

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

ROBERT WILLIAM AVERKAMP  
and JOYCE AVERKAMP,

Plaintiffs,

BLUE CROSS AND BLUE SHIELD  
OF WISCONSIN,

Involuntary Plaintiff,

Case No.: 2:13-CV-473

vs.

SWIMWAYS CORPORATION, CNA  
FOUNDATION, TARGET CORPORATION  
(d/b/a Target) and ACE AMERICAN  
INSURANCE COMPANY,

Defendants.

---

**NOTICE OF REMOVAL**

---

TO: Robert William Averkamp  
Joyce Averkamp  
c/o Attorney Howard S. Sicula  
Pitman, Kyle, Sicula & Dentice, S.C.  
1110 North Old World Third Street, Suite 510  
Milwaukee, WI 53203

**PLEASE TAKE NOTICE** that Target Corporation and Ace American Insurance Company, by their attorneys, CRIVELLO CARLSON, S.C., pursuant to 28 U.S.C. §§ 1441(b) and 1446, file this Notice of Removal with the court. The grounds for removal of this action are as follows:

1. A civil action designated as Case No. 13-CV-002912 has been commenced and is now pending in the Circuit Court for Milwaukee County, Wisconsin, between the above-named parties.

2. On March 25, 2013, the plaintiffs filed the Summons and Complaint in the Circuit Court for Milwaukee County, Wisconsin. A true and correct copy of the Summons and Complaint is attached as **Exhibit A**.

3. On April 25, 2013, Target Corporation and Ace American Insurance Company filed their Answer and Affirmative Defenses in the Circuit Court for Milwaukee County, Wisconsin, and served all parties who have appeared in Case No. 13-CV-002912. A true and correct copy of the Answer and Affirmative Defenses is attached as **Exhibit B**.

4. The above-described action is a civil action for damages alleged to have arisen from actions arising in Milwaukee County, Wisconsin.

5. The United States District Court for the Eastern District of Wisconsin has jurisdiction over this action for the following reasons:

a. Upon information and belief, the Plaintiffs are residents of the State of Wisconsin. Complaint at ¶1. Defendant Target Corporation is a foreign corporation located in Minneapolis, Minnesota. Complaint at ¶11. Defendant Swimways Corporation is a corporation organized under the laws of the Commonwealth of Virginia. Complaint at ¶3. Defendant CNA Foundation is a corporation organized under the laws of the State of Illinois. Complaint at ¶8. Defendant Ace American Insurance Company is a corporation organized under the law of the State of Pennsylvania. Complaint at ¶14.

b. Removal of this action to the United States District Court is proper under 28 U.S.C. Sec. 1441(a) and (b) because there is complete diversity of citizenship between the

plaintiff and the defendants and the amount in controversy exceeds \$75,000. The United States District Court would, therefore, have had original jurisdiction of this matter under 28 U.S.C. Sec. 1332 had the action been brought in federal court originally.

c. The case is properly venued in that the Plaintiffs are within the jurisdiction of the Eastern District of Wisconsin, and that some of the alleged events or omissions that form the basis for the Plaintiffs' claims occurred within the Eastern District of Wisconsin.

d. This Notice of Removal is timely under Section 1446(b) of Title 28 of the United States Code because the time permitted by statute for filing has not expired.

e. Defendants Target Corporation and Ace American Insurance Company consent to removal.

6. Concurrent with the filing of this Notice of Removal, Defendant, by its attorneys, will notify all active parties and the Clerk of the Circuit Court for Milwaukee County that this case is the subject of a petition for removal in the United States District Court for the Eastern District of Wisconsin, as required by 28 U.S.C. § 1446(d).

### **JURY DEMAND**

1. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, defendant hereby demands trial by jury.

Dated this 29<sup>th</sup> day of April, 2013.

BY: s/ Stacy K. Luell  
JEFFREY T. NICHOLS  
State Bar No.: 1001631  
STACY K. LUELL  
State Bar No.: 1036160  
Attorneys for Target Corporation  
Crivello Carlson, S.C.  
710 North Plankinton Avenue  
Milwaukee, Wisconsin 53203

414-271-7722

Email: [jnichols@crivellocarlson.com](mailto:jnichols@crivellocarlson.com)  
[sluell@crivellocarlson.com](mailto:sluell@crivellocarlson.com)