

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

BROOKE STEWART	*	CASE NO.
	*	
versus	*	
	*	JUDGE
TARGET CORPORATION OF MINNESOTA and	*	
ACE AMERICAN INSURANCE COMPANY	*	MAGISTRATE

NOTICE OF REMOVAL

NOW INTO COURT, through undersigned counsel comes defendants Target Corporation of Minnesota (“Target”), and ACE American Insurance Company (“ACE”) who hereby request this Honorable Court to remove that certain matter styled “Brooke Stewart versus Target Corporation of Minnesota and ACE American Insurance Company,” suit number 642813, from the docket of the 19th Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana, (hereinafter sometimes referred to as the “state court proceeding”), to the United States District Court for the Middle District of Louisiana, on the following grounds, to-wit:

1.

On or about October 8, 2015 plaintiff filed a petition for damages against named defendants Target Corporation of Minnesota and ACE American Insurance Company. Plaintiff Brooke Stewart alleged that she received personal injuries as a result of slipping on a foreign substance and striking her leg against a shopping cart on or about October 4, 2014 at a Target store location in Baton Rouge, Louisiana.

2.

In the petition plaintiff alleged that she was a resident and domiciled in the Parish of East Baton Rouge, State of Louisiana.

3.

Defendant Target Corporation of Minnesota is a corporation organized under the laws of the State of Minnesota with their principal place of business in Minneapolis, Minnesota. Therefore, Target is a citizen of the State of Minnesota. This entity was served with the Petition for Damages through its registered agent for service of process on October 15, 2015.

4.

Defendant ACE American Insurance Company is a foreign insurance company organized under the laws of the State of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania. Therefore, Ace is a citizen of the State of Pennsylvania. ACE was served with the Petition for Damages October 27, 2015.

5.

Plaintiff and defendants Ace and Target are citizens of different states.

1. **REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. § 1332.**

6.

28 U.S.C. § 1332 provides Federal District courts with concurrent original jurisdiction in cases “where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between- citizens of different States.”

A. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00.

7.

The petition for damages in the state court proceeding did not expressly set out a specific amount of damages in which the plaintiff was seeking in the state court proceeding, i.e., the amount in controversy. The petition only made generic allegations of damages that Brooke Stewart sustained, and that her damages included past, present, and future mental anguish and distress, past, present, and future physical pain and suffering, past, present, and future medical expenses, impairment of function, and loss of enjoyment of life.

8.

The allegations of the state court petition were not such that it was readily ascertainable that the action was removable at the time of its filing. Since the filing of the petition for damages, and within the last 30 days, defendants have received “other paper(s)” which evidence that the amount which plaintiff will seek in the state court proceeding, i.e., the amount in controversy, will exceed \$75,000.00, exclusive of interest and costs. Defendants are informed and believe that the amount in controversy for the matter will exceed \$75,000 exclusive of interest and costs.

9.

On December 9, 2015, in response to a state court issued subpoena, defendants received the medical records of plaintiff from the Bone and Joint Clinic of Baton Rouge. Those records identified that since the incident complained of, plaintiff has undergone surgery for damages allegedly related to same. More specifically, those records provided that plaintiff sought initial

treatment with Dr. Broyles on December 23, 2014 complaining of right hip pain allegedly related to the incident at Target. An MRI of the right hip on January 2, 2015 showed a right labral tear. Surgery to repair the right labral tear was conducted on January 19, 2015. Subsequent follow up visits and therapy allegedly failed to alleviate her complaints and a repeat MRI was conducted in May 2015. That MRI was read by the radiologist as demonstrating a progression of the tear. Dr. Boyles opined that instead of a tear there was a build up of fluid between the capsule and labrum at the surgery's anchor placement. Plaintiff was given an injection but reported on July 8, 2015 that same only provided one week of relief. Dr. Boyles then opined that plaintiff was having synovitis around her capsulotomy and her iliopsoas was rubbing on that area. Dr. Boyles then referred plaintiff for an iliopsoas bursa injection.

By September 23, 2015 plaintiff reported that the injection made the pain worse and was now painful with any activity. Dr. Boyles recommended plaintiff undergo an MRI arthrogram to be conducted in November. Dr. Boyles remarked that this MRI maybe a pre-operative planning tool. He also recommended that plaintiff consider a second opinion. The MRI anthrogram was performed on November 4, 2015. On November 9, 2015 Dr. Boyles opined that the labrum repair showed the labrum to be intact with no fluid extravasation into the side of the labral repair. The only thing he could see as a pain generator was edema coursing next to the ileus soleus tendon. Dr. Boyles again recommended plaintiff obtain a second opinion before considering another surgical procedure. Total medical expenses from Bone and Joint equated to \$14,107.46.

10.

Based upon the above medical records received on December 9, 2015, defendants are informed and believe that the amount in controversy for the matter will exceed \$75,000 exclusive of interest and costs. Plaintiff has undergone injections, physical therapy, and right leg surgery. Plaintiff's medical treatment appears is ongoing, and a second surgery has been suggested as an option. The known medical expenses to date are approximately \$14,000, but are known to be greater as that amount does not include surgical facility costs or future medicals. Accordingly, the alleged injuries, and medical expenses related to treatment thus far, clearly indicate the amount in controversy will exceed \$75,000 exclusive of interest and costs.

11.

Further, the state court petition is subject to amendment upon motion of plaintiff at any time, including the ability to assert damages greater than \$75,000, exclusive of interest and costs. Defendants are informed and believe that the amount which plaintiff will seek in the state court proceeding, i.e., the amount in controversy, will exceed \$75,000, exclusive of interest and costs.

B. COMPLETE DIVERSITY

12.

Defendants Target and Ace are foreign corporations organized under the laws of the States of Minnesota and Pennsylvania, respectively, which their principal places of business in Minneapolis and Philadelphia, respectively.

13.

Plaintiff is a resident of and domiciled in the State of Louisiana.

14.

Accordingly, there is complete diversity of citizenship between the plaintiff and the only properly joined defendants.

15.

This is a civil action over which the United States District Court for the Middle District of Louisiana has concurrent original jurisdiction under the provisions of 28 U.S.C. § 1332, *et seq.*, as the amount in controversy exceeds SEVENTY-FIVE THOUSAND AND NO/100 (\$75,000.00) DOLLARS, exclusive of interest and costs, and complete diversity exists between all adverse properly joined parties.

II. DEFENDANTS HAVE STATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL

16.

Defendant Target Corporation of Minnesota was served with the Petition for Damages through its registered agent for service of process on October 15, 2015. Defendant ACE American Insurance Company was served with the Petition for Damages on October 27, 2015.

17.

The original Petition for Damages did not allege damages sufficient to where it was readily ascertainable that the case was one which was removable. The original petition only made general allegations of damages without information as to medical expenses or treatment rendered. Those generic allegations did not allow for removal at the time of service of same upon defendants.

18.

The subpoenaed medical records response of the Bone and Joint Clinic of Baton Rouge constitutes “other papers” under 28 U.S.C. §1446(b) (3) from which it may first be ascertained that the case is one which is or has become removable. The subpoena response was received on December 9, 2015. This Notice of Removal is being filed within thirty (30) days after first receipt by defendants of a copy of another paper/pleading from which it may first be ascertained that the case is one which is or has become removable. This notice of removal is further being filed within one year of commencement of the action. Therefore, this Notice of Removal is timely under 28 U.S.C. § 1446(b) (3) and 28 U.S.C. § 1446(c).

19.

Jurisdiction is founded in the existence of diversity jurisdiction under 28 U.S.C. § 1332, which grants federal courts concurrent original jurisdiction over claims where the matter in controversy exceeds the sum or value of SEVENTY-FIVE THOUSAND AND NO/100 (\$75,000.00) DOLLARS, exclusive of interest and costs, and is between citizens of different states.

20.

The 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, is located within the Middle District of Louisiana pursuant to 28 U.S.C. § 98(a). Therefore, venue is proper in accordance with 28 U.S.C. § 1441(a).

21.

No previous application has been made by defendants in this case for the relief requested herein.

22.

Defendants wish to remove the claims which have been asserted by plaintiff in the state court proceeding to the United States District Court for the Middle District of Louisiana. The claims that plaintiff, Brooke Stewart, now asserted in the state court proceeding are claims between citizens of different states involving more than \$75,000, exclusive of interest and costs. The claims which plaintiff, Brooke Stewart, has asserted in the state court proceeding, therefore, fall within the jurisdiction of the United States District Court and may properly be removed to the United States District Court for the Middle District of Louisiana. See, 28 U.S.C. § 1332, 28 U.S.C. §§ 1441 & 1446-1451.

23.

Target Corporation of Minnesota, and ACE American Insurance Company confer in removal of the matter and respectfully requests that this Notice of Removal be filed into the record of the United States District Court for the Middle District of Louisiana, effecting a removal of that certain matter styled, “Brooke Stewart versus Target Corporation of Minnesota and ACE American Insurance Company,” suit number 642813, from the docket of the 19th Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana.

24.

Pursuant to 28 U.S.C. § 1446(a), a copy of the all pleadings filed in the state court proceeding are attached as exhibits. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Brooke Stewart, and a copy is being filed with the Clerk of Court for the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana.

25.

Defendants are entitled to and request **trial by jury** of all issues herein.

WHEREFORE, defendants, Target Corporation of Minnesota, and Ace American Insurance Company, hereby remove this action from the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, to the docket of the United States District Court for the Middle District of Louisiana.

Respectfully Submitted:

LAWRENCE & ASSOCIATES

By: /s/David P. Curlin

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of **January, 2016**, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Jeffrey S. Wittenbrink, attorney for plaintiff.

/s/David P. Curlin