

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**LENDWOOD MCKNIGHT, ET UX.,
FONDA MCKNIGHT**

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CIVIL ACTION NO.

versus

JUDGE:

**VELOCITY EQUIPMENT SOLUTIONS, LLC
AND THE CINCINNATI INSURANCE
COMPANY**

MAG:

**THE CINCINNATI INSURANCE COMPANY'S
NOTICE OF REMOVAL**

To: The Judges of the United States District Court for the Eastern District of Louisiana

Pursuant to 28 U.S.C. § 1446, Defendant, The Cincinnati Insurance Company, with full reservation of any and all defenses, objections, and exceptions, hereby gives notice of the removal of this civil action from the Twenty-First Judicial District Court, Parish of Tangipahoa, State of Louisiana, to the United States District Court for the Eastern District of Louisiana. A copy of this Notice of Removal was also filed with the Clerk of Court for the Twenty-First Judicial District Court for the Parish of Tangipahoa. As more fully set forth below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441, as The Cincinnati Insurance Company has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. As grounds for this removal, The Cincinnati Insurance Company respectfully represents that:

BACKGROUND

I.

On July 22, 2013, a civil action was commenced and is presently pending in the Twenty-First Judicial District Court for the Parish of Tangipahoa, State of Louisiana, entitled “Lendwood McKnight et Ux. versus Velocity Equipment Solutions, LLC et al.,” bearing Docket Number 2013-0002222. A copy of the entire State Court record is attached hereto as Exhibit “A.”

II.

Named as defendants to this action are The Cincinnati Insurance Company and Velocity Equipment Solutions, LLC.

III.

Removing Defendant, The Cincinnati Insurance Company, was served with the Petition for Damages on July 25, 2013.

IV.

Defendant, Velocity Equipment Solutions, LLC, was served with the Petition for Damages on July 29, 2013, via the Louisiana Long Arm Statute.

V.

In light of the foregoing, this removal is timely under Title 28 U.S.C. §1446(b).

JURISDICTIONAL BASIS FOR REMOVAL

VI.

The above-described action is a civil action over which this Court has original jurisdiction based on diversity of citizenship pursuant to Title 28 U.S.C. §1332 and is one that Defendant is entitled to remove to this Court pursuant to Title 28 U.S.C. §1441.

A. The Amount in Controversy Is Satisfied

VII.

This is a civil action in which the good faith amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. Specifically, Plaintiffs allege the following regarding damages in their Petition:

While the Plaintiff, Lendwood McKnight, was performing his job, the guard on top of the machine suddenly and without any prior warning slipped from its position on top of the machine and fell into the hopper. Plaintiff being on top of the machine also slipped and fell into the machine when the grate slipped. (Petition for Damages, Paragraph 3, attached hereto as part of Exhibit "A"). As a result of the fall, Plaintiff, Lendwood McKnight, wedged his foot between the belt and pulley and his back struck and wedged against the gear box of the machine. Plaintiff injured his foot, knee, and back as a result of [the] fall. (Petition for Damages, Paragraph 4, attached hereto as part of Exhibit "A"). As a result of [the] accident, the Plaintiff, Lendwood McKnight, sustained injuries to his foot, knee, and back, causing him physical pain, discomfort, and disability, which continue to cause him pain, discomfort and disability. Plaintiff alleges that the complaints from the injuries appear to be progressing and becoming worse over time. (Petition for Damages, Paragraph 10, attached hereto as part of Exhibit "A"). The Plaintiff, Lendwood McKnight, was forced to undergo medical treatment. He has and will continue to suffer restrictions and limitations on his activities. He received other damages such as inconvenience, mental duress, pain

and suffering, expenses incurred for medical treatment, diagnostic testing, loss of earnings, loss of earning capacity and prescription bills, future medical expenses, and loss of enjoyment of life. (Petition for Damages, Paragraph 11, attached hereto as part of Exhibit "A"). The Plaintiff, Fonda McKnight, wife of Lendwood McKnight, is making a claim for loss of consortium. (Petition for Damages, Paragraph 12 attached hereto as part of Exhibit "A"). Plaintiffs, Lendwood McKnight and his wife, Fonda McKnight, represent that their damages are in excess of the amount required for a jury trial and do request trial by jury. (Petition for Damages, Paragraph 13, attached hereto as part of Exhibit "A").

VIII.

Further supporting the fact that the good faith amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, is the following. Via correspondence dated August 15, 2013 (and forwarded via facsimile to plaintiff counsel on that date), undersigned counsel for removing Defendant forwarded to counsel for Plaintiffs a Stipulation that the amount in controversy in this matter, with respect to the claims of Plaintiffs both individually and in the aggregate, exclusive of interest and costs, has never exceeded, does not presently exceed, nor will it in the future exceed the sum of \$74,999.99. Undersigned counsel requested that the Stipulation be executed by Plaintiffs and their counsel and then returned by August 23, 2013. Plaintiff counsel has never returned the executed Stipulation and has not contacted undersigned counsel to discuss the issue. A copy of the correspondence and Stipulation is attached hereto as Exhibit "B," in globo.

IX.

In light of the foregoing, the amount in controversy requirement is satisfied, as it is apparent that Plaintiffs' claims, if proved, would more likely than not exceed \$75,000.00, exclusive of interest and costs.

B. There Is Complete Diversity of Citizenship

X.

Plaintiff, Lendwood McKnight, is a citizen of the State of Louisiana. See Petition for Damages, first (unnumbered) Paragraph.

XI.

Plaintiff, Fonda McKnight, is a citizen of the State of Louisiana. See Petition for Damages, first (unnumbered) Paragraph.

XII.

Defendant, Velocity Equipment Solutions, LLC, is now, and was at the time Plaintiffs' Petition was filed, an entity organized under the laws of and having its principal place of business in the State of Pennsylvania.

XIII.

Defendant, The Cincinnati Insurance Company, is now, and was at the time Plaintiffs' Petition was filed, an entity organized under the laws of and having its principal place of business in the State of Ohio.

XIV.

No defendant in this action is a citizen of the State of Louisiana. Consequently, this suit is between citizens of different states for purposes of Title 28 U.S.C. §1332; and complete

diversity of citizenship exists.

PROCEDURAL REQUIREMENTS FOR REMOVAL

XV.

Service of process of the Petition was made on The Cincinnati Insurance Company, the first-served defendant, through its registered agent for service on July 25, 2013.

XVI.

The Cincinnati Insurance Company files this Notice of Removal within thirty (30) days after having been served and within one year after commencement of this action. This removal is, therefore, timely under Title 28 U.S.C. §1446(b).

XVII.

Service of process of the Petition was made on Velocity Equipment Solutions, LLC by certified mail via the Louisiana Long Arm Statute on July 29, 2013. A Consent to Removal executed by this defendant is attached hereto as Exhibit "C."

XVIII.

The United States District Court for the Eastern District of Louisiana embraces the parish in which the state court action was filed; and, therefore, this case is properly removed to this Court under 28 U.S.C. §§ 98(a) and 1441(a).

XIX.

Pursuant to 28 U.S.C. § 1446(a), the entire record from the state court, including the Petition for Damages, is attached as Exhibit "A" to this Notice of Removal.

XX.

Pursuant to 28 U.S.C. § 1446(d), The Cincinnati Insurance Company is filing written notice of this removal with the Clerk of the Twenty-First Judicial District Court, Parish of Tangipahoa, State of Louisiana, where the action is currently pending. Copies of the Notice to Adverse Parties of Removal and this Notice of Removal are being served upon Plaintiffs' counsel pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Removing Defendant, The Cincinnati Insurance Company, prays that this action be removed to the United States District Court in and for the Eastern District of Louisiana.

Respectfully submitted:

**DUPLASS, ZWAIN, BOURGEOIS,
PFISTER & WEINSTOCK**

s/Guyton H. Valdin, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2013, a copy of the foregoing Notice of Removal was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all known counsel of record by operation of the Court's electronic filing system and/or U. S. Mail.

s/Guyton H. Valdin, Jr.

GUYTON H. VALDIN, JR.