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7 Attorneys for Defendant,

ACE AMERICAN INSURANCE COMPANY

8
9 UNITED STATES DISTRICT COURT

10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11
12 SAN DIEGO UNIFIED PORT
DISTRICT,

13 Plaintiff,

14 v.

15 ACE AMERICAN INSURANCE
16 COMPANY, and DOES 1 through 50,
inclusive,

17 Defendants.
18

Case No.: **'14CV0070 CAB RBB**

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(B)
(DIVERSITY)**

19 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

20 PLEASE TAKE NOTICE that Defendant ACE AMERICAN INSURANCE
21 COMPANY (“ACE”) hereby removes to this honorable Court the State Court
22 action described below:

23 1. On August 9, 2013, Plaintiff SAN DIEGO UNIFIED PORT
24 DISTIRCT (“San Diego Port”) commenced an action in the Superior Court of the
25 State of California for the San Diego, captioned San Diego Unified Port District v.
26 ACE American Insurance Company, Case No. 37-2013-00062180-CU-IC-CTL. A
27 true and correct copy of the Summons and Complaint is attached hereto and
28 incorporated herein as Exhibit “1.”

1 2. On October 25, 2013, ACE filed its Verified Answer to the complaint.
2 A true and correct copy of the Verified Answer is attached hereto and incorporated
3 herein as Exhibit “2.”

4 3. The first date upon which ACE received an “other paper” (as
5 contemplated by 28 U.S.C. Section 1446) from which it may be first ascertained
6 that the case is removable was when San Diego Port served responses to ACE’s
7 Special Interrogatories (Set One) upon ACE on December 24, 2013. A true and
8 correct copy of San Diego Port’s responses to ACE’s Special Interrogatories (Set
9 One) is attached hereto and incorporated hereby as Exhibit “3”.

10 3. This is a civil action for which the U.S. District Court has original
11 jurisdiction under 28 U.S.C. Section 1332. This action is one which may be
12 removed to this Court by ACE pursuant to the provisions of 28 U.S.C. Section
13 1441(b) in that it is a civil action between citizens of different states and the
14 amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.
15 In this action, San Diego Port alleges that ACE breached its contractual duties to
16 defend and indemnify it in connection with a Petition for Writ of Mandate, Action
17 for Declaratory Relief and Injunctive Relief filed by Phelps Portman San Diego,
18 LLC and Hensel Phelps Construction Co. in the Superior Court of the State of
19 California, County of San Diego (the “Claim ”) and a subsequent complaint filed
20 by Phelps Portman San Diego, LLC and Hensel Phelps Construction Co. against
21 San Diego Port in the Superior Court of the State of California, County of San
22 Diego, Case No. 37-2013-00053225-CU-NP-CTL (the “Lawsuit”).

23 4. In its responses to Special Interrogatories, San Diego Port has stated
24 that the damages sought against ACE under the subject insurance policy, as of
25 November 2013, include \$86,000 in defense costs with respect to the Claim and/or
26 the Lawsuit. San Diego has also stated that it intends to seek indemnity against
27 ACE in the Lawsuit for which plaintiffs in the Lawsuit seek damages in excess of
28 \$9,542,488.85. San Diego Port also seeks, as of October 2013, \$23,000 in “Brandt”

1 attorneys fees.

2 5. ACE is informed and believes that San Diego Port was, and still is, at
3 the time of this filing, a public corporation organized and existing under the laws
4 of the State of California, with its principal place of business in San Diego,
5 California.

6 6. ACE was, and still is, at the time of this filing, a corporation
7 organized and existing under the laws of the State of Pennsylvania, with its
8 principal place of business in Philadelphia, Pennsylvania. ACE is informed and
9 believes that it is the only Defendant upon which service of the Complaint in this
10 action has been attempted.

11 7. Notwithstanding this removal, ACE does not waive and specifically
12 reserves any and all objections, exceptions or defenses to the Complaint herein,
13 including but not limited to, moving to have this matter dismissed, stayed and/or
14 transferred to another court.

15
16 DATE: January 10, 2014

17 WILSON, ELSER, MOSKOWITZ
18 EDELMAN & DICKER LLP

19 By: Tae S. Um
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22 Attorneys for Defendant,
23 ACE AMERICAN INSURANCE
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