

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

JAMES MATHEWS,  
  
Plaintiff,

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VS.

CASE NO. 1:11-cv-228

INDEMNITY INSURANCE CO.  
OF NORTH AMERICA

Defendants.

JURY DEMANDED

**PETITION OF REMOVAL TO THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Indemnity Insurance Company of North America, for purposes only of removing this cause to the United States District Court for the Northern District, Fort Worth Division, states as follows:

**I.**

**STATE COURT ACTION**

This is an action filed on or about October 14, 2010, in the 419<sup>th</sup> Judicial District Court, Travis County, Texas, being assigned cause number D-1-GN-10-003685 and styled “*James Mathews vs. Indemnity Insurance Company of North America,*” seeking to recover damages due to Defendant’s alleged breach of the duty of good faith and fair dealing, alleged violations of the Texas Insurance Code, and alleged violations of the Texas Deceptive Trade Practices Act.

**II.**

**FEDERAL JURISDICTION**

For purposes of jurisdiction, Plaintiff is an individual who resides in Travis County, Texas, and is a citizen of the State of Texas. Defendant Indemnity Insurance Company of North America is a foreign corporation incorporated under the laws of Pennsylvania, with its principal place of business in the State of Pennsylvania.

The amount in controversy, without interest and costs, exceeds the sum or value of \$75,000.00, specified by 28 U.S.C. §1332, that on information and belief, the amount in controversy is alleged as in excess of \$125,000.00 as set forth in Plaintiff's Original Petition. Therefore, this Court has original jurisdiction over this action pursuant to 28 U.S.C. Section 1332. Accordingly, this action may be removed by Defendant Indemnity Insurance Company pursuant to 28 U.S.C. Section 1441. Venue is proper in this Court under 28 U.S.C. Section 1391 as this action was pending in the State Court within this district and division.

**III.**

**STATE COURT DOCUMENTS ATTACHED**

Citation was received by Zurich American Insurance Company's registered agent on February 22, 2011, which was the first time Indemnity Insurance Company of North America received, through service or otherwise, a copy of the initial pleadings setting forth the claim for relief upon which this action is based.

As such, this original Notice of Removal is timely, under 28 U.S.C. Section 1446(b). A copy of the State court civil docket sheet is attached as Exhibit "2." A copy of Plaintiff's Original Petition is attached hereto as Exhibit "3." The Citation served on

Indemnity Insurance Company of North America is attached hereto as Exhibit "4." These documents constitute the only pleadings, process or orders received by Defendant in this action. Defendant Indemnity Insurance Company of North America filed its answer on March 11, 2011, which is also attached as Exhibit "5." Last, Defendant Indemnity Insurance Company of North America's Certificate of Interested Persons is attached hereto as Exhibit "6." Defendant Indemnity Insurance Company of North America's Notice of Removal is attached hereto as Exhibit "7."

**IV.**

**RELIEF REQUESTED**

Indemnity Insurance Company of North America respectfully requests the United States District Court for the Western District of Texas, Austin Division, accept this Petition of Removal, that it assume jurisdiction of this cause and issue all such further orders and process as may be necessary to bring before it all parties necessary for the trial hereof.

Respectfully submitted,

**AYERS & AYERS**

BY:  /s/ Deanne C. Ayers \_\_\_\_\_

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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been forwarded to all known counsel of record via certified mail, return receipt requested, on this the 24<sup>th</sup> day of March, 2011.

/s/ Deanne C. Ayers

Deanne C. Ayers