

No. \_\_\_\_\_

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**In the**  
**Supreme Court of the United States**

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EXCLUSIVE GROUP HOLDINGS, INC.,

*Petitioner,*

v.

NATIONAL UNION FIRE INSURANCE COMPANY OF  
PITTSBURGH, PENNSYLVANIA,

*Respondent.*

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Eleventh Circuit**

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**PETITION FOR A WRIT OF CERTIORARI**

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February 20, 2025

SUPREME COURT PRESS



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## QUESTION PRESENTED

It is no accident that there can be monetary consequences pursuant to 28 U.S.C. § 1447(c) for unsuccessfully removing a case filed in state court to federal court. The “large objective” of deterring unnecessary federal court removal petitions is at play: “Assessing costs and fees on remand reduces the attractiveness of removal as a method for delaying litigation and imposing costs on the plaintiff.” *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 140 (2005).

In *Martin*, this Court balanced that “large objective” of deterring unnecessary removal petitions with other competing public policy rationale by eliminating an “automatic” operation of an award of attorneys’ fees and costs upon remand pursuant to 28 U.S.C. § 1447(c). *Martin*, 546 U.S. at 139. Nevertheless, the *Martin* court went on to hold that “[a]bsent unusual circumstances,” a district court “may award attorney’s fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal.” *Martin*, 546 U.S. at 141 (emphasis added).

The question presented to this Court is:

Whether, in order to fulfill the “large objective” of deterring unnecessary federal court removal petitions, district courts are required to expressly determine whether or not “unusual circumstances” exist in adjudicating motions for awards of attorneys’ fees and costs pursuant to 28 U.S.C. § 1447(c).

## **PARTIES TO THE PROCEEDINGS**

### **Petitioners and Plaintiff Below**

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- Exclusive Group Holdings, Inc.

### **Respondent and Defendant Below**

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- National Union Fire Insurance Co.  
of Pittsburgh Pennsylvania

### **Appellees Who Are Not Respondents Pursuant to Rule 12.6**

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- AIG Claims, Inc.
- American International Group, Inc.
- BBCG Claims Services
- J.S. Held LLC

Note: Petitioner will serve 3 copies of the petition to counsel for these appellees.

## **CORPORATE DISCLOSURE STATEMENT**

Petitioner Exclusive Group Holdings, Inc. has no parent company and no publicly held company owns 10 percent or more of its stock.

**TABLE OF CONTENTS**

	Page
QUESTION PRESENTED .....	i
PARTIES TO THE PROCEEDINGS .....	ii
CORPORATE DISCLOSURE STATEMENT .....	ii
TABLE OF AUTHORITIES .....	v
OPINIONS BELOW .....	1
JURISDICTION.....	1
STATUTORY PROVISIONS INVOLVED .....	1
STATEMENT OF THE CASE.....	2
A. Material Facts .....	2
a. Exclusive Group Sued NUFIC and “Doe Defendants” in Florida State Court ...	2
b. NUFIC Removed the Case to Federal Court .....	3
c. During the Federal Court Proceedings, Exclusive Group Discovered the Identity of Some of the “Doe Defendants,” Including, J.S. Held, LLC .....	3
d. Post-Remand, the District Court Denied Exclusive Group’s Motion for Attorneys’ Fees and Expenses.....	4
e. The Eleventh Circuit Court of Appeals Affirmed the District Court’s Decision to Deny Exclusive Group’s Motion for Attorneys’ Fees and Expenses.....	5
REASONS FOR GRANTING THE PETITION.....	6
CONCLUSION.....	10

**TABLE OF CONTENTS – Continued**

Page

**APPENDIX TABLE OF CONTENTS****OPINIONS AND ORDERS**

Opinion, U.S. Court of Appeals for the Eleventh Circuit (November 22, 2024) .....	1a
Order Denying Attorneys' Fees, U.S. District Court Middle District of Florida (January 30, 2024).....	11a
Opinion and Order, U.S. District Court Middle District of Florida (December 12, 2023) .....	14a
Order Granting Leave to Add Party and Remanding Case to State Court, U.S. District Court Middle District of Florida (July 31, 2023) .....	48a

**STATUTORY PROVISIONS**

Relevant Statutory Provision 28 U.S. Code § 1447.....	63a
--	-----

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>A Forever Recovery, Inc. v. Twp. of Pennfield</i> , 606 Fed. Appx. 279 (6th Cir. Apr. 2, 2015).....	7
<i>Acutex Inc. v. GM de Mexico S. de R.L. de C.V.</i> , No. 23-cv-12618, 2024 U.S. Dist. LEXIS 33753 (E.D. Mich. Feb. 26, 2024).....	8
<i>In re Farmers Ins. Exch. Claims Representatives' Overtime Pay Litig.</i> , MDL Docket No. 33-1439(B), 2008 U.S. Dist. LEXIS 91322 (D. Ore. Nov. 7, 2008).....	8
<i>Martin v. Franklin Cap. Corp.</i> , 546 U.S. 132 (2005) .....	i, 4, 6, 7, 9, 10
<i>Nessel ex rel. People v. Amerigas Partners, L.P.</i> , 421 F. Supp. 3d 507 (E.D. Mich. Sept. 30, 2019) .....	8
<i>R.D. Olson Constr., L.P. v. Am. Safety Indem. Co.</i> , No. CV 08-5013 CAS (FFMx), 2008 U.S. Dist. LEXIS 83102 (C.D. Cal. Sept. 23, 2008).....	9
<i>Westchester Cnty. v. Mylan Pharms., Inc.</i> , No. 23-CV-6096 (CS), 2025 U.S. Dist. LEXIS 21968 (S.D.N.Y. Feb. 3, 2025) .....	8
<i>Yazzie v. Celadon Trucking Servs.</i> , No. CV-09-8198-PHX-GMS, 2010 U.S. Dist. LEXIS 24223 (D. Ariz. Mar. 2, 2010) .....	8
<b>STATUTES</b>	
28 U.S.C. § 1254(1) .....	1
28 U.S.C. § 1447(c).....	i, 1, 4, 6, 7, 8, 9



## OPINIONS BELOW

Petitioner EXCLUSIVE GROUP HOLDINGS, INC. prays that a writ of certiorari issue to review the judgment of the U.S. Court of Appeals for the Eleventh Circuit in favor of Respondent National Union Fire Insurance Co. of Pittsburgh Pennsylvania (“NUFIC”) below: *Exclusive Group v. NUFIC*, No. 24-10593, 2024 U.S. App. LEXIS 29817, at \*1 (11th Cir. Nov. 22, 2024). (App.1a) This decision affirmed the denial of attorneys’ fees by the U.S. District Court Middle District of Florida, dated January 30, 2024. (App.11a).



## JURISDICTION

The Eleventh Circuit Court of Appeals entered its judgment on November 22, 2024. This Court’s jurisdiction is invoked under 28 U.S.C. § 1254(1).



## STATUTORY PROVISIONS INVOLVED

The following statutory provisions is reproduced in the appendix:

28 U.S.C. § 1447(c)

Procedure after removal generally  
(App.63a)



## STATEMENT OF THE CASE

### A. Material Facts

#### 1. Exclusive Group Sued NUFIC and “Doe Defendants” in Florida State Court

Exclusive Group is a domestic wholesaler of international telecommunications. (Doc. 92-1, ¶ 17).

Exclusive Group filed a Florida state court complaint against NUFIC and “Doe Defendants” regarding Exclusive Group’s insurance coverage for trade-credit insurance policies Exclusive Group purchased for its telecommunications customers. (Doc. 92-1, ¶¶ 1-5).

The claims against the “Doe Defendants” included claims that the Florida state court declare that the Doe Defendants engaged in tortious interference with Exclusive Group’s insurance contract. (Doc. 1-1, ¶ 132).

Exclusive Group alleged that the Doe Defendants were “believed to be related insurance or insurance service companies who handled Exclusive’s claims.” (Doc. 1-1, ¶ 8). Exclusive Group also alleged that the Doe Defendants “may be related to Defendant NUFIC and may be responsible for the claims management, adjustment of Exclusive’s trade claims, and, if so, were eventually responsible for wrongfully denying Exclusive’s trade claims under the policies of insurance issued by Defendant NUFIC.” (Doc. 1-1, ¶ 11). Exclusive Group further alleged that the Doe Defendants were also involved in, *inter alia*, “servicing, investigating, mishandling, processing, and wrongfully denying Exclusive’s claims.” (Doc. 1-1, at pgs. 28-30)

## **2. NUFIC Removed the Case to Federal Court**

NUFIC timely filed a removal petition from state court to federal court. (Doc. 1). Regarding the Doe Defendants, NUFIC stated in the removal petition, “[E]ven if the Doe defendants were properly identified and joined as defendants, there would still be complete diversity among the parties to the State Court Action,” (Doc. 1, at pg. 5, fn. 1)

## **3. During the Federal Court Proceedings, Exclusive Group Discovered the Identity of Some of the “Doe Defendants,” Including, J.S. Held, LLC**

While in federal court, Exclusive Group obtained documents in response to a subpoena to J.S. Held, LLC (“J.S. Held”) that identified J.S. Held as one of the “Doe Defendants.” (Doc. 92, at pg. 8 of 25) (Doc. 103, at pg. 6 of 15).

Upon discovering the existence, identity and actions of J.S. Held, Exclusive Group added J.S. Held as a defendant. (Doc. 92); (Doc. 103); (Doc. 110). (App.48a).

Because J.S. Held is a non-diverse defendant, the District Court approved the Magistrate Court’s recommendation to remand the case back to state court after allowing Exclusive Group to add J.S. Held as a defendant. (Doc. 103); (Doc. 110). (App.14a).

The District Court approved the Magistrate Court’s recommendation that J.S. Held was one of the contemplated “Doe Defendants” Exclusive Group originally named in the State Court complaint that was removed to Federal Court. (Doc. 103); (Doc. 110, at

pgs. 21-22). The Magistrate Court found, in pertinent part: “Exclusive Group also seems to have contemplated J.S. Held in its original complaint . . . This almost mirrors the current allegations against J.S. Held, suggesting J.S. Held was an anticipated defendant even before removal; Exclusive Group just needed the time to identify it.” (Doc. 103, pgs. 4 & 5 of 15) (App.52a)

#### **4. Post-Remand, the District Court Denied Exclusive Group’s Motion for Attorneys’ Fees and Expenses**

After Exclusive Group spent over \$150,000 in attorneys’ fees and expenses in Federal Court only to have the case remanded back to state court, where the case began, Exclusive Group moved for attorneys’ fees and expenses pursuant to 28 U.S.C. § 1447(c). (Doc. 111).

The District Court denied the motion for attorneys’ fees and expenses, finding that there was an “objectively reasonable basis for removal.” (Doc. 115, at pg. 3). However, despite Exclusive Group asking the District Court to consider the “unusual circumstances” of the case under *Martin*, (Doc. 111, at pgs. 10-11), the District Court did not analyze whether such unusual circumstances were present.

The District Court spent two paragraphs and 204 words of analysis and stopped at this conclusion: “The Court finds that an objectively reasonable basis for removal existed at the time, and that fees should be denied.” (Doc. 115, at pgs. 2, 3). (App.13a)

**5. The Eleventh Circuit Court of Appeals Affirmed the District Court’s Decision to Deny Exclusive Group’s Motion for Attorneys’ Fees and Expenses**

On appeal, the Eleventh Circuit affirmed the district court’s ruling denying Exclusive Group’s motion for attorneys’ fees and expenses.

The Eleventh Circuit found that at the time of removal, NUFIC had an objectively reasonable basis for seeking removal. (App.8a). The Eleventh Circuit also found that: “Given the absence of any evidence that NUFIC knew or should have known that adding J.S. Held would destroy diversity jurisdiction, we cannot say that the district court abused its discretion in refusing to award fees.” (App.9a). Finally, in response to Exclusive Group’s argument that the district court failed to state whether “unusual circumstances” were present, the Eleventh Circuit found that “the district court adequately explained its decision here.” (App.10a, fn.2).



## REASONS FOR GRANTING THE PETITION

Is Essential for this Court to Require District Courts to Expressly Determine Whether or Not “Unusual Circumstances” Exist in Adjudicating Motions for Awards of Attorneys’ fees and Costs Pursuant to 28 U.S.C. § 1447(c), In Order to Fully Deter Unnecessary Federal Court Removal Petitions

In eliminating an “automatic” award of attorneys’ fees and costs any time a case gets remanded back to state court, the *Martin* court balanced competing policy interests or, as the Court noted, “large objectives.” *Martin*, 546 U.S. at 136-141.

On the one hand, the *Martin* court recognized the policy interest of deterring unnecessary federal court removal petitions because:

“The process of removing a case to federal court and then having it remanded back to state court delays resolution of the case, imposes additional costs on both parties, and wastes judicial resources. Assessing costs and fees on remand reduces the attractiveness of removal as a method for delaying litigation and imposing costs on the plaintiff.” *Martin*, 546 U.S. at 140.

On the other hand, the *Martin* court also recognized the countervailing policy interest of “not undermining Congress’ basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied.” *Martin*, 546 U.S. at 140.

The balance the *Martin* court struck for these “large objectives,” was to, in general, not penalize litigants with awards of attorneys’ fees and costs where there is an “objectively reasonable” basis underlying the unsuccessful federal court removal petition. *Martin*, 546 U.S. at 141.

Nevertheless, the *Martin* court still recognized that there is a subset of unsuccessful federal court removal petitions that, despite having an “objectively reasonable basis” behind removal, carry such “unusual circumstances” that an award of attorneys’ fees and costs can still be appropriate. *Martin*, 546 U.S. at 141. Allowing for an award of attorneys’ fees and costs in a subset of cases with such “unusual circumstances” appropriately acknowledges the strong policy interest of deterring unsuccessful federal court removal petitions. *Compare, e.g., A Forever Recovery, Inc. v. Twp. of Pennfield*, 606 Fed. Appx. 279, 284 (6th Cir. Apr. 2, 2015) (“The district court did not abuse its discretion in finding that Pennfield removed the case for the bad-faith purpose of prolonging litigation, which justified the award of fees regardless of whether Penfield had an objectively reasonable basis for removal.”).

Here, in denying Exclusive Group’s motion for attorney’s fees and costs pursuant to 28 U.S.C. § 1447(c), the district court did not expressly state whether or not this case falls within the “unusual circumstances” subset of cases where an award of attorneys’ fees and expenses are appropriate. The District Court spent two paragraphs and 204 words of analysis and stopped at this conclusion: “The Court finds that an objectively reasonable basis for removal existed at the time, and that fees should be denied.” (Doc. 115, at pgs. 2, 3). In affirming, the Eleventh Circuit did not

require the district court to do more than that, despite the district court not actually articulating whether or not “unusual circumstances” exist.<sup>1</sup>

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<sup>1</sup> Compare, e.g., *Westchester Cnty. v. Mylan Pharms., Inc.*, No. 23-CV-6096 (CS), 2025 U.S. Dist. LEXIS 21968, at \*11 (S.D.N.Y. Feb. 3, 2025) (“I do not find that the Removing Defendants’ failure to stipulate to remand following the disclaimer constitutes an “unusual circumstance” sufficient to warrant an award of attorney’s fees.”); *Nessel ex rel. People v. Amerigas Partners, L.P.*, 421 F. Supp. 3d 507, 514 (E.D. Mich. Sept. 30, 2019) (“the Court finds that Defendants had an objectively reasonable basis for seeking removal and no unusual circumstances exist such that an award of attorneys’ fees would be appropriate.”) (emphasis added); *Acutex Inc. v. GM de Mexico S. de R.L. de C.V.*, No. 23-cv-12618, 2024 U.S. Dist. LEXIS 33753, at \*13 (E.D. Mich. Feb. 26, 2024) (“GM Mexico possessed an objectively reasonable basis to remove this litigation to federal court . . . Nor are there ‘unusual circumstances’ warranting an assessment of fees and costs.”) (emphasis added); *In re Farmers Ins. Exch. Claims Representatives’ Overtime Pay Litig.*, MDL Docket No. 33-1439(B), 2008 U.S. Dist. LEXIS 91322, at \*8-\*9 (D. Ore. Nov. 7, 2008) (finding an objectively reasonable basis for removal and stating, “FIE’s removal was not ‘sought for the purpose of prolonging litigation and imposing costs on the opposing party,’ and conclude therefore, that this case does not warrant an award of attorney fees and costs under the ‘unusual circumstances’ exception”) (emphasis added).

[I]t is not objectively unreasonable to believe that the Plaintiffs would be seeking more than \$ 75,000 in damages . . . Awarding fees and costs under Section 1447(c) can serve to deter spurious removals, orchestrated to prolong litigation and impose costs on the opposing party, but there is no evidence of improper motive, unreasonable bases for removal, or other “unusual circumstances.”

*Yazzie v. Celadon Trucking Servs.*, No. CV-09-8198-PHX-GMS, 2010 U.S. Dist. LEXIS 24223, at \*5 (D. Ariz. Mar. 2, 2010) (emphasis added); *R.D. Olson Constr., L.P. v. Am. Safety Indem. Co.*, No. CV 08-5013 CAS (FFMx), 2008 U.S. Dist. LEXIS 83102,

This Court should grant *certiorari* to require district courts to expressly make determinations as to whether or not unsuccessful removal petitions carry such “unusual circumstances” such that an award of attorneys’ fees and costs can still be appropriate. *Martin*, 546 U.S. at 141. Without district courts having to expressly make an “unusual circumstances” determination in every fee motion under 28 U.S.C. § 1447(c), the “large objective” of deterring unnecessary federal court removal petitions the *Martin* court recognized remains unsatisfied.

While some courts already appear to expressly make “unusual circumstances” determinations even when denying fees in motions under 28 U.S.C. § 1447(c),<sup>2</sup> those cases are not analytically uniform and, in any event, that body of cases conflicts with the Eleventh Circuit’s affirmance of the district court’s failure to expressly make an express “unusual circumstances” determination here.

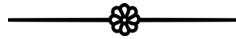
A directive by this Court that district courts expressly make determinations as to whether or not a given unsuccessful removal petition carries “unusual circumstances” such that an award of attorneys’ fees and costs can still be appropriate would unify the nationwide analytical landscape for deciding fee motions under 28 U.S.C. § 1447(c), and more importantly, would appropriately fulfill the Congressional policy concern and “large objective” articulated in the

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at \*13 (C.D. Cal. Sept. 23, 2008) (“the Court finds that plaintiff has failed to show that ‘unusual circumstances’ warrant the award of attorneys’ fees and costs,”) (emphasis added).

<sup>2</sup> See note 1 *supra*.

*Martin* case that federal courts take steps to deter unnecessary removal petitions.



## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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