

Court of Clay County, State of Missouri, and in support of its Notice of Removal, hereby states as follows:

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INTRODUCTION

1. The underlying matter was instituted when Nicholas Financial Inc. (“NFI”) sought a deficiency judgment against Jeremiah Gross in the Associate Circuit Court of Clay County, Missouri. Gross filed a class action counterclaim (“Counterclaim”), on behalf of himself and all

others similarly situated (“Class”), against NFI alleging violations of Missouri’s Uniform Commercial Code. Gross and NFI subsequently entered into a settlement and non-execution agreement pursuant to Missouri Revised Statute Section 537.065 and Zurich, as NFI’s insurer, timely intervened to contest the issue of damages. On May 15, 2024, the Circuit Court of Clay County, Missouri approved the Class Action Settlement Agreement between NFI, Gross, and the Class and entered the underlying judgment,² with an estimated value of over \$263 million, in favor of Gross and the Class and against NFI, disposing of all claims as between Gross and NFI in the litigation. After judgment had been entered on the aforementioned claims resolving all issues pending in the litigation, Gross improperly filed a Petition³ against Zurich alleging Zurich breached its contracts with NFI to provide insurance coverage to NFI for the Counterclaim, breached its duty to defend NFI against the Counterclaim, failed in bad faith to defend or settle the Counterclaim against NFI and seeking declaratory judgment regarding the parties’ rights and obligations under the insurance policies issued by Zurich to NFI.⁴

2. Gross’ Petition against Zurich is removable under the Class Action Fairness Act (“CAFA”). 28 U.S.C. § 1453. Removal is proper under CAFA if the matter: (1) is a class action involving 100 or more people; (2) involves “minimal diversity”; and (3) if the amount in

² Zurich has filed a Motion to Amend the Final Judgment to the extent it includes a single paragraph, Paragraph 13, that improperly contains findings outside the scope of the allegations of the Counterclaim; however, Zurich does not challenge the remainder of the Final Judgment.

³ Gross improperly calls his Petition a “Cross-Claim,” as though Zurich was a defendant and/or party in the case in its individual capacity, as opposed to its capacity as intervenor pursuant to Mo. Rev. Stat. § 537.065, in which it stepped into the shoes of NFI.

⁴ It is Zurich’s position that Gross’ Petition is removable because it is a separate and distinct claim and judicial unit asserted after judgment was entered by the Circuit Court of Clay County that, with the exception of the single paragraph subject to Zurich’s Motion to Amend, *see* Footnote 2 *supra*, disposed of all claims pending before the Circuit Court. However, to the extent this Court considers otherwise, Zurich moves to sever the claims Gross asserted against Zurich directly from the other claims asserted in the case.

controversy exceeds \$5 million. Those elements are satisfied. Under binding Eighth Circuit precedent in *Williams v. Employers Mutual Casualty Co.*, 845 F.3d 891 (8th Cir. 2017), this is a removable “class action” under CAFA involving more than 100 claimants. Gross is only before this Court seeking to recover damages he obtained in the capacity of a purported class representative of, upon information and belief, more than 17,000 people pursuant to Missouri Rule 52.08, the analogue to Rule 23.

3. Even if it were not removable under CAFA, this case is also removable under this Court’s general diversity jurisdiction because: (1) there is complete diversity between the parties; (2) the amount-in-controversy exceeds \$75,000; (3) no defendant is a citizen of the forum state; (4) all defendants join in this removal; and (5) the removal is timely.

PARTIES

4. ZAIC is a New York corporation engaged in the insurance business with a statutory home office located at 4 World Trade Center, 150 Greenwich Street, New York, NY 10007, and its principal place of business located at 1299 Zurich Way, Schaumburg, IL 60196. ZAIC is authorized to transact business and has transacted business in Florida. ZAIC is therefore a citizen of New York and Illinois.

5. AZIC is an Illinois corporation engaged in the insurance business with a statutory home office and its principal place of business located at 1299 Zurich Way, Schaumburg, IL 60196. AZIC is therefore a citizen of Illinois.

6. AGLIC is a New York corporation engaged in the insurance business with a statutory home office located at 4 World Trade Center, 150 Greenwich Street, New York, NY 10007, and its principal place of business located at 1299 Zurich Way, Schaumburg, IL 60196. AGLIC is therefore a citizen of New York and Illinois.

7. Gross is an individual domiciled in Kansas City, Missouri in Clay County, and is therefore a citizen of Missouri.

8. Although it is no longer a proper party to the removed action because all the claims against it are resolved by the Final Judgment, NFI is a Florida corporation with a principal place of business in Clearwater, Florida, and is therefore a citizen of Florida.⁵

FACTUAL AND PROCEDURAL BACKGROUND

9. ZAIC, as successor by merger with Maryland Casualty Company and Assurance Company of America, issued Commercial General Liability policies, Policy Nos. 38508751 with effective policy periods spanning from 2001 to 2010 and Policy Nos. 04002251 with effective policy periods spanning from 2009 to 2013 (“ZAIC CGL PAS policies”). ZAIC, as successor by merger with Maryland Casualty Company and Assurance Company of America, also issued Commercial Umbrella policies, Policy Nos. 38508751 with effective policy periods spanning from 2002 to 2010 and Policy Nos. 04002251 with effective policy periods spanning from 2009 to 2013 (“ZAIC Umbrella PAS policies”). Collectively the ZAIC CGL PAS policies and the ZAIC Umbrella PAS policies are referred to herein as “ZAIC PAS policies.” *See* Ex. A-3 at 4527-7845.

10. AGLIC issued Commercial Liability Policy Nos. CPO 57816654-00 through CPO 5781654-02 to NICHOLAS, which has effective policy periods spanning from December 22, 2013, through December 22, 2016 (“AGLIC CPO policies”). *See* Ex. A-3 at 1014-2307.

11. AZIC issued Commercial Liability Policy Nos. CPO 5781654-03 through CPO 5781654-06 to NICHOLAS, which has effective policy periods spanning from December 22, 2016, through December 22, 2020 (“AZIC CPO policies”). *See* A-3 at 2308-4157.

⁵ Because Gross filed a separate and distinct claim against Zurich after all the claims involving NFI were resolved by a judgment, Zurich does not believe NFI is a party to this separate, removable action.

12. AGLIC also issued Commercial Umbrella Policy Nos. AUC 5781728-00 through AUC 5781728-06 to NICHOLAS, which has effective policy periods spanning from December 22, 2013, through April 1, 2020 (“AGLIC AUC policies”). *See* Ex. A-3 at 4158-4526.

13. The above referenced policies are collectively referred to herein as the “Policies.”

14. On March 9, 2021, Nicholas Financial Inc. (“NFI”) filed a Petition for Deficiency on Retail Installment Contract and Security Agreement against Jeremiah Gross in the Associate Circuit Court of Clay County, Missouri. Ex. A-1 at 0001-0003, *gen.*; Ex. A-1 at 0004-0009.

15. After NFI obtained a default judgment against Gross, on March 23, 2022, Gross had the default judgment set aside and filed the Counterclaim against NFI asserting claims under Missouri’s Uniform Commercial Code and seeking statutory damages and other relief for the Class consisting of people who obtained a secured collateralized loan or financing from NFI whose collateral was repossessed. *See, gen.* Ex. A-1 at 0001-0003; Ex. A-2 at 0055-0056.

16. The Counterclaim alleged that NFI engaged in unlawful and deceptive wrongdoing “regarding collection, enforcement, repossession, and disposition of collateral, and collection of alleged deficiencies.” *See* Ex. A-2 at 0086-0105, ¶ 1.

17. Specifically, the Counterclaim alleged that:

- a. NFI mailed deficient presale notices to the class members. *See id.*, ¶ 100-101.
- b. NFI failed to provide “reasonable authenticated notice of disposition” to the class members. *See id.*, ¶ 102.
- c. NFI reported derogatory information about class members to credit agencies. *See id.*, ¶ 103.

d. NFI charged Missouri subclass members post-default, prejudgment interest and fees, causing right to cure notices to be deficient, violating Missouri State law. *See id.*, ¶ 108.

18. Based upon all terms, provisions, limitations, and exclusions of the Policies, Zurich advised NFI that the Counterclaim's allegations likely do not trigger coverage under the Policies, and invited NFI to provide any information which it believed placed the Counterclaim within coverage provided by the Policies. *See gen.*, Ex. A-3 at 0968-0977. NFI, which was being afforded a defense to the counterclaim by another insurer, confirmed its position that there was no coverage for the Counterclaim under the Policies and communicated that it would advise if its position changed in any way; NFI never disputed Zurich's coverage position, never requested Zurich provide it a defense to the Counterclaim, never provided any subsequent information that would challenge or alter Zurich's coverage position and never made a demand for payment on Zurich within the Zurich policy limits.

19. On February 20, 2024, NFI and Gross, individually and on behalf of the Class, entered into a Class Action Settlement Agreement as to all claims and causes of action relating to the Counterclaim, including those relating to the collateralized loans and financing from NFI, whereby NFI agreed to enter into a consent/non-contested judgment in favor of Gross and the Class. *See Ex. A-3 at 0527-0579.*

20. On February 21, 2024, NFI and Gross, individually and on behalf of the Class, filed a joint motion for approval of the Class Action Settlement and the Circuit Court entered a Preliminary Approval Order. *See Ex. A-3 at 0518-0526.*

21. On April 5, 2024, Zurich timely moved to intervene in the underlying litigation pursuant to Missouri Revised Statutes Section 537.065, and the Circuit Court granted its Motion to

Intervene and deemed its answer to the Counterclaim deemed filed on April 9, 2024. *See Ex. A-3 at 0600-0626.* Upon intervention, Zurich stepped into the shoes of its insured, NFI, with all rights afforded to NFI under Missouri law. Zurich asserted no coverage issues in its pleadings. After intervening, Zurich asserted no claims against any party relating to coverage or Zurich's direct interests as a potential insurer of NFI. *See Ex. A-3 at 0602-0621.*

22. On May 15, 2024, the Circuit Court held a fairness hearing on the Class Action Settlement and a Final Approval Order approving the Class Action Settlement and finding a total quantifiable benefit conferred on the Class valued over \$263 Million. *See Ex. A-3 at 0913-0923.*

23. In addition, on May 15, 2024, the Circuit Court entered a Final Judgment incorporating the Final Approval Order and finding in favor of Gross and the Class on all claims asserted in the Class Action Counterclaim. *See Ex. A-3 at 0924-0927.*

24. The Circuit Court certified the Final Judgment, stating that it “resolves a distinct judicial unit between the parties and is final for purposes of appeal. The Court expressly determined that there is no just reason for delay under Missouri Rule of Civil Procedure 74.01.” *See Ex. A-3 at 0926.*

25. On May 15, 2024, after the Final Judgment was entered by the Court disposing of all issues before the Court, Gross improperly filed a Petition titled as a “Cross-Claim” against Zurich seeking to recover for the underlying class action judgment. In its newly filed Petition, Gross claims Zurich failed to provide a defense and indemnity to NFI for the underlying class action Counterclaim under the policies NFI had with Zurich. *See Ex. A-3 at 0928-0939.*

26. Gross alleges that the Policies provide coverage to NFI for the allegations of the Counterclaim and the underlying judgment because the allegations of the Counterclaim seek to impose liability on NFI for a covered “occurrence,” that NFI's presale and post-sale notices were

deficient under the Uniform Commercial Code and resulted in damages covered by the Policies, and that no exclusions of the Policies cover all the allegations of the Counterclaim. *See* Ex. A-3 at 0928-0939, *gen.* and ¶¶ 31-35.

27. On June 10, 2024, Zurich filed a complaint for declaratory judgment with the United States District Court for the Middle District of Florida, Tampa Division, Court requesting a declaration and judgment declaring no coverage is available to NFI under the Policies, there was no wrongful denial of coverage under the Policies by Zurich to NFI, and Zurich had no duty to defend and/or indemnify NFI for the claims alleged in the Counterclaim or the Class Action Settlement Agreement. That matter remains pending. *See* Case No. 8:24-cv-01410.

LEGAL ANALYSIS

28. This action is being removed to the United States District Court for the Western District of Missouri, Western Division, it is being removed under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d) and 28 U.S.C. § 1453. Alternatively, on the basis of diversity of citizenship under 28 U.S.C. § 1332(a), 28 U.S.C. Section 1441, and 28 U.S.C. Section 1446.

I. THE OPERATIVE PETITION IS REMOVABLE UNDER CAFA

29. The operative underlying Petition is removable under the Class Action Fairness Act of 2005, codified as 28 U.S.C. §§ 1332(d), 1453, and 1711-15, (“CAFA”) because each of the requirements for removal under CAFA are clearly met.

A. Applicable Legal Standard for Removal under CAFA

30. CAFA confers federal jurisdiction over class actions when “1) there is minimal diversity; 2) the proposed class contains at least 100 members; and 3) the amount in controversy is at least \$5 million in the aggregate.” *Raskas v. Johnson & Johnson*, 719 F.3d 884, 886 (8th Cir.

2013). A class action meeting these requirements may be removed to federal court. 28 U.S.C. § 1453(b). Other defendants need not consent to removal under CAFA. *Id.*

31. The operative Petition is removable under CAFA because: (1) it is a “class action” involving more than 100 class members under binding Eighth Circuit precedent in *Williams*; (2) minimal diversity is present; and (3) the amount in controversy exceeds \$5 million. *See Williams*, 845 F.3d at 898-902 (holding that because plaintiff “brought this action on behalf of a class previously certified under a state-law analogue to Rule 23, the action was necessarily ‘filed under’ Rule 23 or a state-law analogue” for purposes of removal.)

B. The Action in the Operative Petition is a “Class Action” under CAFA

32. Section 1332(d)(1) defines “class action” as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by one or more representative persons as a class action.” CAFA envisions liberal removal rules to effectuate its purposes, which the Eighth Circuit has consistently applied in its rulings on the statute. “In enacting CAFA, Congress expressed concern about lawyers who ‘game’ the procedural rules and keep nationwide or multi-state class actions in state courts whose judges have reputations for readily certifying classes and approving settlements without regard to class member interests.” *Williams v. Emps. Mut. Cas. Co.*, 845 F.3d 891, 901 (8th Cir. 2017). “Thus, Congress emphasized that ‘class action’ should be ‘interpreted liberally.’” *Id.* “Generally speaking, lawsuits that resemble a purported class action should be considered class actions for purposes of applying [CAFA].” *Id.*

33. The Eighth Circuit has already held that an equitable garnishment action seeking to recover for an underlying class action judgment against an insurer is a “class action” removable under CAFA. *See id.* The same reasoning is applicable with respect to Gross’ operative Petition in

that both the Petition and the equitable garnishment action in *Williams* involved a class representative plaintiff who had been assigned an insured-defendant's rights under insurance policies attempting to collect directly from the insured-defendant's insurer for damages to the class allegedly caused by the insured-defendant's conduct.

34. In *Williams*, a class of residents of Autumn Hills sued Collier for allegedly contaminated drinking water. *Williams*, 845 F.3d at 894-95. Collier demanded defense and indemnity from multiple insurers, each of whom declined. *Id.* at 895. Like here, Collier entered into a non-execution agreement with the class, whereby the class representative "agreed that if the class obtained judgment against Collier, the class' recovery would be limited to those insurance proceeds." *Id.* The state court found the class suffered bodily injury and property damage due to the contamination and awarded more than \$80 million.

35. Similar to here where Gross filed the Petition to recover against the Policies, the class representative in *Williams* filed an equitable garnishment action against the insurers in state court. *Id.* The insurers removed to the Eastern District of Missouri. *Id.* The class representative filed a motion to remand, arguing an equitable garnishment action was not a "class action" under CAFA. *Id.* The district court disagreed and denied remand. After the district court granted the insurers' motion for judgment on the pleadings, the class representative appealed to the Eighth Circuit challenging the district court's jurisdiction. *Id.* On appeal, the class representative in *Williams* argued that "an action is 'filed under' Rule 23 or a state-law analogue only where the complaint expressly invokes such a rule." *Id.* at 899.

36. The Eighth Circuit disagreed, noting that the equitable garnishment statute does not independently authorize plaintiffs to bring suit on behalf of others (nor does Mo. Rev. Stat. § 537.065, the statute under which Gross was assigned NFI's rights). Rather, a plaintiff must rely on

the class action mechanism of Missouri Rule 52.08 or Rule 23 to proceed as a collective. Thus, the Eighth Circuit reasoned “it is clear from the pleadings that Williams can bring this case only because of her status as the representative of the class certified under Rule 52.08, an undisputed analogue of Rule 23.” *Id.* at 900. “[A]lthough the complaint omits reference to Rule 52.08, it is clear from the face of the complaint that Rule 52.08 is the precise rule under which Williams proceeds in her effort to enforce the judgment obtained for the benefit of the class.” *Id.* at 901. Thus, the Court held the equitable garnishment action was a “class action for purposes of CAFA jurisdiction.” *Id.*

37. Here, like *Williams*, Gross filed the Counterclaim “individually and as class representative” against NFI. *See* Ex. A-2 at 0086-0105, *gen.* and ¶¶ 11, 61. After entering into a non-execution agreement, Gross and NFI proceeded to seek the Preliminary Approval Order and Final Approval Order approving the Class Action Settlement, in which the Circuit Court of Clay County certified a class of approximately 17,000 people across the country under Missouri Rule 52.08 and entered an underlying judgment with an estimated value of over \$263 million. Like *Williams*, Gross seeks to vindicate this class action judgment through a secondary action against NFI’s insurers through an assignment of rights by NFI. Because Gross’ ability to collect the underlying judgment is predicated on his status as a class representative, as in *Williams*, this case is a “class action” under CAFA. After all, Gross himself pleads that he “counterclaimed on behalf of himself and a class of similarly situated consumers” and “Gross and the Class ask [the court] to enter judgment against [Zurich].” *See* Ex. A-3 at 0928-0939, ¶¶ 2, 57, 71; *see also, id.* at Prayer for Relief ¶¶ a, d.

C. Minimal Diversity is Present

38. CAFA vests district courts with diversity jurisdiction anytime there is minimal diversity—which occurs when at least one plaintiff and defendant reside in different States. *Home Depot U. S. A., Inc. v. Jackson*, 139 S. Ct. 1743, 1754 (2019). Gross, the Plaintiff as to the claims against Zurich, is domiciled in, and therefore a citizen of Missouri. ZAIC, AZIC, ALGIC are citizens of New York and/or Illinois. Minimal diversity is met and this is not in dispute.

D. The Amount in Controversy Exceeds \$5 Million

39. CAFA confers federal jurisdiction over minimally diverse class actions when “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs...” 28 U.S.C. § 1332(d)(2). Generally, “when a defendant seeks federal-court adjudication [by removing a case to federal court], the defendant’s amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87 (2014).

40. However, if the plaintiff contests the defendant’s allegation concerning the amount in controversy, Section 1446(c)(2)(B) requires “both sides to submit proof and the court decides, by a preponderance of the evidence, whether the amount-in-controversy requirement has been satisfied.” *Id.* at 88. “When a preponderance of evidence standard applies, ‘the defendant’s showing on the amount in controversy may rely on reasonable assumptions,’ and there is no demand at the early stages of removal to conclusively establish damages.” *Waters v. Home Depot USA, Inc.*, 446 F. Supp. 3d 484, 491 (E.D. Mo. 2020). To make this showing, the defendant may rely on “reasonable deductions, reasonable inferences, or other reasonable extrapolations” to establish the amount in controversy. *Waters v. Ferrara Candy Co.*, 873 F.3d 633, 636 (8th Cir. 2017). Under this standard, removal is proper when “a fact finder *might legally conclude*” that

recoverable damages meet the minimum amount in controversy. *Pirozzi v. Massage Envy Franchising, LLC*, 938 f.3D 981, 984 (8th Cir. 2019).

41. Here, the amount in controversy is met for three reasons: (1) the policy limits Gross alleges are applicable to the underlying judgment are no less than \$210 million; (2) Gross seeks the entire amount of the underlying judgment beyond the policies' limits; and (3) the total quantifiable benefit conferred on the Settlement Class by way of the Final Approval Order as incorporated by the underlying judgment is valued over \$263 million.

42. “A class action, no less than traditional joinder (of which it is a species), merely enables a federal court to adjudicate claims of multiple parties at once, instead of in separate suits”. *Shady Grove Orthopedic Associates, P. A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010) (plurality opinion of Scalia, J.). Thus, here, the underlying Class Action Settlement and Final Approval Order incorporated by the underlying judgment resolved not only Gross' claims, but claims many other people, which Gross now alleges implicates insurance coverage across 39 separate Zurich policies spanning from 2001 to 2020. *See* Ex. A-3 at 0928-0939, *gen.*; *See* Ex. A-3 at 1014-7845. If coverage is provided for Gross' claims under each of these insurance policies, which Zurich expressly denies, the collective limits of these insurance policies is \$210 million if there was only one occurrence per policy period and \$230 million if there was more than one occurrence per policy period. Thus, the limits across all policy periods—at least \$210 million in total—are at issue.

43. Second, Gross asserts claims not only for breach of contract against Zurich, but also alleges that Zurich breached their duty to act in good faith in failing to defend and/or settle the claims Gross and the Class asserted against NFI. *See* Ex. A-3 at 0928-0939, *gen.* Under Missouri law, if a party is successful in asserting a claim for bad faith failure to defend and/or settle against

an insurance company, an insurer “may be liable over and above its policy limits if it acts in bad faith ... in refusing to settle the claim against its insured within its policy limits *when it has a chance to do so.*” *State ex rel. Kilroy Was Here, LLC v. Moriarty*, 633 S.W.3d 406, 416 (Mo. App. E.D. 2021) citing *Landie v. Century Indemnity Company*, 390 S.W.2d 558, 563 (Mo. App. 1965); *see also, Estes as Next Friend for Doe v. Bd. of Trustees of Missouri Pub. Entity Risk Mgmt. Fund*, 623 S.W.3d 678, 715 (Mo. App. W.D. 2021); *Truck Ins. Exch. v. Prairie Framing, LLC*, 162 S.W.3d 64, 94 (Mo. App. W.D. 2005). Moreover, in the operative Petition, Gross specifically prays for a money judgment against Zurich for not only the policies’ limits, but also for the entire amount of the underlying judgment beyond the policies limits. *See* Ex. A-3 at 0928-0939, *gen.*; Ex. A-3 at 0938, ¶ c. Therefore, by the terms of Gross’ operative Petition, the amount in controversy clearly exceeds the policies’ collective \$210 million each occurrence limits.

44. Third, Gross clearly seeks to satisfy the underlying judgment through recovery of damages for the breach of contract and bad faith claims asserted in the Petition against Zurich. The underlying judgment incorporates the Final Approval Order and Class Action Settlement Agreement, which provides that the settlement will be funded, in part, by the underlying judgment for damages allegedly suffered by the Class for NFI’s conduct alleged in the Counterclaim. *See* Ex. A-3 at 0924-0927, 0527-0561, 0913-0923. The underlying judgment incorporates the Final Approval Order which estimates a total quantifiable benefit conferred by the Class Action Settlement Agreement at approximately \$263,530,000. *See* Ex. A-3 at 0918. Thus, the amount Gross seeks from Zurich in the Petition, regardless of the limits of the policies, is clearly in excess of CAFA’s \$5 million threshold.

II. THE OPERATIVE PETITION IS REMOVABLE UNDER DIVERSITY JURISDICTION

45. The operative petition is removable on the basis of general diversity jurisdiction because it involves diversity of citizenship between all plaintiffs and all defendants, the amount-in-controversy exceeds \$75,000 and the other requirements for removal are met.

A. Standard for Removal Under Federal Court's Diversity Jurisdiction

46. Section 1332(a) of Chapter 28 of the United States Code provides that the district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs and is between citizens of different state. *See* 28 U.S.C. § 1332(a). Any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed by the defendant to the district court of the United States for the district and division embracing the place where such action is pending. *See* 28 U.S.C. § 1441(a).

47. Under 28 U.S.C. § 1441(b), when a civil action is removed on the basis of diversity jurisdiction under § 1332(a), no properly joined and served defendants can be a citizen of the state in which the action is brought. *See* 28 U.S.C. § 1441(b). Further, a civil action removed solely under § 1441(a) requires all defendant who have been properly joined and served to join in or consent to the removal of the action. *See* 28 U.S.C. § 1446(b)(2)(A).

48. Each of these requirements for removal on the basis of diversity jurisdiction are met in relation to the operative Petition.

B. The Amount in Controversy Exceeds \$75,000

49. Plaintiff now alleges that each of the Policies provide coverage for the claims asserted by Gross in the Counterclaim. *See* Ex. A-3 at 0928-0939, *gen.* The Policies have a collective Each Occurrence limit of \$210 million and a collective Aggregate Limit of \$230 million.

See Ex. A-3 at 1014-7845, *gen.* Moreover, the lowest single Each Occurrence Limit under a single Policy is \$1 million, *see id.*; therefore, even if Plaintiff sought to recover under only a single policy it would clearly exceed the \$75,000 amount-in-controversy threshold. In addition, Plaintiff now seeks extra contractual damages from Zurich to satisfy the underlying judgment which incorporates the Final Approval Order that estimates a quantifiable benefit conferred in excess of \$263 million. *See* Ex. A-3 at 0928-0939, *gen.*; 0918. Therefore, the amount-in-controversy requirement is undoubtedly met.

C. Complete Diversity of Citizenship is Met

50. In the operative petition, Gross, as Plaintiff, asserts claims against AZIC, ZAIC, and AGLIC, as defendants. *See* Ex. A-3 at 0928-0939, *gen.* As outlined above, Gross is a citizen of Missouri. AZIC, ZAIC, and AGLIC are citizens of Illinois and/or New York. Although it is not a party to the operative petition and as such its citizenship is not relevant, NFI is a citizen of Florida. Complete diversity “exists where no defendant holds citizenship in the same state where any plaintiff holds citizenship.” *Jet Midwest Int’l Co., Ltd v. Jet Midwest Grp., LLC*, 932 F.3d 1102, 1104 (8th Cir. 2019). Because none of the defendants hold citizenship in same state as the plaintiff (or NFI), complete diversity exists.

D. The Other Procedural Requirements for Diversity Jurisdiction Are Met

51. As the Petition asserts claims for breach of contract and tort against diverse parties seeking damages in excess of \$75,000, this is a civil action over which this Court has diversity jurisdiction, and is therefore removable under § 1332(a) and § 1441(a).

52. Moreover, because ZAIC, AZIC and AGLIC are not citizens of Missouri, no properly joined defendant is a citizen of the state where the proceeding was originally filed in state court and the requirements of § 1441(b) are satisfied.

53. Similarly, all properly joined defendants join in this removal as ZAIC, AZIC and AGLIC are the only properly joined defendants in the operative Petition and jointly filed this Notice of Removal. Therefore, the requirements of §1446(b)(2)(A).

E. The Notice of Removal is Timely

54. Under 28 U.S.C. § 1446(b) a defendant must file a notice of removal within thirty days after the receipt of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based or, if the case stated by the initial pleading is not removal, a notice of removal may be filed within thirty days after receipt by the defendant of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is on which is or has become removable. *See* 28 U.S.C. § 1446(b)(1), §1446(b)(3).

55. Gross filed the now operative Petition on May 15, 2024 after judgment had been entered on all other claims in the pending litigation and which the Circuit Court had otherwise denominated a “distinct judicial unit.” Gross’ gratuitous titling of his new Petition as a “Cross Claim” is illogical and improper on its face. At the time of the filing, all claims at issue in the litigation had been disposed of by way of judgment. Moreover, Zurich had not intervened in its capacity as an “insurer” under R.S.Mo. § 537.065 but instead intervened in the action to stand in the shoes of NFI and to ensure liability and damages were appropriately contested. What Gross actually did was institute a new action against Zurich, as an insurer of NFI, that was separate and distinct from the matters and claims in which had been reduced to judgment involving the Counterclaim or Deficiency Petition filed by NFI.

56. Specifically, in the Counterclaim, Gross and the Class asserted claims for UCC violations against NFI arising out of NFI’s financial lending and collection practices. In the now operative Petition, Gross alleges claims against Zurich relating to Zurich’s rights and obligations

under insurance policy contracts; by their very terms, the current Petition does not arise out of the same transactions or occurrences that is the subject matter of either the Deficiency Petition or the Counterclaim. Further, upon intervening in the case, Zurich stepped into the shoes of NFI and was afforded all rights available to NFI relating to the claims plead in the Counterclaim. *See* Mo. Rev. Stat. § 537.065. Zurich’s intervention did not make it a party in its own, individual capacity against whom any and all unrelated claims could be brought, *see id.*, which is what the Petition seeks to do. Moreover, Gross’ Petition was filed after the Final Judgment resolving the claims arising out of the Counterclaim and Deficiency Petition was entered. Therefore, the currently operative Petition is an initial pleading setting forth a claim for relief upon which a distinct action or proceeding is based.

57. Although Zurich disputes that it was properly served with the operative Petition as an initial pleading instituting a new and distinct action, Zurich is removing it to this Court within thirty days of otherwise receiving a copy of Gross’ Petition. *See* § 1446(b)(1); §1446(b)(3). Accordingly, this Notice of Removal is timely filed.⁶

CONCLUSION

58. All the elements for removal under CAFA, § 1332(d) and § 1453 are met. Under binding precedent in *Williams*, this is a “class action” involving more than 100 claimants. Minimal diversity is present because Plaintiff Smith has diverse citizenship from both defendants. The minimum amount in controversy is met because the underlying judgment estimated at over \$263

⁶ Although Zurich disputes that Gross’ Petition can be considered the same action as the Counterclaim and Deficiency Petition, to the extent Gross may argue that more than one year has commenced since the Counterclaim and Deficiency Petition were filed, in attempting to bring a separate and distinct claim in the same action as the unrelated Counterclaim, Plaintiffs have acted in bad faith to prevent Zurich from removing what would be an otherwise removable action. *See* 28 U.S.C. § 1446(c).

million implicates policy limits totaling at least \$210 million and Gross pleads for extra-contractual damages as well.

59. Alternatively, all the elements for removal of Gross' Petition on the basis of diversity jurisdiction under § 1332(a), § 1441, and § 1446 are met. The amount-in-controversy exceeds \$75,000 exclusive of interest and costs. There is complete diversity of all plaintiffs from all defendants and no properly joined defendant is a citizen of Missouri. All properly joined defendants join in the removal and the removal is timely.

60. Zurich files this Notice of Removal and files as an attachment to this Notice of Removal a true and correct copy of the state court's complete file, including all process, papers, exhibits, pleadings, orders, and other documents served in this action and currently on file in the Circuit Court of Clay County, State of Missouri attached hereto as:

- a. Case No. 21CY-CV02148 attached as EXHIBIT A-1 (pages 0001-0054);
- b. Case No. 21CY-CV02148 attached as EXHIBIT A-2 (pages 0055-0150);
- c. Case No. 21CY-CV02148 attached as EXHIBIT A-3 (pages 0151-7845).

61. Also accompanying and attached to this Notice of Removal is a Civil Cover Sheet for filing in this Court.

62. Zurich has given written notice to Gross and NFI of the filing of this Notice of Removal and will file a copy of this Notice of Removal with the Clerk of the Circuit Court of Clay County, State of Missouri, as required by 28 U.S.C. § 1446.

63. Based on the foregoing, Zurich respectfully requests that this Court accept jurisdiction of this action.

64. Zurich hereby demands a trial by jury on all issues so triable.

WHEREFORE Defendants Zurich American Insurance Company, American Zurich Insurance Company, and American Guarantee and Liability Insurance Company respectfully requests that the above referenced Petition filed in the state court action be removed from the Circuit Court of Clay County to this Court, and that this Honorable Court accept jurisdiction of the case; and for any and other further relief this Court deems just and proper.

Respectfully submitted,

WATTERS WOLF BUB & HANSMANN, LLC

/s/ Timothy J. Wolf

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Company***

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served by the Court's electronic filing system, this 14th day of June, 2024 upon all parties of record.

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/s/ Timothy J. Wolf _____