

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**JACK MCELVEEN**

**VERSUS**

**WATERMAN STEAMSHIP CORPORATION  
AND ABC INSURANCE COMPANY**

**CIVIL ACTION NO.**

**SECTION  
JUDGE**

**DIVISION  
MAG. JUDGE**

**NOTICE OF REMOVAL**

**NOW INTO COURT**, through undersigned counsel, comes defendant, The Standard Club Europe, Ltd. (“The Standard Club”), who, with a full reservation of any and all defenses including without limitation those under Rule 12 of the Federal Rules of Civil Procedure and the Federal Arbitration Act (“FAA”), files this Notice of Removal of the state court action described below on the following grounds:

1.

Plaintiff, Jack McElveen (“plaintiff”), filed this action on October 11, 2013, in the Civil District Court, Parish of Orleans, State of Louisiana, bearing Docket No. 13-9666. Plaintiff named now-Debtor Waterman Steamship Corporation (“Debtor Waterman”) and ABC Insurance Company as defendants. Plaintiff withheld service on ABC Insurance Company.

2.

On July 31, 2016, Debtor Waterman filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. On March 2, 2017, the United States Bankruptcy Court for the Southern District of New York issued Findings of Fact, Conclusions of Law and Order Confirming First Amended Modified Joint Chapter 11 Plan of Reorganization for International Shipholding Corporation and Its Affiliated Debtors (the “Confirmation Order”).

3.

Following Debtor Waterman's emergence from bankruptcy, Debtor Waterman removed this matter to this Court on August 2, 2017 pursuant to 28 U.S.C. §1441(a) and §1452(a), as well as Rule 9027 of the Federal Rules of Bankruptcy Procedure. [See R. Doc. 1 in C.A. No. 17-7433.] Debtor Waterman alleged jurisdiction pursuant to 28 U.S.C. §157(b), §1331, and §1334(b). [Id.]

4.

On August 31, 2017, Plaintiff moved to remand this matter back to state court. [R. Doc. 10 in C.A. No. 17-7433.]

5.

After the Plaintiff moved to remand, he also filed a Motion for Leave to file a First Supplemental and Amended Complaint, wherein he sought to amend his Petition to name The Standard Club as a defendant in place of ABC Insurance Company and to bring a cause of action against The Standard Club as the marine protection and indemnity ("P&I") underwriter for Debtor Waterman. [R. Doc. 15 in C.A. No. 17-7433.] The district court granted leave, and Plaintiff's First Supplemental and Amended Complaint was filed into the record. [R. Doc. 18 in C.A. No. 17-7433.]

6.

On October 24, 2017, the district court issued its Order and Reasons remanding the claims against Debtor Waterman back to state court. [R. Doc. 22 in C.A. No. 17-7433.]

7.

After the matter was remanded to state court, Plaintiff moved to formally serve The Standard Club. However, instead of serving pursuant to Louisiana state court procedural rules, Plaintiff served the federal summons that was issued for the First Supplemental and Amended

Complaint filed in federal court. According to an Affidavit of Service that was recently filed in state court, Plaintiff served The Standard Club via The Hague Convention on January 9, 2018, with the Foreign Process Section of Her Majesty's Courts and Tribunals Service providing a certificate of service dated March 7, 2018.<sup>1</sup> Plaintiff filed an Affidavit of Service of Foreign Process on May 14, 2018 in state court.<sup>2</sup>

8.

Plaintiff's First Supplemental and Amended Complaint seeks to allege a claim against The Standard Club under the Louisiana Direct Action Statute, La. R.S. §22:1269 as the P&I underwriter of Debtor Waterman. The Louisiana Direct Action Statute permits a plaintiff to sue the insurer of a third party directly, provided that the narrow statutory conditions for suit are met.

9.

Plaintiff's claim against The Standard Club involves matters over which the federal court has jurisdiction pursuant to several federal laws, including 28 U.S.C. §1331, 28 U.S.C. § 1332, 28 U.S.C. §1333 and 9 U.S.C. §205, *et seq.*, and therefore, Plaintiff's claims are subject to removal pursuant to 28 U.S.C. §1441.

10.

More specifically, jurisdiction in federal court is proper under 28 U.S.C. §1333, as the claims asserted by Plaintiff against The Standard Club implicate the P&I coverage provided by The Standard Club to its member, Debtor Waterman. Accordingly, because the P&I coverage provided by The Standard Club to Debtor Waterman constitutes a maritime contract, this court may exercise its admiralty jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §1333.

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<sup>1</sup> A copy of the State Court pleadings, including the Affidavit of Service of Process filed by Plaintiff is attached as Exhibit 1.

<sup>2</sup> *Id.* at pp. 174-190.

11.

Additionally, jurisdiction is proper under the Uniform Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention” or “Convention”), 9 U.S.C. §205, *et seq.*, because The Standard Club’s Rules provide for mandatory arbitration in London. Plaintiff’s claim references the P&I underwriting relationship between The Standard Club and Debtor Waterman, and Plaintiff seeks to assert his claim against The Standard Club via the Louisiana Direct Action Statute as a result of the underlying P&I policy issued to Debtor Waterman.

12.

9 U.S.C. §205 confers federal jurisdiction to situations like this, stating:

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal.

This broad removal provision “confers a form of federal question jurisdiction” on the district courts. *See O’Connor v. Mar. Mgmt. Corp.*, C.A. No. 16-16201, 2017 U.S. Dist. LEXIS 37798, at \*5 (E.D. La. Mar. 16, 2017) (citing *Beiser v. Weyler*, 284 F.3d 665, 670 (5th Cir. 2002)).

13.

Plaintiff’s claim arises as a result of an accident that allegedly took place in 2012, and Plaintiff seeks to recover from The Standard Club on a policy of insurance that responds to

claims arising during the 2012-2013 policy year. As such, The Standard Club's P&I and Defence Rules and Correspondents for 2012-2013 (the "Rules") apply.<sup>3</sup>

14.

The Rules contain a dispute resolution process for Members and The Standard Club. The arbitration provision in the Rules provides as follows:

If the Dispute is not settled by mediation within 14 days of commencement of the mediation or within such further period as the parties may agree in writing, the dispute shall be referred to and finally resolved by arbitration in London before two arbitrators, one to be appointed by each of the parties, and an umpire to be appointed by the two arbitrators. The submission to arbitration and all the proceedings therein shall be subject to the Arbitration Act 1996 and any statutory modifications thereof.<sup>4</sup>

15.

Courts within the Fifth Circuit have routinely held that a non-signatory, such as Plaintiff, can be compelled to arbitrate when asserting claims directly against an insurer, whose insurance policy (or, in this instance, Rules) contain an arbitration clause. *See Authenment v. Ingram Barge Co.*, 878 F. Supp. 2d 672 (E.D. La. 2012); *Todd v. Steamship Mut. Underwriting Ass'n, Ltd.*, C.A. No. 08-1195, 2011 U.S. Dist. LEXIS 38638, at \*3-4 (E.D. La. Mar. 28, 2011)).

16.

Accordingly, this matter is removable under 9 U.S.C. §205, and Plaintiff's claim against The Standard Club -- to the extent even cognizable -- must be arbitrated.<sup>5</sup> To compel arbitration, removal is proper.

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<sup>3</sup> Exhibit 2.

<sup>4</sup> *Id.*, Rule 25.5.

<sup>5</sup> The Standard Club anticipates filing a Rule 12(b) Motion to Dismiss the claim against it on the basis that the requirements for a claim under the Louisiana Direct Action Statute have not been satisfied. Alternatively, The Standard Club will move to compel arbitration.

17.

Removal is timely under 9 U.S.C. §205 because a defendant may remove a matter falling under the Convention at any time before trial.

18.

This Honorable Court occupies the District and Division in which plaintiff's Petition for Damage was filed, as required by 28 U.S.C. §1446(a).

19.

Pursuant to 28 U.S.C. §1446(b)(2)(A), Debtor Waterman consents to this removal.<sup>6</sup>

20.

As required by 28 U.S.C. §1446(a), a certified copy of all additional process, pleadings and orders served upon The Standard Club in the state court proceeding or made part of the state court is attached<sup>7</sup> and is incorporated by reference.

21.

The Standard Club has provided written notice of this removal to Plaintiff, and defendants have previously filed a copy of the Notice of Removal with the Clerk of Court for the Civil District Court, Parish of Orleans, State of Louisiana, as required by 28 U.S.C. §1446(d). A copy of the Notice of Filing of Notice of Removal to Federal Court is attached without exhibits.<sup>8</sup>

22.

For the foregoing reasons, removal should be allowed, and this Honorable Court should assume jurisdiction of this action.

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<sup>6</sup> See attached Consent to Removal.

<sup>7</sup> Exhibit 1.

<sup>8</sup> Exhibit 3.

**WHEREFORE**, defendant, The Standard Club Europe, Ltd., requests that the entire action be removed from the Civil District Court, Parish of Orleans, State of Louisiana, to the United State District Court for the Eastern District of Louisiana, and that this Honorable Court assume jurisdiction of this action and make sure further orders as may be required to determine properly this controversy.

Respectfully submitted,

JONES WALKER LLP

*/s/ William C. Baldwin*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of June 2018, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system. I also certify that I have mailed this filing by United States Postal Service to any non-CM/ECF participants.

*/s/ William C. Baldwin*

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