

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE PLATINUM-BEECHWOOD : 18-cv-06658 (JSR)
LITIGATION :
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WASHINGTON NATIONAL INSURANCE :
COMPANY and BANKERS CONSECO :
LIFE INSURANCE COMPANY : 18-cv-12018 (JSR)
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Third-Party Plaintiffs, :
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-against- :
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MARK NORDLICHT, *et al.*, :
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Third-Party Defendants :
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**DEFENDANT HOKYONG KIM'S A/K/A STEWART KIM'S REPLY MEMORANDUM
OF LAW IN SUPPORT OF MOTION TO DISMISS THE THIRD PARTY COMPLAINT**

Defendant Stewart Kim (“Kim”), by and through his counsel, The Law Office of Stewart J. Kong, respectfully submits this reply memorandum of law in support of his motion to dismiss (Dkt. No. 191) to dismiss the March 27, 2019, third party complaint (Dkt. No. 75) (“TPC”) by Washington National Insurance Company and Bankers Consec Life Insurance Company.

Kim asserts in his reply that the only sufficiently pleaded allegation in the TPC is that he was an employee at Platinum Management in New York and two Beechwood entities. *See* TPC ¶ 505. Otherwise, plaintiffs do not offer anything new in their opposition to Kim’s Motion. Rather, they conveniently offer the text of TPC allegations made against the defendants in Exhibits A – Q attached to the Polivy Decl. (Dkt. No. 254) as a way to highlight in bulk what amounts to baseless conclusory assertions – especially with respect to Kim. None of these allegations attribute to Kim a single overt act or statement that would infer his culpability in any alleged wrongdoing. In fact, all of the allegations regarding Kim, many of which are repeated numerous times throughout the TPC, are drafted as conclusory assertions based on pure speculation. *See* Polivy Decl. Exhibits A, B, F, H, J, K, L, M, O, and P.

Given the failure of the TPC to sufficiently allege any of the counts against Kim, it appears that plaintiffs, in a desperate fashion, always referred to Kim as part of a group of 3 or more defendants. The TPC’s factual allegations fall short at that very point, never singling out Kim in connection with any overt act, omission, or statement that describe or specify his level of involvement in any alleged wrongdoing. Moreover, the TPC fails to allege in particularity that Kim had knowledge of the various counts of alleged wrongdoing. For example, and further underscoring the TPC’s lack of factual support against Kim, plaintiffs always referred to Kim as part of a group, such as the “troika” consisting of Kim, Daniel Saks (“Saks”), and Dhruv Narain (“Narain”). Not once does the TPC or the Polivy Decl. Exhibits A, B, F, H, J, K, L, M, O, and P,

carve out Kim's actions, omissions, or statements as distinct from those of other "troika" defendants like Saks, Narain, or other Co-conspirators as defined in the TPC.

Examples of these conclusory and speculative allegations made in the TPC and Polivy Decl.

Exhibits follow:

"... Feuer, Taylor, Saks, Narain, Kim and the other Co-conspirators denied that there was any relationship between Platinum and Beechwood – often vehemently, in the case of Feuer – and totally concealed Platinum's control over Beechwood. They hid from WNIC and BCLIC what Co-conspirators admitted: that the two were 'integrated.'" See TPC ¶ 580 and Polivy Decl. Exhibit K.

As you can see, nothing in this allegation carves out Kim from this rather large group of Co-conspirators as having done anything in particular constituting an affirmative denial of the Platinum-Beechwood relationship.

"– the troika of Danny Saks, Stewart Kim, and Dhruv Narain (starting in 2016) took over the reins from Levy and continued the fraud these entities were perpetrating against WNIC and BCLIC. On a regular basis when WNIC and BCLIC raised questions about the prudence of these entities' investment of trust assets, Saks, Kim, and Narain invariably inveighed upon WNIC and BCLIC to repose their trust and confidence in the troika's expertise and prudence." TPC ¶ 644 and Polivy Decl. Exhibit K.

Here also, there is no distinction between Kim and other group members. Rather a speculative and conclusory allegation is made against this "troika" without any particularization.

"... Hodgdon, Slota, Small, Leff, Manela, Ottensoser, Kim, and Poteat each made false representations of material fact to WNIC and BCLIC, knowing such statements were false when making them, to induce WNIC and BCLIC to enter into the Reinsurance (and accompanying) Agreements." TPC ¶ 802 and Polivy Decl. Exhibit K.

Other than asserting that this large group of defendants, including Kim, misrepresented their employment status at Beechwood and Platinum, this allegation provides no further factual support that Kim even had knowledge of false statements or that he even made such statements independently from the larger group.

The plaintiffs' opposition itself illustrates the lack of factual foundation for any of the TPC allegations made against Kim. The Polivy Decl. Exhibits do not add anything new here. Besides alleging that Kim is a member of the large Co-conspirators group, his association with Saks and Narain as part of a "troika" group is equally questionable. Despite being always named as part of a group, the TPC lacks any allegations of specific conduct by Kim to warrant his inclusion in those groups. There are many cases dismissing complaints based on deficient group pleadings as is the case here. *See, e.g., Attuahene v. City of Hartford*, 10 F. App'x 33, 34 (dismissing complaint under Rule 8 because plaintiff "lump[ed] all the defendants together in each claim and provid[ed] no factual basis to distinguish their conduct"). In this case, Kim has been grouped with a "troika," with not a single particularized allegation made against him as having acted individually. *See also Ochre LLC v. Rockwell Architecture Planning & Design, P.C.*, No. 12 Civ. 2837 (KBF), 2012 U.S. Dist. LEXIS 172208, at *16 (S.D.N.Y. Dec. 3, 2012) (dismissing causes of action where the key facts pled in the complaint are 'lumped' together and thus do not afford each defendant adequate notice of the factual allegations it faces).

In conclusion, the weak factual allegations made in the TPC totally fall short of sufficient pleading as to *all* counts brought by plaintiffs against Kim. These allegations at most amount to an impermissible group pleading that should be dismissed for failure to state a claim. The plaintiffs' opposition does not change such conclusion and thus the conduct alleged against Kim is not actionable.

For the reasons stated above and in our motion and the moving and reply papers of the other movants whose arguments Kim has joined, Kim respectfully submits that the TPC should be dismissed as to him with prejudice, and without leave to replead.

Dated: Queens, New York
June 26, 2019

THE LAW OFFICE OF STEWART J. KONG

/s/ Stewart J. Kong

Stewart J. Kong, Esq.

3 Northern Boulevard, 2nd Floor

Great Neck, New York. 11021

Telephone: (646) 285-3172

Email: sjklaw@gmail.com

Attorney for Defendant Stewart Kim