

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

DAVID BLAU, Trustee of the Zupnick Family	:	
Trust 2008 C,	:	
	:	Case No. <u>14-CV-3202</u>
Plaintiff,	:	
	:	
v.	:	Removed from: Supreme Court of the State
	:	of New York, County of Kings
ALLIANZ LIFE INSURANCE COMPANY	:	
OF NORTH AMERICA,	:	Index No. 502877/2014
	:	
Defendant.	:	

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT Defendant Allianz Life Insurance Company of North America (“Allianz”) by and through its undersigned attorneys, hereby removes the above-captioned proceeding, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 and Local Civil Rule 81.1, from the Supreme Court of the State of New York, County of Kings, where the action was pending as Index No. 502877/2014, to the United States District Court for the Eastern District of New York, being the district embracing the place where the case is pending. The Removing Defendant appears for the purpose of removal only and for no other purpose, reserves all defenses and rights available to it, and states as follows:

1. Plaintiff seeks a declaration that a life insurance policy, Policy No. [REDACTED] 9319, with a “face value of eight million dollars,” has not lapsed and is in full force and effect. Complaint ¶¶ 3, 8. As explained more fully below, this Court has subject matter jurisdiction over this civil action because the parties are completely diverse and the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332.

2. A copy of the Summons and Complaint that Allianz received by mail from the Minnesota Secretary of State is attached to this Notice of Removal as Exhibit A. Allianz also received a copy of the Summons and Complaint by mail from the New York Department of Financial Services, which is attached as Exhibit B. Exhibits A and B constitute “a copy of all process, pleadings, and orders served upon” Allianz in the state court action. 28 U.S.C. § 1446(a). A copy of the state court docket sheet (as of May 21, 2014) is attached hereto as Exhibit C.

3. In accordance with 28 U.S.C. § 1446(b), this Notice of Removal is timely filed, as it is filed within one year after the state court proceedings were commenced and within 30 days after Allianz received the Summons and Complaint. Allianz received a copy of the Summons and Complaint on April 22, 2014.¹ *See* Declaration of Sandra Gudvangen in Supp. of Allianz’s Notice of Removal (“Gudvangen Decl.”) ¶ 3. This Notice of Removal is filed within 30 days of receipt of the Summons and Complaint.

4. Allianz will promptly serve on opposing counsel and deliver to the Clerk of the Supreme Court of the State of New York, County of Kings, a copy of the Notice of Removal and its accompanying Exhibits in accordance with 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Notice of Removal (excluding its exhibits) is attached hereto as Exhibit D.

5. This Court has subject matter jurisdiction over this case because the action presents a dispute between citizens of different States where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a)(1).

Accordingly, this case is removable under 28 U.S.C. § 1441(a).

¹ Allianz does not waive any arguments about the validity of service or, assuming effective service, when service was completed.

6. The citizenship of the sole plaintiff, David Blau, trustee, is unknown and is not pled in the Complaint. Nor is the citizenship of the Zupnick Family Trust 2008 C (the Trust) pled in the Complaint. Consequently, Allianz requests that plaintiff file a statement of the “residence and domicile and any state or other jurisdiction of which that party is a citizen for purposes of 28 U.S.C. § 1332” for Blau and the Trust within 21 days after removal as required by Local Civil Rule 81.1. There are no allegations that Blau or the Trust are citizens of the state of Minnesota.

7. At the time the Complaint was filed, at the time of removal, and at all intervening times, the sole Defendant, Allianz, was and is a corporation organized solely under the laws of the state of Minnesota with its principal place of business located solely in the state of Minnesota. *See* Complaint ¶ 2; Gudvangen Decl. ¶¶ 5, 6. 28 U.S.C. § 1332(c)(1) (deeming a corporation to be a citizen of the State where it is incorporated and of the State where it has its principal place of business). Accordingly, complete diversity of citizenship exists in this case.

8. Plaintiff seeks a declaration that life insurance policy number [REDACTED] 9319 “with a face value of eight million dollars” “is in full force and effect and has been continuously in full force and effect since the Policy was issued.” Complaint ¶¶ 3, 8, 36; 28 U.S.C. § 1446(c)(2) (“the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy”).

9. “In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.” *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977). Specifically in the insurance context, the Second Circuit has held that:

the amount in controversy is not necessarily the money judgment sought or recovered, but rather the value of the consequences

which may result from the litigation. In a declaratory judgment action involving the validity of a contract . . . the entire value of the contract determined the amount in controversy rather than installments under the contract or possible damages. Similarly, it has been held that the entire value of an insurance policy determines the jurisdictional amount rather than the premium due or paid under the insurance contract.

Beacon Constr. Co. v. Matco Elec. Co., 521 F.2d 392, 399 (2d Cir. 1975) (internal citations omitted). Thus, the amount in controversy is “the maximum potential adverse consequence to the carrier in the event the policy remains in force.” *Cheung v. Union Cent. Life Ins. Co.*, 269 F. Supp. 2d 321, 324 (S.D.N.Y. 2003); *see also Crag Burn Vill. Ass’n, Inc. v. Fed. Ins. Co.*, No. 04-CV-436A, 2005 WL 600342, at *1 (W.D.N.Y. Mar. 8, 2005) (“the amount that the carrier ultimately may be called upon to pay is a defensible measure of the value of the policy.”).

10. The “entire value” of the insurance policy which plaintiff seeks to have declared in force is \$8 million. Complaint ¶ 3. Thus, the amount-in-controversy requirement for the exercise of diversity jurisdiction is satisfied. 28 U.S.C. § 1332(a)(1). At the very least, the sum of premiums paid into the policy is \$903,553.57 – well in excess of the \$75,000 threshold. Gudvangen Decl. ¶ 7.

WHEREFORE, Allianz respectfully requests that the Court exercise jurisdiction over this civil action.

DATED: May 22, 2014.

CARLTON FIELDS JORDEN BURT, P.A.

By: s/ _____
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