

SUPREME COURT: COUNTY OF NEW YORK

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., on Behalf of Itself and Each of Its Related Companies that Provided Insurance Coverage to Respondents,

Petitioner/Plaintiff,

- against -

ARENA FOOTBALL ONE, LLC; VIPERS FOOTBALL, LLC d/b/a ALABAMA VIPERS; ARIZONA RATTLERS d/b/a ARIZONA RATTLERS; BOSSIER BATTLEWINGS; CR FOOTBALL ACQUISITION, LLC d/b/a CHICAGO RUSH; DALLAS VIGILANTES; GEORGIA FORCE FOOTBALL CLUB LLC d/b/a GEORGIA FORCE; IOWA BARNSTORMERS FOUNDATION d/b/a IOWA BARNSTORMERS; JACKSONVILLE SHARKS d/b/a JACKSONVILLE SHARKS; KANSAS CITY COMMAND; MILWAUKEE MUSTANGS ARENA FOOTBALL, INC. d/b/a MILWAUKEE MUSTANGS; NEW ORLEANS VODOO ARENA FOOTBALL d/b/a NEW ORLEANS VODOO; OKLAHOMA CITY YARD DAWGZ LLC d/b/a OKLAHOMA CITY YARD DAWGZ; ORLANDO PREDATORS LIMITED PARTNERSHIP d/b/a ORLANDO PREDATORS; PHILADELPHIA SOUL d/b/a PHILADELPHIA SOUL; PITTSBURGH POWER FOOTBALL d/b/a PITTSBURGH POWER; SABERCATS OF SAN JOSE LLC d/b/a SAN JOSE SABERCATS; SPOKANE SHOCK FOOTBALL LLC d/b/a SPOKANE SHOCK; TAMPA BAY STORM INC. d/b/a TAMPA BAY STORM; TULSA TALONS; UTAH BLAZE FOOTBALL, LLC d/b/a UTAH BLAZE; and JOHN DOES 1 THROUGH 10,

Respondents/Defendants.

Index No.:

PETITION TO COMPEL ARBITRATION AND COMPLAINT FOR BREACH OF CONTRACT, UNJUST ENRICHMENT, AND QUANTUM MERUIT

Petitioner/Plaintiff National Union Fire Insurance Company of Pittsburgh, Pa., on behalf of itself and each of its related companies that provided insurance coverage to Respondents/Defendants (“National Union”) respectfully petitions the Court for an Order pursuant to CPLR 7503(a), the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and the terms of the Parties’

arbitration agreements, compelling Respondents¹ to submit to binding arbitration. If the instant Petition to Compel Arbitration (the “Petition”) is denied, then National Union asserts claims before this Court seeking money damages for Respondents’ breaches of contract, unjust enrichment, and quantum meruit.

NATURE OF THE CASE

1. Between 2009 and 2012, National Union provided workers compensation coverage to Respondents, the Arena Football One, LLC (“Arena One”) and the owners, operators, and member teams of that professional sports league.

2. Despite their receipt of the benefits of the coverage afforded by National Union pursuant to the workers’ compensation insurance policies (the “Policies”) and related agreements (collectively, the “Insurance Program”), Respondents failed to honor their obligations to remit payment of premium, reimburse for loss payments made on Respondents’ behalf, provide collateral to secure payment of Respondents’ future losses, and to pay amounts due under a prior settlement agreement with National Union (which memorialized the settlement of a previous dispute between the Parties regarding payments due under the Insurance Program). Respondents currently owe National Union over \$2.4 million dollars.

¹ Respondents/Defendants are: Arena Football One, LLC; Vipers Football, LLC d/b/a Alabama Vipers; Arizona Rattlers d/b/a Arizona Rattlers; Bossier Battlewings; CR Football Acquisition, LLC d/b/a Chicago Rush; Dallas Vigilantes; Georgia Force Football Club LLC d/b/a Georgia Force; Iowa Barnstormers Foundation d/b/a Iowa Barnstormers; Jacksonville Sharks d/b/a Jacksonville Sharks; Kansas City Command; Milwaukee Mustangs Arena Football, Inc. d/b/a Milwaukee Mustangs; New Orleans Voodoo Arena Football d/b/a New Orleans Voodoo; Oklahoma City Yard Dawgz LLC d/b/a Oklahoma City Yard Dawgz; Orlando Predators Limited Partnership d/b/a Orlando Predators; Philadelphia Soul d/b/a Philadelphia Soul; Pittsburgh Power Football d/b/a Pittsburgh Power; Sabercats of San Jose LLC d/b/a San Jose Sabercats; Spokane Shock Football LLC d/b/a Spokane Shock; Tampa Bay Storm Inc. d/b/a Tampa Bay Storm; Tulsa Talons; Utah Blaze Football, LLC d/b/a Utah Blaze; and John Does 1 through 10 (collectively, “Respondents”). In turn, John Does 1 Through 10 are persons whose names are not yet known to National Union and who were or are alter-egos of one or more of the Respondents, or are as yet unidentified subsidiaries, affiliates, associated and/or successor organizations to Arena Football One, LLC.

3. Following Respondents' refusal to pay the monies owed National Union, and pursuant to the terms of the Parties' arbitration agreement (discussed below), on October 16, 2019, National Union served Respondents with a demand for arbitration (the "Arbitration Demand") seeking an arbitral award of the monies owed.

4. National Union now brings this Petition under CPLR § 7503(a), the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and the terms of the Parties' arbitration agreements for an Order compelling Respondents to arbitrate all disputes set forth in the parties' arbitration agreements.

5. In the event this Court denies the Petition to Compel Arbitration, National Union asserts, in the alternative, the claims in Count II and III of this Petition to recover damages arising out of Respondents' breach of contract or for unjust enrichment/quantum meruit.

PARTIES

6. Petitioner/Plaintiff National Union is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principle place of business in New York, New York.

7. Respondent/Defendant Arena Football One, LLC is a limited liability company organized and existing under the laws of Nevada, with its principle place of business in Chicago, Illinois.

8. Respondent/Defendant Vipers Football, LLC d/b/a Alabama Vipers is on information and belief a limited liability company organized and existing under the laws of New York, with its principle place of business in Meridianville, Alabama.

9. Respondent/Defendant Arizona Rattlers d/b/a Arizona Rattlers is on information and belief a limited liability company organized and existing under the laws of Arizona, with its principle place of business in Scottsdale, Arizona.

10. Respondent/Defendant Bossier Battlewings is on information and belief an entity with a place of business in Bossier City, Louisiana.

11. Respondent/Defendant CR Football Acquisition, LLC d/b/a Chicago Rush is on information and belief a limited liability company organized and existing under the laws of Delaware with its principle place of business in Chicago, Illinois.

12. Respondent/Defendant Dallas Vigilantes is on information and belief an entity with a place of business in Texas.

13. Respondent/Defendant Georgia Force Football Club LLC d/b/a Georgia Force is on information and belief a limited liability company organized and existing under the laws of Georgia with its principle place of business in Flowery Branch, Georgia.

14. Respondent/Defendant Iowa Barnstormers Foundation d/b/a Iowa Barnstormers is a non-profit organized and existing under the laws of Iowa with its principle place of business in Des Moines, Iowa.

15. Respondent/Defendant Jacksonville Sharks d/b/a Jacksonville Sharks is on information and belief incorporated, organized and existing under the laws of Florida with its principle place of business in Jacksonville, Florida.

16. Respondent/Defendant Kansas City Command is on information and belief

incorporated, organized and existing under the laws of Missouri with its principle place of business in Kansas City, Missouri.

17. Respondent/Defendant Milwaukee Mustangs Arena Football, Inc. d/b/a Milwaukee Mustangs is on information and belief a corporation organized and existing under the laws of Wisconsin with its principle place of business in Waukesha, Wisconsin

18. Respondent/Defendant New Orleans Voodoo Arena Football d/b/a New Orleans Voodoo is on information and belief an entity, organized and existing under the laws of Louisiana, with its principle place of business in Metairie, Louisiana.

19. Respondent/Defendant Oklahoma City Yard Dawgz LLC d/b/a Oklahoma City Yard Dawgz is on information and belief a limited liability company organized and existing under the laws of Oklahoma, with its principle place of business in Oklahoma City, Oklahoma.

20. Respondent/Defendant Orlando Predators Limited Partnership d/b/a Orlando Predators is on information and belief a limited partnership organized and existing under the laws of Florida, with its principle place of business in Windermere, Florida.

21. Respondent/Defendant Philadelphia Soul d/b/a Philadelphia Soul is on information and belief an entity organized and existing under the laws of Pennsylvania, with its principle place of business in Philadelphia, Pennsylvania.

22. Respondent/Defendant Pittsburgh Power Football d/b/a Pittsburgh Power is on information and belief an entity organized and existing under the laws of Pennsylvania with its principle place of business in Pittsburgh, Pennsylvania.

23. Respondent/Defendant Sabercats of San Jose LLC d/b/a San Jose Sabercats is on information and belief a limited liability company organized and existing under the laws of California with its principle place of business in San Jose, California.

24. Respondent/Defendant Spokane Shock Football LLC d/b/a Spokane Shock is on information and belief a limited liability company organized and existing under the laws of Washington, with its principle place of business in Spokane Valley, Washington.

25. Respondent/Defendant Tampa Bay Storm Inc. d/b/a Tampa Bay Storm is on information and belief incorporated, organized and existing under the laws of Florida, with its principle place of business in Tampa, Florida.

26. Respondent/Defendant Tulsa Talons is on information and belief an entity with its principle place of business in Oklahoma.

27. Respondent/Defendant Utah Blaze Football, LLC d/b/a Utah Blaze is on information and belief a limited liability company organized and existing under the laws of Utah, with its principle place of business in Salt Lake City, Utah.

28. Respondents/Defendants John Does 1 Through 10 are persons whose names are not yet known to National Union and who were or are alter-egos of one or more of the Respondents/Defendants, or are as yet unidentified subsidiaries, affiliates, associated and/or successor organizations to Arena Football One, LLC.

JURISDICTION AND VENUE

29. Jurisdiction in this Court is proper under CPLR Article 75 and the Parties'

agreements to arbitrate (discussed below), in which the Parties agreed to submit any motion to compel arbitration to this Court's jurisdiction.

30. Further, the Court may exercise personal jurisdiction over Respondents because they purposefully transacted business within the State, pursuant to CPLR § 302(a)(1), by, among other things, procuring insurance from National Union, a New York-based insurance company, regularly communicating – by mail, phone and electronically – with National Union in New York, making payments to National Union in New York, and causing harm to a New York resident by breaching a contract entered into in New York.

31. Venue is proper pursuant to CPLR 7502(a)(i) because the Parties' agreement contains a venue clause (discussed below) specifying the City, County and State of New York as the appropriate venue for any motions to compel arbitration. Additionally, venue is proper in this Court pursuant to CPLR 503 because a substantial part of the events giving rise to the claim occurred in New York County and Petitioner resides and conducts business in New York County.

STATEMENT OF FACTS

The Insurance Program Between The Parties And The Instant Dispute Over Amounts Owed

32. From 2009 to 2012, National Union provided workers' compensation liability insurance coverage in connection with Respondents' operation of a professional sports league. In connection with the Policies, the Parties entered into certain written agreements that govern the Insurance Program, including a Payment Agreement, effective October 31, 2009, and all addenda and schedules thereto (together, the "Payment Agreement"). Certain parts of the Payment Agreement are annexed hereto as **Exhibit A** (A001-A30).

33. As the governing premium finance agreement, the Payment Agreement

provides:

WHAT HAVE YOU AND WE AGREED TO?

We have agreed to the following:

- to provide *You* insurance and services according to the *Policies* and other agreements; and
- to extend credit to *You* by deferring our demand for full payment of the entire amount of *Your Payment Obligation* if *You* make partial payments according to this Agreement.

To induce us to agree as above,
You have agreed to the following:

- to pay us all *Your Payment Obligation* and to perform all *Your* other obligations according to this Agreement and *Schedule* for all entities covered by the *Policies*;
- To provide us with collateral according to this Agreement and *Schedule*.

A003. In turn, “Your Payment Obligation” is defined as follows:

“**Your Payment Obligation**” means the amounts that *You* must pay us for the insurance and services in accordance with the terms of the *Policies*, this Agreement, and any similar primary casualty insurance policies and agreements with us incurred before the inception date hereof. Such amounts shall include, but are not limited to, any of the following, including any portions thereof not yet due and payable:

- the premiums and premium surcharges, taxes and assessments,
- *Deductible Loss Reimbursements*
- any amount that we may have paid on *Your* behalf because of any occurrence, accident offense, claim or suit with respect to which *You* are a self-insurer,
- any other fees, charges, or obligations as shown in the *Schedule* or as may arise as *You* and we may agree from time to time,
- costs and expenses incurred by any third party administrator,
- any penalties or charges incurred as a result of *Your* failure to cooperate in the completion of an actual premium audit.

Loss Reserves: *Your Payment Obligation* includes any portion of the premiums, premium surcharges, *Deductible Loss Reimbursements* or other obligations that we shall have calculated

on the basis of our reserves for *Loss and ALAE*. Those reserves shall include specific reserves on known *Losses and ALAE*, reserves for incurred but not reported *Losses and ALAE*, and reserves for statistically expected development on *Losses and ALAE* that have been reported to us. Any *Loss* development factors we apply in determining the such reserves will be based on our actuarial evaluation of relevant statistical data including, to the extent available and credible, statistical data based upon *Your* cumulative *Loss and ALAE* history.

A011-12.

34. The Payment Agreement became effective on October 31, 2009 and ends “only after You [Respondents] and we [National Union] have settled and paid all obligations between You and us relating to this Agreement.” A003. Accordingly, the Payment Agreement remains in full force and effect.

35. In breach of the Payment Agreement, Respondents failed to meet their Payment Obligation and to provide required collateral. In addition, Respondents failed to pay amounts due under a prior settlement agreement with National Union (regarding a previous payment dispute between the Parties under the Insurance Program). Respondents currently owe National Union over \$2.4 million dollars.

**Arena Football One, LLC And The Member
Teams Are Parties To The Payment Agreement**

36. Respondent Arena One is a Named Insured and signatory to the Payment Agreement. Under the Payment Agreement, “You” is defined to include “the organization(s) named as ‘our Client’ in the *Schedule*.” (A003, A011.) In turn, the *Schedule*, which is an addendum to the Payment Agreement, identifies “You” as follows:

... “*You*”, our *Client* [Arena One] . . . on behalf of *You* and all *Your* subsidiaries or affiliates except those listed below: (None).

A016.

37. “You” and “Your” are also defined on page 4 of the Payment Agreement

which provides as follows:

“**You**” or “**Your**” means the person or organization named as our Client in the title page of this Agreement, its predecessor and successor organizations, and each subsidiary, affiliated or associated organizations that are included as Named Insureds under any of the *Policies*. Each is jointly and severally liable to us for the entire amount of *Your Payment Obligation*. (A004.)

A004. Thus, under these provisions of the Payment Agreement, Arena One and its member teams are jointly and severally liable as subsidiaries, affiliates, associated and/or successor organizations to Arena One for all Payment Obligations under the Payment Agreement.

38. Further, an endorsement from Policy No. WC 006-51-7566 (attached hereto as **Exhibit B**) states that

An election was made by or on behalf of each person described in the Schedule to be subject to the worker compensation law of the State named in the Schedule. The premium basis for the policy includes the renumeration of such persons.

Persons

...

Partners: ALL PARTNERS

As a result of this endorsement, Arena One and its member teams are jointly and severally liable as “Partners” for all obligations under the Payment Agreement.

The Broad Arbitration Agreement Between the Parties

39. The Payment Agreement broadly requires that all disputes about “*Your Payment Obligation*” be submitted to arbitration before a Panel of three industry qualified

arbitrators. *See* A008 (“HOW WILL DISAGREEMENTS BE RESOLVED”). In addition, “[a]ny other unresolved dispute arising out of this Agreement must be submitted to arbitration.” *Id.*

40. The Payment Agreement further provides that the Arbitration Panel “will have exclusive jurisdiction over the entire matter in dispute, including any question as to its arbitrability”:

The arbitrators may award compensatory money damages and interest thereon. They may order You to provide collateral to the extent required by this Agreement. They will have exclusive jurisdiction over the entire matter in dispute, including any question as to its arbitrability. (A009.)

41. The Payment Agreement vests jurisdiction in this Court to decide this Petition to Compel Arbitration, specifically providing that any motion to compel arbitration must be brought “in a court of competent jurisdiction in the City, County, and State of New York”:

How arbitrators must be chosen: You must choose one arbitrator and we must choose another. They will choose the third. If you or we refuse or neglect to appoint an arbitrator within 30 days after written notice from the other party requesting it to do so, or if the two arbitrators fail to agree on a third arbitrator within 30 days of their appointment, either party may make application only to a court of competent jurisdiction in the City, County, and State of New York. Similarly, any action or proceeding concerning arbitrability, including motions to compel or stay arbitration, may be brought only in a court of competent jurisdiction in the City, County, and State of New York. (A012.)

42. Finally, the Payment Agreement provides that “[t]he arbitration must be governed by the United States Arbitration Act, Title 9 U.S.C. Section 1, et seq. [“FAA”].” A009. However, even in the absence of this express provision, the FAA would apply because the instant dispute involves interstate commerce.

The Agreement to Pay the Costs of Enforcement

43. The Payment Agreement provides:

WHO MUST PAY TO ENFORCE THIS AGREEMENT? If You or we fail to perform or observe any provision under this Agreement, the other may incur reasonable additional expenses to enforce or exercise its remedies. Either You or we must reimburse the other upon demand and presentation of clear and convincing supporting evidence for any and all such additional expenses.

(A009). National Union seeks an award of its “reasonable additional expenses to enforce or exercise its remedies” under the Payment Agreement, including but not limited to its reasonable attorneys’ fees and costs in this Arbitration.

The Arbitration Demand

44. Respondents failed to meet their Payment Obligation, provide required collateral, or pay amounts due under a prior settlement agreement with National Union. Accordingly, National Union served Respondents with an Arbitration Demand on October 16, 2019, seeking an arbitral award of the monies owed. This Petition to Compel Arbitration follows.

**COUNT ONE
(PETITION TO COMPEL ARBITRATION)**

45. National Union repeats and realleges each paragraph above as if set forth fully and verbatim herein.

46. National Union and Respondents entered into valid and binding broad agreements to arbitrate.

47. The Parties currently dispute Respondents’ Payment Obligation to National

Union.

48. The dispute falls within the scope of the Parties' broad agreement to arbitrate as set forth in the governing Payment Agreement. Moreover, under the Payment Agreements, any issues as to arbitrability are solely for the arbitrators to resolve.

49. National Union has served an Arbitration Demand upon Respondents, demanding that they arbitrate the parties' dispute, but Respondents have yet to comply with that demand.

50. As set forth above, this matter is governed by the FAA because (i) it involves interstate commerce, and (ii) the Payment Agreement expressly incorporates the FAA. Section 4 of the FAA (9 U.S.C. § 4), provides:

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court ... for an order directing that such arbitration proceed in the manner provided for in such agreement ... The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.

51. Because the Parties have undeniably entered into a broad arbitration agreement, and the Parties' disputes relate to those agreements and indeed are governed by them, National Union is entitled to an order pursuant to CPLR 7503, section 4 of the FAA, and the terms of the relevant agreements compelling Respondents to arbitrate all disputes set forth in the Arbitration Demand.

COUNT TWO
(FOR BREACH OF CONTRACT)

52. National Union repeats and realleges each paragraph above as if set forth fully and verbatim herein.

53. As set forth above, National Union is entitled to entry of an Order requiring Respondents to arbitrate all disputes between them set forth in the Arbitration Demand.

54. In the event the Court denies or dismisses National Union's Petition to Compel Arbitration as set forth in Count I, National Union seeks judgment against Respondents awarding National Union money damages in an amount to be proven at trial but not less than \$2,451,064.42 for Respondents' breaches of contract.

55. The Policies and Payment Agreement, all related endorsements, addenda, and schedules, and the Settlement Agreement, are valid and enforceable contracts (collectively, the "Insurance Program Agreements").

56. To date, National Union has performed all of its obligations to Respondents under the Insurance Program Agreements.

57. Respondents breached their obligations under the Insurance Program by failing to pay the amounts owed as their Payment Obligation, failing to provide required collateral, and failing to pay amounts owed under the Settlement Agreement in connection with a prior dispute over amounts owed as their Payment Obligation.

58. To date, Respondents have made no attempt to cure or mitigate this breach by tendering to National Union, at any time up to and including the date of this Petition/Complaint,

the full amount owed to National Union.

59. As a direct and proximate result of Respondents' breaches of contract, to date, National Union has suffered damages in an amount of no less than \$2,451,064.42, plus interest.

COUNT THREE
(FOR UNJUST ENRICHMENT AND QUANTUM MERUIT)

60. National Union repeats and realleges each paragraph above as if set forth fully and verbatim herein.

61. As set forth above, National Union is entitled to entry of an Order requiring Respondents to arbitrate all disputes between them set forth in the Arbitration Demand.

62. In the event the Court denies or dismisses National Union's Petition to compel arbitration as set forth in Count I, National Union seeks judgment awarding it damages in an amount to be proven at trial but not less than \$2,451,064.42 for Respondents' unjust enrichment and benefits of workers compensation insurance coverage received for which they must pay for the value received.

PRAYER FOR RELIEF

WHEREFORE, National Union demands the following relief:

(a) An order compelling Respondents to arbitrate the dispute set forth in the Arbitration Demand;

(b) In the alternative, a judgment against Respondents for money damages, in an amount to be proven at trial, plus interest thereon;

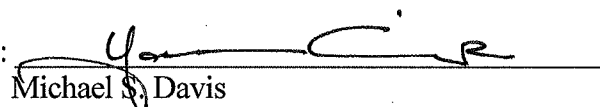
(c) The costs and disbursements of this action, including an award of reasonable attorneys' fees as one of the Costs of Enforcement under the Payment Agreement; and

(d) Such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 16, 2019

ZEICHNER ELLMAN & KRAUSE LLP

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