

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

AIG SPECIALTY INSURANCE COMPANY,)
f/k/a CHARTIS SPECIALTY INSURANCE CO.,)

Plaintiff,)

v.)

AMERICAN BROADCASTING COMPANIES,)
INC., JIM AVILA, and THE WALT DISNEY)
CO.,)

Defendants.)

Index No. _____

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

American Broadcasting Companies, Inc.
c/o Corporation Service Company
80 State Street
Albany, New York 12207-2543

Jim Avila
ABC News
500 Circle Seven Drive
Glendale, CA 91201

The Walt Disney Company
c/o Corporation Service Company
80 State Street
Albany, New York 12207-2543

YOU ARE HEREBY SUMMONED to respond to the claims asserted against you in the Complaint of AIG Specialty Insurance Company, f/k/a Chartis Specialty Insurance Company (“Plaintiff”). You must serve a copy of your response on Plaintiff’s undersigned attorneys within twenty (20) days after service of this summons, exclusive of the day of service of this summons and the annexed Complaint, or within thirty (30) days after service is complete if this

summons is not personally delivered to you within the State of New York. In the case of your failure to respond, judgment will be taken against you for the relief demanded in the Complaint.

Venue is proper in this Court pursuant to Section 503 of the New York Civil Practice Law & Rules, as defendant American Broadcasting Companies, Inc. resides in this County.

Dated: October 26, 2017
New York, New York

KASOWITZ BENSON TORRES LLP

By: /s/ Michael J. Bowe
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Attorneys for Plaintiff

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AIG SPECIALTY INSURANCE COMPANY,)	
f/k/a CHARTIS SPECIALTY INSURANCE CO.,)	
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Plaintiff,)	Index No. _____
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AMERICAN BROADCASTING COMPANIES,)	
INC., JIM AVILA, and THE WALT DISNEY)	
CO.,)	
)	
Defendants.		

COMPLAINT

Plaintiff AIG Specialty Insurance Company, formerly known as Chartis Specialty Insurance Company (“Plaintiff” or “CSIC”), by and through its undersigned counsel, upon Plaintiff’s personal knowledge as to itself and its own acts and upon information and belief as to all other matters, alleges for its complaint against, American Broadcasting Companies, Inc. (“ABC”), Jim Avila, and The Walt Disney Company (“Disney”) (collectively, “Defendants”) as follows:

PRELIMINARY STATEMENT

1. Defendant ABC and its employee, defendant Avila, (together, the “ABC Defendants”) published a series of news reports where they referred to one of the products manufactured by Beef Products, Inc. (“BPI”) as “pink slime.” BPI sued the ABC Defendants, alleging that the news reports constituted defamation and that BPI suffered hundreds of millions or billions of dollars of damage as a result of the ABC Defendants’ purported defamation (the “BPI Litigation”). This is an insurance coverage dispute related to the ABC Defendants’ settlement of the BPI Litigation (the “BPI Settlement”).

2. Disney, the parent company of ABC, purchased an insurance policy from CSIC that includes the ABC Defendants as insureds. That policy does not insure against, and specifically excludes coverage for, any claims “alleging . . . any . . . malicious . . . act, error or omission.” All of the claims remaining in the BPI Litigation at the time of the BPI Settlement required a showing that the ABC Defendants acted with actual malice. While the insurance policy does contain a provision that brings certain defamation claims back within the scope of coverage of the policy, by carving them out of the coverage exclusion, the BPI Litigation claims are not subject to this defamation carve-out. In order for the defamation carve-out to apply, (1) the claim must allege actual malice in conjunction with allegations of defamation, libel or slander of a public person and (2) the insured must have obtained a written opinion and authorization from outside legal counsel stating that the contemplated conduct is legal. The BPI Litigation claims satisfy the first requirement, but [REDACTED]

[REDACTED] The BPI Settlement thus remains excluded from coverage under the policy.

3. Despite the clear language of the policy, Defendants have demanded that CSIC pay them the full limits of the policy – \$25 million – in partial reimbursement of the BPI Settlement. CSIC asks this Court for a declaration stating that it does not need to reimburse the ABC Defendants for the BPI Settlement pursuant to the terms of the insurance policy.

THE PARTIES

4. Plaintiff CSIC is an Illinois corporation with its principal place of business located at 175 Water Street, New York, New York.

5. Defendant ABC is a Delaware corporation licensed to do business in the State of New York. ABC’s principal place of business is located at 77 West 66th Street, New York, New York. Disney is the parent company of ABC.

6. During the relevant time period, Defendant Jim Avila was a Senior National Correspondent for ABC News and a resident of Washington, D.C. Upon information and belief, Avila is currently a resident of California.

7. Defendant Disney is a Delaware corporation licensed to do business in the State of New York. Disney's principal place of business is located at 500 South Buena Vista Street, Burbank, California.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the parties and this proceeding pursuant to CPLR 301, as ABC is a New York resident, and CPLR 302(a)(1), as Defendants have, in person or through their agents, transacted business in the State of New York from which the causes of action asserted herein arise.

9. Venue in this Court is proper pursuant to CPLR 503 because CSIC's and ABC's principal offices are located in this County.

FACTUAL BACKGROUND

I. The CSIC Excess Insurance Policy

10. CSIC sold insurance policy number 01-855-73-58 to Disney (the "CSIC Policy").

11. The CSIC Policy is attached as Exhibit A.

12. The CSIC Policy applies to Disney as the Named Insured and to its subsidiaries and employees thereof as additional Insureds. ABC and Avila are purported Insureds under the CSIC Policy.

13. The CSIC Policy is a "claims-made" policy that provides insurance for certain specified categories of claims asserted from May 1, 2012 to May 1, 2013.

14. The CSIC Policy is an excess policy that provides up to \$25 million of insurance for covered claims in excess of the first \$50 million in payments.

15. The CSIC Policy is a “follow form” policy that, except as modified in certain specified ways, follows the terms and conditions of another lower layer insurance policy.

16. The CSIC Policy follows form to an insurance policy issued by North American Capacity Insurance Company bearing policy number H2X0000509-00, which also applies to claims asserted for the period of May 1, 2012 to May 1, 2013 (the “Swiss Re Policy”).

17. More specifically, the CSIC Policy provides that “[t]his policy shall provide coverage in accordance with the same terms, conditions and limitations of the [Swiss Re] Policy, as modified by and subject to the terms, conditions and limitations of this policy.”

18. The Swiss Re Policy, in turn, follows form to an insurance policy issued by Illinois Union Insurance Company bearing policy number G21654115 006, which also has a policy period of May 1, 2012 to May 1, 2013 (the “ACE Policy”). The ACE Policy is attached as Exhibit B.

19. More specifically, the Swiss Re Policy provides that the “‘Insurer’ agrees to provide insurance coverage to the ‘Insured(s)’ in accordance with the terms, definitions, conditions, exclusions and limitations of the [ACE] Policy, except as otherwise provided herein.”

20. The ACE Policy is a manuscript policy, which means that it is custom designed for a particular insured and not a standard form.

21. The ACE Policy provides insurance for certain “Wrongful Acts” that are “committed solely in the conduct of Media Activities.”

22. “Wrongful Acts” is defined in the ACE Policy to include a “Multimedia Act” in the rendering of “Media Activities.”

23. “Multimedia Act” is defined in the ACE Policy to include “defamation or harm to the character or reputation of any person or entity including but not limited to libel, slander, trade

libel, product disparagement or injurious falsehood and emotional distress or outrage to the extent it is based on harm to character or reputation.”

24. “Media Activities” is defined in the ACE Policy to include “news gathering, news programming, and news distribution of informational content, programming or materials.”

A. Exclusion A of the CSIC Policy and the Defamation Carve-Out

25. The ACE Policy also contains a list of certain specific exclusions that exclude coverage for specific claims or types of claims that would otherwise be covered under the terms of the policy.

26. The CSIC Policy follows form to these exclusions in the ACE Policy.

27. Exclusion A states that “[t]he Insurer shall not be liable for Damages, Claims Expenses, or Data Breach Expenses on account of any Claim . . . alleging, based upon, arising out of or attributable to any dishonest, fraudulent, criminal, malicious, or intentional act, error or omission, or any intentional or knowing violation of the law by an Insured.”

28. Exclusion A contains a carve-out (the “Defamation Carve-out”) that provides that certain defamation claims are excluded from Exclusion A. thus placing them back within the ambit of coverage.

29. In order for the Defamation Carve-out to apply, the ACE Policy lists two requirements.

30. One requirement is that the Claim for which the insured is seeking coverage “alleges actual malice, as defined by the law, in conjunction with allegations of defamation, libel or slander of a public person, as defined by law.”

31. The other requirement is that “prior to the date the Insured engaged in such excluded conduct, the Insured had received from its outside legal counsel a written opinion and

authorization stating that based on counsel's good faith and reasonable legal evaluation and analysis of the existing law, counsel has concluded that such conduct was legal under and protected by the First Amendment of the United States Constitution or any similar provision of a State Constitution protecting freedom of speech or freedom of the press."

32. In other words, an insured under the policy has potential coverage for claims that it defamed a public person so long as it first receives a written opinion from outside counsel opining that the insured's conduct is appropriate.

B. The Dispute Resolution Provision of the CSIC Policy

33. The CSIC Policy follows form to the dispute resolution procedure in the ACE Policy.

34. Section XIX of the ACE Policy is entitled "Alternative Dispute Resolution." It provides that "[e]ither an Insured or the Insurer may elect the type of ADR process discussed below. . . ."

35. The two choices of ADR process are "(1) non-binding Mediation administered by any Mediation facility to which the Insurer and Insured mutually agree, in which the Insured and the Insurer shall try in good faith to settle the dispute by Mediation in accordance with the then-prevailing commercial Mediation rules of the Mediation facility; or (2) arbitration submitted to any arbitration facility to which the Insured and the Insurer mutually agree, in which the arbitration panel shall consist of three disinterested individuals."

36. The relevant provision further specifies that, "[i]n the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties In the event of Mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days

after the date the Mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.”

37. The ACE Policy continues by saying that “[e]ither ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the Named Insured [here, California].”

38. The ACE Policy provides the Insured with “the right to reject the choice by the Insurer of the type of ADR process” but only “prior to its commencement.”

II. The BPI Litigation and Settlement

39. On September 13, 2012, BPI and two of its affiliates filed the BPI Litigation against defendants including ABC, Avila, and ABC News, Inc. in South Dakota state court, captioned *Beef Products, Inc., et al. v. American Broadcasting Companies, Inc., et al.*, Circuit Court of South Dakota, Union County, No. 12-292.

40. In their 257-page complaint, BPI claimed to be the victim of a journalistic hit job and asserted 26 counts of defamation and disparagement arising out of the ABC Defendants’ purported smear campaign against them, each of which alleged that the ABC Defendants acted with actual malice.

41. As alleged in the BPI Litigation, BPI and its affiliated companies pioneered the manufacture of an agricultural product called lean finely textured beef (“LFTB”). BPI alleged that its process allows it to extract more lean beef from cows, producing an additional 10 to 20 pounds of lean beef from each bovine animal. Meat processors then use this LFTB, along with beef trimmings and other cuts of beef, to make ground beef.

42. BPI alleged that, in 2011, ABC aired a series called “Food Revolution,” which purported to provide consumers information about the nutritional value of their food. An April

11, 2011 episode of Food Revolution made numerous statements about LFTB, including about the process used by BPI to produce it and its safety and nutritional value, that BPI alleges were untrue.

43. Shortly after that episode aired, the president of the American Meat Institute, the nation’s oldest and largest meat and poultry trade association, sent a letter to ABC informing the company that it had broadcast false and defamatory statements regarding LFTB. That letter also purported to correct ABC’s misstatements about LFTB and directed it to a USDA fact sheet that explained: (1) only beef that has met safety inspection requirements is eligible for school lunches; (2) all ground beef products are routinely tested for safety; (3) the USDA has zero tolerance for Salmonella and E. coli 0157:H7; and (4) the Food and Drug Administration (“FDA”) consider the processes used by BPI in producing LFTB to be “Generally Recognized As Safe” for food.

44. BPI further alleged that, less than a year later, on March 7, 2012, ABC began airing a series of reports about LFTB, reprising the same factually incorrect themes as those in the Food Revolution episode. ABC is alleged to have broadcast 11 such reports between March 7 and April 3, 2012 and, additionally, published 14 online reports (the “2012 Reports”).

45. Despite the concerns raised in response to the Food Revolution broadcast, 



46. In the 2012 Reports, the ABC Defendants used the term “pink slime” to refer to LFTB. The ABC Defendants stated that LFTB was “not really beef,” and was beef “substitute” that was mere “filler” added to ground beef to “pump up” the volume.

47. The ABC Defendants also reported that LFTB is a “questionable” product made from “low grade” “scraps” and “waste” that is added to ground beef. They stated that ground beef made with LFTB was “suspect” because LFTB was an unknown product “lurking” and “hiding” in it.

48. After the first 2012 Report aired on March 7, BPI sent several emails to ABC, purporting to provide factual information to refute the broadcast’s false claims and referring them to several other sources for more information. BPI also claimed that ABC’s statements directly contradicted the factual information available on BPI’s and the USDA’s websites.

49. Additionally, between March 9 and March 25, 2012, BPI’s outside counsel sent several letters to ABC, informing them that BPI believed numerous statements made in the 2012 Reports to be false and purporting to correct such misstatements.

50. Nevertheless, the ABC Defendants persisted in disseminating the 2012 Reports without alteration. [REDACTED]

51. After the completion of the 2012 Reports, BPI provided notice to the ABC Defendants that BPI believed their statements were false and defamatory and demanding that the ABC Defendants retract them, but the ABC Defendants declined to do so.

52. Thereafter, BPI initiated the BPI Litigation against the ABC Defendants, alleging defamation, common law product disparagement, violation of South Dakota’s Agricultural Food Products Disparagement Act, and tortious interference (with the tort being publication of defamatory or disparaging statements).

53. In connection with its claims, BPI alleged that the ABC Defendants acted with actual malice by knowingly making false statements, or recklessly disregarding the falsity of statements, about BPI and/or LFTB, including statements that:

- LFTB is pink slime, which statement is alleged to be false because pink slime “is a noxious, repulsive, and filthy fluid” and LFTB is not;
- LFTB is not meat or beef, which statement is alleged to be false because LFTB is in fact beef and it is meat, made from beef trimmings that come from USDA-inspected and approved beef; and
- LFTB is “economic fraud” or “food fraud,” which statements are alleged to be false because BPI has not engaged in any fraud: LFTB is beef and BPI obtained approval from the USDA to include LFTB in ground beef without additional labeling.

54. The BPI Litigation continued through discovery and summary judgment, with the court denying a motion for summary judgment filed by ABC and Avila.

55. The case proceeded to trial on BPI’s defamation, common law disparagement, statutory disparagement, and tortious interference claims against the ABC Defendants, with each of these claims requiring a showing that the ABC Defendants acted with actual malice.

56. Trial commenced on June 5, 2017.

57. In June 2017, BPI and the ABC Defendants reached an agreement to settle the BPI Litigation on terms that were kept confidential from the public (the “BPI Settlement”).

58. In the BPI Settlement, the ABC Defendants agreed to pay BPI a sum in excess of the limits of the CSIC Policy in exchange for BPI’s dismissal of the BPI Litigation with prejudice.

59. Following the execution of the BPI Settlement, BPI dismissed the BPI Litigation on June 28, 2017.

III. Defendants Attempt to Rewrite the Defamation Carve-out to Create Coverage for the BPI Settlement

60. Following the BPI Settlement, Defendants demanded that CSIC pay Disney the full limits of the CSIC Policy, \$25 million, as partial reimbursement for the BPI Settlement.

61. Defendants made this demand notwithstanding the clear contractual language that excludes the BPI Settlement from coverage under the CSIC Policy.

62. The CSIC Policy does not cover judgments or settlements of claims where the Insured defamed a public person with “actual malice” unless the Insured obtained an advance written opinion from outside counsel stating that the counsel has concluded that the statements the Insured intends to make are legal.

63. The reason for this is obvious. If an insured consults outside counsel concerning potentially defamatory statements prior to making them, the insured will be less likely to engage in conduct that gives rise to liability. In order to incentivize insureds to consult with counsel, the CSIC Policy provides coverage to an insured that consults with counsel even if the counsel’s advice ultimately proves incorrect.

64. On the other hand, if an insured publishes defamatory content about a public person with actual malice without having consulted outside counsel (or against the advice of outside counsel), then the insured bears the responsibility for his reckless conduct (and is disadvantaged in disproving actual malice by not being able to raise an “advice of counsel” defense).

65. In this case, ABC and Avila published purportedly defamatory content nearly 200 times over a 28-day period. [REDACTED]

[REDACTED]

66. [REDACTED]

[REDACTED]

67. [REDACTED]

[REDACTED]

68. [REDACTED]

[REDACTED]

[REDACTED], Defendants' reimbursement request relies exclusively on an

attempted rewriting of the Policy in an effort to create coverage where none exists.

A. And Means And, Not Or

69. The Defamation Carve-out has two requirements. To restore coverage for a Claim excluded from coverage under Exclusion A, the Insured must "receive from its outside counsel a written opinion . . . **and** . . . the Claim [must] allege[] actual malice, as defined by the law, in conjunction with allegations of defamation, libel or slander of a public person" (emphasis added).

70. Defendants contend that "and" means "or" and that the Defamation Carve-out is actually two separate carve-outs.

71. Defendants contend that there is (1) a carve-out that applies to all claims where the Insured obtained a written opinion from its outside legal counsel and (2) a separate and distinct carve-out that applies to all defamation, libel, and slander claims that allege actual malice, without regard to whether the Insured obtained an outside legal opinion.

72. Defendants' attempt to rewrite the CSIC Policy to change "and" to "or" in the Defamation Carve-out is contrary to the plain terms of the Policy.

B. Defendants' Argument about Commercial Reasonability Is Wrong and Irrelevant

73. [REDACTED]

74. Defendants are mistaken. News organizations regularly obtain written opinions and authorization from outside counsel before investigating and reporting a news story.

75. In any event, Defendants' argument about what is commercially reasonable is irrelevant. Defendants agreed to the terms of the CSIC Policy. If Defendants believed the terms of the Defamation Carve-out were commercially unreasonable, the time to raise that concern was at the time Defendants were negotiating the Policy.

IV. CSIC Commences Mediation and the Parties Mediate

76. On June 22, 2017, CSIC "formally commence[d] non-binding mediation to address The Walt Disney Company's claim for indemnity coverage under the [CSIC] Policy."

77. Following formal commencement of mediation, the parties did in fact mediate for several months.

78. The mediation sessions were brokered by intermediaries from two New York-based insurance brokers who sought to facilitate the parties' discussions.

79. Senior executives of CSIC met with the intermediaries in person, by telephone, and by email and also met directly with senior executives of Defendants by telephone and email to discuss possible compromises of the parties' disputes.

80. For example, a senior executive of Defendants participated in a telephonic mediation session with a senior executive of CSIC on Monday, August 28.

81. In advance of this mediation session, the parties agreed in writing that the contents of their discussions “are confidential compromise negotiations . . . subject to the prohibitions and protections of Federal Rule of Evidence 408(a)”

82. The August 28 mediation session was brokered by an intermediary from one of the New York-based insurance brokers.

83. There were various other mediation sessions, some of which involved direct communications between the parties and some of which involved communications with intermediaries who were speaking to both sides.

84. CSIC’s executives were primarily in New York for the mediation sessions and never traveled to California for a mediation session.

85. Following the August 28 mediation session, Disney terminated mediation on September 1, 2017 by unilaterally purporting to initiate an improper arbitration against CSIC using the Los Angeles office of JAMS (the “Purported Arbitration”).

86. Disney’s Purported Arbitration is contrary to the requirements of the CSIC Policy for several reasons, including because Defendants are not permitted to elect arbitration after mediation has already commenced. Instead, the CSIC Policy provides that, upon termination of mediation, the prescribed dispute resolution mechanism is commencement of “a judicial proceeding” in either New York or California.

87. Disney’s Purported Arbitration is also improper because Disney brought the arbitration in an arbitration facility that the parties did not agree to use, which contravenes the CSIC Policy’s clear requirement for the dispute to be “submitted to any arbitration facility to which the Insured and Insurer mutually agree” (emphasis added).

88. Disney's Purported Arbitration is also improper because it excludes ABC and Avila as parties even though they were the defendants in the BPI Litigation and the parties who were responsible for payment of the money for which Disney seeks reimbursement. Disney's Purported Arbitration appears designed to allow multiple bites at the apple such that, if Disney loses the arbitration, ABC or Avila could try again.

89. On October 13, 2017, JAMS' Los Angeles office confirmed that Disney's Purported Arbitration is improper. JAMS Los Angeles wrote to both parties, saying that "JAMS was presented with an agreement that does not call for JAMS administration. Since there is no agreement from the parties to allow JAMS to administer this matter, JAMS cannot proceed with the administration"

90. On October 17, 2017, Disney commenced a case in the United States District Court for the Central District of California captioned *The Walt Disney Company v. AIG Specialty Insurance Company f/k/a Chartis Specialty Insurance Company*, Case No. 2:17-cv-07598, purporting to compel CSIC to participate in the Purported Arbitration that JAMS already found to be improperly commenced. CSIC disputes that the California court has jurisdiction, particularly in the absence of necessary and indispensable parties ABC and Avila.

91. Disney's improper attempts to seek arbitration with CSIC appear designed to try to have an arbitration panel address the relevant contract interpretation issues giving rise to the dispute between CSIC, ABC, and Avila before this Court has an opportunity to do so. The question of whether CSIC is obligated to reimburse the ABC Defendants for a settlement that CSIC believes is plainly excluded from coverage under the terms of the CSIC Policy is pending only here and should be resolved by this Court.

FIRST CAUSE OF ACTION

**DECLARATORY RELIEF
Declaration of No Coverage
(Against ABC and Avila)**

92. CSIC incorporates by reference and realleges each and every allegation set forth above as though fully set forth herein.

93. An actual case or controversy exists between CSIC and the ABC Defendants as to whether the BPI Settlement is excluded from coverage under the CSIC Policy.

94. The CSIC Policy is a valid and enforceable contract between CSIC, on the one hand, as the insurer, and the ABC Defendants, on the other, as insureds.

95. The CSIC Policy follows form to the ACE Policy, Exclusion A of which exempts the insurer from liability “for Damages, Claims Expenses, or Data Breach Expenses on account of any Claim . . . alleging, based upon, arising out of or attributable to any dishonest, fraudulent, criminal, malicious, or intentional act, error or omission, or any intentional or knowing violation of the law by an Insured.”

96. The Defamation Carve-out excludes certain defamation claims from Exclusion A, placing them back within the ambit of coverage if and only if (1) the Claim for which the Insured is seeking coverage “alleges actual malice, as defined by the law, in conjunction with allegations of defamation, libel or slander of a public person, as defined by law,” and (2) prior to engaging in the defamation of a public person that is the subject of such a Claim, the Insured obtains from outside counsel a written opinion that the Insured’s conduct is lawful.

97. Defendants claim coverage for the BPI Settlement under the CSIC Policy.

98. The BPI Settlement settles the BPI Litigation, which alleged claims for defamation, disparagement, and tortious interference against the ABC Defendants and alleged that the ABC Defendants acted with actual malice in conjunction therewith.

99. Prior to engaging in the allegedly malicious defamation complained of in the BPI Litigation and resolved in the BPI Settlement, [REDACTED]

100. The BPI Settlement thus is not within the Defamation Carve-out and is not exempted from Exclusion A.

101. Accordingly, CSIC is entitled to a declaration that the BPI Settlement is not covered by the CSIC Policy.

SECOND CAUSE OF ACTION

DECLARATORY RELIEF Declaration of Date Mediation Commenced (Against Defendants)

102. CSIC incorporates by reference and realleges each and every allegation set forth above as though fully set forth herein.

103. An actual case or controversy exists between CSIC and Defendants as to whether CSIC commenced mediation prior to September 1, 2017.

104. The CSIC Policy is a valid and binding contract between CSIC, on the one hand, and Defendants, on the other.

105. The CSIC Policy follows form to the ACE Policy, Section XIX of which provides for a choice of one of two ADR processes: “(1) non-binding Mediation administered by any Mediation facility to which the Insurer and Insured mutually agree . . . ; or (2) arbitration submitted to any arbitration facility to which the Insured and the Insurer mutually agree.”

106. On June 22, 2017, CSIC formally commenced non-binding mediation to address Disney’s claim for indemnity coverage under the CSIC Policy.

107. Defendants did not reject mediation.

108. Thereafter, CSIC and Defendants mediated for several months.

109. Accordingly, CSIC is entitled to a declaration that mediation commenced prior to September 1, 2017.

THIRD CAUSE OF ACTION

**INJUNCTIVE RELIEF
(Against Defendants)**

110. CSIC incorporates by reference and realleges each and every allegation set forth above as though fully set forth herein.

111. The CSIC Policy is a valid and binding contract between CSIC, on the one hand, and Defendants, on the other.

112. The CSIC Policy follows form to the ACE Policy, Section XIX of which provides for two choices of ADR processes: “(1) non-binding Mediation administered by any Mediation facility to which the Insurer and Insured mutually agree . . . ; or (2) arbitration submitted to any arbitration facility to which the Insured and the Insurer mutually agree.”

113. The ACE Policy further provides that the Insured has “the right to reject the choice by the Insurer of the type of ADR process” but only “prior to its commencement.”

114. CSIC formally commenced mediation on June 22, 2017, and, subsequently, CSIC and Defendants mediated for several months.

115. On September 1, 2017, nearly six weeks after CSIC commenced mediation, Disney improperly attempted to initiate the Purported Arbitration.

116. CSIC has no adequate remedy at law and will suffer irreparable harm if denied injunctive relief.

117. CSIC is thus entitled to an order enjoining Defendants from moving forward with the Purported Arbitration or any other arbitration concerning coverage for the BPI Settlement under the CSIC Policy.

PRAYER FOR RELIEF

WHEREFORE, CSIC seeks judgment against Defendants as follows:

- A. Finding in favor of CSIC on all counts asserted herein;
- B. Declaring that the BPI Settlement is not covered by the CSIC Policy
- C. Declaring that mediation was commenced prior to September 1, 2017;
- D. Enjoining Defendants from going forward with the Purported Arbitration or any other arbitration concerning coverage for the BPI Settlement under the CSIC Policy; and
- E. Awarding CSIC such other and further relief as the Court deems just and proper.

Dated: October 26, 2017

/s/ Michael J. Bowe

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