

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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FGNY PARENTCO, LLC, et al.,

Plaintiffs,

Civil Action No.:

v.

ACCEPTANCE INDEMNITY INSURANCE COMPANY, et al.,

Defendants.
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NOTICE OF REMOVAL OF CIVIL ACTION

Pursuant to 28 U.S.C. §§ 1332, 1441(a), and Rule 81 of the Federal Rules of Civil Procedure, Defendant Acceptance Indemnity Insurance Company (“Acceptance”) petitions the Court for removal of the action described below from the Supreme Court of the State of New York, County of Kings, to this Court, and in support thereof, states upon information and belief as follows:

1. On August 4, 2020, Plaintiff FGNY ParentCo, LLC (“FGNY”), along with 52 other Plaintiffs, filed suit against Acceptance and 26 other insurance companies in the Supreme Court of the State of New York, County of Kings, under Index No. 541089/2020 (the “State Court Action”). On August 25, 2020, 95 total Plaintiffs filed an Amended Complaint against 41 Defendants. A copy of Plaintiffs’ Summons and Complaint (the “Initial Pleading”), together with a copy of all process, pleadings, and orders served upon Acceptance in the State Court Action, as required by 28 U.S.C. § 1446(a), is attached as **Exhibit A**.

2. Acceptance received a copy of the Initial Pleading on August 7, 2020. Thus, this Notice of Removal is being timely filed pursuant to 28 U.S.C. § 1446(b) because it is filed within 30 days after receipt of the Initial Pleading by Acceptance.

3. Upon information and belief, the amount in controversy is in excess of \$75,000.00.

4. Upon information and belief, FGNY is a Delaware limited liability company with its principal place of business in New York, New York. The citizenship of FGNY's members is unknown; as such, pursuant to Local Rule 81.1, Acceptance hereby requests that Plaintiffs provide a statement of the omitted information.

5. Acceptance is a Nebraska corporation with its principal place of business in Raleigh, North Carolina.

6. The citizenships of the other Plaintiffs and the other Defendants should be ignored for purposes of jurisdiction based on fraudulent or procedural misjoinder and/or fraudulent joinder.

7. FGNY alleges three causes of action against Acceptance: Declaratory Judgment, Breach of Contract, and Unjust Enrichment. Each other Plaintiff alleges causes of action against its own insurer(s) for Declaratory Judgment, Breach of Contract, and Unjust Enrichment.

8. The following elements of joinder have not been met: (1) Plaintiffs have alleged no joint, several, or alternative liability or right to relief; (2) the claims do not arise out of the same transaction, occurrence, or series of transactions or occurrences; and (3) there are no common questions of fact. *See* CPLR 1002; FED. R. CIV. P. 20(a). As such, the citizenships of the other Plaintiffs and the other Defendants should be ignored for purposes of jurisdiction based on fraudulent or procedural misjoinder.

9. FGNY has no possibility of recovering against any defendant other than Acceptance. The existence of a contract between parties is essential to an action for a declaration

of rights under a contract or a claim for breach of contract. Similarly, an allegation that a defendant retained something of benefit from the plaintiff is essential to a claim for unjust enrichment. FGNY has not alleged that it has a contract with any of the defendants other than Acceptance, or that any of the defendants other than Acceptance retained something of benefit to FGNY. *See* Exhibit A. As such, there are no circumstances under which FGNY could recover from any of the other Defendants. As a result, the citizenship of the defendants other than Acceptance should be ignored.

10. Similarly, no Plaintiff other than FGNY has any possibility of recovering against Acceptance. No Plaintiff other than FGNY has alleged the existence of any contract with Acceptance or that Acceptance retained something of value from them. *See* Exhibit A. As a result, the citizenship of the plaintiffs other than FGNY should be ignored.

11. Thus, the other Plaintiffs' and Defendants' citizenships should be ignored based on fraudulent or procedural misjoinder and/or fraudulent joinder.

12. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because there is complete diversity between FGNY and Acceptance, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of costs and interests. Due to fraudulent or procedural misjoinder and/or fraudulent joinder, the citizenship of all other parties should be ignored.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 112(b) because it is the district and division embracing the place where the State Court Action was pending in accordance with 28 U.S.C. § 1441(a).

14. Because the other defendants have not been properly joined, *see supra* ¶¶ 6-11, they need not join in or consent to the removal of this action. *See* 28 U.S.C. § 1446(b)(2)(A).

15. No previous application has been made for the relief requested herein.

16. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiffs, and a copy is also being filed with the Clerk of the Supreme Court of the State of New York, County of Kings. The Notice of Filing of Notice of Removal is attached hereto as **Exhibit B**.

WHEREFORE, Acceptance respectfully requests that the State Court Action be removed to the United States District Court for the Eastern District of New York, and that this Court assume jurisdiction of this action and make such further orders as may be required to properly determine this controversy.

Dated: New York, New York
September 4, 2020

Respectfully submitted,

**FORAN GLENNON PALANDECH PONZI &
RUDLOFF PC**

/s/ Charles J. Rocco _____

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