

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

ANGELINA MATOS,

Plaintiff,

v.

PLANNED PARENTHOOD KEYSTONE t/a
PLANNED PARENTHOOD KEYSTONE
BERKS COUNTY, BAYER HEALTHCARE
PHARMACEUTICALS INC., and DOE
DESIGNEES 1 and 2.

Defendants.

**BAYER HEALTHCARE
PHARMACEUTICAL INC.’S NOTICE
OF REMOVAL UNDER §§ 28 U.S.C.
1332, 1441, AND 1446.**

Complaint Filed: January 11, 2021

NOTICE OF REMOVAL

Defendant Bayer Healthcare Pharmaceuticals Inc. (“Bayer”) respectfully gives notice that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, it has removed the above-entitled action to the United States District Court for the Eastern District of Pennsylvania from the Court of Common Pleas of Philadelphia County, Commonwealth of Pennsylvania. In support of its Notice of Removal, Bayer states as follows:

I. THE REMOVED CASE

1. Plaintiff filed this civil action on January 11, 2021, in the Court of Common Pleas, Philadelphia County, Commonwealth of Pennsylvania, styled *Angelina Matos v. Planned Parenthood Keystone t/a Planned Parenthood Keystone Berks County, et al.*, No. 210100693. Pursuant to 28 U.S.C. § 1446(a), a copy of all process and pleadings served upon or by Bayer to date are attached as Exhibit A.

II. BAYER HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL.

2. This removal is timely. Bayer files this Notice of Removal within 30 days after Entry of a Judgment by Non Pros in favor of Planned Parenthood, which rendered this matter removable. *See* 28 U.S.C. § 1446(b)(3). Bayer received service of the Praecipe for Judgment by Non Pros and notice of entry on Judgment by Non Pros on June 9, 2021.

3. The United States District Court for the Eastern District of Pennsylvania is the proper venue for removal under 28 U.S.C. § 1441(a) because it is “the district and division embracing the place where such action is pending,” namely, the County of Philadelphia for the Commonwealth of Pennsylvania.

4. Pursuant to 28 U.S.C § 1446(d), written notice of this removal will be filed with the Clerk of the Court of Common Pleas of Philadelphia County, Commonwealth of Pennsylvania, and Bayer will serve a copy of the Notice of Removal on all adverse parties to the case.

III. REMOVAL IS PROPER BECAUSE THE COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441.

A. Diversity of Citizenship Exists Between the Parties.

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because this is a civil action in which the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest, and is between citizens of different states. Removal under 28 U.S.C. § 1441(b) is appropriate in this matter since complete diversity of citizenship exists between Plaintiff and Bayer, and Bayer is not a citizen of Pennsylvania, the state in which this action was brought.

6. Plaintiff resides in Reading, Pennsylvania. (Am. Compl. ¶ 1). Plaintiff is therefore a citizen of the State of Pennsylvania for the purposes of determining diversity. Bayer is now, and was at the time Plaintiff commenced this action, a Delaware corporation, having its principal place

of business in New Jersey, (*see* Am. Compl. ¶ 3.), and, thus, for jurisdictional purposes, is a citizen of Delaware and New Jersey. *See* 28 U.S.C. § 1332(c)(1).

7. Pursuant to 28 U.S.C. § 1441, the citizenship of the Doe Defendants is immaterial for determining diversity jurisdiction because “the citizenship of defendants sued under fictitious names shall be disregarded.” *See* 28 U.S.C. § 1441(b)(1).

B. The Amount in Controversy Requirement Is Satisfied.

8. Based on the factual allegations of the Amended Complaint, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *See* 28 U.S.C. § 1332. This is a pharmaceutical product liability action in which Plaintiff alleges that she sustained severe injuries as a result of the prescription medication Mirena®. Specifically, Plaintiff alleges that the Mirena® was mal-positioned, causing her to experience “severe abdominal pain, severe headaches, the need to undergo a serious medical procedure to remove the IUD, congestive heart failure, loss of life’s comforts and enjoyments [sic] as well as other serious and permanent injuries.” (Am. Compl. ¶ 25). Plaintiff alleges that she “has been and may in the future continue to be required to expend various sums of money for medicine and medical treatment in and about endeavoring to treat and cure himself [sic] of his [sic] injuries” and that she “has and may continue to suffer great pain and agony, mental anguish and humiliation and has been and may in the future be hindered from attending to his [sic] daily duties, functions and occupation, all to his [sic] great damage and loss.” (Am. Compl. ¶¶ 27–28). Plaintiff has requested compensatory and punitive damages.

9. Plaintiff has not asserted an exact amount of damages. But Plaintiff seeks damages against Bayer in a sum in excess of Fifty Thousand Dollars (\$50,000). (Am. Compl., at Counts IV–VII).

10. The amount in controversy is “not measured by the low end of an open-ended claim, but rather by a reasonable reading of the value of the rights being litigated.” *Lin v. Mid-Century Ins. Co.*, No. 20-3876, 2020 U.S. Dist. LEXIS 175400, at *5 (E.D. Pa. Sep. 24, 2020) (citing *Werwinski v. Ford Motor Co.*, 286 F.3d 661, 666 (3d Cir. 2002); *Angus v. Shiley Inc.*, 989 F.2d 142, 145–146 (3d Cir.1993)). Based on Plaintiff’s claims and the severity of alleged injuries, the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs. *See, e.g., Intzekostas v. Atria Ctr. City*, No. 20-5540, 2020 U.S. Dist. LEXIS 244138, at *9 (E.D. Pa. Dec. 29, 2020) (finding the amount in controversy satisfied where the complaint sought damages “in excess of \$50,000” and the complaint alleged, *inter alia*, “great physical pain, serious and permanent injury and mental anguish; . . . [that plaintiff] has been and may continue to be prevented from attending to [her] usual activities, duties and occupations and has suffered and may continue to suffer a loss of earnings and earning capacity, and . . . [that plaintiff] has incurred and may continue to incur various medical expenses in and about an effort to cure [herself] of the aforesaid injuries.”); *Bailey v. J.B. Hunt Transp., Inc.*, No. 06-240, 2007 WL 764286, at *6 (E.D. Pa. Mar. 8, 2007) (amount-in-controversy requirement satisfied where complaint alleged a “litany of serious, permanent injuries,” “surgeries and treatments,” and “the allegedly permanent impairment of [the] ability to enjoy life’s activities”).

11. Bayer need not confirm through discovery in the State Court Action that the jurisdictional amount is satisfied. Indeed, “a defendant who wishes to remove a case to federal court cannot ‘wait for discovery responses that simply confirm what was obvious from the face of the complaint; in such cases, defendants are not insulated from a remand to state court.’ It is not the law that ‘cases are not removable until there has been an absolute affirmation via discovery . . . that more than \$75,000 [is] in issue.’” *Fields v. Jay Henges Enters., Inc.*, No. 06-323-GPM, 2006

WL 1875457, at *3 (S.D. Ill. June 30, 2006) (quoting *McCoy*, 226 F. Supp. 2d at 941); *see also Roe*, 613 F.3d at 1064 (“when a district court can determine, relying on its judicial experience and common sense, that a claim satisfies the amount-in-controversy requirements, it need not give credence to a plaintiff’s representation that the value of the claim is indeterminate Otherwise, a defendant could wrongly be denied the removal to which it is entitled.”); *Century Assets Corp. v. Solow*, 88 F. Supp. 2d 659, 661 (E.D. Tex. 2000) (holding that a complaint “can facially state a claim over the jurisdictional amount when there are *no* numbers in the [complaint] at all,” and that removal was untimely where it was apparent from the complaint that an amount sufficient to satisfy the requirements of diversity jurisdiction was in controversy) (emphasis in original).

IV. CONCLUSION

In this civil action, there is complete diversity of citizenship between Plaintiff and Bayer. Bayer is not a citizen of Pennsylvania, and the amount in controversy is satisfied. Thus, this case is removable pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

Dated: June 21, 2021

Respectfully submitted,

BY: /s/ Albert G. Bixler
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CERTIFICATE OF SERVICE

I, *Albert G. Bixler, Esquire*, hereby certify that on June 21, 2021 a true and correct copy of the foregoing Notice of Removal was served electronic mail and First Class Mail upon all counsel of record:

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/s/ Albert G. Bixler
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