

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

DEVANTE GRACE	*	CIVIL ACTION NO.
	*	
VERSUS	*	JUDGE
	*	
DONALD MYERS, USA TRUCK, INC.,	*	MAGISTRATE
AND FEDERAL INSURANCE COMPANY	*	
	*	JURY TRIAL

* * * * *

PETITION FOR REMOVAL

NOW INTO COURT, through undersigned counsel, come Defendants, USA TRUCK, INC. and ACE AMERICAN INSURANCE COMPANY, and allege and aver, as follows:

1.

The above entitled case has been filed in the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, Civil Docket Number 636-817, Sec. 26, and is now pending therein. The original *Petition for Damages* was filed on January 30, 2015. A *First Supplemental and Amending Petition for Damages* was filed on February 20, 2015 and added Defendant, ACE AMERICAN INSURANCE COMPANY. A

Second Supplemental and Amending Petition for Damages was filed on April 17, 2015.

Citation and a copy of the original *Petition for Damages* and *First Supplemental and Amending Petition for Damages* were served on USA TRUCK, INC. on or about February 23, 2015.

Citation and a copy of the original *Petition for Damages* and *First Supplemental and Amending Petition for Damages* were served on ACE AMERICAN INSURANCE COMPANY on or about March 5, 2015.

Citation and a copy of the original *Petition for Damages* and *First Supplemental and Amending Petition for Damages* were served on Federal Insurance Company on or about February 13, 2015 and March 5, 2015, respectively.

Citation and a copy of the *Second Supplemental and Amending Petition for Damages* were served on USA TRUCK, INC. and ACE AMERICAN INSURANCE COMPANY on or about April 29, 2015.

As of the date of this filing, Donald Myers has not been served with the original *Petition for Damages*, the *First Supplemental and Amending Petition for Damages*, or the *Second Supplemental and Amending Petition for Damages*.

2.

On April 21, 2015, Judge Donald R. Johnson of the 19th Judicial District Court for the Parish of East Baton Rouge signed an *Order* dismissing Federal Insurance Company from the lawsuit. **Exhibit “A”**.

3.

The aforementioned suit is a civil action filed by Plaintiff, DEVANTE GRACE.

4.

Plaintiff, DEVANTE GRACE, seeks an award of damages against Defendants for injuries and damages allegedly arising out of an automobile accident that occurred on or about February 15, 2014 on Interstate 10 near U.S. Highway 61 in the Parish of St. James, State of Louisiana.

5.

Plaintiff, DEVANTE GRACE, is a person of the age of majority domiciled in the Parish of East Feliciana and is a citizen of the State of Louisiana.

6.

Defendant, USA TRUCK, INC., is a foreign company with its place of incorporation in the State of Delaware and principal place of business in the State of Arkansas.

7.

Defendant, ACE AMERICAN INSURANCE COMPANY, is a foreign insurance company with its place of incorporation and its principal place of business in the Commonwealth of Pennsylvania.

8.

As noted herein, Defendant, Donald Myers, was not served with the original *Petition for Damages*, the *First Supplemental and Amending Petition for Damages*, or the *Second Supplemental and Amending Petition for Damages*. However, he is a person of the age of majority domiciled in the County of Queens and is a citizen of the State of New York.

9.

Defendants allege that this Honorable Court has original jurisdiction over the entitled and numbered cause pursuant to Article III of the United States Constitution and 28 U.S.C. §1332, and that Plaintiff is diverse from all Defendants named in the Petition for Damages and, upon information and belief, that the alleged damages of Plaintiff, DEVANTE GRACE, exceed \$75,000.00, exclusive of interest and costs.

10.

Plaintiff's *Petition for Damages* alleges that Defendant, DONALD MYERS, operating a vehicle owned by Defendant, USA TRUCK, INC., and at the time employed by USA TRUCK, INC., caused an accident in which Plaintiff suffered "back trauma and pain, neck trauma and pain, head trauma and pain, general soreness to the body as a whole, and other injuries which will be more fully established at trial."

11.

In addition, Plaintiff claims that the accident caused him to suffer past, present and future physical pain and suffering, mental pain, anguish and distress, loss of enjoyment of life, lost wages, disability, impairment of earning capacity, medical expenses and "other elements of damages to be more fully set forth at the trial of this matter."

12.

Louisiana Code of Civil Procedure Article 893 specifically prohibits the pleading of the amount of monetary damages sought. Plaintiff's original *Petition for Damages*, *First Supplemental and Amending Petition for Damages*, and *Second Supplemental and Amending Petition for Damages* do not set forth the specific amount of damages sought.

13.

On or about April 16, 2015, Plaintiff, DEVANTE GRACE, served upon Defendants his *Responses to Requests for Admission*. In the *Requests for Admission* propounded by Defendants, Plaintiff was asked to admit that “the total amount in controversy of your claim in the above-entitled matter exceeds \$75,000, exclusive of interest and legal costs.” Plaintiff admitted that his claim did exceed \$75,000, exclusive of interest and legal costs. The *Responses to Requests for Admission* are attached as **Exhibit “B”**.

14.

Further, on April 17, 2015, Plaintiff filed a *Motion for Leave of Court to File Second Supplemental and Amending Petition for Damages*. The amending petition adds a paragraph that states: “Plaintiff avers that his claim for damages exceeds \$75,000.” The *Motion for Leave of Court to File Second Supplemental and Amending Petition for Damages* was granted on April 21, 2015 by Judge Donald R. Johnson. **Exhibit “C”**.

15.

Based on Plaintiff, DEVANTE GRACE’S, *Responses to Requests for Admission* and the allegation of the *Second Supplemental and Amending Petition for Damages*, Plaintiff has submitted in writing that the amount in controversy exceeds \$75,000, exclusive of interest and costs, the minimum amount necessary to support diversity jurisdiction.

16.

Accordingly, Defendants, USA TRUCK, INC. and ACE AMERICAN INSURANCE COMPANY, are entitled to remove this case to this Honorable Court for disposition pursuant to the removal provisions of 28 U.S.C. §1441 *et seq.*, as amended.

17.

The time in which Defendants herein may file a *Notice of Removal* in order to properly remove this case has not yet expired. This *Notice of Removal* is filed within thirty days of service of the *Responses to Requests for Admission*, which was the first instance in which Defendants were provided written assertion by Plaintiff, DEVANTE GRACE, that the amount in controversy for his claim exceeds the jurisdictional minimum.

18.

Defendants file herewith a copy of all process, pleadings and orders served upon them in this action, *in globo*, as **Exhibit "D"**.

19.

In accordance with 28 U.S.C. §1446(d), Defendants will provide appropriate Notice of this Removal to Plaintiff, DEVANTE GRACE, and to the Clerk of Court for the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, by filing of this Notice and the *Notice of Removal* into the record of the state court action.

JURY DEMAND

20.

Defendants are entitled to and request a trial by jury on all issues herein.

WHEREFORE, Defendants, USA TRUCK, INC. and ACE AMERICAN INSURANCE COMPANY, pray that the suit entitled, “*Devante Grace v. Donald Myers, USA Truck, Inc., and Federal Insurance Company*,” now pending in the 19th Judicial District Court, Parish of Orleans, State of Louisiana, and bearing Docket Number 636-817, Sec. 26, be removed to this, the United States District Court for the Middle District of Louisiana, and for trial by jury and all just and equitable relief as allowed by law.

Respectfully submitted,

PERRIER & LACOSTE, L.L.C.

/s/ Ralph G. Breaux

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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DONALD MYERS, USA TRUCK, INC.,	*	MAGISTRATE
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* * * * *		

CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing pleading was this day forwarded to:

Shannon Eastman-Stuart, Esq.
GORDON MCKERNAN INJURY LAWYERS
5630 Bankers Avenue
Baton Rouge, Louisiana 70808

either through the CM/ECF system, depositing a copy of same in the United States mail, first class postage prepaid and properly addressed, by hand delivery, or via facsimile transmission: (225) 926-1202.

New Orleans, Louisiana, this 14th day of May, 2015.

/s/ Ralph G. Breaux

RALPH G. BREAUX