

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT OF
THE TRIAL COURT

TODD & WELD LLP, and AIDALA, BERTUNA)
& KAMINS, PC,)

Plaintiffs,)

NO.)

v.)

BUSINESS LITIGATION SESSION)

HOMESITE INSURANCE COMPANY OF NEW)
YORK, CONTINENTAL CASUALTY)
COMPANY, and MASSACHUSETTS)
PROPERTY INSURANCE UNDERWRITING)
ASSOCIATION,)

JURY TRIAL DEMANDED)

Defendants.)

COMPLAINT AND JURY DEMAND

Plaintiff law firms Todd & Weld LLP (“Todd & Weld”) and Aidala, Bertuna & Kamins, PC (the “Aidala Firm” and together with Todd & Weld, the “Law Firms”), as the assignees of Alan M. Dershowitz (“Professor Dershowitz”) and in their own right, bring this action to enforce obligations owed by defendants Homesite Insurance Company of New York (“Homesite”), Continental Casualty Company (“Continental”) and Massachusetts Property Insurance Underwriting Association (“MPIUA,” and together with Homesite and Continental, the “Insurers”) under certain homeowner’s and professional liability insurance policies issued to Professor Dershowitz. The Law Firms have performed substantial services in defending Professor Dershowitz in New York state and federal court lawsuits, captioned, respectively, *Boies v. Dershowitz*, No. 160874/2019 (N.Y. S. Ct., filed Nov. 7, 2019) (the “Boies Action”) and *Giuffre v. Dershowitz*, No. 19-cv-03377-LAP (S.D.N.Y., filed April 16, 2019) (the “Giuffre Action” and together with the Boies Action, the “Underlying Litigation”) for which they have not been compensated. Because the Insurers have failed to execute fully and in good faith acknowledged

obligations to defend Professor Dershowitz in the Underlying Litigation, the Law Firms, as assignees of Professor Dershowitz, seek to recover money damages on account of the Insurers' breach of the policies.

Further, the Law Firms, in their own right, seek recovery of damages, treble damages and attorneys' fees for the Insurers' knowing and willful unfair and deceptive acts and practices in violation of G.L. c. 93A, § 2, namely, unreasonably delaying reimbursement of defense costs, vendor payments and other expenses for months; refusing, when they did reimburse the Law Firms, to pay a substantial portion of the defense costs they had incurred based on unreasonable, unsupported and arbitrary determinations; and failing to reconsider their nonpayment determinations (or even respond) when the Law Firms pointed out the errors underpinning them.

Finally, the Law Firms, as assignees of Professor Dershowitz, seek a judgment, pursuant to G.L. c. 231A, § 1, et seq., declaring the Insurers' obligations under their policies with respect to the defense of the Underlying Litigation, including their obligation to fully and timely fund the defense of the Giuffre Action and the Boies Action by paying not only the invoices of the Law Firms themselves, but also those of vendors retained by the Law Firms to perform litigation services, such as stenographic and data hosting services, as well as expenses attendant to discovery taken from third parties.

PARTIES

1. Defendant Homesite Insurance Company of New York ("Homesite") is a New York corporation with its principal place of business in Boston, Massachusetts.

2. Defendant Continental Casualty Company ("Continental") is an Illinois corporation with its principal place of business in Chicago, Illinois. It is a subsidiary of CNA Financial Corporation.

3. Defendant Massachusetts Property Insurance Underwriting Association (“MPIUA”) is an unincorporated association of every property and casualty insurer that operates in Massachusetts. Pursuant to G.L. c. 175C, it operates the state’s residual market for property and casualty insurance. In that capacity, MPIUA functions in a fashion similar to an insurance company, underwriting and inspecting risks, accepting premiums, issuing policies and adjusting claims. MPIUA has its headquarters in Boston, Massachusetts.

4. Plaintiff Todd & Weld LLP (“Todd & Weld”) is a Massachusetts limited liability partnership with its principal place of business in Boston, Massachusetts.

5. Plaintiff Aidala, Bertuna & Kamins, PC (the “Aidala firm,” and together with Todd & Weld, the “Law Firms”) is a New York professional corporation with its principal place of business in New York, New York.

JURISDICTION AND VENUE

6. Jurisdiction is based upon G.L. c. 212, §§ 3 and 4.

7. Jurisdiction in the Superior Court is proper under G.L. c. 212 §§ 3 and 4 because the amount in controversy in this action exceeds \$50,000.

8. Venue in Suffolk County is proper under G.L. c. 223, § 8 because Homesite and MPIUA have usual places of business in Boston.

9. With respect to the relief sought herein, there are bona fide justiciable controversies between the Law Firms and the Insurers, and no action is pending between said parties regarding these controversies.

FACTS

The Insurance Policies

The CNA Policy

10. In exchange for premium(s) paid by Professor Dershowitz, Continental issued to Professor Dershowitz a Massachusetts Lawyer's Professional Liability Policy, bearing the policy number 268041166 and in effect from October 13, 2014, to October 13, 2015 (the "CNA Policy").

11. Under the CNA Policy, Continental agreed to pay "on behalf of the **Insured** all sums . . . that the **Insured** shall become legally obligated to pay as **damages** and **claim expenses** because of a **claim** that is both first made against the **Insured** during the **policy period** and reported in writing to [Continental] in accordance with Section V, paragraph A, Notice, by reason of an act or omission in the performance of **legal services** by the **Insured**[".]"

12. The CNA Policy defines "**Insured**" as including the **Named Insured**.

13. The CNA Policy Declarations identify the **Named Insured** as Alan M. Dershowitz of 8 Goldenrod Way, Chilmark, Massachusetts.

14. The CNA Policy defines "**claim**," in pertinent part, as "a demand, including the service of suit or the institution of any alternative dispute resolution proceeding, received by the **Insured** for money or services arising out of: an act or omission, including **personal injury** . . . in the rendering or failure to render **legal services**."

15. The CNA Policy defines "**personal injury**," in pertinent part, as an injury arising out of "libel, slander, or other oral or written disparaging or defamatory publication or material[".]"

16. The CNA Policy defines "**legal services**," in pertinent part, as "those services [. . .] performed by an **Insured** for others as a lawyer[".]"

17. The CNA Policy defines “**policy period**” as “the period of time between the inception date and time shown in the Declarations [i.e., October 13, 2014] and the date and time of termination, expiration or cancellation of this Policy.”

18. The CNA Policy expired on October 13, 2015.

19. Regarding “[m]ultiple . . . **claims** and claimants,” the CNA Policy provides that, if a **claim** is made against an **Insured**, and “related claims are subsequently made against the **Insured** and reported to [Continental], all such **related claims**, whenever made, shall be considered a single **claim** first made and reported to [Continental] within the **policy period** in which the earliest of the **related claims** was first made and reported to” Continental.

20. The CNA Policy defines “**related claims**” as, in pertinent part, “all **claims** arising out of a single act or omission or arising out of **related acts or omissions** in the rendering of legal services[.]”

21. The CNA Policy defines “**related acts or omissions**” as, in pertinent part, “all acts or omissions in the rendering of **legal services** [. . .] that are logically or causally connected by any by any common fact, circumstance, situation, transaction, event, advice or decision.”

22. The CNA Policy defines “**claim expenses**” as “fees charged by attorneys designated by [Continental] or by the **Insured** with [Continental’s] written consent” and “all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** if incurred by [Continental], or by the **Insured** with the written consent of” Continental.

23. The CNA Policy defines “**damages**,” in pertinent part, as “judgments, awards and settlements”

24. Endorsement 3 to the CNA Policy, titled “CLAIM EXPENSES OUTSIDE THE LIMITS ENDORSEMENT–MASSACHUSETTS,” amended Section II of the CNA Policy, titled LIMITS OF LIABILITY AND DEDUCTIBLE, to provide that Continental’s limit of liability “for **damages** for each **claim** first made against the **Insured** and reported to [Continental] during the **policy period** shall not exceed the amount stated in the Declarations for each **claim**” Endorsement 3 further provides, however, that “**Claim expenses** are in addition to the [CNA Policy’s] limits of liability.”

The MPIUA Policy

25. In exchange for premium(s) paid by Professor Dershowitz, MPIUA issued to Alan Dershowitz Revocable Trust and Carolyn Cohen and Alan Dershowitz, Trustees, a Homeowner’s Policy, bearing the policy number 1489773-2 and in effect from October 12, 2018, to October 12, 2019 (the “MPIUA Policy”). The premises covered by the MPIUA property is Professor Dershowitz’s residence in Chilmark, Massachusetts.

26. In addition to its property coverage, the MPIUA Policy contains Personal Liability coverage, which is modified by a Personal Injury endorsement. Professor Dershowitz qualifies as an “insured” under the MPIUA Policy with respect to its Personal Liability coverage.

27. The Personal Liability coverage provides that “[i]f a claim is made or a suit is brought against an ‘insured’ for damages because of ‘bodily injury’ or ‘property damage’ caused by an ‘occurrence’ to which this coverage applies,” MPIUA will pay up to its “limit of liability for the damages for which an ‘insured’ is legally liable” and “provide a defense at [MPIUA’s] expense by counsel of our choice, even if the suit is groundless, false or fraudulent.”

28. The Personal Injury endorsement supplements the MPIUA Policy’s Personal Liability coverage to provide, in pertinent part, that “[i]f a claim is made or suit is brought against

an ‘insured’ for damages resulting from an offense, defined under ‘personal injury’, to which this coverage applies,” MPIUA will pay up to its “limit of liability for the damages for which an ‘insured’ is legally liable” and “provide a defense at [MPIUA’s] expense by counsel of our choice, even if the suit is groundless, false or fraudulent.”

29. The Personal Injury endorsement defines “personal injury,” in pertinent part, as injury arising out of “[o]ral or written publication of material that slanders or libels a person[.]”

The Homesite Policy

30. In exchange for premium(s) paid by Professor Dershowitz, Homesite issued to Professor Dershowitz a Homeowner’s Policy bearing the policy number 35684401 and in effect from November 28, 2018, to November 28, 2019 (the “Homesite Policy” and together with the MPIUA Policy and the CNA Policy, the “Policies”). The premises covered by the Homesite Policy is Professor Dershowitz’s residence in New York, New York.

31. The Homesite Policy also includes a Personal Liability coverage.

32. The Homesite Policy’s Personal Liability coverage provides, in pertinent part, that Homesite will pay up to the “limit of liability for the damages for which the ‘insured’ is legally liable” and “[p]rovide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent” “[i]f a claim is made or a suit is brought against an ‘insured’ for damages because of ‘bodily injury’ or ‘property damage’ to which this coverage applies[.]”

33. The Homesite Policy defines “bodily injury” as “bodily harm, sickness or disease, including required care, loss of services and death that results.”

34. The Homesite Policy includes a Personal Injury endorsement. The Personal Injury endorsement amends the definition of “bodily injury” to include “personal injury.”

35. The Personal Injury endorsement defines “personal injury” as injury arising out of, among other things, “[l]ibel, slander or defamation of character[.]”

36. The Homesite Policy defines “insured” to include Professor Dershowitz.

The Assignment of Rights

37. On December 29, 2022, Professor Dershowitz assigned certain rights under the Policies with respect to the Giuffre Action to Todd & Weld. In pertinent part, the assignment transferred to Todd & Weld Professor Dershowitz’s “rights under the Policies solely with respect to the defense of the Giuffre Action, including all rights to pursue claims against the Insurers arising out of or related to their obligation under the Policies to provide [Professor Dershowitz] such a defense, and for damages, injunctive relief, declaratory judgment, and other remedies for non-performance, violation, or breach of the Policies relating to the Insurers’ failure, in whole or in part, to fund [Professor Dershowitz’s] defense of the Giuffre Action.”

38. On December 29, 2022, Professor Dershowitz assigned certain rights under the MPIUA Policy and the Homesite Policy with respect to the Boies Action to the Aidala Firm. In pertinent part, the assignment transferred to the Aidala Firm Professor Dershowitz’s “rights under the [MPIUA and Homesite] Policies solely with respect to the defense of the Boies Action, including all rights to pursue claims against [MPIUA and Homesite] arising out of or related to their obligation under the [MPIUA and Homesite] Policies to provide [Professor Dershowitz] such a defense, and for damages, injunctive relief, declaratory judgment, and other remedies for non-performance, violation, or breach of the [MPIUA and Homesite] Policies relating to [MPIUA and Homesite’s] failure, in whole or in part, to fund [Professor Dershowitz’s] defense of the Boies Action.”

The Underlying Litigation

The Edwards and Cassell Action

39. On January 6, 2015, a civil action was commenced against Professor Dershowitz in the Circuit Court of the Seventeenth Judicial Circuit in Broward County, Florida, by Bradley J. Edwards and Paul G. Cassell (the “Edwards and Cassell Action”). See *Edwards v. Dershowitz*, Case No. CACE15000072 (Fla. Cir. Ct., filed Jan. 6, 2015). The complaint in the Edwards and Cassell Action contained a single count of defamation.

40. The Edwards and Cassell Action arose out legal work that Professor Dershowitz had performed for his client, Jeffrey Epstein, relating to a federal criminal investigation of Mr. Epstein by the FBI and the United States Attorney’s Office for the Southern District of Florida which was resolved pursuant to a non-prosecution agreement in September 2007.

41. Mr. Edwards and Mr. Cassell represented two victims of Mr. Epstein in a separate action (the “CVRA Action”) filed in the United States District Court for the Southern District of Florida in July 2008, in which their clients challenged the legality of the non-prosecution agreement under the federal Crime Victim’s Rights Act, 18 U.S.C. § 3771 (the “CVRA”). Plaintiffs in the CVRA Action alleged, in essence, that they had been given insufficient and inaccurate information regarding the non-prosecution agreement, in violation of the CVRA.

42. In late 2014, Virginia Giuffre, a victim of Mr. Epstein and, at the time, a client of Mr. Edwards and Mr. Cassell, sought to join the CVRA Action. Among the allegations made in support of the motion for joinder filed by Ms. Giuffre was that Professor Dershowitz had knowledge of, and participated in, Epstein’s criminal sexual abuse of minors. Specifically, she alleged that, in addition to sexually abusing her, Mr. Epstein had “required [Giuffre] to have sexual relations with [Professor] Dershowitz on numerous occasions while she was a minor, not only in

Florida but also on private planes, in New York, New Mexico and the U.S. Virgin Islands[,]” and that, “in addition to being a participant in the abuse of [Giuffre] and other minors, [Professor] Dershowitz was an eye-witness to the sexual abuse of many other minors by Epstein and several of Epstein’s co-conspirators.” *See* No. 19-cv-03377-LAP, Docket No. 127 (S.D.N.Y., filed June 3, 2020) (quoting allegations in Ms. Giuffre’s motion for joinder in the CVRA Action).

43. Professor Dershowitz vehemently and consistently denied those allegations. Professor Dershowitz, a high-profile criminal defense attorney and law professor, communicated his denial to a number of interested media outlets.

44. Shortly thereafter, Plaintiffs Mr. Edwards and Mr. Cassell commenced the Edwards and Cassell Action, alleging that Professor Dershowitz “initiated a massive public media assault” on their reputations by accusing them of, among other things, intentionally lying in the CVRA Action’s complaint, and accusing Professor Dershowitz of defaming them.

45. Because the Edwards and Cassell action arose out of legal work that Professor Dershowitz had performed on behalf of his client, Mr. Epstein, he tendered the defense to Continental under the CNA Policy. Continental accepted the defense of the Edwards and Cassell action.

46. Ms. Giuffre’s motion for joinder in the CVRA Action was denied on April 7, 2015, and the allegations in Ms. Giuffre’s pleading concerning Professor Dershowitz were stricken by the court. *See Doe v. United States of America*, Case No. 9:08-cv-80736-KAM, Docket No. 324 (S.D. Fla., filed April 7, 2015).

47. In April 2016, Professor Dershowitz, Mr. Edwards and Mr. Cassell settled the Edwards and Cassell Action. In a contemporaneous joint statement issued by the parties, plaintiffs acknowledged that “[g]iven the events that ha[d] transpired since the filing of the documents in

the federal court and in this action in which Dershowitz was accused of sexual misconduct, including the court order striking the allegations in the federal court filing,” “it was a mistake to have filed sexual misconduct accusations” against Professor Dershowitz. The financial terms of the settlement remain confidential.

The Giuffre Action

48. Like the Edwards and Cassell Action, the Giuffre Action arose out of Professor Dershowitz’s legal representation of Jeffrey Epstein. Ms. Giuffre was one of the victims of Mr. Epstein and, as detailed above, *see* ¶¶ 41-46 *supra*, sought unsuccessfully to join the CVRA Action in late 2014.

49. In November 2018, the *Miami Herald* began to publish a series of articles about Mr. Epstein and the non-prosecution agreement that Professor Dershowitz had helped negotiate in his capacity as counsel for Mr. Epstein.

50. On November 28, 2018, the *Miami Herald* published an interview with Ms. Giuffre as part of a lengthy article discussing the allegedly preferential treatment Mr. Epstein received from the criminal justice system. The *Miami Herald* story repeated the accusations made by Ms. Giuffre in support of her motion for joinder in the CVRA Action, namely, that she had been trafficked to Professor Dershowitz by Mr. Epstein. The article quoted portions of Ms. Giuffre’s allegations, including Ms. Giuffre’s statements that she had sex with Professor Dershowitz at least six times, including when she was a minor.

51. Again, Professor Dershowitz defended himself from those allegations to many interested media outlets, including the *Miami Herald*. Some of Professor Dershowitz’s comments about Ms. Giuffre and her attorneys were included in the November 28, 2018 *Miami Herald* article. Others were disseminated through different print, television and digital media outlets.

52. During the subsequent months, other media outlets published similar stories accusing Professor Dershowitz of sexual misconduct with Ms. Giuffre, and Professor Dershowitz continued to deny those allegations.

53. On April 16, 2019, Ms. Giuffre filed a complaint against Professor Dershowitz in the United States District Court for the Southern District of New York. *See Giuffre v. Dershowitz*, No. 19-cv-03377 (S.D.N.Y., filed April 16, 2019). As originally filed, the complaint contained a single count of defamation regarding statements made by Professor Dershowitz. It was amended in April 2020 to add counts for (1) battery and (2) violation of the federal wiretap act, 18 U.S.C. § 2511(1)(a), and again amended in November 2021.

54. In the Giuffre Action, Ms. Giuffre alleged that certain statements made by Professor Dershowitz were false and defamatory, and sought damages and other relief.

55. Professor Dershowitz denied the substance of the allegations in the Giuffre Action and filed counterclaims for defamation and intentional infliction of emotional distress against Ms. Giuffre. *See Giuffre v. Dershowitz*, No. 19-cv-03377-LAP, Docket No. 118 (S.D.N.Y., filed April 28, 2020). Professor Dershowitz filed amended counterclaims on June 3, 2020. *See Giuffre v. Dershowitz*, No. 19-cv-03377-LAP, Docket No. 127 (S.D.N.Y., filed June 3, 2020).

56. In November 2022, Professor Dershowitz and Ms. Giuffre settled the Giuffre Action, jointly releasing an “Agreed Statement.” In the Agreed Statement, Ms. Giuffre stated, in reference to her trafficking by Jeffrey Epstein, that she “was very young at the time, [and] it was a very stressful and traumatic environment[.]” She stated that she “now recognize[d that she] may have made a mistake in identifying Mr. Dershowitz” as a participant in Mr. Epstein’s crimes.

57. For his part, Professor Dershowitz reiterated that he had never had sex with Ms. Giuffre. He further stated that

I have nevertheless come to believe that at the time she accused me she believed what she said. Ms. Giuffre is to be commended for her courage in now stating publicly that she may have been mistaken about me. She has suffered much at the hands of Jeffrey Epstein, and I commend her work combatting the evil of sex trafficking.

58. No financial consideration was exchanged between Professor Dershowitz and Ms. Giuffre pursuant to the settlement of the Giuffre Action.

59. The settlement of the Giuffre Action represented not only an acceptable conclusion to the litigation for Professor Dershowitz, but also an excellent result for the Insurers, who were not required to pay any amount in indemnification of their insured.

The Boies Action

60. David Boies is a lawyer who initially represented Ms. Giuffre in the Giuffre Action. Mr. Boies and his law firm were ultimately disqualified as counsel in the Giuffre Action on the motion of Professor Dershowitz after the court determined that Mr. Boies might be called as a witness in that case. *See Giuffre v. Dershowitz*, No. 19-cv-03377-LAP, Docket No. 67 (S.D.N.Y., Oct. 16, 2019).

61. In defending himself against the allegations made against him by Ms. Giuffre, Professor Dershowitz made certain comments concerning Ms. Giuffre's attorneys, a group that at the time included Mr. Boies, and Mr. Boies personally.

62. On November 7, 2019, Mr. Boies filed a complaint in the New York County Supreme Court containing one count for defamation and seeking damages and other relief against Professor Dershowitz. *See Boies v. Dershowitz*, No. 160874/2019 (N.Y. S. Ct., filed Nov. 7, 2019). In that complaint, Mr. Boies alleged that Professor Dershowitz made false assertions to the *Miami Herald*, *The New York Daily News* and other print and television outlets that stated or implied that Mr. Boies was engaging in extortion and suborning perjury. *Id.*

63. Professor Dershowitz denied the substance of the allegations in the Boies Action and asserted counterclaims against Mr. Boies for defamation, intentional infliction of emotional distress, and violation of New York Judiciary Law § 487. *See Boies v. Dershowitz*, No. 160874/2019, Docket No. 2 (N.Y. S. Ct., filed Jan. 27, 2020).

64. In November 2022, the Boies Action was settled along with the Giuffre action. Mr. Boies also was a party to the Agreed Statement, in which he stated, “I know that Alan Dershowitz has suffered greatly from the allegation of sexual abuse made against him—an allegation that he has consistently, and vehemently, denied.” Mr. Boies stated that he, like Professor Dershowitz and Ms. Giuffre, believed that the time had come to “end this litigation and move on.”

65. While, as noted, Professor Dershowitz reaffirmed in the Agreed Statement that he never had sex with Ms. Giuffre, he further stated, that he “now believe[d] that my allegations that David Boies engaged in an extortion plot and in suborning perjury were mistaken.”

66. No financial consideration was exchanged between Professor Dershowitz and Mr. Boies pursuant to the settlement of the Boies Action.

67. The settlement of the Boies Action represented not only an acceptable conclusion to the litigation for Professor Dershowitz, but also an excellent result for the Insurers, who were not required to pay any amount in indemnification of their insured.

Insurance Claims and Insurer Performance

Notification and Response

68. In April 2019, Professor Dershowitz tendered defense of the Giuffre Action to Continental. Continental initially denied coverage on May 16, 2019. After Professor Dershowitz requested that Continental reconsider its denial, Continental informed Professor Dershowitz on March 15, 2020, that it would, subject to a complete reservation of rights, fund a share of “claim

expenses,” as defined in the CNA Policy, that were “reasonably and necessarily incurred by Professor Dershowitz in defense of the Giuffre Action.”

69. On June 11, 2019, Professor Dershowitz tendered defense of the Giuffre Action to MPIUA and Homesite.

70. On June 12, 2019, MPIUA acknowledged receipt and confirmed coverage of the Giuffre Action under the MPIUA Policy. MPIUA informed Professor Dershowitz that it would provide him with a defense of Ms. Giuffre’s lawsuit without any reservation of rights.

71. On June 27, 2019, Homesite acknowledged receipt and confirmed coverage of the Giuffre Action under the Homesite Policy. Homesite informed Professor Dershowitz that it would provide him with a defense of Ms. Giuffre’s lawsuit by counsel of its choice, subject to a reservation of certain rights under the Homesite Policy.

72. Professor Dershowitz also tendered defense of the Boies Action to MPIUA and Homesite.

73. On January 20, 2020, MPIUA informed Professor Dershowitz that MPIUA would “agree to provide [Professor] Dershowitz with a defense in the *Boies* matter subject to a full and complete reservation of its rights” under the MPIUA Policy. MPIUA also stated that it understood that Professor Dershowitz “intends to exercise his right to be represented by independent counsel” in the Boies Action, and that MPIUA would “therefore plan to coordinate with [Professor] Dershowitz’s selected counsel and any other involved insurers with respect to the defense.”

74. On February 24, 2020, Homesite informed Professor Dershowitz that it had agreed to share in the defense of the Boies Action pursuant to a reservation of rights.

75. Professor Dershowitz engaged Todd & Weld to defend him in the Giuffre Action. Todd & Weld is a leading Boston-based law firm known particularly for providing the highest

level of trial advocacy to its clients. Howard Cooper, a founding partner of the firm and lead defense counsel in the Giuffre Action, has decades of experience and a sterling reputation in defamation litigation. Nevertheless, Mr. Cooper and Todd & Weld substantially reduced their usual hourly billing rates when the Insurers requested that they do so.

76. Professor Dershowitz engaged the Aidala Firm to defend him in the Boies Action. The Aidala Firm is a preeminent New York City-based “boutique” law firm handling high-profile criminal defense and civil litigation. The firm is led by experienced trial and appellate lawyers, including former prosecutors and two former judges. Arthur Aidala, a renowned criminal and civil defense lawyer, served as lead defense counsel in the Boies Action.

The Insurers’ Deficient Performance of Their Conceded Defense Funding Obligations

77. The Insurers agreed to Professor Dershowitz’s selection of Todd & Weld to defend the Giuffre Action and the Aidala Firm to defend the Boies Action.

78. Throughout the pendency of the Boies Action and the Giuffre Action, Professor Dershowitz cooperated with the Insurers with respect to defense activity. He arranged for regular monthly update calls between his defense counsel and representatives of the Insurers – Homesite, MPIUA and Continental as to Giuffre, and Homesite and MPIUA as to Boies. During these calls, defense counsel reported on litigation developments, outlined their strategies and impressions, and responded to the Insurers’ questions.

79. Despite their involvement and general approval of the Law Firms’ defense strategies, however, the Insurers repeatedly failed to pay the Law Firms fully or in timely fashion. The Insurers routinely refused to pay portions of the submitted invoices and habitually delayed payment for several months after payment was due, depriving the Law Firms of earned revenue and of the time value of money even for charges the Insurers ultimately did not refuse.

80. *First*, the Insurers have failed to pay invoices submitted by the Law Firms in a timely manner, sometimes leaving invoices entirely unpaid for over a year. For example, on or about February 28, 2020, Todd & Weld submitted an invoice, number 776583, in the amount of \$55,338.10, to the Insurers. No payment was made on that invoice until over eight months later, on November 4, 2020. And to date, \$7,196.11 of invoice number 776583 remains unpaid.

81. Similarly, on or about March 19, 2020, Todd & Weld submitted an invoice, number 777479, in the amount of \$17,228.13, to the Insurers. No payment was made on that invoice until almost eight months later, on November 4, 2020. And to date, \$1,795.74 of invoice number 777479 remains unpaid.

82. The conduct of MPIUA and Homesite with respect to the invoices submitted by the Aidala Firm has been, if anything, even more egregious. MPIUA and Homesite have paid only a single invoice from the Aidala Firm. That invoice, number 70820961, for services during the period from inception of the Boies Action (filed on November 7, 2019) to February 28, 2021, in the amount of \$390,100.00, was submitted to MPIUA and Homesite on or about March 25, 2021. Homesite did not make any payment on that invoice, however, until February 22, 2022—nearly eleven months after its submission. MPIUA's payment, not issued until April 14, 2022, was more delinquent still, arriving thirteen months after the invoice was submitted. And to date, \$119,850.00 of the invoice remains unpaid.

83. Although the Aidala Firm has continued to submit invoices to Homesite and MPIUA, neither insurer has made any subsequent payment to the Aidala Firm. Numerous invoices remain outstanding, including one, invoice number 71729695, in the amount of \$79,250.00, submitted on or about August 16, 2021, and another, invoice number 72073077, in the amount of \$80,420.00, submitted on or about October 18, 2021.

84. Todd & Weld has not been paid at all, by any Insurer, since August 2022.

85. The Aidala Firm has not been paid at all, by any Insurer, since April 2022.

86. *Second*, with respect to the invoices that they did pay, the Insurers imposed unilateral, unjustified reductions without consulting with the Law Firms. Those reductions were made in the absence of an adequate investigation to determine whether they were justified.

87. When the Insurers did provide explanations for invoice reductions after the fact, the explanations were inadequate and evinced a lack of understanding of the reason for the billed task and the time spent thereon.

88. For instance, the Insurers reduced by 50% time billed by Todd & Weld attorney Kristine Oren to review Professor Dershowitz's emails for relevance and privilege on the purported basis of "multi-staffing" and "inadequate description of tasks." But the court had required Todd & Weld to review upward of 85,000 of Professor Dershowitz's emails for responsiveness and privilege. Such an enormous task could not be accomplished by a single attorney, nor would any greater detail in attorney Oren's time entry be edifying.

89. The Insurers also made unilateral reductions where they purportedly could not determine how the task "relat[ed] to the defense of the insured in the pending litigation." Had the Insurers conducted a reasonable investigation—or simply inquired with Todd & Weld—they would have discovered that those tasks, which concerned, *inter alia*, investigations into the credibility of Ms. Giuffre and other proper matters of litigation strategy, were essential to the defense of Professor Dershowitz, and that the costs arising from them were reasonably incurred.

90. When the Insurers provided Todd & Weld with their unilateral reductions, along with the rationale supporting those reductions (which, as discussed above, failed to provide a reasonable justification), Todd & Weld attorneys provided a thorough rebuttal to many of them,

explaining why the disputed time had been billed and why it was reasonable and necessary for the defense of Professor Dershowitz.

91. The Insurers never responded to Todd & Weld's comments, nor did they change their position with respect to any of their unilateral reductions.

92. Due to this pattern of late and incomplete payment, as of the November 8, 2022 settlement of the Boies Action and the Giuffre Action, the Insurers, collectively, owed Todd & Weld \$668,640.34 in overdue, unpaid legal fees, costs and expenses, and owed the Aidala Firm \$635,315.93 in overdue, unpaid legal fees, costs and expenses.¹

93. The Insurers also owe Todd & Weld and the Aidala Firm interest on each of the past-due invoices and on the balances remaining on invoices they refused to pay in full.

94. On November 30, 2022, Howard Cooper, lead counsel for Professor Dershowitz in the Giuffre Action, wrote to counsel for each of the Insurers communicating Todd & Weld's frustration with the Insurers' failure to pay Professor Dershowitz's legal bills in accordance with their obligations under the Policies and demanding payment in full. Mr. Cooper reminded the Insurers that Todd & Weld was owed over \$700,000 in fees, a large portion of which was months or years overdue.

95. Mr. Cooper received no response from the Insurers and, to date, neither of the Law Firms has been paid any of the amounts that were outstanding as of the date of settlement.

¹ Additional invoices submitted by Todd & Weld for fees and costs incurred before the November 2022 settlement, but which only became due and owing after settlement have brought the outstanding amount owed by the Insurers for the Giuffre Action to an amount in excess of \$780,000. Additional invoices submitted by the Aidala Firm for fees and costs incurred before the November 2022 settlement, but which only became due and owing after the settlement have brought the outstanding amount owed by the Insurers for the Boies Action to an amount in excess of \$790,000.

96. The Insurers also have failed to make full and timely payments to various litigation vendors (the “Litigation Vendors”). As of the date of the settlement the Giuffre Action, the Insurers, collectively, owed the Litigation Vendors over \$56,000 on certain overdue, outstanding invoices, and Todd & Weld over \$77,000 as reimbursement of vendor invoices.

97. The Litigation Vendors were engaged by Todd & Weld and/or the Aidala Firm to provide essential litigation support in the Giuffre Action, including data hosting and the provision of court reporting services. The costs incurred by the Law Firms with respect to the Litigation Vendors were reasonable and necessary for the defense of the Giuffre Action, and typical of those incurred in any similar litigation.

98. Nevertheless, the Insurers have, unreasonably and without adequate justification, failed to make timely payments of the Litigation Vendors’ invoices or to reimburse the Law Firms for payment of the same, and many invoices are now many months overdue.

99. For example, none of the Insurers has made payment on an invoice issued in November 2021, by Magna Legal Services, with the invoice number 763965 and in the amount of \$655.00. Other Magna Legal Services invoices from December 2021 and February, March, April, July, August and September 2022 likewise remain unpaid.

100. Nor have the Insurers made payment on numerous invoices issued by DISCO, a data hosting service. A DISCO invoice issued in May 2022, with the invoice number 173021 and in the amount of \$8,443.36, has not been paid and, at the date of settlement, was more than six months overdue. DISCO invoices from July, August, September, and October 2022, in similar amounts, also have not been paid.

101. The nonpayment of the DISCO invoices has been particularly prejudicial to Todd & Weld. During the deposition of Professor Dershowitz, Todd & Weld’s access to the electronic

files hosted by DISCO was briefly revoked due to long-overdue invoices, and Todd & Weld was unable to retrieve critical materials during the deposition until access was restored. Todd & Weld's access to DISCO was again revoked due to nonpayment after the settlement of the Giuffre Action, jeopardizing Todd & Weld's ability to comply with certain court orders. In both instances, the Insurers' unreasonable delay in making payment compromised Todd & Weld's ability to defend Professor Dershowitz, in violation of the Insurers' obligations under the Policies.

102. The Insurers have also failed to reimburse the Law Firms for vendor invoices paid by the Law Firms.

103. For instance, Todd & Weld has paid Magna Legal Services invoices, with the invoice numbers 658758, 664173, 703557, 704291, 731551 and 761261, without ever having been reimbursed by any Insurer. All of these invoices date from 2021, and reimbursement is long overdue.

104. The Insurers' unreasonable delay in reimbursing Todd & Weld has caused Todd & Weld to suffer harm, including from the loss of use of funds paid to the Litigation Vendors that would otherwise be available to Todd & Weld.

105. On December 14, 2022, Mr. Cooper wrote to the Insurers, demanding payment and informing them that their conduct was causing significant disruption for not only Todd & Weld, but also for the Litigation Vendors, who had provided important assistance in the defense of the Giuffre Action.

106. Mr. Cooper received no response from the Insurers and, on information and belief, to date, the Litigation Vendors have not been paid any of the amounts that were outstanding as of the date of settlement.

107. Finally, on information and belief, Homesite has also failed to reimburse Professor Dershowitz's former employer, Harvard University, for its share of costs incurred by Harvard in reviewing certain emails sent from, or received by, Professor Dershowitz at his Harvard University email account prior to their production. Homesite's share, which amounts to \$52,035.09, has remained unpaid for over six months despite a court order in the Giuffre Action requiring Professor Dershowitz to reimburse Harvard those costs, and despite Homesite's explicit agreement to do so. Homesite has not offered any explanation as to why, despite having agreed to pay those costs, it has failed to do so, and instead continues to recklessly disregard the legitimate interests of its insured.

COUNT I
(Breach of Contract: Giuffre Action—All Defendants)

108. The Law Firms adopt, incorporate, and reallege all preceding paragraphs as if set forth fully herein.

109. The Policies constitute binding contracts of insurance.

110. All premiums due under the Policies have been paid.

111. Professor Dershowitz qualifies as an "insured" under each of the Policies.

112. The Giuffre Action constitutes a "suit" or a "claim" under each of the Policies.

113. Professor Dershowitz has assigned his rights under each of the Policies with respect to defense of the Giuffre Action to Todd & Weld.

114. Professor Dershowitz promptly notified each of the Insurers with respect to the Giuffre Action and has otherwise performed all of his obligations under each of the Policies.

115. Homesite, Continental and MPIUA are under a duty to defend the Giuffre Action pursuant to the provisions of the Policies they issued, a duty each of those insurers has acknowledged in writing.

116. Homesite, Continental and MPIUA breached their duty to defend Professor Dershowitz in the Giuffre Action by, *inter alia*, unduly delaying payment of defense costs and expenses; failing fully to pay reasonably incurred defense costs; refusing without adequate justification to pay reasonable costs incurred by the Law Firms in defending the Underlying Litigation; failing to reconsider its refusal to pay certain defense costs after being apprised of errors in its analysis of the same; and failing to respond to reasonable requests for information regarding the refusal to pay defense costs.

117. As a result of the Insurers' breaches of their defense obligations, Todd & Weld, as assignee of Professor Dershowitz, has suffered, and will continue to suffer, substantial damages.

COUNT II
(Breach of Contract: Boies Action—Homesite and MPIUA)

118. The Law Firms adopt, incorporate, and reallege all preceding paragraphs as if set forth fully herein.

119. The Homesite Policy and the MPIUA Policy constitute binding contracts of insurance.

120. All premiums due under the Homesite Policy and the MPIUA Policy have been paid.

121. Professor Dershowitz qualifies as an "insured" under Homesite Policy and the MPIUA Policy.

122. The Boies Action constitutes a "suit" or a "claim" under the Homesite Policy and the MPIUA Policy.

123. Professor Dershowitz has assigned his rights under the Homesite Policy and the MPIUA Policy with respect to defense of the Boies Action to the Aidala Firm.

124. Professor Dershowitz promptly notified Homesite and MPIUA with respect to the Underlying Litigation and has otherwise performed all of his obligations under the Policies.

125. Homesite and MPIUA are under a duty to defend the Boies Action pursuant to the provisions of the Policies they issued, a duty each of those insurers has acknowledged in writing.

126. Homesite and MPIUA breached their duty to defend Professor Dershowitz in the Boies Action by, *inter alia*, unduly delaying payment of defense costs and expenses; failing fully to pay reasonably incurred defense costs; refusing without adequate justification to pay reasonable costs incurred by the Law Firms in defending the Underlying Litigation; and failing to respond to reasonable requests for information regarding the refusal to pay defense costs.

127. As a result of the Insurers' breaches of their defense obligations, the Aidala Firm, as assignee of Professor Dershowitz, has suffered, and will continue to suffer, substantial damages.

COUNT III
(Violation of G.L. c. 93A—All Defendants)

128. The Law Firms adopt, incorporate, and reallege all preceding paragraphs as if set forth fully herein.

129. G.L. c. 93A, § 2 prohibits the use or employment of unfair or deceptive acts or practices in the conduct of trade or commerce.

130. Each of the Insurers is engaged in the conduct of trade or commerce within the Commonwealth of Massachusetts.

131. Each of the Insurers has engaged in trade or commerce with the Law Firms, namely the defense of Professor Dershowitz in the Giuffre Action and/or the Boies Action.

132. Each of the Insurers has committed unfair or deceptive acts in the conduct of trade or commerce through, *inter alia*:

- a. Unduly delaying payment of defense costs and expenses;

- b. Refusing without adequate justification to pay reasonable costs incurred by the Law Firms in defending the Boies Action and the Giuffre Action;
 - c. Failing to reconsider its refusal to pay certain defense costs after being apprised of errors in its analysis of same;
 - d. Failing to respond to reasonable requests for information supporting their refusals to assume the full defense of Professor Dershowitz in the Underlying Litigation;
 - e. Failing to develop a fundamental understanding of the proceedings for which they are refusing payment.
133. The unfair or deceptive acts in issue took place primarily and substantially in Massachusetts.
134. The Insurers' violations of G.L. c. 93A, § 2 were knowing and willful.
135. The Law Firms have suffered monetary damages as a consequence of the Insurers' violations of G.L. c. 93A, § 2 and are entitled to all damages authorized by G.L. c. 93A, § 11.

COUNT IV
(Declaratory Judgment—All Defendants)

136. The Law Firms adopt, incorporate, and reallege all preceding paragraphs as if set forth fully herein.
137. A bona fide, justiciable controversy exists between the Law Firms and each of the Insurers with respect to the nature and extent of its duty to defend the Giuffre Action and the Boies Action, and the performance by the Insurers of that duty.
138. This controversy has caused and continues to cause substantial actual monetary loss to the Law Firms, and declaratory relief is appropriate to resolve this controversy.
139. Pursuant to G.L. c. 231A, §§1 and 2, the Law Firms are entitled to a declaration of the nature and extent of their rights and the Insurers' obligations with respect to the defense of the

Giuffre Action and the Boies Action and a finding that the Insurers presently stand in breach of those obligations, together with a determination of the nature, manner, extent, and impacts of such breaches.

REQUEST FOR RELIEF

WHEREFORE, the Law Firms request that this Court:

- (i) Enter judgment on Count I of this Complaint in an amount equal to the damages Todd & Weld has incurred as a result of the Insurers' breach of their obligations under the Policies with respect to the defense of the Giuffre Action, plus interest;
- (ii) Enter judgment on Count II of this Complaint in an amount equal to the damages the Aidala Firm has incurred as a result of MPIUA and Homesite's breach of their obligations under the Policies with respect to the defense of the Boies Action, plus interest;
- (iii) Enter judgment on Count III of this Complaint and award the Law Firms the following relief as against the Insurers: all damages caused by the Insurers' violation of G.L. c. 93A, § 2 and their failure to pay the Law Firms' fees, costs and expenses; and double or treble those damages as a consequence of the Insurers' knowing and willful violations of G.L. c. 93A, § 2; and the Law Firms' attorneys' fees and expenses;
- (iv) Enter a declaratory judgment under Count IV of this Complaint declaring the liabilities, obligations, and duties of the Insurers to the Law Firms with respect to defense of the Giuffre Action and the Boies Action under their respective Policies and finding that the Insurers are in breach thereof, including but not limited to declarations that:
 - (a) The Insurers owe all amounts submitted by the Law Firms for their defense of the Underlying Litigation;
 - (b) The Insurers owe interest on all overdue invoices submitted by the Law Firms for their defense of the Underlying Litigation;
 - (c) The Insurers owe all other costs and expenses submitted by the Law Firms, Litigation Vendors or Harvard University pertaining to the defense of the Underlying Litigation; and
- (v) Award the Law Firms their attorneys' fees in this action and grant such other and further relief as may be just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by a jury on all issues and claims so triable.

**TODD & WELD LLP
AIDALA, BERTUNA & KAMINS, PC**

By their attorneys,

/s/ Martin C. Pentz

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Dated: December 30, 2022.