

1 Steven Plitt (SBN 007481)
 2 Joshua D. Rogers (SBN 021300)
 3 **KUNZ PLITT HYLAND**
 4 **DEMLONG & KLEIFIELD**
 5 3838 North Central Avenue, Suite 1500
 6 Phoenix, Arizona 85012-1902
 Telephone: (602) 331-4600
sp@kunzlegal.com; jdr@kunzlegal.com
 Attorneys for Defendants

7 **UNITED STATES DISTRICT COURT**
 8 **DISTRICT OF ARIZONA**

9
 10 Carol Linn, A married woman,

11 Plaintiff,

12 vs.

13 Liberty Mutual Insurance Holding
 14 Company, Inc., a foreign corporation;
 15 Liberty Mutual Fire Insurance Company, a
 16 foreign corporation; DOES I-X,

17 Defendants.

CASE NO.:

(Maricopa County Superior Court,
 Case No. CV2006-014887)

NOTICE OF REMOVAL

18 Pursuant to 28 U.S.C. §§ 1331 and 1441(a), Defendant Liberty Mutual Fire
 19 Insurance Company and Liberty Mutual Insurance Holding Company, Inc., hereby file
 20 this Notice of Removal and show the court the following:

21 I.

22 Plaintiff is a resident of Maricopa County, Arizona.

23 II.

24 Defendant Liberty Mutual Insurance Holding Company, Inc. is a foreign
 25 corporation with its place of incorporation in Massachusetts and its principal place of
 26 business in Boston, Massachusetts.

1 III.

2 Liberty Mutual Fire Insurance Company is a foreign insurer which is a
3 Wisconsin corporation with its principle place of business in Boston, Massachusetts.

4 IV.

5 Plaintiff Carol Linn filed a lawsuit in the Superior Court of Arizona, in and for
6 the County of Maricopa on October 18, 2006. The civil lawsuit filed by Plaintiff is
7 captioned *Carol Linn v. Liberty Mutual Insurance Holding Company, Inc. and*
8 *Liberty Mutual Fire Insurance Company*, Civil Cause No. CV2006-014887. A copy
9 of the lawsuit is attached hereto as **Exhibit "A."** A copy of the Complaint was served
10 on the Arizona Department of Insurance on February 5, 2007. This Notice of Removal
11 is filed within the 30-day time limitation prescribed by 28 U.S.C. § 1446(b).

12 V.

13 Plaintiff Carol Linn alleges that Liberty Mutual Fire Insurance Company issued
14 an automobile policy to her which provided physical damage coverage for her
15 automobile. On or about October 9, 2004, Plaintiff's vehicle was involved in an
16 accident receiving damage. Plaintiff alleges that the total cost of repairs for the vehicle
17 exceeded Sixteen Thousand Dollars (\$16,000) and, therefore, the vehicle should have
18 been totaled rather than repaired. As a result, Plaintiff has alleged that Defendants have
19 breached the insurance contract, the Defendants breached their duty of good faith and
20 fair dealing and that Plaintiff is entitled to an award of punitive damages against
21 Defendants. Based on the allegations of Plaintiff's Complaint, it appears to a legal
22 certainty that the amount claimed or to be claimed by Plaintiff and her attorney in this
23 matter will exceed Seventy-five Thousand Dollars (\$75,000). See *Pakledinaz v.*
24 *Consolidated Rail Corp.*, 737 F.Supp. 47, 48 (E.D. Mich. 1990) (holding that removal
25 was proper even though the amount in controversy cannot be determined by plaintiff's
26 paper because a successful, plaintiff's allegation of damages could exceed \$50,000.00);

1 *Compare, Matter of Shell Oil Co.*, 966 F.2d 1130, 1131 (7th Cir. 1992)(citing cases for
2 the proposition that the removal is proper even if the complaint asks for less than the
3 jurisdictional amount, when state law permits a court to award more than the court is
4 likely to do so if it decides in plaintiff’s favor). Plaintiff has filed a Certificate of
5 Compulsory Arbitration pursuant to Rule 3.2 of the Maricopa County Rules of Practice
6 in which she indicates that the amount in controversy exceeds the limits set by local
7 rules for compulsory arbitration which, in Maricopa County, Arizona, is Fifty Thousand
8 Dollars (\$50,000.00).

9 VI.

10 Had Plaintiff initially filed her lawsuit in federal court, this court would have
11 diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). Removal is proper under 28
12 U.S.C. § 1441(a).

13 VII.

14 Pursuant to 28 U.S.C. § 1446(d) Defendants will give written notice of the filing
15 of this Notice of Removal to Plaintiff promptly after this Notice of Removal is filed
16 with the Court. In accordance with Rule 3.7 of the Rule of Practice for the United
17 States District Court for the District of Arizona, Defendants state that a copy of this
18 Notice of Removal has been filed with the Clerk of the Maricopa County Superior
19 Court. A copy of the Notice of Filing of the Notice of Removal filed with the state
20 court clerk is attached hereto as **Exhibit “B.”**

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VIII.

This Notice is signed pursuant to Rule 11 Fed.R.Civ.P., as required by Local Rule 3.7.

DATED this 7th day of March, 2007.

**KUNZ PLITT HYLAND
DEMLONG & KLEIFIELD**

By: s/ Steven Plitt
Steven Plitt
Joshua D. Rogers
3838 N. Central Avenue, Suite 1500
Phoenix, AZ 85012-1902
Attorneys for Defendants

ORIGINAL electronically filed with Clerk
this 7th day of March, 2007 to.

and a **COPY** electronically delivered or mailed
this 7th day of March, 2007 to:

Richard A. Dillenburg, Esq.
Law Office of Richard A. Dillenburg, PC
2173 E. Warner Rd., Suite 101
Tempe, AZ 85284-3503
Attorney for Plaintiff

/s Stacey Shirer