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PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1053

[Filed May 22, 2023]

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees ad litem, and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT	)
v.	)
ERIE INDEMNITY COMPANY, Appellant	)

On Appeal from the United States District Court
for the Western District of Pennsylvania
District Court No. 2-22-cv-00166
Magistrate Judge: The Honorable Cynthia R. Eddy

Argued April 20, 2023

Before: HARDIMAN, BIBAS, and SMITH,
Circuit Judges

App. 2

(Filed: May 22, 2023)

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OPINION OF THE COURT

SMITH, *Circuit Judge.*

Erie Indemnity Co. ("Indemnity") appeals the District Court's order remanding this matter to Pennsylvania state court. Indemnity argues that the District Court had jurisdiction because the case is a "class action" for purposes of the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 ("CAFA"). In the alternative, Indemnity argues that federal jurisdiction exists because this case is a continuation of a previous federal class action against Indemnity involving similar parties and claims. We are not persuaded on either ground and will affirm the District Court's order.

I.

A.

Erie Insurance Exchange ("Exchange") is an unincorporated association that operates as a reciprocal insurance exchange under Pennsylvania law. *See* 40 Pa. Stat. § 961 (authorizing creation of insurance exchanges through which individuals "exchange reciprocal or inter-insurance contracts with

each other . . . providing indemnity among themselves"). Exchange is owned by its members, who are subscribers to insurance plans offered by Erie Insurance Group. Exchange is, essentially, a pool of funds comprised of insurance premiums and other fees paid by subscribers. Exchange's funds are mainly used to cover claims by subscribers. Exchange has no independent officers nor a governing body.

Indemnity is a Pennsylvania corporation that serves as the managing agent and attorney-in-fact for Exchange. In return, and under an agreement between Indemnity and each Erie Insurance Group subscriber, Indemnity receives a management fee paid out from Exchange's funds.

In August 2021, Erie Insurance Group subscribers Troy Stephenson, Christina Stephenson, Susan Rubel, and Steven Barnett (collectively, the "Stephenson Plaintiffs") sued Indemnity in the Court of Common Pleas of Allegheny County. *See Stephenson v. Erie Indem. Co.*, 2:21-cv-1444 (W.D. Pa. Nov. 3, 2021). The suit alleged that Indemnity breached its fiduciary duty to Erie Insurance Group subscribers by charging an excessive management fee. The Stephenson Plaintiffs brought the case as a class action under Pennsylvania law on behalf of themselves and other "Pennsylvania residents" who subscribed to Erie Insurance Group policies. JA 99.

Invoking federal jurisdiction under CAFA, Indemnity removed *Stephenson* to the U.S. District Court for the Western District of Pennsylvania. Shortly thereafter, the Stephenson Plaintiffs voluntarily dismissed the case. *See* Notice of Voluntary Dismissal,

Stephenson v. Erie Indem. Co., No. 21-1444, Dkt. 12 (W.D. Pa. Nov. 2, 2021).

B.

One month after the voluntary dismissal of *Stephenson*, Exchange filed this case in the Court of Common Pleas of Allegheny County. As in *Stephenson*, the Complaint here alleges that Indemnity breached its fiduciary duty by charging an excessive management fee. The operative facts and the legal theory in this case are identical to those in *Stephenson*. But unlike *Stephenson*, this case is not pled as a class action—rather, it is pled in Exchange's name "by" Troy Stephenson, Christina Stephenson, and Steven Barnett (the "Individual Plaintiffs").[1] The Individual Plaintiffs purport to bring the case "on behalf of Exchange and . . . to benefit all members of Exchange." JA 54.

Though the Complaint alleges only a single count of breach of fiduciary duty, it advances two legal theories for why the Individual Plaintiffs have a right to sue on Exchange's behalf. First, the Complaint characterizes the claim as one brought pursuant to Rule 2152 of the Pennsylvania Rules of Civil Procedure, which authorizes "[a]n action prosecuted by an association . . . in the name of a member or members thereof as trustees ad litem for such association." Pa. R. Civ. P. 2152. Alternatively, the Complaint characterizes the claim as one brought pursuant to Rule 2177 of the Pennsylvania Rules of Civil Procedure, which

[1] Susan Rubel, who was named as a plaintiff in *Stephenson*, is not named as a trustee ad litem in this case.

authorizes "a corporation or similar entity" to prosecute an action "in its corporate name." Pa. R. Civ. P. 2177.

Indemnity removed the case to the U.S. District Court for the Western District of Pennsylvania, again citing CAFA. Though the Complaint characterizes this case as an individual action on Exchange's behalf—not as a class action—Indemnity argued that the case is in substance a class action insofar as Exchange is a stand-in for a class of Erie Insurance Group subscribers. Indemnity also argued that the case was a continuation of *Stephenson* and therefore fell within the District Court's jurisdiction under "the well-established rule that plaintiffs cannot extinguish federal jurisdiction" once it has attached. JA 14. The District Court disagreed and, on Exchange's motion, remanded the case to state court.

Indemnity timely petitioned this Court for leave to appeal pursuant to 28 U.S.C. § 1453. The motions panel first denied the petition, reasoning that this case is distinct from *Stephenson* and that our precedents therefore dictate that the case is not a class action. Indemnity petitioned for rehearing. The same motions panel then vacated its order and granted Indemnity leave to appeal.

II.

Whether the District Court had jurisdiction is the sole question on appeal. "Federal courts are courts of limited jurisdiction," and "[t]hey possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). We therefore "presume[] that a cause

lies outside [our] limited jurisdiction." *Id*. As the party seeking removal, Indemnity bears the burden of establishing federal jurisdiction, *see id*., and here, the burden of showing that this case falls within CAFA's jurisdictional grant, *see Morgan v. Gay*, 471 F.3d 469, 473 (3d Cir. 2006), *abrogated on other grounds by Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81 (2014).

Indemnity asserts that the District Court had jurisdiction under 28 U.S.C. § 1332(d). We have jurisdiction to review the District Court's remand order pursuant to 28 U.S.C. § 1453(c). *See Erie Ins. Exch. v. Erie Indem. Co.*, 722 F.3d 154, 158 (3d Cir. 2013) ("*Erie Insurance I*"). We review issues of subject matter jurisdiction and statutory interpretation de novo. *Id*. at 158 n.1.

A.

To start, this case is not a class action as that term is defined in CAFA. Congress enacted CAFA to ensure federal jurisdiction over "interstate cases of national importance."[2] CAFA § 2(b)(2). To that end, CAFA

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[2] CAFA does not define what makes a class action nationally important, and we have not yet had the opportunity to address that question. When our sister circuits have sought such a definition, they generally have looked to the citizenship of the parties, the location of the operative facts, and which state's laws provide the basis for the legal claims. *See, e.g., Dominion Energy, Inc. v. City of Warren Police & Fire Ret. Sys*., 928 F.3d 325, 338 (4th Cir. 2019) (concluding that class action against large utility company on behalf of "thousands of . . . class members across the United States" was nationally important); *Bridewell-Sledge v. Blue Cross of Cal*., 798 F.3d 923, 933 (9th Cir. 2015) (characterizing

authorizes federal jurisdiction over class actions that arise under state law but that involve minimally diverse parties and an aggregate amount in controversy in excess of $5 million. 28 U.S.C. § 1332(d)(2). The statute defines a 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 1 or more representative persons as a class action." *Id*. § 1332(d)(1)(B).

Our precedent in *Erie Insurance I* makes clear that this case is not a class action on its face. *Erie Insurance I* involved the same nominal parties and the same state procedural rules as this case. 722 F.3d at 156–57. We held that the case was not a class action for CAFA purposes because Rule 2152 was not "similar" to Rule 23.[3] *Id*. at 159. Accordingly, and on a record materially identical to this case, we affirmed the district court's order remanding the case to state court. *Id*. at 163.

Despite Indemnity's insistence to the contrary, we are bound to follow *Erie Insurance I*. Only when Supreme Court authority has "undermine[d] the

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case as "largely a local California controversy involving routine employment discrimination claims arising solely under California law").

[3] We further explained, albeit in dictum, that "Rule 2177 is even less like Rule 23 [than is Rule 2152] in that it contains none of Rule 23's class-related requirements, and, unlike Rule 2152, does not even explicitly contemplate a suit filed by a member 'on behalf of' an association." *Id*. Suits brought under Rule 2177 thus also are not "class actions" for CAFA purposes.

rationale" of our precedent may a panel of this Court "reconsider contrary prior holdings without having to resort to an en banc rehearing." *DiFiore v. CSL Behring, LLC*, 879 F.3d 71, 76 (3d Cir. 2018). No such authority undermines *Erie Insurance I*. When we decided *Erie Insurance I*, we did so with the benefit of Supreme Court dicta and legislative history supporting a liberal construction of CAFA's jurisdictional provisions. That the Supreme Court has since reiterated those directives in cases involving other requirements of CAFA jurisdiction, *see, e.g.*, *Dart Cherokee*, 574 U.S. at 89, does nothing to undermine *Erie Insurance I*'s rationale. We must therefore conclude that this case is not a class action on its face.

This does not end our inquiry. If a complaint does not satisfy CAFA's jurisdictional requirements on its face, we must cut through any pleading artifice to identify whether the case is in substance an interstate class action. In *Standard Fire Insurance Co. v. Knowles*, the Supreme Court noted that courts must be careful not to "exalt form over substance" when determining whether a case satisfies CAFA's jurisdictional requirements. 568 U.S. 588, 595 (2013). At least one of our sister circuits has taken this dictum as an "instruct[ion] . . . to look beyond the complaint to determine whether the putative class action meets [CAFA's] jurisdictional requirements." *Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013). Though we have not addressed that precise issue in the CAFA context, we repeatedly have held that courts may look beyond a complaint when ruling on factual challenges to their subject matter jurisdiction. *See Davis v. Wells Fargo*, 824 F.3d 333,

346 (3d Cir. 2016). Indemnity invites us to look beyond the Complaint's characterization of this case as an individual action to the fact that the Complaint ultimately seeks to benefit a large interstate class of Erie Insurance Group subscribers.

But we have made clear—albeit outside the CAFA context—that we will look beyond the four corners of a complaint only when addressing factual predicates, not legal requirements, for our subject matter jurisdiction. *See Davis*, 824 F.3d at 346. And indeed, the overwhelming majority of CAFA cases in which courts have looked beyond the four corners of the complaint have turned on CAFA's amount in controversy requirement—a quintessentially factual inquiry. *See, e.g.*, *Standard Fire*, 568 U.S. at 596 (holding that a plaintiff may not evade CAFA jurisdiction by stipulating that the class would seek damages below CAFA's jurisdictional threshold); *Freeman v. Blue Ridge Paper Prods., Inc.*, 551 F.3d 405, 410 (6th Cir. 2008) (aggregating the amount in controversy across five related cases to determine whether case at bar met CAFA's jurisdictional threshold). But the primary obstacle preventing *this* case from falling within CAFA's definition of a class action is a quintessentially legal requirement: whether the Pennsylvania procedural rules governing Exchange's claim are similar to Rule 23. Search as we might, there are no facts beyond the Complaint that could alter our conclusion that the relevant state rules are dissimilar to Rule 23 and that this case therefore falls beyond the scope of CAFA jurisdiction. *See Erie Insurance I*, 722 F.3d at 160 ("No amount of piercing the pleadings will

change the statute or rule under which the case is filed." (cleaned up)).

We likewise decline Indemnity's invitation to construe CAFA's text liberally in light of that statute's "primary objective: ensuring 'Federal court consideration of interstate cases of national importance.'" *Standard Fire*, 568 U.S. at 595 (quoting CAFA § 2(b)(2)). To be sure, we are careful not to "interpret federal statutes to negate their own stated purposes." *N.Y. State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419–20 (1973). Nor have we shied away from adopting purpose-driven—even atextual—constructions of CAFA in the past. *See Morgan v. Gay*, 466 F.3d 276, 279 (3d Cir. 2006) (offering "common sense revision" to misleading statutory text that contravened Congress's intent in enacting CAFA). "But no legislation pursues its purposes at all costs," *Rodriguez v. United States*, 480 U.S. 522, 525–26 (1987), and "we are not free to rewrite this statute (or any other) as if it did," *Bartenwerfer v. Buckley*, 143 S. Ct. 665, 675 (2023). Indeed, "it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law." *Rodriguez*, 480 U.S. at 526.

CAFA's text leaves no wiggle room. A state court proceeding will be considered a class action under CAFA only if it is "filed under" a "State statute or rule of judicial procedure" that "authoriz[es] an action to be brought by 1 or more representative persons as a class action" and otherwise is "similar" to Rule 23. 28 U.S.C. § 1332(d)(1)(b). As discussed above, we are bound by our precedent to conclude that the state procedural

rules at issue are dissimilar to Rule 23. *See Erie Insurance I*, 722 F.3d at 159. We likewise are bound by Congress's decision to limit CAFA jurisdiction to cases filed under state procedural rules similar to Rule 23. We acknowledge that CAFA was "intended to expand substantially federal court jurisdiction over class actions." S. Rep. No. 109-14, at 43 (2005). Yet Congress's "policy concerns cannot trump the best interpretation of the statutory text." *Patel v. Garland*, 142 S. Ct. 1614, 1627 (2022). And that text plainly dictates that this case falls beyond CAFA's ambit.

Lastly, we note the Eighth Circuit's insightful dictum that when a plaintiff "seeks to return [a previously removed] case to his original chosen forum in a form that will avoid removal," it is not readily apparent "who is the forum shopper." *Tillman v. BNSF Ry. Co.*, 33 F.4th 1024, 1029 (8th Cir. 2022). It is for precisely this reason that text, rather than policy, must guide our jurisdictional inquiry. And it is for precisely this reason that we will adhere to our precedent and decline to treat this case as a class action.

B.

Recognizing the challenge that it faces in characterizing this individual claim as a class action, Indemnity has a fallback position: that the District Court had jurisdiction here because this case is a continuation of *Stephenson*.

Federal courts have long held that "events occurring subsequent to removal . . . do not oust the district court's jurisdiction once it has attached." *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 293

(1938). We assume, for the purpose of this case, that this rule applies to CAFA jurisdiction. *See Louisiana v. Am. Nat. Prop. Cas. Co.*, 746 F.3d 633, 639 (5th Cir. 2014) (noting that "[e]very circuit that has addressed the question has held that" the *Red Cab* rule applies in the CAFA context). We likewise assume that the district court had jurisdiction in *Stephenson*.

But the *Red Cab* rule does not support Indemnity's assertion of federal jurisdiction, because this case is not a continuation of *Stephenson*. "[I]t is hornbook law that 'a voluntary dismissal without prejudice under Rule 41(a) leaves the situation as if the action never had been filed.'" *United States v. L-3 Commc'ns EOTech, Inc.*, 921 F.3d 11, 19 (2d Cir. 2019) (emphasis omitted) (quoting 9 Charles Alan Wright & Arthur R. Miller *et al.*, Federal Practice and Procedure § 2367, at 559 (3d ed. 2017)). It follows that when a plaintiff voluntarily dismisses his case, "any future lawsuit based on the same claim is an entirely new lawsuit unrelated to the earlier (dismissed) action." *City of South Pasadena v. Mineta*, 284 F.3d 1154, 1157 (9th Cir. 2002) (alterations omitted) (quoting *Sandstrom v. ChemLawn Corp.*, 904 F.2d 83, 86 (1st Cir. 1990)).

Our opinion in *Vodenichar v. Halcon Energy Properties, Inc.*, is not to the contrary. 733 F.3d 497 (3d Cir. 2013). There, as here, we addressed a situation in which the plaintiffs voluntarily dismissed a federal court class action and refiled a new case in state court. *Id.* at 502. In determining whether the case fell within the district court's CAFA jurisdiction, we characterized the plaintiffs' voluntary dismissal and refiling strategy as similar "[i]n practical terms" to "a situation where a

party amends a pleading to join parties to an existing case." *Id*. at 509. We therefore deemed it appropriate to "consider[] the second filed action a continuation of the first filed action." *Id*.

But a closer look at *Vodenichar* reveals this language to have been a red herring. The issue there was whether the dismissed action was an "other class action" as that term is used in CAFA's local controversy exception. *Id*. at 506 (citing 28 U.S.C. § 1332(d)(4)(A)). And to that end, our reasoning rested entirely on the text and purpose of the local controversy exception. *Id*. at 508–10. We noted that Congress "excluded from the local controversy exception cases where a defendant was named in multiple similar cases" because it was concerned that defendants would "face copycat[] suits in multiple forums." *Id*. at 508. By the same token, we reasoned that the "other class action" requirement was linked to one of Congress's goals in enacting CAFA: "control[ling] the impact of multiple class actions filed by different members of the same class against a defendant by providing a single forum to resolve similar claims." *Id*. Noting the unique procedural history of *Vodenichar* and its predecessor and the many commonalities between the two suits, we determined that the situation in *Vodenichar* did not implicate Congress's policy concern because it was "not a copycat situation where the defendants face similar class claims brought by different named plaintiffs and different counsel in different forums." *Id*. at 509 We therefore concluded that the predecessor suit was not, "[i]n practical terms," an "other class action" for the purpose of the local controversy exception. *Id*.

Thus despite any facial similarities to this case, *Vodenichar* did not address the situation before us now, in which a removing defendant seeks to tie the instant case to its predecessor as a means of establishing federal jurisdiction. In fact, our decision to treat the two actions as a single proceeding in *Vodenichar* had precisely the opposite legal consequence in that case as it would here. There, we concluded that the successor case fell within CAFA's local controversy exception and thus exceeded the district court's jurisdiction. *Id*. at 510. Accordingly, we affirmed the district court's order remanding the case to state court. *Id*. By contrast if we were to treat *this* case as a continuation of *Stephenson*, we would reverse the District Court's remand order and hold that the plaintiffs' decision to file this case in state court had no bearing on whether the case would proceed in the state or federal forum.

That result would contradict our result in *Vodenichar*. We concluded there that the successor case fell within CAFA's local controversy exception and so belonged in state court rather than federal court. *Id*. at 509. That exception applies only where at least one defendant "is a citizen of the State in which the action was originally filed." § 1332(d)(4)(A)(i)(II)(cc). *Vodenichar*'s predecessor was filed in Pennsylvania federal court and involved only one defendant, a Delaware corporation. *See id*. at 502, 504. It was the plaintiffs' addition of two Pennsylvania corporations as defendants in the refiled action that brought *Vodenichar* within the scope of the local controversy exception and thereby provided the basis for remanding the case to state court. *See id*. at 507.

That our jurisdictional determination in *Vodenichar* hinged on the updates in the refiled complaint makes clear that we considered *Vodenichar* to be a continuation of its predecessor only for the purpose of the local controversy exception. As noted above, it is an "elementary principle that jurisdiction which has once attached is not lost by subsequent events." *Fairview Park Excavating Co. v. Al Monzo Const. Co.*, 560 F.2d 1122, 1125 (3d Cir. 1977) (citation omitted). If we truly considered the *Vodenichar* plaintiffs' voluntary dismissal and refiling to be "no different from a situation where a party amends a pleading to join parties to an existing case," 733 F.3d at 509, we would have concluded that the case belonged in federal court and vacated the District Court's order—just as Indemnity asks us to do here. Instead, we concluded that the case belonged in state court without discussing whether federal jurisdiction had attached during the predecessor case. *Vodenichar* therefore supports rather than undermines the longstanding rule that a case brought after a voluntary dismissal is "an entirely new lawsuit unrelated to the earlier (dismissed) action." *Sandstrom*, 904 F.2d at 86.

What's more, the two actions at issue here involve different plaintiffs, further revealing that they are different cases. *Cf. Vodenichar*, 733 F.3d at 502 (treating two cases with shared plaintiffs as one). Formally, this case is pled in Exchange's name, while *Stephenson* was a class action pled on behalf of four named plaintiffs and other Pennsylvania residents who subscribed to Erie Insurance Group policies. And functionally, the real parties in interest here are different from the real parties in interest in

Stephenson. While the proposed plaintiff class in *Stephenson* was expressly limited to "Pennsylvania residents," JA 99, any benefit that Exchange recovers here would flow to "all members of Exchange" no matter where they reside, JA 54. That difference undermines Indemnity's assertion that this case is merely *Stephenson* by another name.

The Seventh Circuit's decision in *Addison Automatics, Inc. v. Hartford Casualty Insurance Co.* likewise illustrates that while courts have at times found it rhetorically useful to characterize subsequent actions as continuations of voluntarily dismissed actions, they have not relied on that analogy as a rule of decision. 731 F.3d 740 (7th Cir. 2013). In *Addison*, the Seventh Circuit looked to a prior class action in holding that the federal courts had jurisdiction over a case that did not purport to raise class claims. *Id*. at 741. The litigation began when Addison Automatics, Inc. ("Addison") filed a class action against Domino Plastics Company ("Domino"), which Domino's liability insurer declined to defend. *Id*. at 741. Domino and Addison entered into a settlement agreement in which "Domino assigned to Addison—as class representative—whatever claims Domino might have against its absent liability insurers" conditioned on Addison's service as class representative in a suit against the insurers. *Id*. Addison sued the insurer both individually and as a class representative, and the insurer removed to federal court under CAFA. *Id*. Addison voluntarily dismissed the case and filed a new case in state court, this time bringing only individual claims. *Id*. at 741–42.

In holding that the nominally individual suit was a class action for the purpose of CAFA jurisdiction, the Seventh Circuit noted the importance of focusing on substance rather than form in the CAFA context and analogized voluntary dismissal and refiling to amending the complaint. *Id*. at 744. But the court emphasized that its decision did "not depend" on that "detail[]," as the case would have been a federal class action and the court's "decision would [have been] the same even if Addison had not filed th[e] first complaint." *Id*. Instead, the court concluded that the case was "in substance a class action" because Addison had standing to sue "only in its capacity as class representative" and not individually. *Id*. at 742.

We are not blind to the substantial factual and legal overlap between this case and *Stephenson*. Nor do we ignore the fact that Exchange filed this case only one month after the Stephenson Plaintiffs dismissed their case against Indemnity and less than two months after Indemnity removed *Stephenson* to federal court. But we are not prepared to essentially set aside a basic principle of Anglo-American law: that distinct cases filed by distinct plaintiffs deserve distinct judicial treatment. We therefore will not gloss over the differences—however minor or formalistic—between this case and *Stephenson*, and so will not treat Exchange's individual suit as a mere amendment to the Stephenson Plaintiffs' class action.

III.

The District Court correctly determined that this case was neither a class action as that term is defined in CAFA nor a continuation of the voluntarily

dismissed class action in *Stephenson*. Seeing no basis for exercising federal jurisdiction, we therefore will AFFIRM the District Court's order remanding this case to state court.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA
PITTSBURGH

2:22-CV-00166-CRE

[Filed September 28, 2022]

ERIE INSURANCE EXCHANGE, AN UNINCORPORATED ASSOCIATION, BY TROY STEPHENSON, CHRISTINA STEPHENSON, AND STEVEN BARNETT, TRUSTEES AD LITEM, AND ALTERNATIVELY, ERIE INSURANCE EXCHANGE, BY TROY STEPHENSON, CHRISTINA STEPHENSON, AND STEVEN BARNETT;	)
Plaintiff,	)
vs.	)
ERIE INDEMNITY COMPANY,	)
Defendant,	)

MEMORANDUM OPINION[1]

CYNTHIA REED EDDY, Chief United States Magistrate Judge.

I. INTRODUCTION

Plaintiffs Troy Stephenson, Christina Stephenson, and Steven Barnett as trustees *ad litem* on behalf of Erie Insurance Exchange (collectively Plaintiffs or "Exchange") initiated this breach of fiduciary duty action against Defendant Erie Indemnity Company ("Indemnity") in the Court of Common Pleas of Allegheny County, Pennsylvania. Thereafter, Indemnity removed the action to this Court. Presently for consideration is Exchange's motion to remand (ECF No. 19). The motion is fully briefed and ripe for consideration.

For the reasons that follow, said motion is granted and this case shall be remanded to the Court of Common Pleas of Allegheny County, Pennsylvania.

II. BACKGROUND

Exchange is an unincorporated association that operates as a reciprocal insurer. It has no employees, officers, or board of directors. Indemnity serves as the managing agent and attorney-in-fact for Exchange in its operation as a reciprocal insurer. Exchange alleges that by virtue of this relationship, Indemnity owes

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[1] All parties have consented to jurisdiction before a United States Magistrate Judge; therefore the Court has the authority to decide dispositive motions, and to eventually enter final judgment. *See* 28 U.S.C. § 636, *et seq*.

fiduciary duties to Exchange. Exchange alleges that Indemnity has breached its fiduciary duties by charging Exchange an annual "Management Fee" that equates to tens of millions of dollars that is not used to cover the cost of serving as the attorney-in-fact and managing agent for Exchange, but funnels this money to Indemnity's shareholders, including a small group of controlling shareholders who are members of Indemnity's Board of Directors and who set the Management Fee in the form of dividends and "special dividend" payments.

Plaintiffs Troy Stephenson, Christine Stephenson and Steven Barnett initiated this action in the Court of Common Pleas of Allegheny County as trustees *ad litem* for Exchange under Rule 2152 of the Pennsylvania Rules of Civil Procedure. Plaintiffs allege two causes of action against Indemnity based on a breach of fiduciary duty for Indemnity's conduct in December 2019 and 2020 related to the management fee charge. On January 27, 2022, Indemnity filed a Notice of Removal asserting that this Court has jurisdiction under Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) ("CAFA"). Exchange moves to remand the action to state court and argues that this Court lacks jurisdiction under CAFA.

III. STANDARD OF REVIEW

"Generally, 'federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress.'" *NORCAL Mut. Ins. Co. v. Laurel Pediatric Assocs., Inc.*, No. 3:21-CV-66, 2022 WL 1308109, at *2 (W.D. Pa. May 2, 2022) (quoting *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716, 116 S. Ct. 1712,

135 L. Ed. 2d 1 (1996)). The party seeking removal of an action to federal court bears the burden of establishing that federal subject matter jurisdiction exists. *Kaufman v. Allstate New Jersey Ins. Co.*, 561 F.3d 144, 151 (3d Cir. 2009). To determine whether removal is proper, the court should examine the allegations set forth in the complaint and the notice of removal. *Erie Ins. Exch. v. Erie Indem. Co.*, 722 F.3d 154, 158 (3d Cir. 2013).

IV. DISCUSSION

Exchange argues that this case must be remanded to state court because this action does not meet the subject matter jurisdiction requirements of CAFA because (1) this action is not a "class action" within the meaning of CAFA and (2) the parties are not minimally diverse as required by CAFA § 1332(d)(2)(A).

"CAFA grants federal courts original jurisdiction over actions in which: (1) the matter constitutes a 'class action'; (2) 'the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs'; (3) CAFA's minimal diversity requirements are met; and (4) there are at least 100 members of the putative class." *Hoffman v. Nutraceutical Corp.*, 563 F. App'x 183, 185 (3d Cir. 2014) (unpublished) (quoting 28 U.S.C. § 1332(d)(2), (d)(5)(B)). "The proper test in a CAFA removal action depends on the nature of the jurisdictional facts alleged and whether they are in dispute." *Judon v. Travelers Prop. Cas. Co. of Am.*, 773 F.3d 495, 500 (3d Cir. 2014).

Exchange takes issue with the first element and argues that the complaint does not allege a class action

under the Federal Rules of Civil Procedure or any similar Pennsylvania statutes or rule.

Indemnity argues that the Court should consider the parties litigation history and because Exchange has attempted to assert class claims under CAFA with respect to the management fees in prior actions, including a recently removed action that included class claims that Plaintiffs voluntarily dismissed post-removal to this Court, the Court should consider the claims asserted here as class claims. Indemnity argues that Plaintiffs' voluntary dismissal of the prior putative class action and filing of this case sans-class claims is the functional amendment, or amendment *de facto*, of Plaintiff's previously voluntarily dismissed action.

CAFA defines a "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 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). Under the unambiguous definition of "class action," "[t]he statute directs [the court] to inquire whether th[e] action was brought under a 'state statute or rule' that is 'similar' to Rule 23 or, in other words, 'whether the state statute authorizes the suit "as a class action." ' " *Erie Ins. Exchange*, 722 F.3d at 158 (quoting *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011)).

The parties previously litigated the same issue of whether the federal court had jurisdiction under CAFA where trustees *ad litem* of the Exchange brought breach of contract, breach of fiduciary duty claims and

equitable relief under Pennsylvania Rule of Civil Procedure 2152 ("Rule 2152") in state court. *Erie Ins. Exchange*, 722 F.3d at 157. Indemnity removed the action to federal court, Exchange moved to remand and the district court granted that motion and remanded the case to state court. On appeal, the Court of Appeals for the Third Circuit held that there was no federal jurisdiction under CAFA because Exchange did not bring class claims, nor could it under Rule 2152 as an unincorporated association bringing claims on behalf of its members. The court of appeals found that

> Rule 2152 contains none of the defining characteristics of Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"). It does not, for example, provide for class certification mechanisms, . . . list requirements such as numerosity or commonality that a suit must meet to constitute a class action . . . or specify the form and substance of notice that must be given to absent class members[.] Nor does Rule 2152 permit individual class members to opt-out or provide for the appointment of a lead plaintiff or class counsel. Far from "authorizing an action to be brought by [a] representative person[] as a class," 28 U.S.C. § 1332(d)(1)(B), Rule 2152 merely authorizes suits by representatives on behalf of an unincorporated association. *See* Pa. R. Civ. P. 2152. Indeed, to the extent we have interpreted Pennsylvania law on the matter, we have held that suits by members of an unincorporated association (such as those contemplated by Rule 2152) may not be brought as a class action. *See Underwood v. Maloney*, 256

> F.2d 334, 337 (3d Cir. 1958) ("Pennsylvania has forbidden a suit by or against an unincorporated association to be maintained as a class action.").

Erie Ins. Exchange, 722 F.3d at 158–59. The court of appeals further explained that a suit under Rule 2152 "is properly understood as a suit by one entity, not by 'a conglomerate of individuals.' " *Erie Ins. Exchange*, 722 F.3d at 159 (quoting *Long v. Sakleson*, 328 Pa. 261, 195 A. 416, 420 (1937)). It further found that "[p]laintiffs are the masters of their complaints and are 'free to choose the statutory provisions under which they will bring their claims[,]' " *id.* (quoting *Purdue Pharma L.P. v. Kentucky*, 704 F.3d 208, 216 (2d Cir. 2013) n. 7 (2d Cir.2013)), and concluded that there was no jurisdiction under CAFA and affirmed the district court's remand of the action to state court. *Erie Ins. Exchange*, 722 F.3d at 156.

Indemnity has provided no tenable reason to deviate from this result. Exchange brings this lawsuit under Rule 2152 and does not assert class claims or any state law equivalent, and as such, there is no basis for CAFA jurisdiction. Indemnity cites *Loper v. Lifeguard Ambul. Serv., LLC*, 2:19-CV-583-CLM, 2020 WL 8617215, at *8 (N.D. Ala. Jan. 10, 2020) for the proposition that a plaintiff cannot use Federal Rule of Civil Procedure 15 to amend his complaint to divest a federal court of jurisdiction under CAFA, and also cannot do so by using the voluntary dismissal procedure under Rule 41 to do the same. In *Loper*, the court denied the plaintiff's request to amend her complaint in an attempt to divest the court of CAFA jurisdiction and further denied the plaintiff's request to

voluntarily dismiss her action so that she could refile it so that it did not meet the jurisdictional requirements of CAFA. In so denying, the court noted "that it would be passing strange to bar a Plaintiff from divesting a federal court of jurisdiction by using Rule 15 to amend his complaint but allow him to do so using Rule 41." *Loper*, 2020 WL 8617215, at *10. However, in *Loper*, the court was addressing whether to exercise its discretion to approve a stipulation of dismissal under Rule 41(a)(2) which requires a court order and for the court to allow dismissal "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Instantly, Exchange's previous case was voluntarily dismissed under Fed. R. Civ. P. 41(a)(1)(A)(i) prior to any answer being filed and did not require a court order to become immediately operative. *See Stephenson v. Erie Indemnity Company*, 2:21-cv-1444 (W.D.Pa.) (ECF No. 12). Rule 41 is clear that a stipulation of dismissal under Rule 41(a)(1)(A) "does not require a court order, nor does it require the approval of the court." *State Nat'l Ins. Co. v. Cnty. of Camden*, 824 F.3d 399, 406 (3d Cir. 2016). *See also Blair v. Comprehensive Healthcare Mgt. Services, LLC*, 2:18-CV-1667, 2021 WL 3855931, at *3 (W.D. Pa. Aug. 27, 2021). Because a dismissal under Rule 41(a)(1)(A) does not require a court order or approval, [the Court of Appeals for the Third Circuit has] held that '[t]he entry of such a stipulation of dismissal is effective automatically.' " *State National Insurance Company*, 824 F.3d at 406 (quoting *First Nat. Bank of Toms River, N. J. v. Marine City, Inc.*, 411 F.2d 674, 677 (3d Cir. 1969)). A stipulation to dismiss under Rule 41(a)(1)(A) is "immediately self-executing. No separate entry or order is required to effectuate the

dismissal." *State Nat'l Ins. Co*, 824 F.3d at 406–07 (footnotes omitted). *But see* Fed. R. Civ. P. 41(a)(2) (explicitly requiring a court order to approve of the dismissal "on terms that the court considers proper.").[2] Therefore, this Court cannot consider Exchange's previously dismissed case that included class claims as a basis for CAFA jurisdiction in this case which pleads no class claims or state law equivalent claims. The present action as it is pleaded includes no class claims and because Exchange is the scrivener of its complaint and is free to choose the statutory provisions under which it will bring its claims, there is no basis for CAFA jurisdiction. As previously noted by the court of appeals:

> This case was not filed under any rule that contemplates class proceedings, and Indemnity does not contend otherwise. It therefore fails to meet the statutory definition of "class action" and may not properly be removed under CAFA. Even after accepting Indemnity's invitation to perform an analysis beyond what CAFA's text requires, and to wade through the complaint in hopes of concluding that something else is afoot, we have failed to uncover any evidence that this case is really a class action wolf dressed in sheep's clothing.

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[2] While the Court did issue an order approving the stipulation of dismissal, such an Order was superfluous, was entered for the purpose of directing the Clerk's Office to close the case and did not require the Court's discretion for the voluntary dismissal to become immediately effective. *See Stephenson v. Erie Indemnity Company*, 2:21-cv-1444 (W.D.Pa.) (ECF No. 13).

Erie Ins. Exch., 722 F.3d at 163. Accordingly, Plaintiffs' motion to remand is GRANTED.

V. CONCLUSION

Based on the foregoing, Exchange's motion to remand (ECF No. 19) is GRANTED and the Clerk's Office shall remand this case to the Court of Common Pleas of Allegheny County, Pennsylvania forthwith. Should Indemnity seek a stay of this Order, they shall file said motion to stay remand of the case by **October 5, 2022**.

An appropriate Order follows.

DATED this 28th day of September, 2022.

BY THE COURT:

s/Cynthia Reed Eddy
Chief United States Magistrate Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1053

[Filed June 22, 2023]

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees ad litem, and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT

v.

ERIE INDEMNITY COMPANY,
Appellant

District Court No. 2-22-cv-00166

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN,

MONTGOMERY-REEVES, CHUNG, and SMITH[*],
Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and none of the panel having voted for rehearing, the petition for rehearing, is denied.

BY THE COURT,

s/D. Brooks Smith
Circuit Judge

Dated: June 22, 2023
Amr/cc: All counsel of record

[*] The vote of the Honorable D. Brooks Smith, Senior Judge of the United States Court of Appeals for the Third Circuit, is limited to panel rehearing.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-8051

[Filed January 9, 2023]

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees ad litem, and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT	)
v.	)
ERIE INDEMNITY COMPANY, Petitioner	)

(2:22-cv-00166)

SUR PETITION FOR REHEARING

Present: AMBRO, KRAUSE, and NYGAARD, Circuit Judges

The petition for rehearing filed by Petitioner Erie Indemnity Company in the above-entitled case having been submitted to the judges who participated in the decision of this Court, it is hereby ORDERED that the

petition for rehearing by the panel is GRANTED. The Court's order of November 7, 2022 is hereby VACATED. Petitioner's Petition for Leave to Appeal (Dkt. No. 1) is GRANTED and Petitioner's appeal is referred to a merits panel for further briefing on the merits, as well as this Court's jurisdiction over Petitioner's appeal. The Clerk of Court is directed to issue a briefing schedule in accordance with 28 U.S.C. § 1453(c)(2), which requires the merits panel to render judgment not later than 60 days after Petitioner files its appeal, unless both parties agree to an extension under 28 U.S.C. § 1453(c)(3). In light of this decision, no further action will be taken by the en banc court.

BY THE COURT,

s/ Cheryl Ann Krause
Circuit Judge

Dated: January 9, 2023
Amr/cc: All counsel or record

[SEAL]

A True Copy:

/s/ Patricia S. Dodszuweit

Patricia S. Dodszuweit, Clerk

APPENDIX E

STATUTORY PROVISIONS

CAFA, Pub. L. No. 109-2, § 2, 119 Stat. 4-5 (2005) (codified as a note to 28 U.S.C. § 1711)

(a) Findings.—Congress finds the following:

(1) Class action lawsuits are an important and valuable part of the legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

(2) Over the past decade, there have been abuses of the class action device that have—

(A) harmed class members with legitimate claims and defendants that have acted responsibly;

(B) adversely affected interstate commerce; and

(C) undermined public respect for our judicial system.

(3) Class members often receive little or no benefit from class actions, and are sometimes harmed, such as where—

(A) counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value;

(B) unjustified awards are made to certain plaintiffs at the expense of other class members; and

(C) confusing notices are published that prevent class members from being able to fully understand and effectively exercise their rights.

(4) Abuses in class actions undermine the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction as intended by the framers of the United States Constitution, in that State and local courts are—

(A) keeping cases of national importance out of Federal court;

(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.

(b) Purposes.—The purposes of this Act [see Short Title of 2005 Amendments note set out under section 1 of this title] are to—

(1) assure fair and prompt recoveries for class members with legitimate claims;

(2) restore the intent of the framers of the United States Constitution by providing for Federal court

consideration of interstate cases of national importance under diversity jurisdiction; and

(3) benefit society by encouraging innovation and lowering consumer prices.

28 U.S.C. § 1332 - Diversity of citizenship; amount in controversy; costs

(a) 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—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less

than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title—

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of—

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated; and

(C) the State or foreign state where the insurer has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d)

(1) In this subsection—

(A) the term "class" means all of the class members in a class action;

(B) the term "class action" means 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 1 or more representative persons as a class action;

(C) the term "class certification order" means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

(D) the term "class members" means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

(A) whether the claims asserted involve matters of national or interstate interest;

(B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

(A)

(i) over a class action in which—

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(II) at least 1 defendant is a defendant—

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State

in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

(5) Paragraphs (2) through (4) shall not apply to any class action in which—

(A) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of

the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim—

(A) concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

(10) For purposes of this subsection and section 1453, an unincorporated association shall be

deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11)

(A) For purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)

(i) As used in subparagraph (A), the term "mass action" means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term "mass action" shall not include any civil action in which—

(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

(II) the claims are joined upon motion of a defendant;

(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

(C)

(i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.

(ii) This subparagraph will not apply—

(I) to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

(II) if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall

be deemed tolled during the period that the action is pending in Federal court.

(e) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

28 U.S.C. § 1441(a) - Removal of civil actions

(a) Generally.—

Except as otherwise expressly provided by Act of Congress, 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 or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 2:22-cv-166

Electronically Filed

[Filed January 28, 2022]

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees *ad litem,* and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, Plaintiff,	)
v.	)
ERIE INDEMNITY COMPANY, Defendant.	)

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT Defendant Erie Indemnity Co. ("Indemnity"), by and through its counsel, Dechert LLP and Knox McLaughlin Gornall & Sennett, P.C., reserving any and all defenses and

exceptions, hereby removes the above-captioned action from the Court of Common Pleas, Allegheny County, Pennsylvania, to the United States District Court for the Western District of Pennsylvania (Erie Division) pursuant to 28 U.S.C. §§ 1441 and 1453 on the grounds of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d).

In support of this Notice of Removal, Indemnity states as follows:

INTRODUCTION

1. This Notice of Removal is the direct consequence of Plaintiffs' frantic effort to escape the jurisdiction of this Court and the impact of its ruling three years ago in *Ritz v. Erie Indemnity Company*, No. 17-340, 2019 WL 438086 (W.D. Pa. Feb. 4, 2019). This Court dismissed Ritz's claim with prejudice based on claim preclusion. In dismissing the claim, the Court found that both the *Ritz* action and a prior action, *Beltz*, "detail an alleged scheme . . . to favor the shareholders over the subscribers by allegedly violating the 25% compensation cap mandated by the Subscriber's Agreement." *Id.* at *4. This Court ruled that the claim in *Ritz* was barred by claim preclusion because the defendants prevailed in *Beltz*, the two cases arose from "the 'same cause of action,'" and all subscribers of Erie Insurance Exchange ("Exchange") are in privity with each other. *Id.* Because this case shares all of those characteristics, the Court's ruling in *Ritz* necessarily requires that this Complaint, too, is barred by claim preclusion.

2. It is that result that Plaintiffs desperately seek to flee. Their fear is understandable, since this case is a virtual carbon copy of the *Ritz* case, which was pleaded as a class action pursuant to CAFA. In the instant action, Plaintiffs, as in *Ritz*, claim that Indemnity breached its fiduciary duty when it took a 25% Management Fee expressly permitted by the Subscriber's Agreement, the foundational document governing the rights and obligations of the parties to this lawsuit. As in *Ritz*, Plaintiffs here allege that Indemnity accomplished this purported breach of fiduciary duty by abusing its position under the Subscriber's Agreement as the attorney-in-fact for the subscribers. Compl. ¶ 10, *Erie Ins. Exch. v. Erie Indem. Co.*, No. GD-21-014814 (Pa. Ct. Com. Pl. Allegheny Cnty. Dec. 6, 2021) (hereafter "Compl."), attached hereto as Exhibit 1; *Ritz*, 2019 WL 438086, at *1. As in *Ritz*, Plaintiffs here assert that this abuse occurred because Indemnity set out to favor its shareholders over the subscribers. Compl. ¶¶ 47, 54; *Ritz*, 2019 WL 438086, at *4. As in *Ritz*, Plaintiffs here say they are acting on behalf of Exchange to benefit the same class—all Erie subscribers. And, as in *Ritz*, Plaintiffs here demand that Indemnity's Management Fee be disgorged as relief for the alleged breach of fiduciary duty. Compl. ¶¶ 82, 90; *Ritz*, 2019 WL 438086, at *1.

3. It is no wonder then that Plaintiffs in this action have contorted themselves into a series of baseless and increasingly desperate positions in their effort to both escape CAFA jurisdiction and re-litigate the *Ritz* judgment in state court. In the latest iteration of this seemingly never-ending saga, Plaintiffs filed a class action in the Common Pleas Court for Allegheny

County complaining, yet again, about Indemnity taking the 25% Management Fee set out in the Subscriber's Agreement. Indemnity timely removed that action to this Court. After reviewing the Notice of Removal, Plaintiffs chose to voluntarily dismiss that action rather than move to remand. Then, just a few weeks later, Plaintiffs re-filed their action, again in Allegheny County. This "new" complaint was the substantive equivalent of their first filing. It changed little, if anything, other than to delete the class action label through which Plaintiffs originally sought to represent a million Erie subscribers who were residents of Pennsylvania and substitute in its place a new label stating that the action was now being brought in the name of Exchange in order to "benefit all members of Exchange," an even larger group of subscribers. Compl. ¶ 16.

4. This conduct by Plaintiffs presents at least three separate bases that justify removal. *First*, inasmuch as the second filing is substantively equivalent to the "class action" they initially filed (and to the *Ritz* class action), that second filing qualifies as a "class action" under CAFA. *Second*, Plaintiffs' contrived dismissal and amendment tactic runs afoul of the well-established rule that plaintiffs cannot extinguish federal jurisdiction by amending their complaint after removal. *Third*, federal law, including United States Supreme Court precedent, is clear that efforts to thwart federal jurisdiction must be disregarded and federal jurisdiction maintained where, as here, plaintiffs employ pleading artifices to evade CAFA's removal protections.

5. These three fundamental features of Plaintiffs' latest gambit to avoid this Court's ruling in *Ritz* also create a stark contrast with the Third Circuit's ruling in *Erie Insurance Exchange v. Erie Indemnity Co.*, 722 F.3d 154 (3d Cir. 2013) ("*Sullivan*"). There, the Third Circuit, on the record before it, concluded that claims under Pennsylvania Rules of Civil Procedure 2152 and 2177 did not, on their own, trigger CAFA jurisdiction. However, the Third Circuit was not confronted with any of the three bases of jurisdiction set forth above. There was no consideration of the dismiss-and-amend tactic like the one deployed here. And the Court expressly reserved judgment on whether jurisdiction *would* exist where Plaintiffs *had* initially filed their claim as a class action or where Plaintiffs *had* exhibited a pattern of evasion.

6. At bottom, this case is a paradigm of the types of lawsuits that Congress intended to cover when it passed CAFA. Plaintiffs' relentless efforts to elude federal court cannot obscure that obvious fact. This matter belongs in federal court and all efforts to hide from that reality should be rejected.

FACTUAL AND PROCEDURAL BACKGROUND

I. THE ERIE INSURANCE GROUP

7. Erie Insurance Group ("Erie") is a reciprocal insurance business consisting of two key entities. The first entity is Exchange. Erie policyholders, known as "subscribers"—which now total more than two million subscribers across 12 states and the District of Columbia—agree to pool their risk by insuring each other through their exchange of reciprocal insurance

obligations. Exchange is the legal entity that acts to effectuate the pooling of these individual insurance obligations and accordingly is the technical insuring entity that issues the subscribers' insurance policies. Exchange does not have (and is not required by law to have) any directors, officers, or employees. Compl. ¶¶ 2–3.

8. The second key legal entity is Indemnity. Indemnity is not an insuring entity, but rather is a public corporation that manages the insurance function for the subscribers. It is appointed by each subscriber individually to perform that function. Compl. ¶ 5; Erie Indemnity Co. 2020 Form 10-K at 3 (Feb. 25, 2021) (hereinafter, "2020 Form 10-K").[1]

9. The foundational document creating and governing Erie's reciprocal arrangement, and the relationship and rights between Indemnity and the subscribers, is the Subscriber's Agreement. The Subscriber's Agreement is a single-page, identical agreement signed individually by each subscriber from all 12 states and the District of Columbia, regardless of where they are domiciled or reside. The Subscriber's Agreement: (a) creates the subscribers' exchange of identical reciprocal insurance obligations among and between the subscribers; (b) appoints Indemnity to

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[1] Plaintiffs rely upon Indemnity's 2020 Form 10-K in their Complaint. *See, e.g.*, Compl. ¶¶ 45, 60. The Third Circuit has held that, in removal proceedings, a district court may take judicial notice of documents "integral to or explicitly relied upon in the complaint," as well as SEC filings. *In re NAHC, Inc. Sec. Litig.*, 306 F.3d 1314, 1331 (3d Cir. 2002) (quoting *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997)).

serve as the management entity for all of the subscribers regardless of their geographic location or policy type; (c) sets out Indemnity's responsibilities in managing the obligations of the subscribers to each other; and (d) specifies Indemnity's compensation for managing this reciprocal insurance business. Compl. ¶¶ 21–23, 27; Compl. Ex. A[2]; 2020 Form 10-K at 3.

10. Subscribers pay premiums in return for their insurance policies, and "[t]hese premiums, along with investment income, are the major sources of cash that support the operations of the Exchange." 2020 Form 10-K at 35.

11. The surplus in Exchange, which is used to pay claims, is "determined under statutory accounting principles." *Id.*

12. Under Indemnity's management, the surplus has grown substantially. It increased from $4.8 billion in 2009, *see* 2009 Erie Indemnity Company Annual Rep. at 5, to $7.7. billion in 2016, *see* 2016 Erie Indemnity Company Annual Rep. at 4, to $9.5 billion in 2019 and then increased another $1.2 billion to $10.7 billion in 2020, *see* 2020 Form 10-K at 35. In other words, Indemnity's provision of management services has driven an almost 125% increase in a

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[2] Plaintiffs cited, but did not attach, the Subscriber's Agreement as Exhibit A to their Complaint. *See* Compl. ¶ 22 ("A true and correct exemplar of the Subscriber's Agreement is attached hereto at Exhibit A."). Accordingly, Indemnity cites to Exhibit A from Plaintiffs' first complaint. Compl., *Stephenson et al. v. Erie Indem. Co.*, No. GD-21-010046 (Pa. Ct. Com. Pl. Allegheny Cnty. Aug. 24, 2021), attached hereto as Exhibit 2.

decade in the surplus available to pay the claims of subscribers. This continuous and steady growth "reflect[ed] a disciplined approach to underwriting and a sharpened focus on investments." 2020 Erie Indemnity Company Annual Rep. at 5, 10, *available at* https://bit.ly/3GVwl4v.

13. Given the annual upward trajectory of the surplus—even during a global pandemic—there is no reason to believe that the current surplus is insufficient to cover claims filed, to pay any appropriate dividend, or to fund any necessary expense for the benefit of the subscribers. Importantly, Plaintiffs do not allege otherwise.

14. Pursuant to the Subscriber's Agreement, each subscriber expressly agreed that Indemnity may "retain up to 25% of all premiums written or assumed by [Exchange]" as "compensation" for its management services (*i.e.*, the "Management Fee"). *See* Compl. Ex. A; *see also* Compl. ¶¶ 27–28.

15. Indemnity's Management Fee is set once a year on a nationwide basis and applies to all subscribers regardless of their type of policy. In setting the Management Fee, no consideration is given to any factor pertinent to individual subscribers or geography. Rather, it is one, undifferentiated, across-the-board fee, the burden of which is borne equally by each subscriber in all the jurisdictions in which the Erie Insurance Group does business. Plaintiffs do not allege otherwise.

16. "The process of setting the management fee rate includes the evaluation of current year operating results compared to both prior year and industry

estimated results for both Indemnity and the Exchange, as well as consideration of several factors for both entities including: their relative financial strength and capital position; projected revenue, expense and earnings for the subsequent year; future capital needs; as well as competitive position." 2020 Form 10-K at 3.

17. For 2020 and 2021, Indemnity set the Management Fee at 25%. Compl. ¶¶ 70, 76. In 2020, the total Management Fee—for all subscribers across all states and the District of Columbia—was $1.9 billion. *Id.* ¶ 61.

18. As noted above, Plaintiffs do not claim that Indemnity breached the Subscriber's Agreement's compensation cap by taking more than 25% of all premiums written or assumed by Exchange, and therefore do not bring a breach of contract claim. Instead, Plaintiffs complain, in a tautological fashion, that Indemnity's taking of the Management Fee, which is expressly agreed to by each subscriber in the Subscriber's Agreement, "is preventing the same funds from being available for the use and benefit of Exchange." *Id.* ¶ 75. Of course, any dollar used to pay Indemnity for its management services is a dollar less that goes directly into Exchange, just as the dollars paid to buy eggs in a supermarket necessarily reduce the amount that a consumer has to buy other groceries. But that unremarkable observation does not mean the money expended, whether for eggs or management services, does not confer a "benefit." And, if applied to its logical conclusion, that proposition would prohibit Indemnity from taking *any* Management Fee, despite the express terms of the Subscriber's Agreement and

despite the magnitude, nature, and consequent benefit that is conferred on the subscribers by Indemnity's management services.

19. Moreover, Plaintiffs make this claim notwithstanding the fact that, as noted above, Exchange's surplus has expanded consistently and dramatically in the recent past. This fact alone establishes that Indemnity's Management Fee conferred a substantial benefit on the subscribers as a result of Indemnity's management of the insurance business. In any event, Plaintiffs' failure to allege a single fact that articulates any reasonable basis to establish that Exchange cannot meet its responsibilities to the subscribers, let alone as a direct result of the size of Indemnity's Management Fee, demonstrates the vacuous nature of Plaintiffs' claim and the fact that the instant Complaint is indistinguishable from the prior complaints discussed herein.

20. Further, the Subscriber's Agreement specifically states that it is only *after* Indemnity's Management Fee is paid from the premiums received that the "*rest of the premiums* will be used for losses, loss adjustment expenses, . . . establishment of reserves and surplus, . . . dividends and other purposes [Indemnity] decide[s] are to the advantage of Subscribers." Compl. Ex. A. In other words, every subscriber has agreed, in direct conflict with what Plaintiffs now allege, that dividends, loss reserves, and other items beneficial to subscribers must come out of the premium dollars left over *after*, not *before*, the Management Fee is paid. Plaintiffs' theory thus

fundamentally conflicts with the Subscriber's Agreement they signed.

II. THE HISTORY OF SUBSCRIBER MANAGEMENT FEE LITIGATION AGAINST INDEMNITY

21. This is the ***tenth*** complaint, going back nearly ten years, filed by subscribers challenging Indemnity's compliance with the compensation cap laid out in the Subscriber's Agreement, including the 25% cap on Indemnity's Management Fee. All of those complaints (like this lawsuit) asserted claims by a single or handful of subscribers on behalf of a group of similarly situated subscribers, at all times exceeding a million in number across multiple states and the District of Columbia.

A. The *Sullivan* Litigation

22. On August 1, 2012, four subscribers filed suit in the Pennsylvania Court of Common Pleas for Fayette County against Indemnity. Compl., *Erie Ins. Exch. v. Erie Indem. Co.*, No. 1712 of 2012, G.D. (Pa. Ct. Com. Pl. Fayette Cnty. Aug. 1, 2012) (hereinafter "*Sullivan*"), attached hereto as Exhibit 3. The plaintiffs' complaint alleged that Indemnity "ha[d] received from Exchange the maximum amount of 25% of Exchange's written and assumed premiums since 2007" and that the receipt of those funds coupled with other fees received constituted excessive compensation in breach of its fiduciary duty arising from the Subscriber's Agreement 25% cap on the Management Fee. Ex. 3 ¶¶ 20, 25, 31.

23. Because the *Sullivan* complaint asserted claims by subscribers "on behalf" of Exchange and all of its subscribers, and sought damages in excess of $300 million, *id.* Count I, II, & III & ¶ 27, Indemnity removed the *Sullivan* complaint to the U.S. District Court for the Western District of Pennsylvania on August 22, 2012. *See* Notice of Removal, *Erie Ins. Exch. v. Erie Indem. Co.*, No. 12-1205, Dkt. 1 (W.D. Pa. Aug. 22, 2012), attached hereto as Exhibit 4. Indemnity maintained that removal was proper under CAFA because the *Sullivan* complaint was brought "on behalf of" the millions of other subscribers across numerous states. *See, e.g.*, *id.* ¶ 12.

24. The question of whether the *Sullivan* complaint properly belonged in state rather than federal court ultimately was presented to the U.S. Court of Appeals for the Third Circuit. However, after filing the *Sullivan* complaint and before the appeal to the Third Circuit, the *Sullivan* plaintiffs filed yet another complaint, this time in federal court. *Erie Ins. Exch. v. Stover et al.*, No. 13-37, Dkt. 1 (W.D. Pa. Feb. 6, 2013) ("*Beltz*"), attached hereto as Exhibit 5; *see infra* Section II.B. This new federal court complaint, which was brought on behalf of a putative class of all subscribers, again challenged Indemnity's compliance with the Subscriber's Agreement's limit on Indemnity's compensation. Clearly understanding the fundamental nature of its claim, the plaintiffs explicitly invoked CAFA jurisdiction.

25. On appeal, the Third Circuit ruled that it could not consider an amended complaint that had been filed in federal court in its analysis of whether

federal jurisdiction existed because that complaint was filed *after* removal and the law was clear that only matters existing *before* removal could be considered. *See Erie Ins. Exch. v. Erie Indem. Co.*, 722 F.3d 154, 158 n.3 (3d Cir. 2013). The Third Circuit then held that, based on the record before it and because the plaintiffs had never invoked Pennsylvania's class action procedural rules, federal court jurisdiction over the *Sullivan* complaint did not lie under CAFA.

26. In making its ruling, the Third Circuit also explicitly noted that there was no need to consider whether the plaintiffs had attempted to evade federal jurisdiction. The Court reached that conclusion since it found that no evidence had been presented that the plaintiffs had engaged in any efforts "to avoid 'federal jurisdiction.'" *Id.* at 163 n.9 (distinguishing and quoting *Freeman v. Blue Ridge Paper Prods., Inc.*, 551 F.3d 405, 407 (6th Cir. 2008)). If anything, the Court noted that the opposite was true there—because three of the four *Sullivan* plaintiffs had filed a separate class action *in federal court*. *Id.* at 157, 163 & n.9. Therefore, the Third Circuit made clear that it was not ruling on any question concerning evasion of federal jurisdiction under CAFA because there was no evidence that plaintiffs had sought to "avoid 'federal jurisdiction.'" *Id.* at 163 n.9.

27. During the remanded proceedings in *Sullivan*, the *Beltz* plaintiffs filed another complaint, *see infra* Section II.B, and the *Sullivan* plaintiffs moved to stay their state court proceedings in favor of the federal action. They argued that a stay pending the resolution of the federal class action would

"(A) conserve judicial resources; (B) avoid conflicting rulings; and (C) afford deference to the more comprehensive federal court action." Mem. of Law in Support of Pls.' Mot. to Stay at 1, *Erie Ins. Exch. v. Erie Indem. Co.*, No. 1712 of 2012, G.D. (Pa. Ct. Com. Pl. Allegheny Cnty. Sept. 12, 2016). The *Sullivan* plaintiffs emphasized that a stay would "allow all of the substantive claims" asserted in the case "to be litigated and decided in one [class action] proceeding," *id.* at 5, explaining that "[a]bsent a stay of this case, there is the potential for conflicting rulings between a state and federal court involving the same claims," *id.* at 7. The *Sullivan* plaintiffs thus did a complete about face, effectively abandoned their fight to have their action decided in state court, and acknowledged that the federal CAFA proceedings—in which they alleged the same claims—were the most appropriate vehicle for the disposition of their claims.

B. The *Beltz* Litigation

28. As noted above, on February 6, 2013, while the *Sullivan* appeal was pending in the Third Circuit, three of the four *Sullivan* plaintiffs filed a lawsuit in the U.S. District Court for the Western District of Pennsylvania, challenging the same compensation cap that the *Sullivan* complaints challenged, but seeking relief both on behalf of a putative class of all subscribers and derivatively on behalf of Exchange. *See* Ex. 5.

29. The substance of the *Beltz* complaint was identical to the *Sullivan* complaint in all material respects. Like the *Sullivan* complaint before it, the *Beltz* complaint alleged that, "[s]ince at least 2007,

Indemnity has received from Exchange the maximum amount of 25% of Exchange's written and assumed premiums as compensation for its services under the Subscriber Agreement" and was breaching its fiduciary duty in connection with Indemnity's compensation. *See, e.g.*, Ex. 5 ¶¶ 36, 54, 66.

30. The most meaningful difference between the *Sullivan* and *Beltz* complaints was that the *Beltz* complaint, in addition to being brought derivatively, was also brought as a class action under CAFA. *Compare* Ex. 3, *with* Ex. 5.

31. The *Beltz* plaintiffs then amended their complaint twice. *See* 1st Am. Compl., *Erie Ins. Exch. v. Stover et al.*, No. 13-37, Dkt. 32 (W.D. Pa. June 5, 2013), attached hereto as Exhibit 6; *Erie Ins. Exch. v. Stover et al.*, No. 13-37, Dkt. 49 (W.D. Pa. July 18, 2013), attached hereto as Exhibit 7. Throughout each amended complaint, the *Beltz* plaintiffs continued to challenge Indemnity's compliance with the Subscriber's Agreement's 25% compensation cap in the same way as they did in *Sullivan*. And they continued to assert their claims were class actions, invoking CAFA as the basis for federal court jurisdiction. *See, e.g.*, Ex. 5 ¶¶ 24, 36, 54, 66; Ex. 6 ¶¶ 24, 36, 55, 66; Ex. 7 ¶¶ 28, 40, 60, 70.

32. On the defendants' motions to dismiss, the District Court dismissed the *Beltz* case without prejudice. Op. & Order, *Erie Ins. Exch. v. Stover et al.*, No. 13-37, Dkt. 85 (W.D. Pa. Feb. 10, 2014). The plaintiffs unsuccessfully appealed that dismissal to the Third Circuit. *Erie Ins. Exch. ex rel. Beltz v. Stover*, 619 F. App'x 118 (3d Cir. 2015).

33. The *Beltz* plaintiffs then proceeded in 2016 to refile their case. The "new" (fourth) complaint ("*Beltz II*") yet again alleged that, "since at least 2007, Indemnity has retained the maximum amount allowed by the Subscriber's Agreement of all premiums written or assumed by Exchange," and alleged that Indemnity violated the 25% compensation cap mandated by the Subscriber's Agreement, just as was alleged in *Sullivan* and in the first *Beltz* complaints. *Beltz v. Erie Indem. Co.*, No. 16-179, Dkt. 1 ¶ 84 (W.D. Pa. July 8, 2016) ("*Beltz II*"), attached hereto as Exhibit 8. And the *Beltz II* plaintiffs again invoked CAFA jurisdiction on behalf of a putative class of all Exchange subscribers. Ex. 8 ¶¶ 8, 89.

34. The District Court dismissed the *Beltz II* plaintiffs' complaint with prejudice on July 17, 2017, holding, among other things, that Indemnity did not breach the Subscriber's Agreement's 25% compensation cap and that the plaintiffs' breach of fiduciary duty and conversion claims were barred as untimely under Pennsylvania's two-year statute of limitations. *Beltz v. Erie Indem. Co.*, 279 F. Supp. 3d 569, 579–84 (W.D. Pa. 2017). On appeal, the Third Circuit affirmed, holding, among other things, that Indemnity did not breach the Subscriber's Agreement's 25% compensation cap and that the plaintiffs had forfeited their breach of fiduciary duty claims. *Beltz v. Erie Indem. Co.*, 733 F. App'x 595 (3d Cir. 2018).

C. The *Ritz* Litigation

35. During the pendency of the *Beltz II* plaintiffs' appeal, an additional plaintiff filed another lawsuit in this Court challenging Indemnity's compliance with the

Subscriber's Agreement 25% compensation cap. Compl., *Ritz v. Erie Indem. Co.*, No. 17-340, Dkt. 1 (W.D. Pa. Dec. 28, 2017), attached hereto as Exhibit 9. That complaint made the same allegations the *Sullivan* and *Beltz* complaints had made. It alleged that "Indemnity has retained the maximum amount of Management Fees allowed by the Subscriber's Agreement" and that, consequently, Indemnity breached its "fiduciary obligations to the Exchange and the Subscribers . . . by charging and keeping excessive Management Fees." *See, e.g.*, Ex. 9 ¶ 44.

36. Like the *Beltz* complaints, the *Ritz* complaint was brought both on behalf of a class of all subscribers pursuant to CAFA and purportedly derivatively on behalf of Exchange. *Id.* ¶¶ 8, 78, 92.

37. The *Ritz* complaint was dismissed with prejudice by this Court. *See Ritz v. Erie Indem. Co.*, No. 17-340, 2019 WL 438086 (W.D. Pa. Feb. 4, 2019). The Court held that all subscribers were in privity with all other subscribers because they are all "co-beneficiaries of and cosignatories to the same contract that obligates Indemnity to provide the management services" that were being challenged and the "nature of th[at] relationship creates privity for claim preclusion purposes." *Id.* at *6. This Court found that the compensation-cap claim in *Ritz* was the same as, or at least "essentially similar" to, the claim in *Beltz II* and "could have been brought" in that action. *Id.* at *4. Therefore, this Court ruled that the "*Beltz II* plaintiffs were capable of including Ritz's cause of action for the alleged excessive retention of management fees in its complaint" and accordingly the *Ritz* complaint was

barred by the doctrine of claim preclusion based on the prior dismissal with prejudice in *Beltz II*. *Id.* at *3–6. The Court denied a motion for reconsideration, *Ritz v. Erie Indem. Co.*, No. 17-340, 2019 WL 2090511 (W.D. Pa. May 13, 2019), and the *Ritz* plaintiff did not appeal to the Third Circuit.

38. After the final judgments in *Beltz II* and *Ritz* were entered, the *Sullivan* plaintiffs audaciously returned to the Common Pleas Court of Fayette County and requested that the stay they requested two years before be lifted. Pls.' Mot. Status Conf., *Erie Ins. Exch. v. Erie Indem. Co.*, No. 1712 of 2012, G.D. (Pa. Ct. Com. Pl. Fayette Cnty. June 27, 2018). They asked the state court to assist them in bypassing the federal judgments by permitting yet another re-litigation of the question of whether Indemnity had violated its fiduciary duty in applying the 25% compensation cap under the Subscriber's Agreement. The court refused. Instead, the court dismissed the *Sullivan* litigation with prejudice on comity grounds based on the dismissals in the *Beltz II* and *Ritz* federal class actions. Op. & Order, *Erie Ins. Exch. v. Erie Indem. Co.*, No. 1712 of 2012, G.D. (Pa. Ct. Com. Pl. Fayette Cnty. Dec. 2, 2020).

D. The Current Litigation

39. On August 24, 2021, Plaintiffs initiated the latest in this decade long series of challenges to Indemnity's compliance with the Subscriber's Agreement's 25% cap on Indemnity's Management Fee.

40. Plaintiffs initially filed their complaint in the Pennsylvania Court of Common Pleas for Allegheny County. *See* Compl., *Stephenson et al. v. Erie Indem.*

Co., No. GD-21-010046 (Pa. Ct. Com. Pl. Allegheny Cnty. Aug. 24, 2021), attached hereto as Exhibit 2.

41. That complaint, like the eight before it, claimed that Indemnity's compensation practices had breached its fiduciary duties by setting its Management Fee at the 25% level, despite the fact it was permitted explicitly to do so by the terms of the Subscriber's Agreement. *See, e.g.*, Ex. 2 ¶¶ 13, 47, 80. Plaintiffs pleaded the claim as a putative class action pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708, and 1790.

42. Because the complaint pleaded an interstate case of national importance that met all of CAFA's requirements, Indemnity removed the case to this Court. *See* Notice of Removal, *Stephenson v. Erie Indem. Co.*, No. 21-1444, Dkt. 1 (W.D. Pa. Oct. 20, 2021), attached hereto as Exhibit 10. The case was marked as related to the *Ritz* litigation and accordingly assigned to this Court.

43. After reviewing the Notice of Removal, and less than two weeks after Indemnity removed the case to federal court, Plaintiffs decided that they were not going to litigate the removal question embedded in their complaint. Instead, they voluntarily dismissed their case without prejudice. Notice of Voluntary Dismissal, *Stephenson v. Erie Indem. Co.*, No. 21-1444, Dkt. 12 (W.D. Pa. Nov. 2, 2021).

44. The next month, Plaintiffs filed another complaint, again in the Pennsylvania Court of Common Pleas for Allegheny County ("Complaint"). *See* Compl., *Erie Ins. Exch. v. Erie Indem. Co.*, No. GD-21-014814

(Pa. Ct. Com. Pl. Allegheny Cnty. Dec. 8, 2021), attached hereto as Exhibit 1.

45. The claim set forth in the "new" complaint was substantively identical to the one Plaintiffs had filed and dismissed only a few short weeks before. Both complaints asserted fiduciary duty claims challenging the Management Fees that Indemnity retained. Both complaints allege that "[a]s a fiduciary," Indemnity "was obligated at all times to act with the utmost degree of good faith, honesty, candor, undivided loyalty, and full disclosure, and to exercise the high degree of care required of a fiduciary serving as the agent and attorney-in-fact" for the subscribers and Exchange. Ex. 2 ¶ 108; Compl. ¶¶ 77, 84.[3]

46. Both complaints allege that "[i]n setting the Management Fee" in December 2019 and December 2020 "and allowing such amounts to be taken" as compensation "over the course of the last two years" ("in large part to fund dividend payments to Indemnity's shareholders"), Indemnity "breached" or "failed to comply" with its fiduciary duties. Ex. 2 ¶ 109; Compl. ¶¶ 78, 85.

47. Both complaints allege that Indemnity "has also breached its fiduciary duties" "by failing to implement or utilize processes to ameliorate its conflicts of interest when self-dealing and when making decisions in which the rights and interests" of Exchange or the subscribers "are at odds with the

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[3] The most recent complaint uses the phrase "managing agent" rather than "agent." Compl. ¶ 77.

rights and interests" of Indemnity "and its controlling shareholders." Ex. 2 ¶ 110; Compl. ¶¶ 79, 86.

48. Both complaints allege that, "[i]nstead of acting in the best interests" of Exchange and the subscribers, Indemnity "has been acting in its own best interests and abusing" its "power" and its "position of trust." Ex. 2 ¶ 111; Compl. ¶¶ 80, 87.

49. Both complaints allege that Indemnity "is taking excessive profit from the Management Fees it receives from" Exchange in order "to enrich its own shareholders specifically including its conflicted controlling shareholders who serve on" Indemnity's board of directors. Ex. 2 ¶ 112; Compl. ¶¶ 81, 88.

50. Both complaints allege that "[a]s a result" of Indemnity's breaches of fiduciary duty, Exchange and the subscribers have "suffered significant losses by having excessive funds diverted to" Indemnity and "improperly utilized for" Indemnity's "gain and self-interests instead of remaining with Exchange." Ex. 2 ¶ 113; Compl. ¶¶ 82, 89.

51. Both complaints allege that "Members of Exchange" have suffered from Indemnity's purported breaches of fiduciary duty, asserting that the "Members of Exchange . . . have received nothing or only *de minimis* dividends." Ex. 2 ¶¶ 81, 83; Compl. ¶¶ 71–73.

52. Both complaints seek the same relief in the form of a finding that Indemnity breached its fiduciary duties, damages, disgorgement of profits, and other injunctive relief. Ex. 2 at 20; Compl. ¶¶ 82, 90.

53. Both complaints seek to benefit the same large multi-state class of subscribers. In fact, the latest repackaging of the same cause of action explicitly states that, as in the prior suit filed as a class action, it seeks "to benefit *all members* of the Exchange." Compl. ¶ 16 (emphasis added).

54. The only change Plaintiffs made was to alter their choice of the procedural mechanism under the Pennsylvania Rules through which to process their claim. As set out above, Plaintiffs plead the same claim, in the same way, for the benefit of the same, if not an even larger, interstate group of subscribers. Plaintiffs allege no reason, legitimate or otherwise, for dismissing, rather than just amending, their original complaint. The reason behind their choice to dismiss to, only a short time later, file a carbon copy is obvious. They know that an amendment after removal cannot divest the federal court of jurisdiction. So, they are desperately trying to concoct some alternative mechanism to escape this Court and its ruling in *Ritz*.

GROUNDS FOR REMOVAL

55. The Court has jurisdiction over this action pursuant to CAFA because both the original complaint and this latest carbon copy satisfy CAFA's requirements. Under long-settled precedents, Plaintiffs' attempt to amend and refile their complaint after removal cannot destroy CAFA jurisdiction. On the contrary, Plaintiffs' transparent attempts to evade CAFA only further confirm that federal jurisdiction is proper here.

I. REMOVAL IS PROPER PURSUANT TO CAFA.

56. The United States Supreme Court has held that CAFA's "primary objective [is] ensuring '[f]ederal court consideration of interstate cases of national importance.'" *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595 (2013) (quoting Class Action Fairness Act of 2005, Pub.L. No. 109-2, § 2(b)(2), 119 Stat. 5). This case obviously meets that objective. Plaintiffs seek relief on behalf of and to benefit more than two million subscribers across 12 states and the District of Columbia. That relief, if ever obtained, could total in the hundreds of millions of dollars. This case is therefore an "interstate case of national importance" that falls squarely within CAFA's ambit.

A. CAFA Applies to State Actions that Allow 1 or More Plaintiffs to Seek Relief on Behalf of a Broader Class.

57. CAFA applies to "any civil action" filed under Federal Rule of Civil Procedure 23 or a "similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). CAFA's statutory text makes clear that state actions qualify as being "class" actions for CAFA purposes even where plaintiffs have chosen not to explicitly label their case as a "class action." Rather, CAFA's plain text provides that federal jurisdiction exists even where the state action is filed pursuant to a statute or rule that is merely "similar" to a class-action-type mechanism or where "1 or more representatives" seek relief on a behalf of a broader class of individuals. *Id.* Consistent

with that legislative text and its purpose, Congress explained that "the definition of 'class action' is to be interpreted liberally," and that "[i]ts application should not be confined solely to lawsuits that are labeled 'class actions' by the named plaintiff or the state rulemaking authority." S. Rep. No. 109–14, at 34–35 (2005). Thus, "lawsuits that *resemble* a purported class action should be considered class actions for the purpose of applying these provisions." *Id.* (emphasis added).

58. Following this express guidance, to properly determine whether a case is a "class action" within the meaning of CAFA, a court must consider the rules of procedure invoked by the plaintiff, the substance of the claims being brought, and the pertinent surrounding circumstances.

59. In evaluating a plaintiff's complaint, courts must examine whether the plaintiff is merely "artificially structuring" their lawsuit to avoid CAFA jurisdiction. *See Freeman v. Blue Ridge Paper Prods., Inc.*, 551 F.3d 405, 407 (6th Cir. 2008); *see also Erie Ins. Exch.*, 722 F.3d at 163 n.9. When assessing jurisdiction, courts traditionally "look beyond the label to analyze the substance of the claim," *Jarbough v. Att'y Gen.*, 483 F.3d 184, 189 (3d Cir. 2007), lest they "exalt form over substance," *Standard Fire*, 568 U.S. at 595. Thus, the court must independently evaluate the substance of the complaint—rather than blindly accept its labels—to ensure a plaintiff is not attempting to employ pleading artifices to deprive the federal courts of jurisdiction over an action that establishes CAFA

jurisdiction. *See infra* Section III.[4] In doing so, the court will look beyond the specific procedural rules invoked by a plaintiff and evaluate its similarity to class action rules by, among other things, looking at the substance of the claim, including its lineage, the intended beneficiaries of the suit, and the relief sought.

B. Plaintiffs' Complaints Plead "Class Actions" Within the Meaning of CAFA.

60. Plaintiffs' first complaint expressly pleaded a class action under Pennsylvania's class action procedures. *See* Ex. 2 ¶¶ 92–105.

61. Indemnity's notice removing that complaint to this Court explained that Plaintiffs' case satisfied CAFA's jurisdictional requirements. *See* 1st Notice of Removal, Ex. 10. The content of that initial notice of removal is expressly incorporated herein. By voluntarily dismissing and then refiling their new complaint, rather than moving to remand, Plaintiffs effectively chose to acknowledge the existence of CAFA jurisdiction over their initial complaint.

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[4] Courts frequently emphasize the need for a practical, rather than overly formalistic, application CAFA's jurisdictional reach. *See, e.g.*, *Badeaux v. Goodell*, 358 F. Supp. 3d 562, 567 (E.D. La. 2019) ("A lawsuit resembling a class action will not escape CAFA jurisdiction simply because it omits the words 'class action' or does not include the state rule or statute under which it proceeds as a class action."); *Thompson v. La. Reg'l Landfill Co.*, 365 F. Supp. 3d 725, 730 (E.D. La. 2019) ("In a CAFA case, a court may look beyond the pleadings to determine whether the amount-in-controversy requirement is satisfied.").

62. Likewise, Plaintiffs' new Complaint qualifies as a class action within the meaning of CAFA. In their supposed "new" Complaint, Plaintiffs sought to paper over the fact that the fiduciary duty claim in both of their filings targets the same purported wrongdoing, is being pursued on behalf of the same multi-state class of individuals, seeks the same relief, and hence, is essentially the same complaint. The fact that this time around they dropped their reference to the Pennsylvania class action rules and instead substituted Pennsylvania Rule of Civil Procedure 2152 or, in the alternative, Rule 2177, does not alter that reality. Because Plaintiffs are unabashedly pursuing an action that is substantively identical to their prior filing, which they brought as a class action, it easily qualifies as being at least "similar" to a CAFA class action because Plaintiffs seek to serve as representatives who explicitly request universal, class-wide relief "to benefit *all members* of Exchange." Compl. ¶ 16 (emphasis added). In the end, Plaintiffs are pursuing the same claim, against the same party, for the same purported reasons, and seeking the same relief as their first complaint. Accordingly, since Plaintiffs brought their first action as a class action, the instant clone of that action should also be considered a "class action" under CAFA.

63. If anything, Plaintiffs' new Complaint even more obviously falls within CAFA's ambit. The initial complaint artificially sought to confine its requested class to "Pennsylvania residents." Although Indemnity's notice removing that complaint explained that Plaintiffs were necessarily seeking relief on behalf of all subscribers, Plaintiffs' new Complaint expressly

states that it is pursuing universal, class-wide relief for "all members of Exchange," across multiple state lines.

64. Also, if anything, Plaintiffs' latest effort to cloak their class claims in Pennsylvania Rules of Civil Procedure 2152 and 2177, rather than Federal Rule of Civil Procedure 23 or Pennsylvania's class action procedures, underscores the need for CAFA's protections. Although Rule 23 and Pennsylvania's class action procedures require plaintiffs to satisfy strict requirements before defendants can be subject to class-wide relief, Rules 2152 and 2177 do not grant defendants the same protections. Permitting Plaintiffs to use those rules in the manner they are attempting here would materially undermine the text and intended purpose of CAFA and enable Plaintiffs to twist the requirements for CAFA jurisdiction in such a way that even normal class action protections are unavailable.

65. Moreover, neither Rule 2152 nor 2177 is the proper vehicle for Plaintiffs' Complaint.

66. Rule 2152 may never be used to plead claims on behalf of Exchange. Instead, the Rule is limited to actions "prosecuted by an association . . . in the name of a member or members thereof as trustees ad litem for such association." Pa. R. Civ. P. 2151. And the Pennsylvania Rules of Civil Procedure define an insurance association as a "corporation or similar entity," not an "association" within the meaning of Rule 2152. Pa. R. Civ. P. 2176.

67. Nor does Rule 2177 authorize Plaintiffs' lawsuit. That Rule applies to actions "prosecuted by or against a corporation or similar entity in its corporate

name." Although Rule 2176 defines a "corporation or similar entity" to potentially include an "insurance association or exchange," this specific Exchange, by its very nature and design, is a sui generis entity which bears no resemblance to a corporation. It has no directors, officers, or employees, and, accordingly, no one within Exchange to pursue or manage its interests. *Supra* ¶ 7. Further, the subscribers play no role in the leadership or management of Exchange. Unlike shareholders in a corporation, they neither have a vote in any matter concerning Exchange nor a say in other way about the functioning of Exchange. Pursuant to the Subscriber's Agreement, the subscribers have delegated all of their rights and power in regard to the functioning of the Exchange to Indemnity. Rule 2177 was never meant to apply to an entity like Exchange.

68. Ultimately, these wholly artificial labels that Plaintiffs affix to their claims cannot change the fact that the substance of the Complaint clearly pleads a CAFA interstate class action, nor the fact that these Plaintiffs have been transparent in their effort to evade federal jurisdiction. During the past decade of litigation challenging Indemnity's compliance with the 25% compensation cap, the subscribers and their lawyers have consistently pursued the claims as class actions. That is because these subscribers and those before them, who are all in privity with each other, have challenged the Management Fee that applies equally to all subscribers across the country for the same reasons. As a result, Plaintiffs' claims are necessarily shared by and will have the same impact on all subscribers—which is precisely why Plaintiffs are explicitly requesting class-wide relief that would

"benefit *all members* of Exchange." Compl. ¶ 16 (emphasis added).

69. Indeed, as detailed above, Plaintiffs' initial complaint brought materially identical claims *as a class action*. And Plaintiffs' "new" Complaint is merely a rehash of their prior class action complaint. Both complaints, among other things, were brought on behalf of and seek relief for a class of *all* subscribers, which is exactly the sort of action that qualifies as a "class action" under CAFA's plain text. Although Plaintiffs' "new" Complaint "omits reference" to a specific class action rule, "it is clear from the face of the complaint" that Plaintiffs plead allegations on behalf of and seek relief for a class of subscribers within the meaning of "class action" as used in CAFA. *Williams v. Emps. Mut. Cas. Co.*, 845 F.3d 891, 901 (8th Cir. 2017).

II. PLAINTIFFS' VOLUNTARY DISMISSAL AND SUBSEQUENT AMENDMENT OF THEIR COMPLAINT CANNOT DEPRIVE THE COURT OF JURISDICTION.

70. It has long been established that jurisdiction is assessed at the time of removal. *Westmoreland Hosp. Ass'n v. Blue Cross of W. Pa.*, 605 F.2d 119, 123 (3d Cir. 1979). Therefore, "events occurring subsequent to removal . . . whether beyond the plaintiff's control or *the result of his volition*, do not oust the district court's jurisdiction once it has attached." *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 293 (1938) (emphasis added).

71. Applying this bedrock principle, a long line of federal cases has held that plaintiffs cannot destroy

CAFA jurisdiction by amending their complaints. "The well-established general rule is that jurisdiction is determined at the time of removal, and nothing filed after removal affects jurisdiction." *In re Burlington N. Santa Fe Ry. Co.*, 606 F.3d 379, 380 (7th Cir. 2010). "CAFA jurisdiction attaches when a case is *filed* as a class action," and "allowing plaintiffs to amend away CAFA jurisdiction after removal would present a significant risk of forum manipulation." *Id.* at 381. Congress was acutely aware that CAFA did "not alter" "current law" since "once a complaint is properly removed to federal court, the federal court's jurisdiction cannot be 'ousted' by later events," because "[i]f a federal court's jurisdiction could be ousted by events occurring after a case was removed, plaintiffs who believed the tide was turning against them could simply always amend their complaint months (or event years) into the litigation to require remand to state court."[5] S. Rep. 109–14, at 70–71.

72. Here, CAFA jurisdiction plainly existed when Indemnity removed Plaintiffs' first complaint. *See generally* 1st Notice of Removal, Ex. 10. Plaintiffs thus did not divest this Court of CAFA jurisdiction simply

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[5] Accordingly, once a court is vested with jurisdiction under CAFA, even failure to certify a class does not warrant remand. *See F5 Cap. v. Pappas*, 856, F.3d 61, 77 (2d Cir. 2017) ("Because jurisdictional facts are assessed at the time of removal, and because at that time the complaint here appeared to plead in good faith the class claim necessary for jurisdiction, the fact that the court subsequently determined that the case could not proceed as a class action under CAFA did not deprive it of subject matter jurisdiction."); *Lewis v. Ford Motor Co.*, 685 F. Supp. 2d 557, 568 (W.D. Pa. 2010) (same).

because they first unilaterally dismissed and then pasted on a different label and re-filed the same action.

73. "[I]t is not unusual for motions styled as Rule 41 motions or motions to dismiss to be construed as Rule 15 motions for leave to amend." *Baker v. City of Detroit*, 217 F. App'x 491, 496–97 (6th Cir. 2007). Therefore, the same principles restricting evasive amendments following removal apply to voluntary dismissals aimed at the same objective. Indeed, "it would be passing strange to bar a Plaintiff from divesting a federal court of jurisdiction by using Rule 15 to amend his complaint but allow him to do so using Rule 41." *Loper v. Lifeguard Ambulance Serv., LLC*, No. 19-583, 2020 WL 8617215, at *10 (N.D. Ala. Jan. 10, 2020).

74. Courts have thus held that "it is inappropriate for a plaintiff to use voluntary dismissal as an avenue for seeking a more favorable forum" outside of the federal courts. *Thatcher v. Hanover Ins. Grp. Inc.*, 659 F.3d 1212, 1214 (8th Cir. 2011). In *Thatcher*, because the plaintiff sought dismissal under Federal Rule of Civil Procedure 41(a)(2) "merely to deprive the federal court of jurisdiction," the court reversed the dismissal and remanded, directing the district court to consider "whether the motion was an improper forum-shopping measure." *Id.* at 1215. On remand, the district court denied the motion to voluntarily dismiss, reasoning that plaintiffs and their counsel "are not to be permitted to shop for a new and hopefully more favorable forum if it turns out that their complaint—as drawn—places them in a court not of their liking." *Thatcher v. Hanover Ins. Grp., Inc.*,

No. 10-4172, 2012 WL 1933079, at *11 (W.D. Ark. May 29, 2012); *see also Loper*, 2020 WL 8617215, at *9–11. The same rule applies here.

75. Plaintiffs' transparent maneuvering is especially improper given that, as noted above, they offer no logical explanation for it other than to evade this Court's jurisdiction. After all, Plaintiffs could have remained in federal court after the first removal and simply amended their complaint there. Thus, the only possible reason for the dismissal and the subsequent amendment must have been to position Plaintiffs to present some tortured argument that the dismissal and subsequent amendment had divested this Court of jurisdiction. Plaintiffs certainly do not allege any facts that permit any other conclusion. "Absent the proffer of any reason for [a plaintiff's] dismissal," where "it appears that its dismissal was intended solely to destroy diversity jurisdiction," "there is no justification for remand." *Braud v. Transp. Serv. Co. of Ill.*, 445 F.3d 801, 809 (5th Cir. 2006); *Robinson v. Holiday Universal, Inc.*, No. 05-5726, 2006 WL 470592, at *3 (E.D. Pa. 2006) (finding, after a proper removal pursuant to CAFA, plaintiffs could not dismiss the removing defendant and "unring the bell"). *See also Hayden v. Westfield Ins. Co.*, No. 12-390, 2013 WL 5781121, at *4 (W.D. Pa. Oct. 25, 2013) (outside of the CAFA context, denying plaintiff's voluntary dismissal as a "valiant attempt to avoid federal jurisdiction" and forum shop), *aff'd*, 586 F. App'x 835 (3d Cir. 2014).

76. This rule is consistent with longstanding Supreme Court precedent, as well as CAFA's plain text and purpose. "Federal courts should not sanction

devices intended to prevent a removal to a Federal court where one has that right, and should be equally vigilant to protect the right to proceed in the Federal court as to permit the state courts, in proper cases, to retain their own jurisdiction." *Wecker v. Nat'l Enameling & Stamping Co.*, 204 U.S. 176, 185–86 (1907).

77. This is precisely the sort of case that CAFA intended to be litigated in federal court. Because Plaintiffs challenge a singular, nationwide Management Fee that equally affects subscribers across multiple states, their effort to thwart Indemnity's ability to remove the case to this Court risks subjecting Indemnity to fractured, duplicative litigation and potentially contradictory outcomes in twelve other jurisdictions. *See also Metcalf v. TransPerfect Global, Inc.*, No. 19-10104, 2020 WL 7028644, at *5 (S.D.N.Y. Nov. 30, 2020) (discussing import of CAFA's purpose and finding "If the language of a statute is ambiguous, an interpretation that permitted this sort of jurisdictional gamesmanship around the purposes of the statute would generally not be favored" (internal quotation marks and citation omitted)). Plaintiffs' attempt to dismiss and refile the same complaint in this manner is an affront to the integrity of federal courts and their effort to diligently apply CAFA to "interstate cases of national importance." *Standard Fire*, 568 U.S. at 595 (quoting Class Action Fairness Act of 2005, Pub.L. No. 109-2, § 2(b)(2), 119 Stat. 5).

78. Plaintiffs cannot manipulate federal jurisdiction through their post-removal gamesmanship.

Both their initial complaint and their latest Complaint should be treated as pleading an action that belongs in federal court under CAFA's plain terms.

III. PLAINTIFFS' TRANSPARENT EFFORTS TO EVADE CAFA JURISDICTION ONLY CONFIRM THAT FEDERAL JURISDICTION IS PROPER HERE.

79. In decision after decision, the Supreme Court and the lower federal courts have prohibited the precise type of pleading gamesmanship Plaintiffs have undertaken here to evade federal court jurisdiction over their claims.

80. "CAFA was clearly designed to prevent plaintiffs from artificially structuring their suits to avoid federal jurisdiction." *Freeman*, 551 F.3d at 407.

81. Where it is clear a plaintiff has taken action to modify or craft its pleading specifically to avoid federal court jurisdiction, courts will not "exalt form over substance," but instead will honor CAFA's "primary objective" of "ensuring '[f]ederal court consideration of interstate cases of national importance.'" *Standard Fire*, 568 U.S. at 594, 595 (quoting Class Action Fairness Act of 2005, Pub.L. No. 109-2, § 2(b)(2), 119 Stat. 5). Plaintiffs simply "cannot tailor a suit (or a series of suits) to avoid federal jurisdiction," and courts will "look[] beyond the pleadings" to discern the true criteria for jurisdiction. *Simon v. Marriott Int'l, Inc.*, No. 19-2879, 2019 WL 4573415, at *3 (D. Md. Sept. 20, 2019).

82. Here, Plaintiffs have transparently structured their pleading in an effort to evade federal

jurisdiction. After Indemnity removed Plaintiffs' initial complaint, they voluntarily dismissed and then simply refiled the same claim—seeking the same universal relief for *all* subscribers—with only a different set of labels. That gamesmanship is the same type of "poorly disguised attempt" to evade federal court jurisdiction that has been rejected by federal courts time and time again. *See, e.g.*, *Hoffman v. Nordic Nats., Inc.*, No. 14-3291, 2015 WL 179539, at *7 (D.N.J. Jan. 14, 2015), *aff'd*, 837 F.3d 272 (3d Cir. 2016); *Freeman*, 551 F.3d at 408–09.

83. In fact, it is exactly the sort of evasion that the Third Circuit expressly said was lacking in *Sullivan. Erie Ins. Exch.*, 722 F.3d at 163 n.9 (distinguishing *Freeman*, 551 F.3d at 407).

84. Plaintiffs' efforts to evade federal court jurisdiction are even more obvious when understood in the historical context of the string of lawsuits challenging Indemnity's compliance with the 25% compensation cap. Plaintiffs followed a nearly ten-year pattern, including *Beltz*, *Ritz*, and Plaintiffs' own initial complaint, of challenging Indemnity's compensation under the Subscriber's Agreement. Ex. 7 ¶¶ 48–49 (*Beltz*); Ex. 8 ¶¶ 8, 89 (*Beltz II*); Ex. 9 ¶ 78 (*Ritz*); Ex. 2 ¶ 92. Plaintiffs' legal theory and requested relief here are indistinguishable from the fiduciary duty claims made by their fellow subscribers using the class action mechanism.

85. Plaintiffs do not even attempt to allege a legitimate basis to explain their dismissal and refiling tactic. They fail to do so for the obvious reason that it

makes little sense other than to evade federal jurisdiction.

86. If allowed to succeed, Plaintiffs' evasive tactics would allow subscribers to file a never-ending series of lawsuits until one eventually succeeds, while requiring Indemnity to defeat every single one of those suits to avoid a sweeping ruling that would apply to all subscribers. That is precisely the sort of abusive practice that CAFA was enacted to prevent. And it is also what this Court's ruling in *Ritz* prohibited.

87. Indeed, this latest litigation is no more than a collateral state court attack on this Court's binding opinions in *Beltz II* and *Ritz*. Under those decisions, Plaintiffs' challenge to the compensation cap both lacks merit and is barred—which is why Plaintiffs are so desperate to avoid this Court's jurisdiction. Such calculated attempts to nullify federal judgments through state court actions violates the basic norms of federal jurisdiction.

88. At bottom, Plaintiffs' own actions, coupled with the near decade of litigation that has ensued since *Sullivan*, make clear that the claims Plaintiffs assert in their latest Complaint were, have always been, and continue to be class claims brought on behalf of the millions of Exchange subscribers. Indeed, after the Third Circuit's ruling, the *Sullivan* plaintiffs deliberately chose to stay their state court proceedings in favor of the federal class action proceedings in *Beltz*. That is because, even after securing a remand, they recognized that federal class action litigation under CAFA is the appropriate way to litigate these claims.

IV. THE REMAINING CAFA REQUIREMENTS ARE SATISFIED.

A. Plaintiffs Plead a Minimally Diverse Class of More than 100 Members.

89. CAFA requires only minimal diversity to support federal jurisdiction. 28 U.S.C. § 1332(d)(2)(A). Both Plaintiffs' first complaint and its latest Complaint satisfy this requirement.

90. Indemnity's first notice of removal in this case explained that Plaintiffs' initial complaint satisfied CAFA's minimal diversity and numerosity requirements. *See* 1st Notice of Removal, Ex. 10 ¶¶ 51–63, 67–68. As explained above, Plaintiffs did not destroy CAFA jurisdiction by amending or refiling its complaint.

91. Plaintiffs' latest Complaint also plainly and independently satisfies CAFA's minimal diversity and numerosity requirements. Plaintiffs brought this action "to benefit *all members* of Exchange." Compl. ¶ 16 (emphasis added). As Plaintiffs allege, Exchange "consists of, its policyholders [subscribers] who are all members of the unincorporated association." *Id.* ¶¶ 2, 21. Exchange has over two million subscribers across the District of Columbia and 12 states: Illinois, Indiana, Kentucky, Maryland, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin. *About Erie Insurance*, Erie Insurance, https://bit.ly/3nqS9wZ (last visited Jan. 26, 2022).

92. As a result, Plaintiffs' latest Complaint challenging the Management Fee for Exchange and on

behalf of the subscribers that comprise Exchange is an "interstate cases of national importance," *Standard Fire*, 568 U.S. at 595 (quoting Class Action Fairness Act of 2005, Pub.L. No. 109-2, § 2(b)(2), 119 Stat. 5), which necessarily satisfies CAFA's minimal diversity requirements. And the potential class that would benefit from Plaintiffs' case far exceeds CAFA's minimum of 100 members. 28 U.S.C. § 1332(d)(5).

B. Plaintiffs' Allegations Satisfy the Amount in Controversy Requirements.

93. Plaintiffs assert that Indemnity's taking of a 25% Management Fee in 2020 and 2021 was excessive and, among other things, seek damages, restitution, and disgorgement of Indemnity's profits. Compl. ¶¶ 82, 90. In 2020 alone, the Management Fee was $1.9 billion. *Id.* ¶ 61. Thus, the amount in controversy clearly exceeds $5,000,000. 28 U.S.C. § 1332(d)(2).

94. Plaintiffs also seek unspecified forward-looking injunctive relief that—whether coupled with damages or disgorgement of the allegedly excessive fee or on its own—necessarily puts more than $5,000,000 in controversy in this case. Compl. ¶¶ 82, 90.

95. Moreover, any finding or declaration that Indemnity breached its fiduciary duties by taking a 25% Management Fee is necessarily a finding or declaration that Indemnity breached its fiduciary duties to *all subscribers regardless of location* by taking that fee from the undifferentiated pool of premiums paid by *all subscribers*. And any declaration or injunctive relief against Indemnity's Management Fee for 2020, 2021, or going forward, would necessarily

apply to the single rate set for the Management Fee that applies to *all subscribers.*

96. As a result, Plaintiffs' requested relief—even if not brought in *ad litem* status or on behalf of all Exchange as a whole—would necessarily impact all of Exchange and the Management Fee as a whole, which comes from a nationwide pool of the premiums paid over the last two years by *all subscribers*, along with all money held in the Exchange for loss reserves, expenses, or dividends. Similarly, injunctive relief concerning the setting of the Management Fee necessarily would affect all subscribers to the same degree. Because Plaintiffs' Complaint will affect subscribers living everywhere from Wisconsin to North Carolina to New York and Pennsylvania, the need for removal is especially acute here so that a federal court can decide this case of national importance with one universally applicable decision.

V. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED.

97. As required by 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty (30) days after Indemnity accepted service of the Complaint and filed its Acceptance of Service form in the Court of Common Pleas, Allegheny County, Pennsylvania. *See* Ex. 1.

98. This Notice of Removal is being filed in the U.S. District Court for the Western District of Pennsylvania, the district court of the United States for the district and division within which the state court

action is pending, as required by 28 U.S.C. §§ 1446(a) and 1441(a).

99. This Complaint is related to *Beltz II* and *Ritz*, as well as Plaintiffs' initial complaint.

100. Pursuant to Local Rule 3 and this Complaint's relation to *Beltz II* and *Ritz* matters, the matter should be docketed on the calendar of the Erie Division. W.D. Pa. L.R. 3, 40(D).

101. Indemnity has not filed a responsive pleading in the action that Plaintiffs commenced against Indemnity in the Court of Common Pleas, Allegheny County, Pennsylvania, and no other proceedings have transpired in that action.

102. Promptly after filing this Notice of Removal with the U.S. District Court for the Western District of Pennsylvania, a copy of this Notice of Removal, along with the Notice of Filing of Notice of Removal, will be filed with the Prothonotary of the Court of Common Pleas, Allegheny County, Pennsylvania, pursuant to 28 U.S.C. § 1446(d). A copy of both documents will also be served upon Plaintiffs' counsel of record. A copy of the Notice of Filing of Notice of Removal is attached hereto as Exhibit 11.

VI. INDEMNITY RESERVES ALL RIGHTS AND DENIES LIABILITY.

103. Nothing in this Notice is intended or should be construed as an express or implied admission by Indemnity, including but not limited to an admission of any fact alleged by Plaintiffs; of the validity or merit of any of Plaintiffs' claims or allegations; that Plaintiffs

are entitled to any of the relief they seek in the Complaint, or any other relief; or that the certification of any class of Exchange subscribers, no matter how constituted, is appropriate under Federal Rule of Civil Procedure 23, the Pennsylvania state court rules related to class certification, or any other applicable law or rule. Further, nothing in this Notice is intended or should be construed as a limitation of any of Indemnity's rights, claims, remedies, or defenses in connection with this action. Indemnity expressly reserves all such rights, remedies, and defenses, including those available under the All Writs Act, 28 U.S.C. § 1651(a), and the Anti-Injunction Act, 28 U.S.C. § 2283.

WHEREFORE, this action, as a consequence of this Notice of Removal, should be deemed removed from Common Pleas Court of Allegheny County, Pennsylvania and placed on the docket of the Erie Division of this Court.

Dated: January 27, 2022

Respectfully submitted,

/s/ Neal R. Devlin
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Counsel for Defendant Erie Indemnity Company

**pro hac vice* applications forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January 2022, a true and correct copy of the foregoing Notice of Removal was served upon counsel of record for Plaintiffs via first class mail and email at the addresses below:

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Prothonotary, Court of Common Pleas, Allegheny County, Pennsylvania

Dated: January 27, 2022

/s/ Neal R. Devlin
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Exhibit 1

Home > Search > Case Search

Case Details - GD-21-014814	Stephenson etal vs Erie Indemnity Company
Filing Date: 12/09/2021 Filing Time: 02:55:58 Related Cases: Consolidated Cases: Judge: No Judge Amount In Dispute: $ 0 Case Type: Other Tort Court Type: General Docket Current Status: Stipulation Jury Requested: Y	

Parties Count : 7						
--Litigants--						
LName	FName	MI	Type	Address	Initial Service Completeion	Attorney
Stephenson	Troy		Plaintiff		--	Edwin J. Kipela
Stephenson	Christina		Plaintiff		--	Edwin J. Kipela
Erie Insurance Exchange			Plaintiff		--	Edwin J. Kipela
Barnett	Steven		Plaintiff		--	Edwin J. Kipela
Erie Indemnity Company			Defendant		--	--
Showing 1 to 5 of 5 rows						
--Attorney--						
LName	FName	MI	Type	Address	Phone	
Kipela	Edwin	J.	Plaintiff's Attorney	1133 Penn Avenue 5th Floor Pittsburgh CO 15222	4123229243	
Feirson	Steven	B	Attorney		--	

--Non Litigants--
No matching records found

Docket Entries Count : 3				
Filing Date	Docket Type	Docket Text	Filing Party	Redacted Document
12/28/2021	Stipulation	Extension of time for Defendant, Erie Indemnity Company to respond to Complaint	Erie Indemnity Company	Document 3
12/28/2021	Acceptance of Service	accept service this 28th day of December, 2021 of Plaintiffs' Complaint in the above-captioned matter on behalf of Defendant Erie Indemnity Company.	Erie Indemnity Company	Document 2
12/9/2021	Complaint		Troy Stephenson	Document 1
Showing 1 to 3 of 3 rows				

Event Schedule Count : 0
No matching records found
Services Count : 0Complete Service History
No matching records found

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No.

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees *ad litem,* and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, Plaintiff,	)
v.	)
ERIE INDEMNITY COMPANY, Defendant.	)

COMPLAINT

JURY TRIAL DEMANDED

Filed on behalf of Plaintiff:
Erie Insurance Exchange, an unincorporated association, by Troy Stephenson, Christina Stephenson and Steven Barnett, trustees ad litem, and alternatively, Erie Insurance Exchange, by Troy Stephenson, Christina Stephenson, and Steven Barnett.

Counsel of record for Plaintiff:

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No.

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees *ad litem,* and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, Plaintiff,	)
v.	)
ERIE INDEMNITY COMPANY, Defendant.	)

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within **TWENTY (20)** days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice

for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE
Allegheny County Bar Association
11th Floor Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 261-5555

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No.

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees *ad litem,* and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, Plaintiff,	)
v.	)
ERIE INDEMNITY COMPANY, Defendant.	)

COMPLAINT – CIVIL ACTION

Plaintiff, Erie Insurance Exchange ("Exchange"), an unincorporated association, by Troy Stephenson, Christina Stephenson, and Steven Barnett, trustees *ad litem*, and alternatively, Erie Insurance Exchange, by Troy Stephenson, Christina Stephenson, and Steven Barnett, allege the following:

INTRODUCTION

1. Exchange is a Pennsylvania unincorporated association which operates as a reciprocal insurer.

2. Exchange is owned by, and consists of, its policyholders who are all members of the unincorporated association.

3. Exchange has no employees, officers, or board of directors.

4. Exchange has no bylaws or constitution.

5. To enable the unincorporated association to operate as a reciprocal insurer, the members of Exchange all appointed Defendant Erie Indemnity Company ("Defendant") to serve as the managing agent and attorney-in-fact for Exchange.

6. Given its position as managing agent and attorney-in-fact for Exchange, Defendant is trusted and relied upon by the members of Exchange to act on their behalf.

7. Defendant exercises control and authority over all aspects of Exchange. In light of the nature of the relationship, and the trust and confidence placed in Defendant by the members of Exchange, Defendant owes fiduciary duties to Exchange.

8. This litigation concerns Defendant's significant breaches of its fiduciary duties over the last two years.

9. Defendant has abused its position of authority, and among other wrongs, violated its duties of care and loyalty and has acted to enrich itself and its controlling shareholders at the direct expense of Exchange.

10. In particular, since December 10, 2019, Defendant has breached its fiduciary duties by charging Exchange an annual "Management Fee" which is used not to cover the costs of serving as the attorney-in-fact and managing agent for Exchange, but rather to allow tens of millions of dollars or more in each of the last two years to be funneled to Defendant's shareholders—specifically including a small group of controlling shareholders who dominate Defendant's Board of Directors and who determine the Management Fee—in the form of shareholder dividends and "special dividends" payments.

11. Defendant's breaches of its common law fiduciary duties have caused substantial monetary harm to Exchange.

12. Pursuant to Pennsylvania Rules of Civil Procedure 2152 and/or 2177, and the long-established common law of Pennsylvania, Troy Stephenson, Christina Stephenson, and Steven Barnett, as trustees *ad litem* and/or members of Exchange (trustees/members), bring this action on behalf of and in the name of the unincorporated association.

PARTIES

13. Troy Stephenson is an individual residing in White Oak, Pennsylvania, which is located in Allegheny County.

14. Christina Stephenson is an individual residing in White Oak, Pennsylvania, which is located in Allegheny County.

15. Steven Barnett is an individual residing in Lemont Furnace, Pennsylvania, which is located in Fayette County.

16. At all times relevant hereto, the above-named individuals were members/policyholders of Exchange. These individuals are willing to serve as trustees *ad litem* on behalf of Exchange and bring this case to benefit all members of Exchange.

17. Defendant is a Pennsylvania corporation with its headquarters and principal place of business located in Erie, Pennsylvania.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction under 42 Pa.C.S. § 931.

19. This Court has personal jurisdiction over Defendant under 42 Pa.C.S. § 5301 because Defendant is a domestic corporation with its principal place of business in Pennsylvania and conducts business throughout Pennsylvania.

20. Venue is proper in this Court under Pennsylvania Rule of Civil Procedure 2179 because Defendant regularly conducts business in Allegheny County and one or more of the individuals bringing this action as trustees/members of Exchange reside in Allegheny County.

FACTUAL ALLEGATIONS

A. Defendant's Fiduciary Relationship with Exchange

21. Exchange, which is owned by its members, is a Pennsylvania-domiciled unincorporated association that writes property and casualty insurance.

22. In order to be a member of Exchange, each member must execute a materially identical Subscriber's Agreement. A true and correct exemplar of the Subscriber's Agreement is attached hereto as Exhibit A.

23. Upon executing a Subscriber's Agreement, the members designate Defendant to be their agent and attorney-in-fact to manage the business of Exchange on their behalf.

24. Defendant derives nearly all its revenue from the annual Management Fee that Defendant charges Exchange for serving as Exchange's attorney-in-fact and managing agent.

25. Exchange is Defendant's only client.

26. As the attorney-in-fact and managing agent for the unincorporated association, Defendant owes common law fiduciary duties to Exchange, including the duties of care, loyalty, good faith, honesty, candor, undivided loyalty, and full disclosure.

B. Annual Management Fee

27. In return for serving as managing agent and attorney-in-fact, Defendant takes a percentage of the annual premiums paid by the members to Exchange. This is referred to as the Management Fee.

28. The Subscriber's Agreement prohibits Defendant from charging a Management Fee rate any higher than 25% of the annual premiums paid by the members of the unincorporated association. Besides that limitation, however, Defendant is trusted by the members of Exchange to exercise discretion in conformance with its fiduciary duties to determine whether the rate will be 15%, 20%, or any other level up to 25% of the premiums written or assumed by Exchange.

29. On December 10, 2019, and December 8, 2020, Defendant set the Management Fee rate for 2020 and 2021, respectively.

30. Though Defendant sets the Management Fee rate in December for the following calendar year, Defendant can adjust the Management Fee rate at any time over the course of the year. This means Defendant could reduce the rate during the year if, for example, actual expenses were less than projected, or, conversely, assuming Defendant was not already taking the maximum of 25%, Defendant could increase the rate during the year if circumstances changed and warranted an upward adjustment.

31. The members of Exchange have no ability to dispute the Management Fee rate when it is set. Defendant sets the fee and Defendant takes the fee.

This is why it is essential that Defendant act in good faith as a trusted fiduciary when setting and charging the Management Fee.

32. The lower the Management Fee, the more funds that remain for the use and benefit of all the members of Exchange.

33. Thus, Defendant's annual decision as to what the Management Fee rate will be for the next year significantly impacts the members of Exchange.

34. Defendant did not direct any disclosure specifically to the members of Exchange to advise them of the Management Fee rate when it was set in December of 2019 and 2020.

35. Defendant did not solicit input from the members of Exchange prior to setting the Management Fee rate at the maximum 25% in December of 2019 and 2020.

36. Defendant operated with substantial conflicts of interest and did not uphold its common law fiduciary duties to Exchange when setting the Management Fee rate in December of 2019 and 2020 and in taking such monies from Exchange.

C. Control and Management of Defendant and Exchange

37. Exchange and Defendant were founded in or around 1925 by H.O. Hirt. Defendant has served as the managing agent and attorney-in-fact for Exchange since its inception.

38. Since approximately 1995, Defendant has been publicly traded on NASDAQ and currently has a market capitalization of approximately $12 billion.

39. Defendant has two classes of common stock: Class A and Class B.

40. Descendants and family members of H.O. Hirt, directly or through trusts, own more than 20 million Class A shares, which is nearly 50% of the total Class A shares outstanding. *See e.g.*, Erie Indemnity Company, 2021 Information Statement ("2021 Schedule 14C Information") (March 19, 2021), p. 3 (listing Defendant's Board Chair, Thomas B. Hagen, as owner of 16,762,189 Class A shares (36.32% of all shares outstanding) and Board member Elizabeth Hirt Vorsheck as owner of 3,960,946 shares (8.6% of all shares outstanding)).

41. In addition, primarily through the H.O. Hirt Trusts, three descendants of H.O. Hirt, Thomas B. Hagen, Elizabeth Hirt Vorsheck, and Jonathan Hirt Hagen (the "Hirt Heirs"), not only own significant percentages of Class A shares, but also own and/or control approximately 98% of the Class B voting shares of Defendant. *See id*. at 1, 3 (explaining that the H.O. Hirt Trusts, of which Elizabeth Hirt Vorsheck and Jonathan Hirt Hagen are trustees, along with a bank trustee, own 92.05% of Class B shares, while Thomas B. Hagen owns an additional 6.65% of Class B shares).

42. The Hirt Heirs' ownership of Class B shares is "sufficient to determine the outcome of any matter submitted to a vote of the holders of [] Class B common stock." *Id*. at 1.

43. At all times relevant hereto, the Hirt Heirs have served and continue to serve on the Board of Defendant.

44. Given the Hirt Heirs' near total ownership and control of the Class B voting shares, they are able to control the composition of Defendant's Board and the outcome of any matter presented to Defendant's Board for a vote. In short, they wholly control Defendant.

45. Because the Hirt Heirs dominate and control Defendant's Board, they are uniquely empowered to determine the Management Fee rate set by Defendant's Board.

46. The Hirt Heirs' power, control, authority, and ownership of Defendant present a substantial conflict of interest when Defendant's Board sets the Management Fee rate.

47. Without regard to its fiduciary duties owed to Exchange, Defendant has maximized the Management Fee over the last two years simply to generate excess profits which it has funneled to the Hirt Heirs and its other shareholders in the form of shareholder dividends and special dividends—all to the detriment of the members of Exchange.

D. Defendant's Conflict of Interest

48. Defendant's earnings are directly tied to the Management Fee it charges. In fact, nearly 100% of Defendant's annual revenue comes from the Management Fee.

49. Defendant recognizes and admits that, "any reduction in … the management fee rate would have a negative effect on [Defendant's] revenues and net income." Erie Indemnity Company, 2020 Annual Report (Form10-K) (Feb. 25, 2021), Item 1A, p. 6; *see also id.* at 29.

50. Thus, Defendant serves its own interests by maximizing the Management Fee.

51. Further, the greater the revenue to Defendant, the greater the dividends that get paid to the Hirt Heirs and the other shareholders of Defendant.

52. As a fiduciary to Exchange, Defendant has a duty to avoid conflicts of interest and to act with care and loyalty, good faith, and candor in setting and maintaining the annual Management Fee rate.

53. Defendant's own interest in maximizing the Management Fee and its shareholder dividends, as declared by Defendant's Board in December of 2019 and 2020, directly conflicts with its fiduciary obligations to Exchange.

54. Defendant's conflict of interest has resulted in Defendant favoring its own financial interests, and those of the Hirt Heirs, over those of Exchange.

55. Defendant is not taking steps to ameliorate its conflict of interest.

56. Although Defendant's Board technically has an "Exchange Relationship Committee" — which presumably is intended to protect the interests of

Exchange — Defendant admits that the committee has not met in years and, in fact, does not even have a chairperson. *See* 2021 Schedule 14C Information, p. 7 (stating that the "exchange relationship committee has not met in several years" and that Defendant's Board "deferred consideration on the appointment of a new committee chair until such time as it becomes necessary or advisable for the committee to meet again.")

57. With no one protecting the interests of Exchange over the course of the last two years, Defendant has abused its position of trust and set the Management Fee at the maximum 25% rate in order to generate hundreds of millions of dollars in excess profits which it then paid out as shareholder dividends.

58. The Hirt Heirs who sit on the Board of Defendant profit enormously from the shareholder dividends declared by Defendant's Board and funded by the Management Fee.

59. Defendant's actions on December 10, 2019, as described in the December 13, 2019 press release set forth below in paragraph 60, are emblematic of its utter disregard of its fiduciary duties to Exchange.

60. Defendant maximizes the Management Fee charged to Exchange only to simultaneously increase the dividends paid to Defendant's shareholders:

Erie Indemnity Approves Management Fee Rate and Dividend Increase, Declares Quarterly Dividend

ERIE, Pa. (Dec. 13, 2019) - At its regular meeting held Dec. 10, 2019, the Board of Directors of Erie Indemnity Company (NASDAQ: ERIE) set the management fee rate charged to Erie Insurance Exchange, approved an increase in shareholder dividends and declared the quarterly dividend.

The Board agreed to maintain the current management fee rate paid to Erie Indemnity Company by Erie Insurance Exchange at 25 percent, effective Jan. 1, 2020. The management fee rate was 25 percent for the period Jan. 1 through Dec. 31, 2019. The Board has the authority under the agreement with the subscribers (policyholders) at Erie Insurance Exchange to set the management fee rate at its discretion; however, the maximum fee rate permissible by the agreement is 25 percent. This action was taken based on the Board's consideration and review of the relative financial positions of Erie Insurance Exchange and Erie Indemnity Company.

The Board also agreed to increase the regular quarterly cash dividend from $0.90 to $0.965 on each Class A share and from $135.00 to $144.75 on each Class B share. This represents a 7.2 percent increase in the payout per share over the current dividend rate. The next quarterly dividend is payable Jan. 22, 2020, to shareholders of record as of Jan. 7, 2020, with a dividend ex-date of Jan. 6, 2020. Erie Indemnity Company has paid regular shareholder dividends since 1933.

61. Pursuant to Defendant's decision to set the Management Fee rate at 25% for 2020, the Management Fee received by Defendant in 2020 was $1.9 billion.

62. Defendant took the 25% Management Fee in 2020 in order to increase the annual dividends paid to Defendant's shareholders by another 7.2%.

63. In December 2020, Defendant's abuse of its power not only continued, it worsened. Defendant's Board again set the Management Fee rate for the coming year at the maximum rate of 25%, and not because it was needed to pay for Defendant's

management and operating costs, but so that Defendant could again increase the annual dividends paid to the shareholders of Defendant by an additional 7.3%.

64. Further, because Defendant had taken in so much excess profit in 2020 from the 25% Management Fee rate, Defendant's Board also declared and paid an additional special dividend at the end of December 2020 of $2/share for each Class A share and $300/share for each Class B share:

ERIE, PA. , DEC. 8, 2020 /PRNEWSWIRE/ -- AT ITS REGULAR MEETING HELD DEC. 8, 2020 , THE BOARD OF DIRECTORS OF ERIE INDEMNITY COMPANY (NASDAQ: ERIE) SET THE MANAGEMENT FEE RATE CHARGED TO ERIE INSURANCE EXCHANGE, APPROVED AN INCREASE IN SHAREHOLDER DIVIDENDS AND DECLARED THE QUARTERLY DIVIDEND AND

ERIE, Pa., Dec. 8, 2020 /PRNewswire/ -- At its regular meeting held Dec. 8, 2020, the Board of Directors of Erie Indemnity Company (NASDAQ: ERIE) set the management fee rate charged to Erie Insurance Exchange, approved an increase in shareholder dividends and declared the quarterly dividend and a special cash dividend. Erie Indemnity Company has paid regular shareholder dividends since 1933.

The Board agreed to maintain the current management fee rate paid to Erie Indemnity Company by Erie Insurance Exchange at 25 percent, effective Jan. 1, 2021. The management fee rate was 25 percent for the period Jan. 1 through Dec. 31, 2020. The Board has the authority under the agreement with the subscribers (policyholders) at Erie Insurance Exchange to set the management fee rate at its discretion; however, the maximum fee rate permissible by the agreement is 25 percent. This action was taken based on the Board's consideration and review of the relative financial positions of Erie Insurance Exchange and Erie Indemnity Company.

The Board also agreed to increase the regular quarterly cash dividend from $0.965 to $1.035 on each Class A share and from $144.75 to $155.25 on each Class B share. This represents a 7.3 percent increase in the payout per share over the current dividend rate. The next regular quarterly dividend is payable Jan. 20, 2021, to shareholders of record as of Jan. 5, 2021, with a dividend ex-date of Jan. 4, 2021.

The Board also declared a special one-time cash dividend of $2.00 on each Class A share and $300.00 on each Class B share. This special cash dividend is payable Dec. 29, 2020, to shareholders of record as of Dec. 21, 2020, with a dividend ex-date of Dec. 18, 2020.

65. The special dividends alone, paid on December 29, 2020, to Defendant's shareholders, amounted to over $93 million. Accordingly, the total dividends paid to Defendant's shareholders in 2020 approached $300 million.

66. The dividends paid to Defendant's shareholders are funded directly from the Management Fee that Defendant charges and takes from Exchange.

67. Pursuant to Defendant's Board's decision on December 8, 2020, the annual dividends paid to Defendant's shareholders in 2021 are approximately $200 million. Approximately $80-$100 million of these dividends in 2021 have gone to the Hirt Heirs.

68. In 2020 and 2021 alone, the Hirt Heirs will receive upwards of $200 million or more in dividend payments funded directly from Exchange.

69. Every dollar paid as a dividend to Defendant's shareholders is a dollar that could have benefited Exchange.

70. Even apart from the special dividend paid in December 2020, Defendant's annual shareholder dividend has increased by nearly 25% in just the last few years.

71. In contrast to the hundreds of millions of dollars of profit paid annually to the Defendant's shareholders funded by the Management Fee paid by Exchange, as a matter of course, the Members of Exchange, to whom Defendant serves as a fiduciary,

have received nothing or only *de minimis* dividends[1] in recent years.

72. In years past, the Members of Exchange received regular, substantial, annual dividends, as is customary with reciprocal insurers. Indeed, it is a founding principle of Exchange, as with all reciprocal insurers, that the interests of the members should come first.

73. As shown by its actions in December of 2019 and 2020, Defendant is enriching itself and its shareholders at the expense of Exchange.

74. Unlike Defendant, the managing agents and attorneys-in-fact for other reciprocal insurers have protocols and processes to avoid or address conflicts of interest.

75. By taking excessive Management Fees to benefit itself and its shareholders, Defendant is preventing the same funds from being available for the use and benefit of Exchange, including paying policyholder dividends to all of the members.

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[1] Like many insured Americans, certain automobile policyholders of Exchange received a partial premium credit, not an annual dividend, in 2020 due to decreased insurance claims during the Covid-19 pandemic. Moreover, workers' compensation policies may provide certain dividends to insureds.

COUNT I

Erie Insurance Exchange, an unincorporated association, by Troy Stephenson, Christina Stephenson, and Steven Barnett, trustees *ad litem,* bring this count pursuant to Rule 2152 of the Pennsylvania Rules of Civil Procedure

BREACH OF FIDUCIARY DUTY

76. Exchange realleges and incorporates by reference, as if fully set forth herein, the allegations in all the paragraphs above.

77. As a fiduciary of Exchange, Defendant was obligated at all times to act with the utmost degree of good faith, honesty, candor, undivided loyalty, and full disclosure, and to exercise the high degree of care required of a fiduciary serving as the managing agent and attorney-in-fact for Exchange.

78. In setting the Management Fee rate at the maximum rate of 25% in December of 2019 and 2020 and allowing such amounts to be taken from Exchange over the course of the last two years—in large part to fund dividend payments to Defendant's shareholders—Defendant breached its fiduciary duties owed to Exchange.

79. Defendant has also breached its fiduciary duties by failing to implement or utilize processes to ameliorate its conflicts of interest when self-dealing and when making decisions in which the rights and interests of Exchange are at odds with the rights and interests of Defendant and its controlling shareholders.

80. Instead of acting in the best interests of Exchange, Defendant has been acting in its own best interests and abusing its power and position of trust.

81. Defendant is taking excessive profit from the Management Fees it receives from Exchange to enrich its own shareholders specifically including its conflicted controlling shareholders who serve on Defendant's Board.

82. As a result of Defendant's breaches, Exchange has suffered significant losses by having excessive funds diverted to Defendant and improperly utilized for Defendant's gain and self-interests instead of remaining with Exchange.

WHEREFORE, Exchange asks that the Court enter judgment in its favor as follows:

(1) Finding that Defendant has breached its fiduciary duties;

(2) Awarding damages and/or restitution in an amount to be determined at trial; and

(3) Awarding such other relief, including disgorgement of profits or other injunctive relief, that this Court deems just and proper.

ALTERNATIVE COUNT I

Erie Insurance Exchange, by Troy Stephenson, Christina Stephenson, and Steven Barnett, bring this count pursuant to Rule 2177 of the Pennsylvania Rules of Civil Procedure and/or the common law of the Commonwealth of Pennsylvania

BREACH OF FIDUCIARY DUTY

83. Exchange realleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-75 above.

84. As a fiduciary of Exchange, Defendant was obligated at all times to act with the utmost degree of good faith, honesty, candor, undivided loyalty, and full disclosure, and to exercise the high degree of care required of a fiduciary serving as the managing agent and attorney-in-fact for Exchange.

85. In setting the Management Fee rate at the maximum rate of 25% in December of 2019 and 2020 and allowing such amounts to be taken from Exchange over the course of the last two years—in large part to fund dividend payments to Defendant's shareholders—Defendant breached its fiduciary duties owed to Exchange.

86. Defendant has also breached its fiduciary duties by failing to implement or utilize processes to ameliorate its conflicts of interest when self-dealing and when making decisions in which the rights and interests of Exchange are at odds with the rights and interests of Defendant and its controlling shareholders.

87. Instead of acting in the best interests of Exchange, Defendant has been acting in its own best interests and abusing its power and position of trust.

88. Defendant is taking excessive profit from the Management Fees it receives from Exchange to enrich its own shareholders specifically including its conflicted controlling shareholders who serve on Defendant's Board.

89. Defendant has breached its fiduciary duties owed to Exchange. As a result of Defendant's breaches, Exchange has suffered significant losses by having excessive funds diverted to Defendant and improperly utilized for Defendant's gain and self-interests instead of remaining with Exchange.

90. WHEREFORE, Exchange asks that the Court enter judgment in its favor as follows:

(1) Finding that Defendant has breached its fiduciary duties;

(2) Awarding damages and/or restitution in an amount to be determined at trial; and

(3) Awarding such other relief, including disgorgement of profits or other injunctive relief, that this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury of any and all issues in this action so triable.

Dated: December 8, 2021

Respectfully submitted,

/s/ Edwin J. Kilpela, Jr.
Edwin J. Kilpela, Jr., Esq. (PA 201595)
Elizabeth P. Avery, Esq. (PA 314841)
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Attorneys for Plaintiff

VERIFICATION

I, Christina Stephenson, am fully familiar with the facts set forth in this Complaint and believe them to be true and correct to the best of my knowledge, information, and belief. I understand any false statements herein are made subject to the penalties of 18 Pa. C.S § 4904, relating to unsworn falsification to authorities.

Dated: December 8, 2021

Respectfully Submitted,

/s/ Christina Stephenson
Christina Stephenson
E-Signed with Permission

VERIFICATION

I, Troy Stephenson, am fully familiar with the facts set forth in this Complaint and believe them to be true and correct to the best of my knowledge, information, and belief. I understand any false statements herein are made subject to the penalties of 18 Pa. C.S § 4904, relating to unsworn falsification to authorities.

Dated: December 8, 2021

Respectfully Submitted,

/s/ Troy Stephenson
Troy Stephenson
E-Signed with Permission

VERIFICATION

I, Steven Barnett, as trustee *ad litem* and member of Erie Insurance Exchange, am fully familiar with the facts set forth in this COMPLAINT and believe them to be true and correct to the best of my knowledge, information, and belief. I understand that statements herein are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsifications to authorities.

/s/ Steven Barnett
Steven Barnett
E-Signed with Permission

Dated: December 6, 2021

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: December 8, 2021

Respectfully submitted,

/s/ Edwin J. Kilpela, Jr.
Edwin J. Kilpela, Jr., Esq. (PA 201595)
Elizabeth P. Avery, Esq. (PA 314841)
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Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No. GD-21-014814

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees *ad litem,* and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, Plaintiffs,	)
v.	)
ERIE INDEMNITY COMPANY, Defendant.	)

ACCEPTANCE OF SERVICE

Filed on behalf of Erie Indemnity Company, Defendant

Counsel of Record:

Steven B. Feirson (PA 21357)
Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808

215-994-4000
steven.feirson@dechert.com

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No.GD-21-014814

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees *ad litem,* and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, Plaintiffs,	)
v.	)
ERIE INDEMNITY COMPANY, Defendant.	)

ACCEPTANCE OF SERVICE

I, Steven B. Feirson, Esquire, do hereby represent that I am authorized to and do hereby accept service this 28th day of December, 2021 of Plaintiffs' Complaint in the above-captioned matter on behalf of Defendant Erie Indemnity Company.

Dated: December 28, 2021

Respectfully submitted,

/s/ *Steven B. Feirson*
Steven B. Feirson (PA 21357)
Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
215-994-4000
steven.feirson@dechert.com

Counsel for Defendant Erie Indemnity Company

CERTIFICATE OF COMPLAINCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: December 28, 2021

/s/ *Steven B. Feirson*
Steven B. Feirson (PA 21357)
Counsel for Defendant Erie Indemnity Company

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2021, the foregoing Acceptance of Service has been filed electronically on the DCR file system and that a true and correct copy of the foregoing Acceptance of Service

has been served electronically through the DCR file system, as well as via e-mail, on all counsel of record.

Dated: December 28, 2021

/s/ *Steven B. Feirson*
Steven B. Feirson (PA 21357)
Counsel for Defendant Erie Indemnity Company

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No. GD-21-014814

CLASS ACTION

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees *ad litem,* and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, Plaintiffs,	)
v.	)
ERIE INDEMNITY COMPANY, Defendant.	)

STIPULATED EXTENSION OF TIME FOR DEFENDANT ERIE INDEMNITY COMPANY TO RESPOND TO COMPLAINT

Filed on behalf of Erie Indemnity Company, Defendant

Counsel of Record:

Steven B. Feirson (PA 21357)
Dechert LLP

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Philadelphia, PA 19104-2808
215-994-4000
steven.feirson@dechert.com

IN THE COURT OF COMMON OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No.GD-21-014814

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees *ad litem,* and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, Plaintiffs,	)
v.	)
ERIE INDEMNITY COMPANY, Defendant.	)

STIPULATED EXTENSION OF TIME FOR DEFENDANT ERIE INDEMNITY COMPANY TO RESPOND TO COMPLAINT

The parties to this matter, through their undersigned counsel, hereby agree that the deadline by which Defendant Erie Indemnity Company must answer, plead, move, or otherwise respond to Plaintiffs' Complaint shall be and hereby is extended to February 16, 2022.

CARLSON LYNCH

/s/Edwin J. Kilpela, Jr.
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Counsel for Plaintiffs

DECHERT LLP

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steven.feirson@dechert.com

Counsel for Defendant Erie Indemnity Company

Dated: December 28, 2021

CERTIFICATE OF COMPLAINCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential

information and documents differently than non-confidential information and documents.

Dated: December 28, 2021

/s/ *Steven B. Feirson*
Steven B. Feirson (PA 21357)
Counsel for Defendant Erie Indemnity Company

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2021, the foregoing Stipulated Extension of Time for Defendant Erie Indemnity Company to Respond to Complaint has been filed electronically on the DCR file system and that a true and correct copy of the foregoing Acceptance of Service has been served electronically through the DCR file system, as well as via e-mail, on all counsel of record.

Dated: December 28, 2021

/s/ *Steven B. Feirson*
Steven B. Feirson (PA 21357)
Counsel for Defendant Erie Indemnity Company

NOTICE

Pennsylvania Rule of Civil Procedure 205.5. (Cover Sheet) provides, in part:

Rule 205.5. Cover Sheet

(a)(1) This rule shall apply to all actions governed by the rules of civil procedure except the following:

(i) actions pursuant to the Protection from Abuse Act, Rules 1901 et seq.

(ii) actions for support, Rules 1910.1 et seq.

(iii) actions for custody, partial custody and visitation of minor children, Rules 1915.1 et seq.

(iv) actions for divorce or annulment of marriage, Rules 1920.1 et seq.

(v) actions in domestic relations generally, including paternity actions, Rules 1930.1 et seq.

(vi) voluntary mediation in custody actions, Rules 1940.1 et seq.

(2) At the commencement of any action, the party initiating the action shall complete the cover sheet set forth in subdivision (e) and file it with the prothonotary.

(b) The prothonotary shall not accept a filing commencing an action without a completed cover sheet.

(c) The prothonotary shall assist a party appearing pro se in the completion of the form.

(d) A judicial district which has implemented an electronic filing system pursuant to Rule 205.4 and has promulgated those procedures pursuant to Rule 239.9 shall be exempt from the provisions of this rule.

(e) The Court Administrator of Pennsylvania, in conjunction with the Civil Procedural Rules Committee, shall design and publish the cover sheet. The latest version of the form shall be published on the website of the Administrative Office of Pennsylvania Courts at www.pacourts.us.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No.

CLASS ACTION

TROY STEPHENSON, CHRISTINA STEPHENSON, SUSAN RUBEL, and STEVEN BARNETT, individually and on behalf of all others similarly situated, Plaintiffs,	)
v.	)
ERIE INDEMNITY COMPANY, Defendant.	)

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Filed on behalf of Plaintiffs:
Troy Stephenson, Christina Stephenson, Susan Rubel, and Steven Barnett,

Counsel of record for Plaintiffs:

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Other Attorneys On Signature

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No.

CLASS ACTION

TROY STEPHENSON, CHRISTINA STEPHENSON, SUSAN RUBEL, and STEVEN BARNETT, individually and on behalf of all others similarly situated, Plaintiffs,	)
v.	)
ERIE INDEMNITY COMPANY, Defendant.	)

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within **TWENTY (20)** days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE
Allegheny County Bar Association
11th Floor Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 261-5555

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

No.

CLASS ACTION

TROY STEPHENSON, CHRISTINA STEPHENSON, SUSAN RUBEL, and STEVEN BARNETT, individually and on behalf of all others similarly situated, Plaintiffs,	)
v.	)
ERIE INDEMNITY COMPANY, Defendant.	)

COMPLAINT – CIVIL ACTION

Plaintiffs, Troy Stephenson, Christina Stephenson, Susan Rubel and Steven Barnett ("Plaintiffs"), on behalf of themselves and all other similarly situated policyholders of Erie Insurance Exchange ("Exchange") residing in Pennsylvania, allege the following:

INTRODUCTION

1. Reciprocal insurance exchanges are unincorporated insurance organizations in which policyholders, also referred to as subscribers, pool their money and their collective risk to insure one another against loss.

2. Because reciprocal insurance exchanges have no officers, employees, or corporate structure, the policyholders appoint an "attorney-in-fact" to manage and administer the business on their behalf.

3. The attorney-in-fact serves a critical role as a fiduciary and agent for the policyholders.

4. Plaintiffs and the putative class members in this lawsuit are policyholders of Exchange ("the Policyholders").

5. When purchasing their insurance policies, Plaintiffs and the Policyholders all executed a Subscriber's Agreement designating Defendant Erie Indemnity Company ("Defendant" or "Indemnity") as their attorney-in-fact and managing agent.

6. As attorney-in-fact and managing agent, Indemnity is a fiduciary for all of the Policyholders and exercises total control over Exchange's operations.

7. Indemnity receives an annual "Management Fee" for serving as the Policyholders' managing agent and attorney-in-fact.

8. The Management Fee is set annually and is calculated as a percentage of the premiums paid by each Policyholder.

9. Plaintiffs bring this lawsuit because, while serving as the Policyholders' managing agent and attorney-in-fact, Indemnity unilaterally sets the annual Management Fee and has allowed conflicts of interest to wholly undermine its duties of care,

honesty, candor and undivided loyalty, and full disclosure to the Policyholders.

10. Indemnity derives essentially all of its income from the Management Fee.

11. Indemnity operates with an obvious, unabated conflict of interest in serving as the sole decision-maker when setting the Management Fee.

12. Setting the Management Fee is a "zero sum" transaction. The more Indemnity takes from each Policyholder's premium payment as a Management Fee, the less funds that are available to Exchange for loss reserves, expenses or to be returned to the Policyholders as dividends.

13. Over the last two years, in breach of its fiduciary duties, Indemnity has taken excessive Management Fees which have allowed Indemnity to profit substantially and pay massive dividends and special dividends to its shareholders all at the Policyholders' direct expense.

14. The Management Fee taken during the relevant time period has approached two billion dollars a year.

15. Indemnity has maximized the annual Management Fee charged to the Policyholders without regard to its duties of care, honesty, candor, undivided loyalty, and full disclosure.

16. As explained below, the conflicts of interest and breaches of fiduciary duties arise from the fact that Indemnity is controlled by the heirs of Indemnity's

founder who serve on Indemnity's Board of Directors (the "Board"), own a substantial percentage of all outstanding shares of Indemnity and thus derive substantial income from the dividends declared by the Board, and control Indemnity's voting shares.

17. Indemnity has breached its fiduciary duties to the Policyholders by putting its own conflicted interests above those of the Policyholders. Indemnity has used its power as agent and attorney-in-fact to generate massive profits from the excessive Management Fee and funnel hundreds of millions of dollars in dividends and special dividends to the small group of Indemnity's controlling shareholders all at the Policyholders' direct expense.

18. Indemnity's behavior will go unchecked unless addressed by this Court because there is no governmental agency that can enforce the fiduciary duties Indemnity owes to the Policyholders or award damages/restitution to the Policyholders.

PARTIES

19. Plaintiff Troy Stephenson is an individual residing in White Oak, Pennsylvania, which is located in Allegheny County.

20. Plaintiff Christina Stephenson is an individual residing in White Oak, Pennsylvania, which is located in Allegheny County.

21. Plaintiff Susan Rubel is an individual residing in Pittsburgh, Pennsylvania, which is located in Allegheny County.

22. Plaintiff Steven Barnett is an individual residing in Lemont Furnace, Pennsylvania, which is located in Fayette County.

23. At all times relevant hereto, Plaintiffs and putative class members were current or former policyholders of Exchange.

24. Indemnity is a Pennsylvania corporation with its headquarters and principal place of business located in Erie, Pennsylvania.

JURISDICTION AND VENUE

25. This Court has subject matter jurisdiction under 42 Pa.C.S. § 931.

26. This Court has personal jurisdiction over Indemnity under 42 Pa.C.S. § 5301 because Indemnity is a domestic corporation with its principal place of business in Pennsylvania and conducts business throughout Pennsylvania.

27. Venue is proper in this Court under Pennsylvania Rule of Civil Procedure 2179 because Indemnity regularly conducts business in Allegheny County and one or more Plaintiffs and numerous putative class members reside in Allegheny County.

FACTUAL ALLEGATIONS

A. Indemnity's Fiduciary Relationship with the Exchange Policyholders

28. Exchange, which is owned by the Policyholders, is a Pennsylvania-domiciled

unincorporated association that writes property and casualty insurance.

29. Exchange has no employees, officers, directors, or governing or advisory board of its own.

30. The Policyholders all executed materially identical Subscriber's Agreements when they became policyholders of Exchange. A true and correct exemplar of the Subscriber's Agreement is attached hereto as Exhibit A.

31. Upon executing their Subscriber's Agreements, the Policyholders designated Indemnity to be their agent and attorney-in-fact to manage the business of Exchange on their behalf.

32. "[B]y acting as the common attorney-in-fact and decision maker for the subscribers (policyholders)" of Exchange, Indemnity admits that it "has the power to direct the activities of the Exchange that most significantly impact the Exchange's economic performance." Erie Indemnity Company, Quarterly Report (Form 10-Q) (Oct. 29, 2015), pp. 7, 10.

33. As their attorney-in-fact, Indemnity is a fiduciary of the Policyholders.

34. Indemnity's Chief Financial Officer, on Indemnity's behalf, wrote to the Financial Accounting Standards Board on February 10, 2012 to comment upon a proposed accounting standard. In describing Indemnity's duties and responsibilities, this officer represented that: "An attorney-in-fact acting as an agent for a reciprocal insurer, similar to an investment manager, functions in an agent capacity for its

principal (the policyholders of the reciprocal insurer)…" and as such has a "fiduciary duty to act in the best interests of the subscribers/policyholders of the reciprocal insurer." FASB File Ref. No. 2011-220, Comment Letter No. 21 (Feb. 10, 2012).

35. Indemnity has adopted Corporate Governance Guidelines for the Board which state, in pertinent part:

> In discharging their duties, the Directors must also be mindful of the fact that [Indemnity] is appointed to act as the Attorney-in-Fact to the Erie Insurance Exchange (the "Exchange") by the policyholders of the Exchange under the terms of the Subscriber's Agreement between each policyholder and the Company that provides generally for the ***relationship between policyholders and [Indemnity].*** Although there is limited authority that expressly defines the ***duty of an attorney-in-fact to the policyholders*** of a reciprocal insurance exchange, the Directors should treat this responsibility of [Indemnity] as one that is ***fiduciary in nature***…. Consequently, to satisfy the obligations of [Indemnity] to the Exchange, the Directors should cause [Indemnity] to act in a manner they reasonably believe is in the best interests of the Exchange and its policyholders…. (emphasis added)

36. As a fiduciary of the Policyholders, Indemnity owes the duties of care, good faith, honesty, candor, undivided loyalty, and full disclosure to the Policyholders.

37. Indemnity has a duty to avoid conflicts of interest, to act in the best interests of the Policyholders, and to refrain from using its position to its own advantage and to the detriment of the Policyholders.

B. Indemnity's Annual Management Fee

38. In return for serving as managing attorney-in-fact, Indemnity takes a percentage of the annual premiums paid by the Policyholders as a Management Fee.

39. The Subscriber's Agreement prohibits Indemnity from setting the Management Fee rate above 25% of the annual premiums, but beyond that limitation, Indemnity alone determines what the Management Fee rate will be each year.

40. Typically, in December of each year, Indemnity sets the Management Fee rate for the upcoming year.

41. Indemnity can adjust the Management Fee rate during the year. This means Indemnity could reduce the rate during the year if, for example, actual expenses were less than projected, or, conversely, assuming Indemnity was not already taking the maximum of 25%, it could increase the rate during the year if circumstances changed and warranted an adjustment.

42. The Policyholders have no ability to dispute the Management Fee rate when it is set and are forced to pay the amount Indemnity selects.

43. The lower the Management Fee, the more funds that are immediately available to Exchange for the benefit of the Policyholders.

44. Thus, Indemnity's annual decision as to what the Management Fee rate will be for the next year significantly impacts the Policyholders.

45. Indemnity represents in its regulatory filings that the Management Fee rate is determined, "using industry information and other available information for similar services." Erie Indemnity Company, 2020 Annual Report (Form 10-K) (Feb. 25, 2021) ("2020 Form 10-K"), p. 29.

46. Despite serving as their fiduciary, Indemnity does not direct any disclosure specifically to the Policyholders to advise them of the Management Fee rate when it is set each year. Nor does Indemnity explain or attempt to justify to the Policyholders why the Management Fee rate is set at any particular level for a given year.

47. During the relevant period, Indemnity has abused its position of trust to profit at the direct expense of the Policyholders by taking an excessive Management Fee.

C. Indemnity's Background and Current Control and Management

48. Exchange and Indemnity were founded in or around 1925 by H.O. Hirt. Indemnity has served as the managing attorney-in-fact for the Policyholders since its inception.

49. Since approximately 1995, Indemnity has been publicly traded on NASDAQ and has a market capitalization of approximately $12 billion.

50. Indemnity has two classes of common stock: Class A and Class B.

51. Class A shares currently pay annual dividends of $4.14 per share. Class B shares currently pay annual dividends of $621 per share. Only Class B shares have voting rights.

52. Descendants and family members of H.O. Hirt, directly or through trusts, own more than 20 million Class A shares, which is approximately 45% or more of the total Class A shares outstanding. *See* Erie Indemnity Company, 2021 Information Statement (Schedule 14C Information) (March 19, 2021), p. 3 (listing Indemnity's Board Chair, Thomas B. Hagen, as owner of 16,762,189 Class A shares (36.32% of all shares outstanding) and Board member Elizabeth Hirt Vorsheck as owner of 3,960,946 shares (8.6% of all shares outstanding)).

53. In addition, primarily through the H.O. Hirt Trusts, three descendants of H.O. Hirt, Thomas B. Hagen, Elizabeth Hirt Vorsheck, and Jonathan Hirt Hagen (collectively, the "Hirt Heirs"), not only own significant percentages of Class A shares, but they also own and/or control approximately 98% of the Class B voting shares of Indemnity. *See id*. at 1 (explaining the H.O. Hirt Trusts, of which Elizabeth Hirt Vorsheck and Jonathan Hirt Hagen are trustees, along with a bank trustee, own 92.05% of Class B shares, while Thomas B. Hagen owns an additional 6.65% of Class B shares).

54. The Hirt Heirs' ownership of Class B shares is "sufficient to determine the outcome of any matter submitted to a vote of the holders of [] Class B common stock." *Id*.

55. At all times relevant, the Hirt Heirs have served and continue to serve on the Board.

56. Given the Hirt Heirs' near total ownership and control of the Class B voting shares, they are able to control the composition of the Board and the outcome of any matter presented to the Board for a vote.

57. In short, the Hirt Heirs control Indemnity.

58. Because the Hirt Heirs dominate and control the Board, they are uniquely empowered to determine what Indemnity will take each year as a Management Fee and what Indemnity will in turn pay them each year in shareholder dividends.

D. Indemnity's Unabated Conflict of Interest

59. Indemnity's earnings are inherently tied to the Management Fee it charges. Nearly 100% of Indemnity's annual revenue comes from the Management Fee.

60. Indemnity recognizes and admits that, "any reduction in … the management fee rate would have a negative effect on [Indemnity's] revenues and net income." 2020 Form 10-K, Item 1A, p. 6; *see also id.* at 29.

61. The greater the Management Fee, the greater the revenue to Indemnity; thus, Indemnity serves its own interests by maximizing the Management Fee.

62. Further, the greater the revenue to Indemnity, the greater the dividends that get paid to the Hirt Heirs and the other shareholders of Indemnity.

63. As a fiduciary to the Policyholders, Indemnity has a duty to avoid conflicts of interest and to act in the best interests of the Policyholders, which includes setting and maintaining an annual Management Fee rate that is no higher than objectively appropriate, and fully disclosing to the Policyholders the basis of and justification for the Management Fee rate.

64. Indemnity's own interest in maximizing its annual revenue and, therefore, the Management Fee, directly conflicts with Indemnity's fiduciary obligations to the Policyholders.

65. Indemnity's conflict of interest has resulted in Indemnity favoring its own financial interests, and those of its controlling shareholders, over those of the Policyholders.

66. Although Indemnity's Board technically has an "Exchange Relationship Committee" (which presumably is intended to protect the interests of the Policyholders), Indemnity admits that the committee *has not met in years* and, in fact, *does not even have a chairperson. See* Erie Indemnity Company, 2021 Information Statement (Schedule 14C Information) (March 19, 2021), p. 7 (stating that the "exchange relationship committee has not met in several years" and that the Board "deferred consideration on the appointment of a new committee chair until such time

as it becomes necessary or advisable for the committee to meet again.")

67. With no one protecting the interests of the Policyholders, over the course of the last two years[1], Indemnity has abused its position of trust and set the Management Fee at the maximum 25% rate in order to generate hundreds of millions of dollars in excess profits.

68. Indemnity's decisions have been made not out of necessity, but to allow Indemnity to generate enormous excess profits to then be paid to Indemnity's Class A and Class B shareholders. The Hirt Heirs who sit on the Board profit enormously from the shareholder dividends declared by the Board.

69. Indemnity's actions on December 10, 2019, as described in the December 13, 2019 press release set forth below in paragraph 70, are emblematic of its utter disregard of its fiduciary duties to the Policyholders.

70. Indemnity maximizes the Management Fee charged to the Policyholders only to simultaneously increase the dividends paid to Indemnity's shareholders:

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[1] Defendant's egregious behavior with respect to the Management Fee extends back even further, but Plaintiffs' action is limited to the breaches occurring within two years of the filing of this Complaint and through trial.

Erie Indemnity Approves Management Fee Rate and Dividend Increase, Declares Quarterly Dividend

ERIE, Pa. (Dec. 13, 2019) - At its regular meeting held Dec. 10, 2019, the Board of Directors of Erie Indemnity Company (NASDAQ: ERIE) set the management fee rate charged to Erie Insurance Exchange, approved an increase in shareholder dividends and declared the quarterly dividend.

The Board agreed to maintain the current management fee rate paid to Erie Indemnity Company by Erie Insurance Exchange at 25 percent, effective Jan. 1, 2020. The management fee rate was 25 percent for the period Jan. 1 through Dec. 31, 2019. The Board has the authority under the agreement with the subscribers (policyholders) at Erie Insurance Exchange to set the management fee rate at its discretion; however, the maximum fee rate permissible by the agreement is 25 percent. This action was taken based on the Board's consideration and review of the relative financial positions of Erie Insurance Exchange and Erie Indemnity Company.

The Board also agreed to increase the regular quarterly cash dividend from $0.90 to $0.965 on each Class A share and from $135.00 to $144.75 on each Class B share. This represents a 7.2 percent increase in the payout per share over the current dividend rate. The next quarterly dividend is payable Jan. 22, 2020, to shareholders of record as of Jan. 7, 2020, with a dividend ex-date of Jan. 6, 2020. Erie Indemnity Company has paid regular shareholder dividends since 1933.

71. Pursuant to Indemnity's decision to set the Management Fee at 25% for 2020, the Management Fee received by Indemnity in 2020 was $1.9 billion.

72. Indemnity took the 25% Management Fee in 2020 in order to increase the annual dividends paid to Indemnity's shareholders by another 7.2%.

73. In December 2020, Indemnity's abuse of its power not only continued, it worsened. The Board again set the Management Fee for the coming year at the maximum rate of 25%, and not because it was

needed to pay for Indemnity's management and operating costs, but so that Indemnity could again increase the annual dividends paid to the shareholders of Indemnity by an additional 7.3%.

74. In addition, because Indemnity had taken in so much excess profit in 2020 from the 25% Management Fee, the Board *also declared and paid an additional special dividend* at the end of December 2020 (equal to approximately 50% of the annual dividend already paid) of $2/share for each Class A share and $300/share for each Class B share.

75. The special dividends alone, paid on December 29, 2020 to Indemnity's shareholders, amounted to over $93 million. Accordingly, the total dividends paid to Indemnity's shareholders in 2020 approached $300 million.

76. The press release issued by Indemnity on December 8, 2020, is shown below:

Dec 08, 2020

ERIE, PA. , DEC. 8, 2020 /PRNEWSWIRE/ -- AT ITS REGULAR MEETING HELD DEC. 8, 2020 , THE BOARD OF DIRECTORS OF ERIE INDEMNITY COMPANY (NASDAQ: ERIE) SET THE MANAGEMENT FEE RATE CHARGED TO ERIE INSURANCE EXCHANGE, APPROVED AN INCREASE IN SHAREHOLDER DIVIDENDS AND DECLARED THE QUARTERLY DIVIDEND AND

ERIE, Pa., Dec. 8, 2020 /PRNewswire/ -- At its regular meeting held Dec. 8, 2020, the Board of Directors of Erie Indemnity Company (NASDAQ: ERIE) set the management fee rate charged to Erie Insurance Exchange, approved an increase in shareholder dividends and declared the quarterly dividend and a special cash dividend. Erie Indemnity Company has paid regular shareholder dividends since 1933.

Erie Insurance®

The Board agreed to maintain the current management fee rate paid to Erie Indemnity Company by Erie Insurance Exchange at 25 percent, effective Jan. 1, 2021. The management fee rate was 25 percent for the period Jan. 1 through Dec. 31, 2020. The Board has the authority under the agreement with the subscribers (policyholders) at Erie Insurance Exchange to set the management fee rate at its discretion; however, the maximum fee rate permissible by the agreement is 25 percent. This action was taken based on the Board's consideration and review of the relative financial positions of Erie Insurance Exchange and Erie Indemnity Company.

The Board also agreed to increase the regular quarterly cash dividend from $0.965 to $1.035 on each Class A share and from $144.75 to $155.25 on each Class B share. This represents a 7.3 percent increase in the payout per share over the current dividend rate. The next regular quarterly dividend is payable Jan. 20, 2021, to shareholders of record as of Jan. 5, 2021, with a dividend ex-date of Jan. 4, 2021.

The Board also declared a special one-time cash dividend of $2.00 on each Class A share and $300.00 on each Class B share. This special cash dividend is payable Dec. 29, 2020, to shareholders of record as of Dec. 21, 2020, with a dividend ex-date of Dec. 18, 2020.

77. The dividends paid to Indemnity's shareholders are funded directly from the Management Fee that Indemnity charges and takes from the Policyholders.

78. Pursuant to the Board's decision on December 8, 2020, the annual dividends being paid to Indemnity's shareholders in 2021 will be

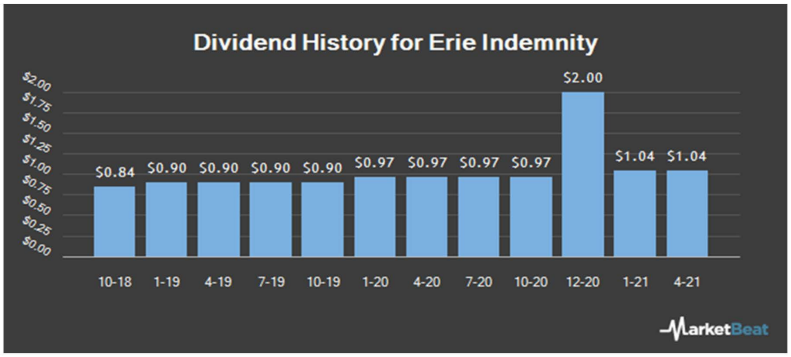
approximately $200 million. Approximately $80-$100 million of these dividends in 2021 will go to the Hirt Heirs.

79. In 2020 and 2021 alone, the Hirt Heirs will receive upwards of $200 million or more in dividend payments funded directly from the Policyholders.

80. Indemnity has ignored its fiduciary obligations, abused its power, and forced the Policyholders to pay excessive Management Fees to support ever increasing annual dividends and special dividends to Indemnity's shareholders, who are largely composed of the Hirt Heirs in control of the Board.

81. Every dollar paid as a dividend to Indemnity's shareholders is a dollar that could be paid as a dividend to the Policyholders or otherwise directly benefit the Policyholders by funding the loss reserves at Exchange and being available for the Policyholders' benefit.

82. Below is a chart showing the quarterly dividends Indemnity paid for the last few years, along with the special dividend paid in December 2020:



83. Even apart from the special dividend paid in December 2020, Indemnity has increased its annual shareholder dividend by 23.8% from October 2018 to the present.

84. In contrast to the hundreds of millions of dollars of profit paid annually to the Indemnity shareholders funded by the Management Fee paid by the Policyholders, as a matter of course, the Policyholders have received nothing or only *de minimis* dividends[2] in recent years.

85. In years past, the Policyholders received regular, substantial, annual dividends, as is customary with reciprocal insurers. Now, Indemnity chooses to enrich itself at the expense of the Policyholders.

86. Indemnity cannot justify why, each year, at the expense of the Policyholders and despite being their fiduciary, Indemnity sets the Management Fee at the maximum rate only to use large portions of the Management Fee to pay the excess profit in ever-increasing dividends to the Hirt Heirs and Indemnity's other shareholders.

87. Unlike Indemnity, the managing agents and attorneys-in-fact for other reciprocal insurers have protocols and processes to avoid or address conflicts of interest.

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[2] Like many insured Americans, Policyholders received a partial premium credit not an annual dividend in 2020 due to decreased insurance claims during the Covid-19 pandemic.

88. Indemnity has failed to — and cannot — demonstrate that the Management Fees it has charged and collected during the past two years are justified and appropriate.

89. By taking excessive Management Fees to benefit itself and its shareholders, Indemnity is preventing the same funds from being available to (a) pay dividends to the Policyholders, (b) fund the loss reserves at Exchange and (c) otherwise be utilized for the Policyholders' benefit.

E. Indemnity Takes Management Fees that are Objectively Excessive

90. Indemnity cannot justify setting the Management Fee at the maximum rate and using the excess profits generated by the Management Fee to fund dividend payments to Indemnity's shareholders at the direct expense of the Policyholders.

91. Indemnity's profit is objectively excessive when compared to industry norms. In business, it is accepted that a company with higher-than-average risk should, in return, have the potential for higher-than-average profits. Accordingly, if Indemnity had a higher-than-average risk profile, it might be expected to also have higher-than-average profits. Indemnity, however, does not have a higher-than-average risk profile. To the contrary, Indemnity is a lower-than-average risk business. Indemnity is not an insurer, and thus, for example, has no risk of catastrophic loss events; instead, Indemnity is a managing agent and attorney-in-fact with a very stable business. Therefore,

Indemnity's profits should be lower than average in line with its risk profile.

CLASS ACTION ALLEGATIONS

92. Plaintiffs, pursuant to Rules 1702, 1708 and 1709 of the Pennsylvania Rules of Civil Procedure, assert this action individually and on behalf of the following class of all Pennsylvania residents (the "Class"):

> All individuals or entities residing in Pennsylvania at the time of the filing of this Complaint who purchased, renewed, or otherwise had in effect an Erie Insurance Exchange policy at any time from two years prior to the filing of this Complaint through trial (the "Class Period").

93. Excluded from the Class are Indemnity, as well as its past and present officers, employees, agents or affiliates, any judge who presides over this action, and any attorneys who enter their appearance in this action.

94. Plaintiffs reserve the right to expand, limit, modify or amend the Class definition, including the addition of one or more subclasses, in connection with their motion for class certification, or at any other time, based on, among other things, changing circumstances and new facts obtained during discovery.

95. **Numerosity – Pennsylvania Rule of Civil Procedure 1702(1).** The members of the Class are so numerous that individual joinder of all Class members is impracticable. The precise number of Class members

and their identities may be obtained from Indemnity's books and records, but, on information and belief, the number is in the thousands.

96. **Commonality – Pennsylvania Rule of Civil Procedure 1702(2).** This action involves questions of law and fact that are common to the Class members. Such common questions include, but are not limited to:

(a) Whether Indemnity owed fiduciary duties to Plaintiffs and Class members;

(b) Whether, in unilaterally setting the Management Fee at the maximum 25% during the Class Period, Indemnity breached the fiduciary duties it owed to Plaintiffs and Class members;

(c) Whether Indemnity's actions and failures to act are breaches of its fiduciary duties;

(d) Whether Plaintiffs and Class members have been damaged and, if so, what is the appropriate measure of such damages; and

(e) Whether disgorgement of profits is an appropriate equitable remedy.

97. **Typicality – Pennsylvania Rule of Civil Procedure 1702(3)**. Plaintiffs' claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured from the uniform prohibited conduct described above. Each policy premium paid by Plaintiffs and Class members was subject to the same, excessive Management Fee rate, which, during the Class Period,

was set unilaterally by Indemnity at the maximum 25%. This uniform injury and the legal theories that underpin recovery make the claims of Plaintiffs and the members of the Class typical of one another.

98. **Adequacy of Representation – Pennsylvania Rules of Civil Procedure 1702(4) and 1709.** Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the other Class members Plaintiffs seeks to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; Plaintiffs intend to prosecute this action vigorously; and Plaintiffs' counsel have adequate financial means to vigorously pursue this action and ensure the interests of the Class will not be harmed. Furthermore, the interests of the Class members will be fairly and adequately protected and represented by Plaintiffs and Plaintiffs' counsel.

99. **Predominance – Pennsylvania Rule of Civil Procedure 1708(a)(1).** Common questions of law and fact predominate over any questions affecting only individual Class members. For example, Indemnity's liability and the fact of damages is common to Plaintiffs and each member of the Class. If Indemnity's unilateral setting of the Management Fee at the maximum 25% during the relevant time period represents a breach of Indemnity's fiduciary duties to Plaintiffs and the Class members, then Plaintiffs and each Class member suffered damages by purchasing policies and paying premiums subject to the excessive Management Fee rate.

100. **Manageability – Pennsylvania Rule of Civil Procedure 1708(a)(2).** While the precise size of the Class is unknown without the disclosure of Indemnity's records, the claims of Plaintiffs and the Class members are substantially identical as explained above. Certifying the case as a class action will centralize these substantially identical claims in a single proceeding and adjudicating these substantially identical claims at one time is the most manageable litigation method available to Plaintiffs and the Class.

101. **Risk of Inconsistent, Varying or Prejudicial Adjudications – Pennsylvania Rule of Civil Procedure 1708(a)(3).** If the claims of Plaintiffs and the Class members were tried separately, Indemnity may be confronted with incompatible standards of conduct and divergent court decisions. Furthermore, if the claims of Plaintiffs and Class members were tried individually, adjudications with respect to individual Class members and the propriety of their claims could be dispositive on the interests of other members of the Class not party to those individual adjudications and substantially, if not fully, impair or impede their ability to protect their interests.

102. **Litigation Already Commenced – Pennsylvania Rule of Civil Procedure 1708(a)(4).** To Plaintiffs' knowledge, there are no other cases currently pending against Defendant where a Pennsylvania plaintiff seeks to represent a class of Pennsylvania residents based on the conduct alleged in this Complaint.

103. **The Appropriateness of the Forum – Pennsylvania Rule of Civil Procedure 1708(a)(5).**

This is an appropriate forum to concentrate the litigation because a substantial number of Class members were injured in this County.

104. **The Class Members' Claims Support Certification – Pennsylvania Rules of Civil Procedure 1708(a)(6) and (7).** Given the relatively low amount recoverable by each Class member, the expenses of individual litigation are insufficient to support or justify individual suits. Furthermore, the damages that may be recovered by the Class will not be so small such that class certification is unjustified.

105. **The General Applicability of Indemnity's Conduct – Pennsylvania Rule of Civil Procedure 1708(b)(2).** Indemnity's unilateral setting of the Management Fee at the maximum 25% in contravention of Indemnity's fiduciary duties to Plaintiffs and Class members is generally applicable to the Class as a whole, making equitable relief appropriate with respect to the Class.

COUNT I

BREACH OF FIDUCIARY DUTY

106. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the allegations in the paragraphs above.

107. Plaintiffs bring this Count on behalf of themselves and the Class.

108. As a fiduciary of Plaintiffs and the Class, Indemnity was obligated at all times to act with the utmost degree of good faith, honesty, candor, undivided

loyalty, and full disclosure, and to exercise the high degree of care required of a fiduciary serving as the agent and attorney-in-fact for Plaintiffs and the Class.

109. In setting the Management Fee rate at 25% in December 2019 and December 2020 and allowing such amounts to be taken from the premiums paid by Plaintiffs and the Class over the course of the last two years from the filing of this Complaint—in large part to fund dividend payments to Indemnity's shareholders —Indemnity failed to comply with its fiduciary duties owed to Plaintiffs and the Class.

110. Indemnity has also breached its fiduciary duties during the Class Period by failing to implement or utilize processes to ameliorate its conflicts of interest when self-dealing and when making decisions in which the rights and interests of the Plaintiffs and the Class are at odds with the rights and interests of Indemnity and its controlling shareholders.

111. Instead of acting in the best interests of Plaintiffs and the Class, Indemnity has been acting in its own best interests and abusing its position of trust.

112. Indemnity is taking excessive profit from the Management Fees it receives from Plaintiffs and the Class to enrich its own shareholders specifically including its conflicted controlling shareholders who serve on the Board.

113. Indemnity has breached its fiduciary duties owed to Plaintiffs and the Class. As a result of Indemnity's breaches, Plaintiffs and the Class have suffered significant losses by having excessive funds diverted to Indemnity and improperly utilized for

Indemnity's gain and self-interests instead of remaining with Exchange and being made available for the benefit of Plaintiffs and the Class.

WHEREFORE, on behalf of themselves and the Class, Plaintiffs ask that the Court enter judgment in their favor as follows:

(1) Finding that Indemnity has breached its fiduciary duties;

(2) Awarding damages in an amount to be determined at trial; and

(3) Awarding such other relief, including disgorgement of profits or other injunctive relief, that this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury of any and all issues in this action so triable.

Dated: August 24, 2021

Respectfully submitted,

/s/ Edwin J. Kilpela, Jr.
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Attorneys for Plaintiffs

VERIFICATION

I, Troy Stephenson, am fully familiar with the facts set forth in this Complaint and believe them to be true and correct to the best of my knowledge, information, and belief. I understand any false statements herein are made subject to the penalties of 18 Pa. C.S § 4904, relating to unsworn falsification to authorities.

Respectfully Submitted,

/s/ Troy Stephenson
Troy Stephenson
E-Signed with Permission

Dated: August 24, 2021

VERIFICATION

I, Christina Stephenson, am fully familiar with the facts set forth in this Complaint and believe them to be true and correct to the best of my knowledge, information, and belief. I understand any false statements herein are made subject to the penalties of 18 Pa. C.S § 4904, relating to unsworn falsification to authorities.

Respectfully Submitted,

/s/ Christina Stephenson
Christina Stephenson
E-Signed with Permission

Dated: August 24, 2021

VERIFICATION

I, Susan Rubel, am fully familiar with the facts set forth in this Complaint and believe them to be true and correct to the best of my knowledge, information, and belief. I understand any false statements herein are made subject to the penalties of 18 Pa. C.S § 4904, relating to unsworn falsification to authorities.

Respectfully Submitted,

/s/ Susan Rubel
Susan Rubel
E-Signed with Permission

Dated: August 24, 2021

VERIFICATION

I, Steven Barnett, am fully familiar with the facts set forth in this Complaint and believe them to be true and correct to the best of my knowledge, information, and belief. I understand any false statements herein are made subject to the penalties of 18 Pa. C.S § 4904, relating to unsworn falsification to authorities.

Respectfully Submitted,

/s/ Steven Barnett
Steven Barnett
E-Signed with Permission

Dated: August 24, 2021

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Plaintiffs

Signature: /s/ Edwin J. Kilpela, Jr.

Name: Edwin J. Kilpela, Jr.

Attorney: 201595

Exhibit A

WARNING: IT IS A CRIME TO PROVIDE FALSE OR MISLEADING INFORMATION TO AN INSURER FOR THE PURPOSE OF DEFRAUDING THE INSURER OR ANY OTHER PERSON. PENALTIES INCLUDE IMPRISONMENT AND/OR FINES. IN ADDITION, AN INSURER MAY DENY INSURANCE BENEFITS IF FALSE INFORMATION MATERIALLY RELATED TO A CLAIM WAS PROVIDED BY THE APPLICANT.

SUBSCRIBER'S AGREEMENT

The Subscriber ("you" or "your") agrees with the other Subscribers at ERIE INSURANCE EXCHANGE ("ERIE"), a Reciprocal/Inter-Insurance Exchange, and with their Attorney-in-Fact, the Erie Indemnity Company ("we" or "us"), a Pennsylvania corporation with its Home Office in Erie, Pennsylvania, to the following:

1) You agree to pay your policy premiums and to exchange with other ERIE Subscribers polices providing insurance for any insured loss as stated in those policies.
2) You appoint us as Attorney-in-Fact with the power to: a) exchange policies with other ERIE Subscribers; b) take any action necessary for the exchange of such policies; c) issue, change, non-renew or cancel policies; d) obtain reinsurance; e) collect premiums; f) invest and reinvest funds;

g) receive notices and proofs of loss; h) appear for, compromise, prosecute, defend, adjust and settle losses and claims under your policies; i) accept service of process on behalf of ERIE as insurer; and j) manage and conduct the business and affairs of ERIE, its affiliates and subsidiaries. This power of attorney is limited to the purposes described in this Agreement.

3) You agree that as compensation for us: a) becoming and acting as Attorney-in-Fact; b) managing the business and affairs of ERIE; and c) paying general administrative expenses, including sales commissions, salaries and employee benefits, taxes, rent, depreciation, supplies and data processing, we may retain up to 25% of all premiums written or assumed by ERIE. The rest of the premiums will be used for losses, loss adjustment expenses, investment expenses, damages, legal expenses, court costs, taxes, assessments, licenses, fees, any other governmental fines and charges, establishment of reserves and surplus, and reinsurance, and may be used for dividends and other purposes we decide are to the advantage of Subscribers.
4) You agree that this Agreement, including the power of attorney, shall have application to all insurance policies for which you apply at ERIE, including changes in any of your coverages.
5) You agree to sign and deliver to us all papers required to carry out this Agreement.
6) This Agreement, including the power of attorney, shall not be affected by your subsequent disability or incapacity.

7) This Agreement is and shall be binding upon you, us, and all executors, administrators, successors and assigns.

I certify that I have given true and complete answers to the questions in this application. I have been given notice of the Notice of Insurance Information Practices.

APPLICANT(S) TO ERIE INSURANCE EXCHANGE SIGN HERE

SUBSCRIBER'S SIGNATURE

In witness whereof the Subscriber hereto sets his hand and seal

.....

Date.....

WARNING: IT IS UNDERSTOOD THAT ONLY $1,000,000 OF PERSONAL LIABILITY PROTECTION CAN BE BOUND BY AN AUTHORIZED AGENT OF ERIE INSURANCE GROUP. LIMITS OF PROTECTION GREATER THAN $1,000,000 MUST BE APPROVED BY THE HOME OFFICE AND NO INSURANCE IS AFFORDED UNLESS AND UNTIL THE APPLICATION IS ACCEPTED BY THE HOME OFFICE OF THE ERIE INSURANCE GROUP.

DO NOT BIND COVERAGE ON ANY PREVIOUSLY CANCELLED RISKS.

Do you consider this an acceptable risk?....
Agent's Signature .....

Exhibit 10

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 2:21-cv-1444

Electronically Filed

TROY STEPHENSON, CHRISTINA STEPHENSON, SUSAN RUBEL, and STEVEN BARNETT, individually and on behalf of all others similarly situated,	)
Plaintiffs,	)
v.	)
ERIE INDEMNITY COMPANY,	)
Defendant.	)

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT Defendant Erie Indemnity Co. ("Indemnity"), by and through its counsel, Dechert LLP and Knox McLaughlin Gornall & Sennett, P.C., reserving any and all defenses and exceptions, hereby removes the above-captioned action from the Court of Common Pleas, Allegheny County, Pennsylvania, to the United States District Court for the Western District of Pennsylvania (Erie Division) pursuant to 28 U.S.C. §§ 1441, 1453 on the grounds of

the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d).

In support of this Notice of Removal, Indemnity states as follows:

INTRODUCTION

1. On August 24, 2021, Plaintiffs Troy Stephenson, Christina Stephenson, Susan Rubel, and Steven Barnett (collectively, "Plaintiffs"), each of whom allegedly "resides" in Pennsylvania, filed their Class Action Complaint (the "Complaint") in the Court of Common Pleas, Allegheny County, Pennsylvania, against Indemnity, a Pennsylvania corporation with its principal place of business in Erie, Pennsylvania.

2. Plaintiffs plead only one claim, for breach of fiduciary duty. They purportedly bring that claim "on behalf of themselves and all other similarly situated subscribers of Erie Insurance Exchange ('Exchange') *residing in Pennsylvania*." Ex. 1, Compl. at 1 (emphasis added).

3. Indemnity is a public company appointed by the policyholders (the "subscribers") to be responsible for managing the affairs of the Erie Insurance Exchange ("Exchange"), a reciprocal insurer which issues various forms of insurance to citizens of 12 states and the District of Columbia. In this action, Plaintiffs challenge Indemnity's decision to take 25% of the premiums received by Exchange as compensation for its management services (the "Management Fee"). However, Plaintiffs concede (as they must) that Indemnity is entitled to take a 25% Management Fee under the Subscriber's Agreement that every single

subscriber individually signs. In fact, each subscriber, through the Subscriber's Agreement, explicitly grants Indemnity the right to "retain up to 25% of all premiums written or assumed by ERIE." Compl. Ex. A. Accordingly, Plaintiffs make no breach of contract claim in this Complaint, instead limiting themselves to a single claim that, notwithstanding its contractual entitlement, Indemnity nevertheless violated some fiduciary duty by taking the contractually provided Management Fee.

4. Plaintiffs' own pleading demonstrates that this is an interstate case of national importance that falls in the heartland of CAFA removal jurisdiction. *See Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595 (2013). The Complaint affirmatively pleads facts establishing that, for purposes of this action, there is no distinction between Pennsylvania resident subscribers and subscribers from the other 12 jurisdictions in which Indemnity conducts business on behalf of Exchange. Indeed, throughout the Complaint, Plaintiffs repeatedly lump all subscribers in every geographic location together for purposes of their claim. And, as their own allegations confirm, all the central facts they plead clearly apply to *all* subscribers, regardless of where they reside or the particular state of their citizenship. *See infra* ¶¶ 29-37; Compl. ¶¶ 30-31, 33, 38, 44, 63.

5. Yet, after pleading a claim that is interstate in nature, Plaintiffs then attempt to artificially limit their proposed class to subscribers "residing in Pennsylvania." And that contrived class definition is driven by a transparent and impermissible effort to

evade federal jurisdiction under CAFA. But, Supreme Court precedent and a number of lower court decisions prohibit precisely the sort of pleading gamesmanship that Plaintiffs have undertaken in their effort to evade this Court's jurisdiction. *See, e.g.*, *Standard Fire*, 568 U.S. at 595; *Freeman v. Blue Ridge Paper Prods., Inc.*, 551 F.3d 405, 406-07 (6th Cir. 2008); *Hoffman v. Nordic Nats., Inc.*, No. 14-3291 (SWD)(SCM), 2015 WL 179539, at *7 (D.N.J. Jan. 14, 2015), *aff'd*, 837 F.3d 272 (3d Cir. 2016).

6. The impetus for this pleading artifice is clear: Federal courts have repeatedly rejected previous claims challenging Indemnity's Management Fees. And, in each instance, those rejected claims were pleaded as a putative class of *all* subscribers across *all* jurisdictions in which Exchange has subscribers. None of those complaints survived the pleading stage. It is that same fate that Plaintiffs here are so desperately trying to avoid by attempting to take their claim to a new forum.

7. Moreover, Plaintiffs do not allege that the "residents" composing their putative class consist only of "citizens" of Pennsylvania. By defining their class based only on residency, as opposed to statutorily required citizenship, Plaintiffs actually have ensured that the minimal diversity required under CAFA exists in this case. Unsurprisingly, a number of the subscribers who are alleged to compose Plaintiffs' Pennsylvania-residents-only putative class are "citizens" of other states, which thereby satisfies CAFA's minimal diversity requirement. *See infra* Section III. The Complaint also makes clear that the amount in controversy totals in the tens (if not

hundreds) of millions of dollars—which is far more than the $5 million minimum required under CAFA. And, finally, the putative class is much larger than 100 people, whether defined to include only Pennsylvania resident subscribers or all subscribers.

8. In short, Plaintiffs cannot evade federal jurisdiction under CAFA by limiting their class to Pennsylvania "residents" when they do not even attempt to plead any facts that establish a legitimate reason for the transparent and artificial carving up of the putative class pleaded in all the prior cases that have been brought challenging Indemnity's Management Fees. And, in any event, the putative class that Plaintiffs plead as containing all "residents" of Pennsylvania necessarily contains "citizens" of other states and thus also serves to satisfy the minimal diversity and other requirements under CAFA for removal. Therefore, removal in this case is proper.

FACTUAL BACKGROUND

9. Erie Insurance Group ("Erie") is a reciprocal insurance business consisting of two key entities. The first entity is Exchange. Exchange is the insuring entity, which is formed when the Erie policyholders, known as "subscribers"—which now total more than 2 million subscribers across 12 states and the District of Columbia—agree to pool their risk by insuring each other through their exchange of reciprocal insurance obligations. Hence, Exchange is the legal entity that issues the subscribers' insurance policies.

10. The second key legal entity is Indemnity. Indemnity is not an insuring entity, but rather is a

public corporation that manages Exchange's insurance function for the subscribers. It is appointed by each subscriber individually to perform that function because Exchange does not have (and is not required by law to have) any directors, officers, or employees. Compl. ¶¶ 28-29; Erie Indemnity Co. 2020 Form 10-K at 3 (Feb. 25, 2021) (hereinafter, "2020 Form 10-K").[1]

11. The foundational document governing Erie's reciprocal arrangement, and the relationship and rights between and among Indemnity, Exchange, and the subscribers, is the Subscriber's Agreement. The Subscriber's Agreement is a single page, identical agreement signed individually by ***every single*** subscriber from all 12 states and the District of Columbia, regardless of where they are domiciled or reside. The Subscriber's Agreement: (i) creates Exchange through the subscribers' exchange of identical reciprocal insurance obligations; (ii) appoints Indemnity to serve as the management entity on an undifferentiated geographic basis for all of the subscribers; (iii) sets out the responsibilities placed on Indemnity to be met in managing Exchange; and (iv) specifies Indemnity's compensation for providing its services managing Exchange and Erie's insurance business. Compl. ¶¶ 5-6, 30-32; Compl. Ex. A; 2020 Form 10-K at 3.

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[1] Plaintiffs rely upon Indemnity's 2020 Form 10-K in their Complaint. *See, e.g.*, Compl. ¶¶ 45, 60. The Third Circuit has held that, in removal proceedings, a district court may take judicial notice of documents "integral to or explicitly relied upon in the complaint," as well as SEC filings. *In re NAHC, Inc. Sec. Litig.*, 306 F.3d 1314, 1331 (3d Cir. 2002) (quoting *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997)).

12. Subscribers pay premiums, and "[t]hese premiums, along with investment income, are the major sources of cash that support the operations of the Exchange." 2020 Form 10-K at 35. The surplus in Exchange that is available to pay claims is "determined under statutory accounting principles, [and] was $10.7 billion and $9.5 billion at December 31, 2020 and 2019, respectively." *Id.*

13. Pursuant to the Subscriber's Agreement, each subscriber expressly agreed that Indemnity could "retain up to 25% of all premiums written or assumed by [Erie Insurance Exchange]" as "compensation" for its management services, *i.e.*, the Management Fee. *See* Compl. Ex. A; *see also* Compl. ¶¶ 7-8, 38.

14. There is one Management Fee, and it is set once a year on a nationwide basis. "The process of setting the management fee includes the evaluation of current year operating results compared to both prior year and industry estimated results for both Indemnity and Exchange, as well as consideration of several factors for both entities including: their relative financial strength and capital position; projected revenue, expense and earnings for the subsequent year; future capital needs; as well as competitive position." 2020 Form 10-K at 3. There is no geographic component involved in the process of setting the Management Fee.

15. Thus, whether Indemnity takes a 0% or 25% Management Fee, geographic factors do not impact the setting of the Management Fee at any point. Consequently, the Management Fee is not dependent in any way on the subscriber's location or by the payment of premiums by any specific subscriber. The

Management Fee, to the extent it can be argued to have any impact at all on an individual subscriber, is the same for all subscribers. Plaintiffs do not, and cannot, allege otherwise.

16. In fact, Plaintiffs allege that the practice which they challenge here has been going on for many years, explaining that while their action "is limited to the breaches occurring within two years of the filing of this Complaint and through trial," the relevant conduct "extends back even further." Compl. at 10 n.1. So, this Complaint attacks the very same practices that were the subject of the complaints previously brought on a nationwide basis and dismissed with prejudice in federal court. *See infra* ¶¶ 42-46.

17. Indemnity has always honored the compensation cap to which it and every single subscriber agreed. It has never retained more than the 25% Management Fee that the Subscriber's Agreement expressly authorizes it to retain. Once again, Plaintiffs do not, and cannot, allege otherwise.

18. Over the past ten years, Exchange's surplus—the amount available to pay claims and claim-related expenses—has more than doubled. 2020 Erie Indemnity Company Annual Rep. at 5, *available at https://www.erieinsurance.com/investor/financials-and-reports/annual-reports*. As reported in Erie's annual reports, in 2020, the surplus grew to $10.7 billion, an increase of nearly $1.3 billion over the prior year, which, according to Erie, "reflect[ed] a disciplined approach to underwriting and a sharpened focus on investments in a year when surplus was also used to provide a policyholder dividend to [Erie] automobile

customers." 2020 Erie Indemnity Company Annual Rep. at 5, 10, *available at https://www.erieinsurance.com/investor/financials-and-reports/annual-reports*. In 2016, by contrast, the surplus was $7.7 billion, 2016 Erie Indemnity Company Annual Rep. at 4, and in 2009, it was $4.8 billion, 2009 Erie Indemnity Company Annual Rep. at 5. Given the annual upward trajectory of Erie's surplus—even during a global pandemic—there is no reason to believe that the current surplus is insufficient to cover claims filed, to pay any appropriate dividend, or to fund any necessary expense for the benefit of the subscribers.

19. For 2020 and 2021, Indemnity set the Management Fee at 25%. Compl. ¶¶ 70, 76. In 2020, the total Management Fee—for all subscribers across all states and the District of Columbia—was $1.9 billion. *Id.* ¶ 71; *see also id.* ¶ 14.

20. As noted above, Plaintiffs do not claim that Indemnity breached the Subscriber's Agreement's 25% Management Fee cap. Instead, Plaintiffs complain in only conclusory fashion that Indemnity's taking of the Management Fee expressly agreed to by each subscriber in the Subscriber's Agreement "is preventing the same funds from being available to (a) pay dividends to the Policyholders, (b) fund the loss reserves at Exchange and (c) otherwise be utilized for the Policyholders' benefit." *Id.* ¶ 89.

21. Plaintiffs make this claim notwithstanding the fact, as noted above, that Exchange's surplus has expanded dramatically over the recent past, and despite Plaintiffs' failure to allege a single fact that even begins to remotely articulate any reasonable basis

to believe that the ability of Exchange to meet its responsibilities to the subscribers is in any danger at all, let alone as a result of the specific level of Management Fee.

22. Moreover, the Subscriber's Agreement specifically states that it is only *after* Indemnity's Management Fee is paid from the premiums received that the "*rest of the premiums* will be used for losses, loss adjustment expenses, . . . establishment of reserves and surplus, . . . dividends and other purposes [Indemnity] decide[s] are to the advantage of Subscribers." Compl. Ex. A. In other words, every subscriber has agreed, in direct conflict with what Plaintiffs now allege, that dividends, loss reserves, and other items beneficial to subscribers must come out of the premium dollars left over *after*, not existing *before*, the Management Fee is paid.

23. Plaintiffs' claim is not in any way specific to Pennsylvania subscribers. Instead, based on their own allegations, the allegations of putative subscriber classes in the prior federal Management Fee litigation, and the inherent nature of the Management Fee set by Indemnity, Plaintiffs' claim and any resulting remedy would apply equally to subscribers who are citizens in the 12 states and the District of Columbia where Exchange issues policies.

GROUNDS FOR REMOVAL

24. Plaintiffs filed a class action within the meaning of 28 U.S.C. § 1332(d)(1)(B). Compl. ¶¶ 92-105.

25. The Court has original jurisdiction over this action pursuant to CAFA because: this action is

interstate in nature, at least one member of the putative plaintiff class is diverse from Indemnity, and the amount-in-controversy and class size requirements are satisfied. 28 U.S.C. § 1332(d)(2). Plaintiffs, however, still attempt to evade the jurisdiction of this Court.

I. CAFA's Jurisdictional Requirements Are Satisfied Based On The Allegations In Plaintiffs' Complaint.

26. The United States Supreme Court has held that CAFA's "primary objective [is] ensuring '[f]ederal court consideration of interstate cases of national importance.'" *Standard Fire*, 568 U.S. at 595 (quoting Class Action Fairness Act of 2005, Pub.L. No. 109-2, § 2(b)(2), 119 Stat. 4). This case falls squarely within that objective.

27. Exchange has over two million subscribers in the District of Columbia and 12 states: Illinois, Indiana, Kentucky, Maryland, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin. *About Erie Insurance*, Erie Insurance, https://www.erieinsurance.com/news-room/fact-sheet (last visited Oct. 20, 2021). Pursuant to their membership in Exchange, subscribers enter into contracts for insurance with Exchange throughout that geographic territory.

28. Regardless of Plaintiffs' effort to artificially limit the scope of the putative class, taking the Complaint's allegations as a whole, *see Kedra v. Schroeter*, 876 F.3d 424, 441 (3d Cir. 2016), and focusing on the substance of Plaintiffs' allegations rather than form, *Standard*

Fire, 568 U.S. at 595 (explaining CAFA should not "exalt form over substance"), this action clearly pleads an interstate case of national importance.

29. Plaintiffs here do not allege that Indemnity has ever treated, or even thought about, subscribers who are citizens of Pennsylvania any differently from subscribers in other states or the District of Columbia in the setting of the Management Fee. To the contrary, the Complaint alleges that Indemnity's duties to subscribers are owed and fulfilled on a geographically undifferentiated basis, and that subscribers' relationships with Indemnity actually operate on a geographically undifferentiated basis. Specifically, the Complaint expressly alleges:

(a) All subscribers "executed materially identical Subscriber's Agreements" when they became policyholders of Exchange, Compl. ¶ 30;

(b) All subscribers "designated Indemnity to be their agent and attorney-in-fact to manage the business of Exchange on their behalf," *id.* ¶ 31;

(c) Indemnity is a fiduciary for all subscribers, *id.* ¶ 33;

(d) Indemnity owes fiduciary duties to all subscribers "to avoid conflicts of interest and to act in the best interests of Policyholders," including with respect to setting the Management Fee and disclosing the basis for the Management Fee rate, *id.* ¶ 63;

(e) Indemnity takes a percentage of annual premiums paid by all subscribers as a Management Fee, *id.* ¶ 38; and

(f) Indemnity's annual decision in setting the Management Fee impacts all subscribers, *id.* ¶ 44.

30. And, critically, Paragraph 3 of the Subscriber's Agreement, which is identical in every Subscriber's Agreement and which authorizes Indemnity to take up to a 25% Management Fee, makes *no* reference to the geographic location of the subscriber and thus does not differentiate based on the subscriber's location. Compl. Ex. A. Indemnity's authority to retain the Management Fee thus applies equally to all subscribers regardless of geographic location. Apparently recognizing that fact, Plaintiffs affirmatively allege that the Management Fee is drawn from "*all premiums* written or assumed by ERIE." *Id.* (emphasis added).

31. Exchange's surplus is the total amount of money that comes from all subscribers across all jurisdictions and is available to pay claims, declare dividends, and otherwise do the things that are in the best interests of the subscribers. Thus, the surplus is undifferentiated by particular subscribers or their respective geographic locations.

32. Indeed, because no geographic distinction is pleaded (or exists) with respect to how the Management Fee is set or implemented, Plaintiffs do not even attempt to isolate or distinguish Pennsylvania subscribers in their allegations. Instead, Plaintiffs identify themselves and the putative class as

exemplary "Policyholders," who represent all policyholders or subscribers of Exchange. *See* Compl. ¶ 4 ("Plaintiffs and the putative class members in this lawsuit are policyholders of Exchange ('the Policyholders').").

33. Therefore, when it comes to the Management Fee, there is no difference between subscribers who are citizens or residents of Pennsylvania and subscribers who are citizens or residents of any other jurisdiction in which Erie operates. Plaintiffs define their putative class as subscribers who are "similarly situated policyholders of Erie." Compl. at 1. That governing definition of the class, and the allegations of their own Complaint which underlie it, establish that Plaintiffs plead an interstate, rather than a Pennsylvania-only case.

34. The interstate nature of the relief sought by Plaintiffs further confirms that the suit is interstate in nature. Plaintiffs' requests for relief confirm that their effort to restrict the putative class definition to Pennsylvania residents is not genuine. They request a ruling "(1) [f]inding that Indemnity has breached its fiduciary duties; (2) [a]warding damages in an amount to be determined at trial; and (3) [a]warding such other relief, including disgorgement of profits or other injunctive relief, that this Court deems just and proper." Compl. at 20. They do not limit those requests geographically and it would be impossible for them to do so.

35. Plaintiffs' refusal to plead any basis for any geographic differentiation for their claims flows directly from the undisputed fact that only one decision

is made each year by Indemnity in setting its Management Fee. That unitary decision affects all subscribers equally, if at all, regardless of where they reside.

36. Plaintiffs' request for a declaratory judgment and injunction accordingly attacks that singular, universally applicable decision: Any finding or declaration that Indemnity breached its fiduciary duties by taking 25% as its Management Fee is necessarily a finding or declaration that Indemnity breached its fiduciary duties to *all subscribers regardless of location* by taking that fee from the undifferentiated pool of premiums paid by *all subscribers regardless of location*. And any declaration or injunctive relief against Indemnity's Management Fee for 2020, 2021, or going forward, would necessarily apply to the single rate set for the Management Fee applicable to *all subscribers regardless of location.*

37. As a result, Plaintiffs' requested relief would necessarily impact the Management Fee as a whole, which comes from the premiums paid over the last two years by *all subscribers*—not just those residing in Pennsylvania—along with all money held in Exchange for loss reserves, expenses, or dividends—which is a nationwide pool that is not segregated by jurisdiction. Similarly, injunctive relief concerning the setting of the Management Fee necessarily would affect all subscribers to the same degree, including those who are citizens of the other 12 jurisdictions in which Exchange issues policies.

38. When fairly read, the allegations of Plaintiffs' own complaint, including the relief sought, establish a

multi-state, rather than a Pennsylvania-only claim targeting many millions of dollars. Plaintiffs' allegations clearly set out an interstate case of national importance, which necessarily satisfies CAFA's minimal diversity requirement for removal. Therefore, on the basis of Plaintiffs' pleading alone, the requirements of CAFA have been met.

II. CAFA Jurisdiction Also Exists Because Plaintiffs Have Improperly Sought To Evade Federal Jurisdiction By Asserting An Artificial And Conclusory Class Definition.

39. In *Standard Fire*, 568 U.S. at 595, the Supreme Court held that parties cannot "exalt form over substance" and rejected the plaintiff's effort to ignore the underlying reality of its claims by stipulating to an artificially low damages cap on behalf of the putative class in order to contravene CAFA's amount in controversy requirement. Because it was clear to the Court in its reading of the complaint that the claims would exceed CAFA's amount in controversy requirement, the Court held that the plaintiffs' evasion tactic could not serve to prevent removal.

40. As noted above, Plaintiffs' own allegations establish that no geographic element factors into the setting of the Management Fee. And, in light of that, their utter failure to plead any reasonable basis to justify a Pennsylvania-only class of subscribers represents the same type of poorly disguised attempt to evade jurisdiction rejected in *Standard Fire*.

41. The transparent nature of Plaintiffs' attempt to evade federal jurisdiction is highlighted by the fact that prior federal complaints challenging the Management Fee all alleged a class definition that directly contradicts Plaintiffs' effort to artificially limit their class to Pennsylvania residents.

42. Plaintiffs' Complaint is far from the first of its kind. Since 2012, Indemnity has faced several complaints in federal court based on the same purported wrong alleged here—*i.e.*, that Indemnity took an excessive Management Fee. In each instance in which those complaints were pleaded as a class action, they were pleaded as a nationwide putative class that included ***all*** subscribers across ***all*** states and the District of Columbia where there are subscribers. The class pleaded by subscriber-plaintiffs has never before been limited to any specific geographic location.

43. Not one of those prior federal court complaints survived the pleading stage.

44. First, in *Beltz v Stover, et al.*, No. 1:13-cv-37 (W.D. Pa.) ("*Beltz I*"), the plaintiffs pleaded a putative class action challenging Indemnity's Management Fee and service charges as being in excess of the 25% compensation cap set in the Subscriber's Agreement. The three named plaintiffs, who allegedly were "residing in Allegheny County and Fayette County, Pennsylvania,"[2] asserted that, since 2007, Indemnity had taken the maximum 25% Management Fee under

[2] Plaintiffs here also reside in Allegheny County and Fayette County. Compl. ¶¶ 19-22.

the Subscriber's Agreement in violation of fiduciary duties owed to the subscribers. *Beltz I* Compl. ¶¶ 3, 35-36 (Feb. 6, 2013). In doing so, *Beltz I* invoked CAFA and alleged that "Exchange currently has more than two million Policyholders in at least ten different states (Illinois, Indiana, Maryland, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and Wisconsin) and the District of Columbia," *id.* ¶¶ 25-26, and sought to represent, without geographic limitation, "*all Policyholders of Exchange as of the date of the filing of [the] complaint*, as a class," *id.* ¶¶ 48-49 (emphasis added).

45. Next, in *Beltz v. Erie Indemnity Co.*, No. 1:16-cv-179 (W.D. Pa.) ("*Beltz II*"), the same three subscribers from *Beltz I* brought another class action against Indemnity and its directors, again challenging Indemnity's retention of service charges as a violation of the 25% compensation cap of the Subscriber's Agreement and claiming that Indemnity's Management Fee was "excessive"—despite acknowledging the fact that the fees had always been at or beneath what they admitted to be the contractually authorized 25% cap. *Beltz II* Compl. ¶ 84 (July 8, 2016). Like *Beltz I*, the plaintiffs in *Beltz II* invoked CAFA jurisdiction on behalf of a putative class of ***"[a]ll current and former Subscribers of Erie Insurance Exchange between September 1, 1997 and the present***" on an undifferentiated geographic basis. *Id.* ¶¶ 8, 89 (emphasis added). And the *Beltz II* plaintiffs further affirmatively pleaded that a class action was necessary to avoid "a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other

members not parties to the adjudications or substantially impair or impede their ability to protect their interests," and that "Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole." *Id.* ¶¶ 100-01.

46. Finally, the most recent action, *Ritz v. Erie Indemnity Co.*, No. 1:17-cv-340 (W.D. Pa.), involved nearly identical allegations to those here, brought by another Erie subscriber who alleged she was a Pennsylvania citizen, against Indemnity and its directors. *Ritz* Compl. ¶ 10 (Dec. 28, 2017). Specifically, Ms. Ritz alleged, among other things, that Indemnity's taking of a 25% Management Fee breached Indemnity's fiduciary duties because it was excessive, despite the fact it never exceeded the 25% cap set out in the Subscriber's Agreement. *See generally Ritz* Compl. The *Ritz* plaintiff also sought, among other things: (i) a declaration that the Management Fee was excessive, (ii) compensatory and punitive damages, and (iii) an injunction prohibiting Indemnity and the directors "from continuing to retain excessive Management Fees." *Id.* at 40. Ms. Ritz sought to represent a putative class of "[a]ll current and former Subscribers of Erie Insurance Exchange during the applicable statute of limitations." *Id.* ¶ 78. And, she further pleaded that a class action pursuant to Rule 23 was necessary to avoid inconsistent, varying adjudications and incompatible standards because such adjudications "would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications." *Id.* ¶ 89.

47. Plaintiffs' legal theory and relief sought here is indistinguishable from the fiduciary duty claims made by their fellow subscribers in those prior cases. Indeed, the Complaint explicitly alleges that the challenged conduct "with respect to the Management Fee extends back even further," while purporting to limit Plaintiffs' claim to events "occurring within two years of the filing th[e] Complaint and through trial." Compl. at 10 n.1. Thus, all of these prior plaintiffs not only affirmatively maintained that there is no geographically relevant difference amongst subscribers for the purpose of challenging the setting of the Management Fee, but also that to proceed on anything other than a national basis would necessarily affect all subscribers in every jurisdiction where Exchange policies exist. Plaintiffs make no attempt and have no valid basis to argue otherwise here.

48. In considering the legal significance of these prior cases, their alleged class definitions, and the ultimate dismissal of those matters, it is vital to remember that Plaintiffs here, as subscribers, are in *privity* with the plaintiffs in those earlier actions.[3]

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[3] When Chief Magistrate Judge Eddy dismissed the *Ritz* complaint with prejudice, she concluded that all subscribers are in privity with each other because they are "cosigners to the same Subscriber's Agreement at issue." *Ritz v. Erie Indem. Co.*, No. 1:17-CV-00340-CRE, 2019 WL 438086, at *6 (W.D. Pa. Feb. 4, 2019), *recons. denied*, No. 1:17-CV-00340-CRE, 2019 WL 2090511 (W.D. Pa. May 13, 2019). She held that: "It is undisputed that the Subscriber's Agreement appoints Indemnity, through its Board, as the Exchange's attorney-in-fact, and this Subscriber's Agreement creates the reciprocal insurance exchange. In other words, the *Beltz II* plaintiffs and Ritz are co-beneficiaries of and cosignatories

Indeed, they were all subscribers at the time that the earlier actions were litigated. Plaintiff Stephenson has had active policies since May 26, 2006, and therefore was a subscriber at the time that all three earlier actions were litigated. Plaintiff Barnett has had active policies since August 11, 2014, and so was a subscriber at the time of both the *Beltz II* and *Ritz* actions. And Plaintiff Rubel began coverage on February 20, 2015, which likewise made her a subscriber at the time of both the *Beltz II* and *Ritz* actions. In addition, the former *Beltz* and *Ritz* plaintiffs are all still Erie subscribers today, and therefore their time as subscribers—and as co-beneficiaries of and cosignatories to the Subscriber's Agreement—overlaps with the current Plaintiffs. As a result, Plaintiffs here are in privity with the *Beltz* and *Ritz* plaintiffs, just as the *Ritz* plaintiff was in privity with the *Beltz* plaintiffs, and importantly, were part of the nationwide classes alleged in those actions.[4]

49. By limiting their proposed class to Pennsylvania residents, Plaintiffs attempt to carve out a subset of subscribers that is fundamentally at odds with the content of their own pleading and the class asserted in

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to the same contract that obligates Indemnity to provide the management services for the Exchange, and the nature of this relationship creates privity for claim preclusion purposes." *Id.* This holding was never appealed.

[4] To be clear, Indemnity does not mean to suggest that any such class should be certified, but rather that the class definition pleaded in the *Beltz* and *Ritz* cases only further confirms that the artificially limited class that Plaintiffs plead here is an improper attempt to evade CAFA jurisdiction.

prior actions by their fellow subscribers with whom they are in privity. Plaintiffs do not and cannot articulate any reasonable basis for distinguishing their artificially constructed class definition from the class definition of all the subscribers with whom they are in privity and whose actions challenging the Management Fee preceded theirs.

50. Plaintiffs' transparent attempt to pursue this "interstate case of national importance" while evading CAFA jurisdiction should not be countenanced. This lawsuit challenging the setting of the Management Fee, like the cases before it, belongs in federal court.

III. In All Events, Plaintiffs' Attempt To Evade CAFA Jurisdiction Fails Because CAFA Is Based On Citizenship And Plaintiffs Plead A Class Based On Residency.

51. Plaintiffs' improper effort to artificially limit its class to Pennsylvania "residents" fails to defeat CAFA jurisdiction for a separate and independent reason: Diversity jurisdiction is determined based on citizenship not on residency, and, unsurprisingly, there are "residents" in Plaintiffs' putative Pennsylvania-only class who are "citizens" of different states. Thus, despite their attempt to artificially limit their class, the minimal diversity required for federal jurisdiction under CAFA is still met in this case because of the manner in which Plaintiffs, themselves, defined their intended class.

52. Indemnity is a corporation organized under the laws of Pennsylvania with its headquarters and principal place of business in Erie, Pennsylvania,

meaning it is a Pennsylvania citizen for diversity jurisdiction purposes. Compl. ¶ 24.

53. If any member of Plaintiffs' proposed class is a citizen of a state other than Pennsylvania, there is minimal diversity for purposes of CAFA. 28 U.S.C. § 1332(d)(2)(A). To determine whether minimal diversity exists, the Court considers the citizenship of *all* putative class members, *both named and unnamed*, who fall within the definition of the proposed class. *Id.* § 1332(d)(1)(D) (emphasis added).

54. Plaintiffs plead a class of "Pennsylvania *residents*," not citizens. Compl. ¶ 92 (emphasis added). Plaintiffs further plead that, to their knowledge, there are no other cases in which a "Pennsylvania plaintiff seeks to represent a class of Pennsylvania *residents* based on the conduct alleged in this Complaint." *Id.* ¶ 102 (emphasis added). *See also id.* at 1 (pleading "on behalf of themselves and all other similarly situated policyholders of Erie Insurance Exchange ('Exchange') *residing* in Pennsylvania" (emphasis added)).

55. The distinction between residency and citizenship is a critical one for federal diversity jurisdiction. In the context of jurisdiction, "the term 'citizen' in 28 U.S.C. § 1332 has long meant something different from 'resident.'" *Hargett v. RevClaims, LLC*, 854 F.3d 962, 965 (8th Cir. 2017); *Steigleder v. McQuesten*, 198 U.S. 141, 143 (1905) ("[R]esidence and citizenship [are] wholly different things."). "'Citizenship' requires permanence. Residency is a more fluid concept." *Hargett*, 854 F.3d at 965 (internal citations omitted). Diversity jurisdiction thus turns on citizenship, not mere residency.

56. Logic necessarily dictates that not all residents of Pennsylvania are citizens of Pennsylvania. *See, e.g.*, *Blockbuster, Inc. v. Galeno*, 472 F.3d 53, 59 (2d Cir. 2006) (holding minimal diversity satisfied where Blockbuster was a Texas and Delaware citizen, the plaintiff was a New York resident, and the putative class was comprised of thousands of New York customers because "it seems plain to us that Blockbuster is able to meet its burden of showing there is a reasonable probability that at least one of these class members is a citizen of New York and thus is 'a citizen of a State different from . . . defendant'" (quoting 28 U.S.C. § 1332(d)(2)(A))). There are at least hundreds of thousands of Erie policies in effect in Pennsylvania. Therefore, as in the Second Circuit's *Blockbuster* decision, because Plaintiffs here allege that there are "thousands" of members in their proposed class, "it seems plain" that Indemnity will be able to "meet its burden of showing there is a reasonable probability that at least one of these class members is a citizen . . . of a state different from [Indemnity]," here, Pennsylvania. *Id.* On this basis alone, Indemnity has met its burden of showing that the minimal diversity requirement is satisfied.

57. Additionally, even putting aside the sheer number of subscribers residing in Pennsylvania and the virtual certainty that some of those subscribers are citizens of other states, additional strong evidence establishes that the minimal diversity requirement has been met in this case. Courts routinely recognize that certain categories of residents are especially likely not to be citizens of the state in which they currently live. For instance, out-of-state students are generally

considered temporary residents who are not domiciled in the state in which they study. *See, e.g.*, Wright & Miller, 13E Fed. Prac. & Proc. Juris. § 3619 (3d ed.); *Nytes v. Trustify, Inc.*, 297 F. Supp. 3d 191 (D.D.C. 2018) (finding a DC college student that worked in DC and started a business there was still domiciled in California); *Harrell v. Kepreos*, No.Civ.04-3082-CO, 2005 WL 730639 (D. Or. Mar. 30, 2005) (finding plaintiff domiciled in Oregon despite attending school and working as a caregiver in California). Similarly, residents who are in the military are presumed to retain the domicile of their permanent residence. *See, e.g.*, Wright & Miller, 13E Fed. Prac. & Proc. Juris. § 3620; *Melendez-Garcia v. Sanchez*, 629 F.3d 25, 41 (1st Cir. 2010) ("Service personnel are presumed not to acquire a new domicile when they are stationed in a place pursuant to orders; they retain the domicile they had at the time of entry into the services." (citation omitted)); *Turek v. Lane*, 317 F. Supp. 349, 350 (E.D. Pa. 1970) ("The domicile of a serviceman at the time of enlistment is presumed not to change, and evidence of an intention to change must be 'clear and unequivocal.'").

58. Moreover, basic subscriber data demonstrates that many subscribers who are residents of Pennsylvania are citizens of other states. Exchange has over 13,000 personal line policies (which includes automobile, homeowners, tenant, and umbrella policies) insuring risks in Pennsylvania where the subscribers maintain out-of-state mailing addresses. And more than 1,000 of these policies have mailing addresses in Florida, which is obviously a warm-weather retirement location where many people

establish citizenship to take advantage of, among other things, the favorable tax environment.

59. Considering automobile policies alone, there are over 1,500 personal automobile policies insuring risks in Pennsylvania where the insured has an out-of-state driver's license—which is alone sufficient to reach the conclusion that at least some of these Pennsylvania resident subscribers are out-of-state citizens.

60. To provide just two individual examples that illustrate the point: One subscriber is an elderly individual who has automobile, umbrella, and tenant policies in Pennsylvania, but has a Florida driver's license and a home in that state—which suggests that the subscriber maintains a residence in Pennsylvania but has established citizenship in Florida. Another subscriber has a Pennsylvania tenant policy and a Pennsylvania automobile policy, but also has a Virginia homeowners policy, a Virginia automobile policy, and a Virginia driver's license. Taken together, these facts indicate that the subscriber is a resident in Pennsylvania (per the tenant and automobile policies), while retaining citizenship in Virginia (per the driver's license, homeowners policy, and automobile policy). Thus, even within Plaintiffs' artificially limited definition, their putative class clearly includes at least one member who is a "resident" of Pennsylvania but a "citizen" of another state.

61. Additionally, the putative class includes commercial entities that are "residents" of Pennsylvania but "citizens" of other states. Indeed, there are over 2,000 commercial policies insuring risks in Pennsylvania that identify an out-of-state mailing

address—many of which insure real property in Pennsylvania. For example, one subscriber business is both incorporated and headquartered in Virginia, which makes it a citizen of that state, but it maintains facilities in State College, York, Harrisburg, Pittsburgh, Wilkes Barre, Uniontown, Greensburg, Lancaster, and Fairless Hills, Pennsylvania. Again, by themselves, these facts establish that at least some Pennsylvania resident subscribers are out-of-state citizens.

62. These facts and examples are by no means exhaustive or comprehensive. But they illustrate the unavoidable truth that at least one putative class member—out of the hundreds of thousands of subscribers in the putative class—is a citizen of a state other than Pennsylvania, which is all that is required to satisfy CAFA's minimal diversity requirement.

63. In the face of this common-sense reality, Plaintiffs have made no allegations about the citizenship of the members of their proposed resident class. And, and as described above, Plaintiffs do not allege that their proposed class, defined in terms of residents, excludes citizens of other states who are only temporarily "residing" in Pennsylvania. This failure to plead, coupled with the controlling legal presumptions applicable here and the facts set out above, is more than enough to establish that, even taking Plaintiffs' artificially constrained class definition on its face, this case still meets CAFA's minimal diversity requirement.

IV. The Remaining Jurisdictional Prerequisites Are Satisfied.

64. Removal is proper because the Complaint establishes that Plaintiffs plead an amount in controversy that exceeds $5,000,000. *See* 28 U.S.C. § 1332(d)(2).

65. Plaintiffs assert that Indemnity's taking of a 25% Management Fee in 2020 and 2021 was excessive and, among other things, seek disgorgement of all improperly taken amounts. In 2020 alone, the Management Fee was $1.9 billion. Compl. ¶ 71. Thus, the relief sought here clearly exceeds $5,000,000.

66. Plaintiffs also seek unspecified forward-looking injunctive relief that—whether coupled with disgorgement of the allegedly excessive fee as discussed above or on its own—obviously puts more than $5,000,000 in controversy in this case.

67. Removal is also proper because the proposed plaintiff class is greater than 100 persons and therefore exceeds CAFA's minimum number of class members. 28 U.S.C. § 1332(d)(5). Plaintiffs allege that, even considering Pennsylvania residents alone, "on information and belief, the number [of class members] is in the thousands." Compl. ¶ 95.

68. And, properly considering the claim's potential impact on all subscribers, Exchange currently has over two million subscribers across all jurisdictions in which it offers insurance, which easily satisfies CAFA's numerosity requirement. *About Erie Insurance*, Erie Insurance, https://www.erieinsurance.com/news-room/fact-sheet (last visited Oct. 20, 2021).

V. CAFA's Removal Requirements Are Satisfied.

69. As required by 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty (30) days after Indemnity accepted service of the Complaint and filed its Acceptance of Service form in the Court of Common Pleas, Allegheny County, Pennsylvania. Ex. 1.

70. This Notice of Removal is being filed in the U.S. District Court for the Western District of Pennsylvania, the district court of the United States for the district and division within which the state court action is pending, as required by 28 U.S.C. §§ 1446(a) and 1441(a).

71. Pursuant to Local Rule 3 and this Complaint's relation to the *Beltz II* and *Ritz* matters, the matter should be docketed on the calendar of the Erie Division. W.D. Pa. L.R. 3, 40(D).

72. Indemnity has not filed a responsive pleading in the action that Plaintiffs commenced against Indemnity in the Court of Common Pleas, Allegheny County, Pennsylvania, and no other proceedings have transpired in that action.

73. Promptly after filing this Notice of Removal with the U.S. District Court for the Western District of Pennsylvania, a copy of this Notice of Removal, along with the Notice of Filing of Notice of Removal, will be filed with the Prothonotary of the Court of Common Pleas, Allegheny County, Pennsylvania, pursuant to 28 U.S.C. § 1446(d). A copy of both documents will also be served upon Plaintiffs' counsel of record. A copy of the

Notice of Filing of Notice of Removal is annexed hereto as Exhibit 2.

VI. Indemnity Reserves All Rights And Denies Liability.

74. Nothing in this Notice is intended or should be construed as an express or implied admission by Indemnity, including but not limited to an admission of any fact alleged by Plaintiffs; of the validity or merit of any of Plaintiffs' claims or allegations; that Plaintiffs are entitled to any of the relief they seek in the Complaint, or any other relief; or that the certification of any class of Erie subscribers, no matter how constituted, is appropriate under Federal Rule of Civil Procedure 23, the Pennsylvania state court rules related to class certification, or any other applicable law or rule. Further, nothing in this Notice is intended or should be construed as a limitation of any of Indemnity's rights, claims, remedies, or defenses in connection with this action. Indemnity expressly reserves all such rights and defenses.

WHEREFORE, this action, as a consequence of this Notice of Removal, should be deemed removed from Common Pleas Court of Allegheny County, Pennsylvania and placed on the docket of the Erie Division of this Court.

Dated: October 20, 2021

Respectfully submitted,

/s/ Neal R. Devlin
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Counsel for Defendant Erie Indemnity Company

**pro hac vice* applications forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October 2021, a true and correct copy of the foregoing Notice of Removal was served upon counsel of record for Plaintiffs via first class mail and email at the addresses below:

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Prothonotary, Court of Common Pleas, Allegheny County, Pennsylvania

Dated: October 20, 2021

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