any of the defendants are going to make with respect tot his policy shall be made in this action and nowhere else [referring to the New York County Supreme Court interpleader action, Index No. 653208/2024].

See March 12, 2025 hearing transcript deciding GAIC's interpleader motion (pp. 48:22 to 53:15) annexed hereto as Exhibit A; *see also* conforming Order which remains pending as a result of Mr. Simpson's untimely and improper removal motion (NSCEF Doc. No. 267).

be remanded, and that the Court deny any request to consolidate the state interpleader action with the other litigations to which Mr. Simpson is a party.

Dated: New York, New York
May 9, 2025

Respectfully submitted,

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4937-3110-9183, v. 6

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EXHIBIT A

In The Matter Of:

GREAT AMERICAN INSURANCE CO. v
ARCH REAL ESTATE HOLDINGS, LLC, et al

ORAL ARGUMENT
March 12, 2025

DINA M. APUZZO, R.P.R.,C.S.R
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NEW YORK COUNTY SUPREME COURT
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NEW YORK, N.Y. 10007

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM PART: 3
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GREAT AMERICAN INSURANCE COMPANY,

Plaintiff,

Index No.

-against-

653208/2024

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

Defendants.
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60 Centre Street
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March 12, 2025

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don't see any particular reason to elevate Offit Kurman's over everyone else's.

I might some day because the interpleader action may require equitable decisions being made, and I think most of what Offit Kurman is saying goes to that issue, but I'm not familiar with any cases granting Summary Judgment in this kind of setting.

I think as the point has been made, just procedurally, this is not a summary -- we are not at the Summary Judgment point.

So I think if the firm wants to press these arguments, it's choices are to be part of this action, make whatever arguments it wants to make, both to the amount contributed into court, which we will get to in a moment, but also there is this CPLR 1006(e) opportunity to potentially present claims for independent liability that can be wrapped into this process.

So the bottom line is that the motion is denied. It's without prejudice to the firm's claims as to recovering the full amount as part of this proceeding, or as part of any independent claim in this proceeding.

Onto the first motion, GAIC moves monies with the court and then to be discharged pursuant to CPLR 1006(f) from all liability to the various claimants, along with an accompanying preliminary injunction against any claims

being asserted by those claimants in other courts.

That's going to be granted in part in that I will, you know, proceed with depositing monies with the court. I think with respect to the discharge I have a couple of concerns.

I think it would be premature to just charge, and I should say before I get into it, what the statute provides is that the stakeholder at this stage may move for an order discharging the stakeholder from liability in whole or in part to any party.

You know, I think it is highly likely, and I think this is the way this is meant to work, that with respect to the Court's decisions on the disbursement of the remaining amounts that would be paid into Court, it is likely at the end of the day that that would come with a discharge of any liability with respect to that amount.

The uncertainty I have here is this potential for claims and actual existence of certain claims under CPLR 1006(e) where there are claims about independent liability, where there is a dispute about whether the amounts being tendered to the Court are the full amounts really at issue.

We have at least two claimants who are asserting those kinds of claims. I think it would be premature to enter a discharge of any sort at this point. I did think about whether entering an order of discharge as to the 2.1

would make sense, but I think it makes more sense to just hold the discharge decision until the end, until I see exactly what shakes out here.

In terms of the preliminary injunction that was sought, we didn't talk about that a lot here, but I think this process only makes sense if we are the central -- if it is the central clearinghouse to try to bring finality to the party's rights with respect to this policy.

I think having individual claimants filing suit wherever they might want, really would harm the process and make it less efficient. It probably doesn't make sense anyway because I think, as GAIC pointed out, anybody who initiates another action now and ends up getting a ruling after all the proceeds have been disbursed is probably out of luck anyway, but to avoid the rush to the courthouse, I am inclined to issue some sort of an order that makes it clear that this interpleader is to "speak now or forever hold your peace" forum, otherwise I don't see a lot efficiency here.

Is there any objection on the Defendant's side to an order that would include deposit monies into the Court, and all claims that any of the defendants are going to make with respect to this policy shall be made in this action and nowhere else.

I mean that includes with respect to ARAH. I

would consolidate it and wrap it in as a claim under 1006(e) which, to me, my inclination is not to overcomplicate this by having separate proceedings, but having all be part of the single proceeding.

That may evolve as I see how this all works out. The claims are similar enough that I would rather have a single judgment and a single decision. I don't see phasing this to decide one before the rest.

I will give the parties a day or two if you want to propose an order for exactly how this is going to work.

Having really not done one of these before, I am open to suggestions as to the most efficient way to do it, but my principle should be that, you know, the remaining funds that GAIC does not contest, just put those into court; but at the same time the fact that they are willing to do that, does not by itself eliminate the ability of the parties to make whatever claims they think they have available to them above and beyond that.

The most obvious are the ones to the claims that have already been paid out.

I'm aware of Mr. Chassen's claim that they described here of something that might potentially go beyond that. Since what I'm saying is, is that all claims should be filed here, I think it's consistent to say: Okay, you could do that and that will be subject to the

normal adjudicated process, including potential motions by GAIC to dismiss any of those claims if they feel like they have legal grounds to do that.

So given that I don't have any particular magic language as to how to draft what it is I just said to protect everyone's rights. I'll ask, if you wouldn't mind, to team up on a proposed order. I will use Plaintiff as the central source, and if you can maybe circulate language among the parties; and, you know, again, to be clear, I do believe that the purpose behind CPLR 1006 should ultimately end up giving comfort to GAIC that as to the 2.1 million that they are depositing into Court, they should not be questioned as to those claims in any other forum.

So a discharge is highly likely. It's just that the scope of it, it may be broader than that. It may expand to the whole 3 million at some point.

I don't see it being less than that.

My preference would be to do the discharge at the end rather than at the beginning. Okay.

If you can get that do me within a week, I would like to get this resolved and moved on.

Now, procedurally, and also, I have never written an order which governs exactly how and to whom you deposit this. I don't want to see it sent to me in any form.

I've got Financial Disclosure Forms to fill out

in a month or two, and I don't want that. I'm sure there is a form to do it, but I don't have one in my back pocket.

If you can do whatever the necessary research is to having describe that, who exactly it gets deposited to and how, and I think that's all I have.

Anybody have any questions?

MR SAYER: Yes. Your Honor.

Would it be possible for us to get a copy of the minutes of today's hearing?

THE COURT: Not only possible, I will order it. If the parties can arrange whatever equitable way you want to divide the payment for it. I would prefer a single payee pays the court reporter and then you all split it rather than her having to send 12 invoices around. You can get the court reporters card after we are done.

MR SAYER: Thank you, Your Honor.

THE COURT: Thank you.

C E R T I F I C A T I O N P A G E

Certified to be a true and accurate record of the within proceedings.

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Dina Ludwicki CSR, RPR
Senior Court Reporter