IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:25-cv-00524

Cornerstone Building Brands, Inc., Plaintiff, v. Berkshire Hathaway Specialty Insurance Company, and Old Republic Insurance Company, Defendants.	)))))))))))	**COMPLAINT** **Jury Trial Demanded**

Plaintiff Cornerstone Building Brands, Inc. ("Cornerstone") brings this action against Defendants Berkshire Hathaway Specialty Insurance Company ("Berkshire") and Old Republic Insurance Company ("Old Republic") (collectively, the "Insurers") for breach of contract and alleges as follows:

PRELIMINARY STATEMENT

1. This is an insurance coverage dispute arising from the Insurers' refusal to honor their contractual obligations under directors & officers ("D&O") liability insurance policies issued to Cornerstone.

2. Cornerstone purchased D&O liability insurance policies from the Insurers that expressly cover "Loss," which is defined to include amounts that Cornerstone is "legally obligated to pay," on account of a "Securities Claim" brought by shareholders of the Company during the November 16, 2021 to November 16, 2022 Policy Period.

3. The underlying litigation arises out of a transaction in which Cornerstone agreed to be taken private by Cornerstone's controlling stockholder, Clayton, Dubilier & Rice ("CD&R") (the "Transaction").

4. The Special Committee of the Board of Directors of Cornerstone retained Centerview Partners LLC ("Centerview") as its financial advisor in connection with the proposed take-private Transaction by CD&R.

5. Under the terms of the engagement agreement between Cornerstone and Centerview, Cornerstone expressly agreed to indemnify and reimburse Centerview for any losses, claims, liabilities, and expenses arising out of its engagement or the Transaction.

6. After the closing of the Transaction, former shareholders of Cornerstone filed lawsuits against Cornerstone, certain directors and officers of Cornerstone, Centerview, and CD&R, challenging the fairness of the transaction (defined in Paragraph 27, below, as the "Take-Private Litigation").

7. Cornerstone tendered the Take-Private Litigation to its D&O insurers, including the Insurers, seeking coverage for all Loss.

8. Cornerstone's D&O insurers, including the Insurers, acknowledged their coverage obligations for Cornerstone's defense costs and settlement payment in the Take-Private Litigation.

9. However, the Insurers wrongfully denied their coverage obligations for certain other amounts Cornerstone is legally obligated to pay on account of the Take-Private Litigation, which also qualify as covered Loss under their insurance policies.

PARTIES

10. Plaintiff Cornerstone Building Brands, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Cary, North Carolina.

11. Defendant Berkshire Hathaway Specialty Insurance Company is a corporation organized and existing under the laws of the State of Nebraska, with its principal place of business

in Boston, Massachusetts. Berkshire is licensed to do business in the State of North Carolina and regularly conducts business in the State of North Carolina.

12. Defendant Old Republic Insurance Company is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business in Mt. Pleasant, Pennsylvania. Old Republic is licensed to do business in the State of North Carolina and regularly conducts business in the State of North Carolina.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1), in that this is a civil action between citizens of different states, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

14. This dispute arises out of the Insurers’ breach of insurance policies they sold in North Carolina to a North Carolina policyholder, Cornerstone. Accordingly, the Court has specific personal jurisdiction over the Insurers.

15. At all relevant times, the Insurers have been insurance companies licensed to do business in the State of North Carolina that sold property and casualty insurance to policyholders in the State of North Carolina. In addition, the Insurers exercise substantial, systematic, and continuous contacts with the State of North Carolina by doing business in the State of North Carolina, insuring businesses and property in the State of North Carolina, and pursuing additional business in the State of North Carolina. Accordingly, this Court has general personal jurisdiction over the Insurers.

16. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), because this dispute arises out of the Insurers’ breach of insurance policies issued in this judicial district to a policyholder based in this judicial district.

FACTS

<u>The Take-Private Transaction and Resulting Litigation</u>

17. Cornerstone is a leading manufacturer of exterior building products serving residential and commercial markets across North America.

18. On October 24, 2021, the Special Committee of the Board of Directors of Cornerstone entered into an agreement (the "Agreement") with Centerview Partners LLC, under which Centerview served as the financial advisor to the Special Committee in connection a proposed take-private Transaction with Cornerstone's controlling stockholder, CD&R.

19. Under the Agreement, Cornerstone is obligated to indemnify Centerview from and against "all losses, claims, damages, demands and liabilities, joint or several, or actions or proceedings in respect thereof, brought by or against any person," which arise out of Centerview's engagement or the Transaction.

20. Under the Agreement, Cornerstone is further obligated to reimburse Centerview for "all reasonably incurred and documented costs and expenses (including expenses, fees, disbursements and other charges of legal counsel), as they are incurred in connection with investigating, preparing for, pursuing, defending against or providing evidence in, any pending or threatened action, claim, suit, investigation or other proceeding brought by or against any person" which arise out of Centerview's engagement or the Transaction.

21. On March 7, 2022, Cornerstone announced that it had entered into a definitive agreement to be acquired by CD&R in an all-cash transaction. CD&R completed its acquisition of Cornerstone on July 25, 2022.

22. In June 2022, Plaintiff Gary D. Voigt, a shareholder of Cornerstone, filed a books-and-records action under Delaware law (8 Del. C. § 220) against Cornerstone, seeking documents related to potential breaches of fiduciary duty by Cornerstone's board of directors in connection

with the Transaction, styled *Voigt v. Cornerstone Building Brands, Inc.*, C.A. No. 2022-0546-JTL (Del. Ch.) (the "Section 220 Action").

23. In the Section 220 Action, the plaintiff requested the production of certain correspondence between Centerview and CD&R regarding the Transaction.

24. On September 2, 2022, a former stockholder commenced an appraisal action against Cornerstone, styled *Matthew Q. Giffuni v. Cornerstone Building Brands, Inc.*, C.A. No. 2022-0780-JTL (Del. Ch.) (the "Appraisal Action").

25. Cornerstone incurred legal fees and expenses in connection with the Appraisal Action.

26. In the Appraisal Action, the plaintiff also subpoenaed Centerview and sought, among other things, all documents concerning the Transaction.

27. On October 25, 2022, Centerview demanded indemnification from Cornerstone for its legal fees and expenses incurred in connection with the Section 220 Action and Appraisal Action, pursuant to the Agreement.

28. In January 2023, former shareholders of Cornerstone filed two separate complaints challenging the fairness of the Transaction. The complaints were captioned *Firefighters' Pension System of the City of Kansas City, Missouri Trust and Gary D. Voigt v. Affeldt et al.*, C.A. No. 2023-0091-JTL (Del. Ch.) and *Whitebark Value Partners LP and Robert Garfield v. Clayton Dubilier & Rice, LLC et al.*, C.A. No. 2023-0092-JTL (Del. Ch.) (the "Shareholder Class Actions").

29. The court appointed Whitebark Value Partners LP to be lead plaintiff and consolidated the Shareholder Class Actions with the Appraisal Action under the caption, *In re*

Cornerstone Building Brands, Inc. Stockholder Litigation, C.A. No. 2023-0092-JTL (Del. Ch.) (the "Take-Private Litigation").

30. In the Shareholder Class Actions, the plaintiffs alleged that CD&R and its affiliates controlled Cornerstone prior to the Transaction and that certain directors and officers of Cornerstone, as well as CD&R and its affiliates, breached their fiduciary duties and engaged in conduct resulting in a sale of the Cornerstone public stockholders' shares to CD&R at an unfair price.

31. Centerview was subpoenaed in the Shareholder Class Actions and incurred additional legal fees and expenses in responding to the discovery requests. The subpoena in the Shareholder Class Actions sought, among other things, all documents concerning the Transaction and any documents produced by Centerview in the Appraisal Action.

32. On August 23, 2023, Centerview made a second demand for indemnification from Cornerstone for its legal fees and expenses incurred in responding to the Shareholder Class Actions, pursuant to the Agreement.

33. In June 2024, Centerview was added as a defendant to the Shareholder Class Actions and incurred additional legal fees and expenses.

34. The Take-Private Litigation settled in May 2025 for $45 million.

35. All legal fees, expenses, and settlement amounts incurred by Centerview in connection with the Take-Private Litigation – in excess of $9.5 million – were reimbursed by Cornerstone as required under the Agreement.

<u>The Zurich Primary Policy</u>

36. Zurich American Insurance Company ("Zurich") issued Directors & Officers Liability Insurance Policy No. DOC 6974704-01 to Cornerstone, for the Policy Period of November 16, 2021 to November 16, 2022 (the "Zurich Policy").

37. The Zurich Policy provides liability insurance coverage to Cornerstone and its directors and officers.

38. Relevant here, Insuring Clause I.C. provides:

> C. COMPANY SECURITIES LIABILITY COVERAGE
>
> The Underwriter shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay on account of a **Securities Claim** first made against the **Company** during the **Policy Period** … for a **Wrongful Act** taking place before or during the **Policy Period**, subject to the Limit of Liability set forth in Item 2.A of the Declarations.

39. Section III of the Zurich Policy, entitled "DEFINITIONS," defines the words bolded above in pertinent part:

> B. **Claim** means:
>
> ***
>
> 2. a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading[.]
>
> ***
>
> C. **Company** means "collectively, the Policyholder and its Subsidiaries[.]"
>
> ***
>
> D. **Defense Costs** means "that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorney's fees and expert's fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Company**) incurred by the **Insureds** (i) in defending or investigating **Claims**, including costs assessed against the **Insureds** in a **Claim** or the premium for appeal, attachment or similar bonds provided the Underwriter shall have no obligation to apply for or furnish such bonds, or (ii) at the Underwriter's request to assist the Underwriter in investigating a **Claim**."
>
> ***

N. **Insureds** means "the **Insured Persons** and, solely with respect to Insuring Clause B, Insuring Clause C and Insuring Clause E, the **Company**."

***

Q. **Loss** means "the total amount the **Insureds** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, and any award of pre-judgment and post-judgment interest with respect to covered damages, settlements and **Defense Costs**. …"

***

Z. **Securities Claim** means "any **Claim** alleging a violation of any statutory or common law which in whole or in part is: (i) brought by one or more securities holders of the **Company**, in their capacity as such, or (ii) based upon, arising out of or attributable to the purchase or sale of, or offer or solicitation of an offer to purchase or sell, any securities issued by the **Company**, whether such purchase, sale, offer or solicitation involves a transaction with the **Company** or occurs in the open market (including without limitation any such **Claim** brought by the Securities and Exchange Commission or any other claimant)."

***

CC. **Wrongful Act** means:

"2. with respect to Insuring Clause C, any actual or alleged act, error, misstatement, misleading statement, neglect, omission or breach of duty by the **Company**[.]"

40. The Limit of Liability under the Zurich Policy is $10,000,000, and the Retention is $5,000,000.

<u>The Berkshire Excess Policy</u>

41. Berkshire issued to Cornerstone a follow-form policy, in excess of the Zurich Policy and other exhausted follow-form excess policies, bearing Policy No. 47-EPC-312958-02, for the Policy Period November 16, 2021 to November 16, 2022 (the "Berkshire Policy").

42. The Berkshire Policy provides coverage "in accordance with the same terms, conditions and limitations of the" Zurich Policy.

43. The Limit of Liability under the Berkshire Policy is $10,000,000.

44. Berkshire's coverage obligations attach upon exhaustion of the underlying insurance. All such underlying insurance has now been exhausted by the payment of covered Loss related to the Take-Private Litigation.

The Old Republic Excess Policy

45. Old Republic issued to Cornerstone a follow-form policy, in excess of the Zurich Policy, other exhausted follow-form excess policies, and the Berkshire Policy, bearing Policy No. ORPRO 12 101512, for the Policy Period November 16, 2021 to November 16, 2022 (the "Old Republic Policy," and together with the Berkshire Policy, the "Policies").

46. The Old Republic Policy provides coverage "in accordance with the terms, conditions, warranties and exclusions set forth in the" Zurich Policy.

47. The Limit of Liability under the Old Republic Policy is $10,000,000.

48. Old Republic's coverage obligations are triggered upon the exhaustion of the underlying insurance Because Cornerstone's Loss exceeds the remaining limits of liability under the Berkshire Policy, the Old Republic Policy is now implicated and its coverage obligations are triggered.

The Insurers Owe Coverage to Cornerstone

49. Under the Policies, the Insurers are contractually obligated to pay on behalf of Cornerstone all "Loss" for which Cornerstone becomes "legally obligated to pay on account of a Securities Claim first made against the Company during the Policy Period … for a Wrongful Act."

50. Cornerstone's D&O insurers, including the Insurers, have admitted that the Take-Private Litigation is a covered Securities Claim first made against Cornerstone during the Policy Period for alleged Wrongful Acts, and have paid Cornerstone's defense costs and settlement amount in the Take-Private Litigation.

51. Cornerstone is legally obligated to indemnify certain third parties, including its financial advisor Centerview, for legal fees and expenses and settlement amounts incurred on account of the Take-Private Litigation.

52. Those amounts constitute covered "Loss" under the Policies as "amount[s] the Insureds become legally obligated to pay" on account of a Securities Claim, and no exclusion bars coverage.

53. Another court, addressing the same issue under virtually identical D&O policies issued to Cornerstone's predecessor concluded such costs are covered, holding that the legal fees and expenses the insured "was obligated to pay on behalf of the third-party Consultants because of discovery propounded on them" in a derivative action were covered Loss "as 'amounts ... that the Insured is obligated to pay' – 'on account of any Securities Claim.'" *See NCI Building Systems, Inc. v. XL Specialty Insurance Co., et al.*, Cause No. 2020-75580 (Tex. Dist. Ct.). A copy of the Order issued in the Texas court is attached hereto as **Exhibit A**.

The Insurance Claim

54. Cornerstone provided timely notice of the Take-Private Litigation to its D&O insurers, including the Insurers.

55. Cornerstone requested that the Insurers pay Cornerstone's Loss in the Take-Private Litigation as required by the Policies, including all indemnification amounts that Cornerstone was legally obligated to pay on account of the Take-Private Litigation.

56. Cornerstone participated in a mediation with the Insurers in the Take Private litigation, in which the instant coverage dispute was addressed.

57. The Insurers unequivocally and wrongfully denied coverage for the amounts Cornerstone was legally obligated to pay Centerview on account of the Take-Private Litigation.

58. The Insurers' denial of coverage for those amounts constitutes a breach of contract.

59. As a result of the Insurers' breach, Cornerstone has suffered substantial damages and been deprived of the benefits of the insurance coverage for which it paid.

60. Cornerstone has fulfilled all policy conditions, including timely notice and exhaustion of retention and underlying limits.

COUNT ONE
BREACH OF CONTRACT AGAINST BERKSHIRE AND OLD REPUBLIC

61. Cornerstone repeats and realleges the allegations above as if fully set forth herein.

62. The Policies are valid and enforceable contracts between Cornerstone and the Insurers.

63. Under the terms of the Policies, the Insurers contracted to pay on behalf of Cornerstone "all Loss" – including amounts that Cornerstone is "legally obligated to pay" – "on account of a Securities Claim first made against the Company during the Policy Period … for a Wrongful Act taking place before or during the Policy Period[.]"

64. The Policies provide coverage for the Loss incurred by Cornerstone on account of the Take-Private Litigation, including the indemnity amounts Cornerstone was legally obligated to pay on account of the Take-Private Litigation.

65. The plaintiffs in the Take-Private Litigation subpoenaed Cornerstone's financial advisor, who was retained to assist with the Transaction, in order to obtain documents and other discovery in the Take-Private Litigation.

66. Centerview incurred fees and expenses in responding to extensive discovery demands in the Take-Private Litigation and subsequently demanded indemnification from Cornerstone pursuant to the contractual indemnity agreement between Cornerstone and Centerview.

67. In addition to being subpoenaed, Centerview was later named as a defendant in the Take-Private Litigation and ultimately incurred a settlement payment to resolve the claims asserted against it in that action.

68. Because Cornerstone is legally obligated to indemnify Centerview for its legal fees and expenses and settlement payment in the Take-Private Litigation, and no exclusion bars coverage for those amounts, they constitute "amount[s] the Insureds become legally obligated to pay" on account of a Securities Claim and, therefore, qualify as covered Loss under the Policies.

69. No exclusions bar or otherwise limit coverage for the Loss incurred by Cornerstone on account of the Take-Private Litigation, which is covered under the Policies.

70. In connection with the Take-Private Litigation, Cornerstone has incurred a Loss in excess of the primary Zurich Policy's retention and the full limits of all underlying insurance policies.

71. Cornerstone's claims against the Insurers are ripe due to the exhaustion of all underlying insurance.

72. The Insurers breached their respective Policies by wrongfully denying coverage for Loss incurred by Cornerstone in connection with the Take-Private Litigation.

73. Cornerstone has performed all material obligations under the Policies, and all conditions precedent to coverage have been satisfied, waived, or otherwise excused.

74. Cornerstone has not excused the Insurers' breach.

75. As a result of the Insurers' breach, Cornerstone has been denied the benefits of insurance coverage for which it is entitled as an insured under the Policies.

76. Cornerstone is entitled to compensatory damages, including all amounts the Insurers were obligated to pay under the Policies, as well as pre- and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Cornerstone respectfully requests that this Court enter judgment in its favor and against Berkshire and Old Republic, and award the following relief:

(a) Compensatory damages in an amount to be determined at trial;

(b) Pre- and post-judgment interest; and

(c) Such other and further relief as the Court deems just and proper.

Dated: August 25, 2025

Respectfully submitted,

REED SMITH LLP

By: /s/ *Dominic I. Rupprecht*
J. James Cooper (LR 83.1(e) special appearance)
Tex. Bar No. 04780010
Dominic I. Rupprecht (LR 83.1(e) special appearance)
Tex. Bar No. 24127494
Pa. Bar No. 308721
1221 McKinney Street
Suite 2100
Houston, TX 77010
713-469-3879
jcooper@reedsmith.com
drupprecht@reedsmith.com

Zachary S. Roman (LR 83.1(e) special appearance)
Pa. Bar No. 325730
225 Fifth Avenue
Pittsburgh, PA 15222
412-288-3367
zroman@reedsmith.com

SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, LLP

By: /s/ *Jackson W. Moore*
JACKSON W. MOORE
N.C. Bar. No. 29912

C. MICHAEL ANDERSON
N.C. Bar No. 42646

150 Fayetteville Street
Raleigh, North Carolina 27601
Telephone: (919) 821-1220
Facsimile: (919) 821-6800
Email: jmoore@smithlaw.com
manderson@smithlaw.com

Attorneys for Plaintiff Cornerstone Building Brands, Inc.