

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

LESS INVASIVE, INC. and
ELIO GARCIA,

Plaintiffs

v.

ILLINOIS UNION INSURANCE CO.,

Defendant.

NOTICE OF REMOVAL

Please take notice that Illinois Union Insurance Company (“Illinois Union”) hereby removes to this Court the state court insurance coverage action filed by Less Invasive, Inc. and Elio Garcia (“Less Invasive and Garcia) in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, on the grounds of diversity of citizenship pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and states as follows:

1. On September 30, 2013, Less Invasive and Garcia improperly filed a Third-Party Complaint against Illinois Union seeking insurance coverage and declaratory relief (the “Coverage Action”) for claims alleged in a personal injury suit styled *Sixto-Rodriguez, et al. v. Mast Biosurgery Usa, Inc.*, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 11-22646CA01 (08) (the “Liability Action”). *See* Ex. A, at Tab 1.

2. Pursuant to Florida’s Non-Joinder Statute, Fla. Stat. § 627.4136, on January 14, 2014, Illinois Union moved to sever the Coverage Action. *Id.* at Tab 3. The state court granted Illinois Union’s motion on July 15, 2014, ordering that “[t]he third-party coverage action by Less

Invasive and Garcia against Illinois Union is severed from the remainder of this action for all purposes.” See Ex. A, at Tab 20. Thus, the Coverage Action became removable for the first time on July 15, 2014. See *Sharp Gen. Contrs., Inc. v. Mt. Hawley Ins. Co.*, 471 F. Supp. 2d 1304 (S.D. Fla. 2007); 28 U.S.C. §1446(b). Copies of all process, pleadings, orders and other papers served upon Illinois Union in the state court as part of the Coverage Action are attached as Composite Exhibit “A”.

3. In the Liability Action, Plaintiffs, Dr. Susanna Sixto-Rodriguez and Dr. William Rodriguez, assert various products liability and related tort claims against several defendants, including Less Invasive and Garcia, seeking to recover unspecified damages for severe and permanent personal injuries Plaintiffs allegedly sustained due to the various defendants’ wrongful conduct. Plaintiffs’ claims are based upon several surgeries performed on Dr. Sixto-Rodriguez, which involved the use of a product called SurgiWrap. *Id.* at Tab 1, §§ 7-8.

4. Less Invasive, Inc. is a corporation incorporated under the law of Florida and has its principal place of business in the Broward County, Florida. *Id.* at Tab 1, § 3.

5. Garcia is a citizen of the state of Florida and a resident of Broward County, Florida. *Id.* at Tab 1, § 2.

6. Illinois Union is a corporation incorporated under the laws of the state of Illinois and has its principal place of business in the state of Pennsylvania.

7. Accordingly, for purposes of 28 U.S.C. § 1332, diversity of citizenship existed between Less Invasive and Garcia and Illinois Union at the time Less Invasive and Garcia commenced the Coverage Action in state court and continues to exist as of the time of filing this notice of removal.

8. Further, removal pursuant to 28 U.S.C. § 1332 is proper because, based upon the allegations of the Coverage Action and the severe and permanent injuries alleged in the Liability Action, Illinois Union has a good faith belief that the amount in controversy exceeds the jurisdictional threshold for diversity jurisdiction.

9. Illinois Union issued a Life Sciences Products-Completed Operations Liability policy bearing policy number SPL G23855677 003 (the "Policy") to Mast Biosurgery USA, Inc., a company organized under the laws of Delaware with its principal place of business in San Diego, California. *See* Ex. A, at Tab 1, Ex. C.

10. Through the Coverage Action, Less Invasive and Garcia seek coverage under the Policy for the defense of the Liability Action as well as indemnity for any judgment entered against Less Invasive and Garcia in the Liability Action. *Id.* at Tab 1, §§ 7-8. Illinois Union Insurance Company has agreed to provide a defense to Less Invasive and Garcia under a reservation of rights. However, this action remains pending and Illinois Union is exercising its right to remove in an abundance of caution.

11. Venue is proper in this district pursuant to 28 U.S.C. section 1391(a) although Illinois Union reserves the right to seek transfer to a different venue and more convenient forum.

12. A copy of this Notice will be promptly filed with the Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

WHEREFORE, Illinois Union hereby removes the Coverage Action to this Court.

Respectfully submitted,

COZEN O'CONNOR

By: /s/ John David Dickenson
John David Dickenson
Florida Bar No. 575801
Email: jdickenson@cozen.com
Matthew B. Criscuolo
Florida Bar No. 58441
Email: mcriscuolo@cozen.com
One North Clematis Street, Suite 510
West Palm Beach, FL 33401
Telephone: 561-515-5250
Facsimile: 561-525-5230

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 14, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List by U.S. Mail and by Electronic Mail.

/s/ John David Dickenson
John David Dickenson

SERVICE LIST

Counsel for Less Invasive, Inc. and Elio Garcia

Garry W. O'Donnell, Esq.
Greenspoon Marder, P.A.
One Boca Place
2255 Glades Road, Suite 414-E
Boca Raton, Florida 33431
Email: garry.odonnell@gmlaw.com
Email: jennifer.mannon@gmlaw.com