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ATTORNEYS FOR PLAINTIFF,
CONSTITUTION INSURANCE COMPANY

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CONSTITUTION INSURANCE,	:	
COMPANY,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO.:
	:	
vs.	:	
	:	
SOCIETY FOR CREATIVE	:	
ANACHRONISM, INC., ELIZABETH	:	
AMICK, JAMEY OLIFF, PAUL ZONA,	:	
AND BENJAMIN SCHRAGGER,	:	COMPLAINT FOR
	:	DECLARATORY JUDGMENT
Defendants.	:	
	:	
	:	

Plaintiff, Constitution Insurance Company ("CIC") by its attorneys, Budd Lerner, P.C., by way of Complaint for Declaratory Judgment against Defendant, Society for Creative Anachronism, Inc. ("SCA"), Elizabeth Amick, Jamey Oliff, Paul Zona and Benjamin Schragger states as follows:

NATURE OF ACTION AND RELIEF SOUGHT

1. This is an action to determine the rights and liabilities of the parties pursuant to a policies of insurance issued by Plaintiff to Defendant, SCA.

2. There is now existing between the parties an actual controversy for which Plaintiff is entitled to have a declaration of its rights pursuant to 28 U.S.C. §§ 2201 and 2202 because of the facts, conditions and circumstances hereinafter set forth.

3. Joined as parties are all those persons necessary for a just and complete adjudication of the dispute between Plaintiff and Defendant.

THE PARTIES

4. Plaintiff CIC is a corporation organized and existing under the laws of the State of New York with its principal place of business at 7 Times Square, 37th Floor, New York, NY 10036.

5. Upon information and belief, Defendant SCA was and is a non-profit corporation organized and existing under the laws of the State of California with its principal place of business in Milpitas, California, having a mailing address of P.O. Box 360789, Milpitas, California, 95036-0789.

6. Upon information and belief, Defendant SCA operated an educational organization which studies the Middle Ages by recreating pastimes and crafts of the period. SCA organizes

tournaments, festivals, classes, feasts and all manner of arts and sciences you would find in the culture of pre-1600s Western Europe.

7. Upon information and belief, Defendant, Elizabeth Amick ("Amick") is an officer of SCA and is a resident of the Commonwealth of Pennsylvania, residing at 1030 Wyandotte Street, Bethlehem, PA 18015-4645.

8. Upon information and belief, Defendant, Jamey Oliff ("Oliff") is an officer of SCA and is a resident of the Commonwealth of Pennsylvania, residing at 1241 Spruce Street, Easton, PA 18042.

9. Upon information and belief, Defendant, Paul Zona ("Zona") is an officer of SCA and is a resident of the Commonwealth of Pennsylvania, residing at 405 E. Abbott Street, Lansford, PA 18232.

10. Defendant Benjamin Schragger ("Schragger") was an employee of SCA and, prior to his incarceration, resided in New Tripoli, PA. Mr. Schragger currently resides at SCI-Rockview, Box A, Bellefont, PA 16823.

JURISDICTION AND VENUE

11. This Court has jurisdiction under 28 U.S.C. § 1332(a)(1) by reason of diversity of citizenship between the parties. The value of the matter in controversy exceeds \$75,000, exclusive of interest and costs.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) and 1391(c) because it is the District in which a substantial part of the events occurred and in which several of the Defendants reside.

THE PRIMARY COMMERCIAL GENERAL LIABILITY INSURANCE POLICIES

13. Fireman's Fund Insurance Company ("FFIC") issued two policies of insurance to Defendant SCA for the period from December 31, 2000 to December 31, 2002.

14. FFIC issued Policy No. S95MZX80773001 with effective dates December 31, 2000 to December 31, 2001 and Policy No. S95MZX80793425 with effective dates December 31, 2001 to December 31, 2002 (collectively the "FFIC Policies") to Defendant, SCA. Copies of the FFIC Policies are attached as Exhibits A and B respectively and are incorporated herein by reference.

THE CIC POLICIES

15. CIC issued two Excess/Umbrella Liability policies to the insured (collectively the "CIC Policies"):

a. CIC Policy No. CUL 40410, has effective dates of December 31, 2000 to December 31, 2001. It provides coverage of \$5 million each occurrence, excess of \$1 million each occurrence provided by the underlying FFIC policy. The policy provides a \$5 million general aggregate (other than product/completed operations), excess of the \$2 million general aggregate provided by the underlying Fireman's Fund policy. A copy of CIC Policy No. CUL

40410 is annexed hereto as Exhibit C and is incorporated herein by reference.

b. CIC Policy No. CUL 41529 has effective dates of December 31, 2001 to December 31, 2002. It also provides coverage in the amount of \$5 million each occurrence, excess of \$1 million each occurrence coverage provided by the underlying Fireman's Fund policy. The policy provides a \$5 million general aggregate (other than product/completed operations), excess of the \$2 million general aggregate provided in the underlying Fireman's Fund policy. A copy of CIC Policy No. CUL 41529 is annexed hereto as Exhibit D and is incorporated herein by reference.

16. The CIC Policies are identical in their terms and conditions.

17. The CIC Policies provide as follows:

I. INSURING AGREEMENTS

COVERAGE A - EXCESS LIABILITY INSURANCE

(FOLLOWING FORM)

Coverage A is excess insurance and follows the underlying insurance except as otherwise stated in this policy.

1. We will pay those sums that the insured must legally pay as damages because of bodily injury, property damages, personal injury, or advertising injury, caused by

an occurrence which occurs during the policy period of this policy in excess of the sums payable as damages in the underlying insurance or which would have been payable but for the exhaustion of the applicable limit of insurance.

(Exhibits C and D, page 1)

18. The CIC Policies are "follow form" policies, subject to the terms of the underlying insurance:

4. Coverage A is subject to the terms of the underlying insurance except:

- a. That the amounts or limits of liability, policy period, and conditions relating to the premium, subrogation, other insurance, obligation to investigate and defend, and cancellation or non-renewal and any renewal agreement of underlying insurance do not apply to this insurance;
- b. That where any exclusions of this policy conflict with any terms of the underlying insurance, the exclusions of this policy shall apply;
- c. that where the underlying insurance has an aggregate limit-of-liability, such

aggregate limit shall not, for the purpose of determining when this insurance applies, be reduced or exhausted by any payment relating to any act, error, omission, injury, damage or offense which occurs prior to the policy period shown in the Declarations of this policy; and

- d. For any obligation to provide or to pay for legal defense. Legal defense is covered by this insurance only as shown under DEFENSE SETTLEMENTS. (Exhibits C and D, page 1)

19. The CIC Policies provide that coverage does not apply to a loss not covered by the underlying insurance because of an exclusion contained in the underlying insurance:

COVERAGE B - UMBRELLA LIABILITY INSURANCE

Coverage B is excess insurance over a self-insured retention. Coverage B applies only to the exposures which are not covered by Coverage A and are not otherwise excluded by this policy or any of the underlying policies.

(Exhibits C and D, page 1)

II. UNDER COVERAGE A

(EXCESS LIABILITY INSURANCE)

In addition to the exclusions in Section I above, this policy does not apply under Coverage A to any loss not covered by the underlying insurance, and all exclusions now or hereafter contained in the underlying insurance, apply to Coverage A with the same force and effect.

III. UNDER COVERAGE B

(UMBRELLA LIABILITY INSURANCE)

In addition to the exclusions in Sections I and II above, this policy does not apply under Coverage B to: (Exhibits A and B, page 5)

20. The CIC Policies provide coverage only for occurrences, defined as follows:

10. Occurrence means:

a. With respect to bodily injury or property damage: an accident, including continuous or repeated exposure to substantially the same general harmful condition, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured and includes: (Exhibits A and B, page 6)

21. The CIC Policies each contain Amendatory Endorsement CUL020, confirming that the CIC Policies each follow the terms, conditions, definitions, and exclusions of the underlying insurance policy:

AMENDATORY ENDORSEMENT

Except as otherwise modified herein this policy shall follow the terms, conditions, definitions and **exclusions** of the controlling underlying insurance policies (as more fully defined in the Schedule of Underlying Insurance).

(CUL020(11/00))

22. Each of the FFIC Policies contain the following "Abuse or Molestation Exclusion-CG 21 46 07 98":

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part

The following exclusion is added to Paragraph

2., **Exclusions of Section I - Coverage A -**

Bodily Injury and Property Damage Liability

and Paragraph 2., **Exclusions of Section I -**

Coverage B - Personal and Advertising Injury

Liability:

This insurance does not apply to **bodily injury, property damage or personal and advertising injury** arising out of:

1. The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured, or
2. The negligent:
 - a. Employment;
 - b. Investigation;
 - c. Supervision;
 - d. Reporting to the proper authorities, or failure to so report; or
 - e. Retention;of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph 1. above.

FACTS

23. On or about February 25, 2010, a complaint was filed against SCA and others in the Court of Common Pleas of Lehigh County, Pennsylvania, entitled S.P., as a parent and natural Guardian of C.L., a minor, et al. v. Society for Creative

Anachronism, Inc., Case No. 2009-C-1644; a third amended complaint (the "Underlying Complaint") was filed on or about June 15, 2010. A copy of the Underlying Complaint is annexed hereto as Exhibit E.

24. The plaintiffs named in the Underlying Complaint are S.P. as parent and natural guardian of C.L., a minor; T.M. as parent and natural guardian of I.M., a minor; D.B. as parent and natural guardian of S.B., a minor; and K.B., an adult individual (collectively, the "Underlying Plaintiffs").

25. The Underlying Complaint alleges, in part, that between 1999-2003, while S.B. was a minor, Schragger improperly touched plaintiff S.B.'s body, engaged in sexual acts and exposed himself. See Exhibit E at paragraph 18.

26. The Underlying Complaint alleges, in part, that between 1999-2003, while K.B. was a minor, Schragger improperly touched plaintiff K.B.'s body, engaged in sexual acts and exposed himself. See Exhibit E at paragraph 21.

27. The Underlying Complaint alleges, in part, that between 2002-2003, while C.L. was a minor, Schragger improperly touched plaintiff C.L.'s body, caused C.L. to be naked in a hot tub with him and masturbated C.L. See Exhibit E at paragraph 24.

28. The Underlying Complaint alleges, in part, that on or about August-September 2003, while I.M. was a minor, Schragger improperly touched plaintiff I.M.'s body and masturbated I.M. See Exhibit E at paragraph 27.

29. The Underlying Complaint alleges that S.B., K.B., I.M. and C.L. sustained physical and emotional injury as a result of the improper sexual acts and touching by Schragger.

30. The Underlying Complaint alleges that Schragger has been convicted of the improper sexual acts and touching of the Underlying Plaintiffs.

31. SCA has requested that CIC provide coverage to SCA for the claims asserted by the Underlying Plaintiffs in the Underlying Complaint.

32. By letter dated December 9, 2010, CIC denied Defendant's Coverage under the CIC Policies for the claims asserted in the Underlying Complaint. A copy of the December 9, 2010 denial letter is annexed hereto as Exhibit F and is incorporated by reference.

33. An actual controversy has arisen and now exists between Plaintiff and Defendants. The actual controversy concerns whether Plaintiff has any obligation under the CIC Policies for any claims asserted in the Underlying Complaint. Plaintiff denies that Defendants are entitled to coverage under the CIC Policies for the reasons stated herein.

COUNT ONE

34. Plaintiff repeats and realleges the allegations made in paragraphs 1 through 33 of the Complaint as if set forth at length herein.

35. The claims asserted in the Underlying Complaint arise out of sexual abuse and/or molestation perpetrated by Schragger against the individuals named in the Underlying Complaint.

36. The claims asserted in the Underlying Complaint did not arise from a covered occurrence.

37. The claims asserted in the Underlying Complaint arise out of incidents of sexual abuse and/or molestation, and are not covered by the CIC Policies.

RELIEF

WHEREFORE, Plaintiff, Constitution Insurance Company, prays for judgment by this Court as follows:

1. Determining that Plaintiff has no obligation under the CIC Policies to defend or indemnify Defendants for the claims asserted in the Underlying Complaint.

3. Awarding Plaintiff its costs, attorney fees and disbursements; and

4. For such other relief as this Court may deem just and proper.

BUDD LARNER, P.C.
Attorneys for Plaintiff,
Constitution Insurance Company

BY: /s/ Jonathan S. Roth
JONATHAN S. ROTH (JR1246)

DATED: June 27, 2011