

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTOINETTE SIMS :
 :
 : CIVIL ACTION
 :
 v. :
 :
 :
 : NO. 04-CV-3773
 PERKINELMER INSTRUMENTS, LLC, :
 ET AL. :

SURRICK, J.

MARCH 31, 2005

MEMORANDUM & ORDER

Presently before the Court is Plaintiff's "Petition to Remand" (Doc. No. 3). For the following reasons, Plaintiff's Motion will be granted.

I. BACKGROUND

On April 14, 2004, Plaintiff filed a complaint in the Court of Common Pleas of Philadelphia County against "PerkinElmer Instruments, LLC formerly EG&G Astrophysics and Vivid Tech" ("PerkinElmer Instruments, LLC") and "EG&G Astrophysics - Inspections" ("EG&G Astrophysics"). *Sims v. PerkinElmer Instruments, LLC*, Civ. A. No. 040402560 (Pa. Ct. Com. Pl. filed Apr. 14, 2004). Plaintiff reinstated the Complaint on May 21, 2004 (Doc. No. 6), and served EG&G Astrophysics by certified mail on May 26, 2004. (*Id.*) The Sheriff's Office of Dauphin County personally served PerkinElmer Instruments, LLC with the Complaint on June 3, 2004. (*Id.*)

Plaintiff's Complaint alleges that she was injured by a portable x-ray scanner. (Doc. No. 5 Ex. B ("Compl.") ¶¶ 4, 6.) Plaintiff avers that she suffered "severe and disabling injuries to the

bones, muscles, blood vessels, tissues, nerves and tendons of her right lower leg, including but not limited to an injury to her Achilles tendon of her right heel.” (*Id.* ¶ 7.) In addition to damages for such things as medical care hospitalization, pain and suffering and disfigurement, Plaintiff alleges that this physical injury resulted in past and future loss of earnings and earnings capacity. Plaintiff specifically alleges that she “has been disabled in the past and will continue in the future to be disabled” as a result of Defendants’ conduct. (*Id.* ¶¶ 8-10.)

On July 12, 2004, after PerkinElmer Instruments, LLC filed preliminary objections to the Complaint, Plaintiff filed an Amended Complaint. (Doc. No. 1 Ex. A. (“Am. Compl.”).) While the Amended Complaint provides more specific detail about the circumstances surrounding Plaintiff’s injury,¹ the damages alleged in it are identical to those asserted in the original Complaint. *Compare* Compl. ¶¶ 7-10, *with* Am. Compl. ¶¶ 9-12. At some point after Plaintiff filed the Amended Complaint, counsel for Plaintiff told Defendants’ counsel that Plaintiff was “seeking damages in excess of \$75,000.” (Doc. No. 5 Ex. A.) On August 10, 2004, after this conversation, Defendants filed a Notice of Removal to this Court on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332.² (Doc. No. 1.)

II. LEGAL STANDARD

Under 28 U.S.C. § 1441(a), a defendant in a state court action may remove the case to federal court if the federal court could have originally exercised jurisdiction over the matter. 28

¹The Amended Complaint avers that a portable x-ray scanner located at the Roxborough High School was being moved on April 18, 2002, from one location to another within the school. (Am. Compl. ¶ 8.) As it was being moved, it hit the heel of Plaintiff’s right leg. (*Id.* ¶¶ 8-9.)

²Defendants also filed a “Praecipe to File Notice of Removal to the United States District Court for the Eastern District of Pennsylvania” with the Court of Common Pleas of Philadelphia County, which was docketed on August 10, 2004. (Doc. No. 6.)

U.S.C. § 1441(a) (2000). A case removed to federal court may be remanded to state court “if at any time before final judgment it appears that the district court lacks subject matter jurisdiction” over the claim. *Id.* § 1447(c) (2000). When, as here, the parties are citizens of different states, this Court has diversity jurisdiction if the amount in controversy exceeds \$75,000. *Id.* § 1332(a) (2000). The removing party bears the burden of proving to a legal certainty that federal subject matter jurisdiction exists. *Samuel-Bassett v. Kia Motors Am., Inc.*, 357 F.3d 392, 396 (3d Cir. 2004). Because § 1441 is strictly construed against removal, *Boyer v. Snap-On Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990), all doubts about whether a plaintiff satisfies the diversity requirement must be resolved in favor of remand. *Samuel-Bassett*, 357 F.3d at 403.

III. LEGAL ANALYSIS

Plaintiff argues that removal is not proper because the notice of removal was untimely under 28 U.S.C. § 1446(b).³ (Doc. No. 3 at unnumbered 4.) She asserts that Defendants should have removed the matter within thirty days of service of the original Complaint. (*Id.* at unnumbered 5.) According to Defendants, however, the thirty-day period for removal did not begin when Plaintiff served the original Complaint because service of that Complaint was

³28 U.S.C. § 1446(b) states:

The notice or removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of the summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

28 U.S.C. § 1446(b) (2000).

defective.⁴ (Doc. No. 5 at 8.)⁵

Defendant PerkinElmer Instruments, LLC's objection to service is based on a cursory review of the state court's docket. It argues that the docket does not clearly show whether the Dauphin County Sheriff's Office served the Complaint on PerkinElmer Instruments, LLC or PerkinElmer Instruments, Inc. (Doc. No. 5 Ex. C at 5.) However, a review of the actual state court record reflects that Defendant's concern is misplaced. The return of service notarized by the Sheriff's Office in Dauphin County shows that, on June 3, 2004, the Complaint was personally served on Amy Auman of Corporation Services at 2704 Commerce Drive in Harrisburg, Pennsylvania. (Doc. No. 6.) This is the service address listed for PerkinElmer Instruments, LLC on the Complaint. In fact, Defendants admit that "Defendant, PerkinElmer Instruments, LLC, is a foreign corporation registered to do business in the Commonwealth of Pennsylvania maintaining an address for service c/o Corporation Services, 2704 Commerce Drive, Harrisburg, PA 17110." *See* Compl. ¶ 2; Am. Compl. ¶ 2; Doc. No. 1 Ex. B. ¶ 2.⁶ Thus, service of the Complaint was properly effected on PerkinElmer Instruments, LLC under the Pennsylvania Rules of Civil Procedure. Pa. R. Civ. P. 402, 405.

⁴The Supreme Court has held that the thirty-day period for removal does not begin to run until an entity is "notified of the action, and brought under a court's authority, by formal process." *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 347-48 (1999).

⁵Defendant PerkinElmer Instruments, LLC filed preliminary objections to Plaintiff's Complaint based on improper service under Pennsylvania Rule of Civil Procedure 1028(1). (Doc. No. 5 Ex. C. at 4.) Defendant EG&G Astrophysics was served with the Complaint by certified mail on May 26, 2004. It did not file any preliminary objections contesting the validity of Plaintiff's service of the Complaint. Thus, the thirty-day period for removal by EG&G Astrophysics began to run on May 26, 2004.

⁶This averment was contained in both the original Complaint and the Amended Complaint. (Compl. ¶ 2; Am. Compl. ¶ 2.)

Defendants argue that even if they were properly served with the Complaint, the thirty-day period for removal did not begin to run until they learned that the Plaintiff's claimed damages exceeded \$75,000. (Doc. No. 5 at 8.) Initially, we note that:

It is not necessary that the amount in controversy be stated in the initial pleading in order to trigger the running of the thirty-day period for removal. Rather, the thirty-day period begins to run when a defendant can reasonably and intelligently conclude from the pleadings that the amount in controversy exceeds the jurisdictional minimum.

Carroll v. United Air Lines, Inc., 7 F. Supp. 2d 516, 521 (D.N.J. 1998); *see also id.* (“[A] pleading does not have to allege a specific dollar amount to give notice to the defendant of the existence of Federal jurisdiction.”).

Generally, whether the amount in controversy requirement has been satisfied is determined from the face of the plaintiff's complaint. *Angus v. Shiley, Inc.*, 989 F.2d 142, 145 (3d Cir. 1993); *see also Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348, 353 (1961) (“The general federal rule has long been to decide what the amount in controversy is from the complaint itself . . .”). In the instant case, the Complaint does not seek a precise amount of damages. Instead, it asserts that the value of each of the three claims is at least \$50,000, without any mention of a maximum possible worth.⁷ (Doc. No. 5 Ex. B.) For demands of indeterminate value such as the ones made in this case, “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.” *Angus*, 989 F.2d at 146. A court must make an independent appraisal of the claim's value to determine whether it satisfies the amount in controversy requirement. *Id.* In making such an appraisal, it

⁷\$50,000 is the minimum amount required in Pennsylvania state court to avoid mandatory referral to arbitration under the Pennsylvania Rules of Civil Procedure, Pa. R. Civ. P. 1021, and the Philadelphia Rules of Local Practice, Phila. Civ. R. 1301.

should apply a “generous reading” of the complaint. *Feld v. Allstate Ins. Corp.*, Civ. A. No. 03-4024, 2003 U.S. Dist. LEXIS 15469, at *7 (E.D. Pa. Aug. 5, 2003).

The averments of a complaint may satisfy the amount in controversy requirement even if the plaintiff’s injuries are summarily detailed. In *Carroll v. United Air Lines, Inc.*, the United States District Court for the District of New Jersey decided to remand a matter based solely on the allegations in plaintiff’s complaint that he fell while exiting an airplane and that he suffered “injuries causing disability, impairment, loss of enjoyment of life, pain and suffering, and he will suffer in the future . . .” *Carroll*, 7 F. Supp. 2d at 518, 522 (citing complaint). Remand was appropriate since these averments gave sufficient notice to the defendant that plaintiff’s claims “could reasonably exceed \$75,000.” *Id.* at 522.

Plaintiff’s Complaint alleges that she was injured by a portable x-ray scanner. (Compl. ¶¶ 4, 6.) As a result, Plaintiff avers that she suffered “severe and disabling injuries to the bones, muscles, blood vessels, tissues, nerves and tendons of her right lower leg, including but not limited to an injury to her Achilles tendon of her right heel.” (*Id.* ¶ 7.) In addition to damages such as medical costs, pain and suffering, and disfigurement, Plaintiff avers that this physical injury resulted in past and future loss of earnings and earnings capacity. (*Id.* ¶¶ 8-10.)

These allegations are such that Defendants could “reasonably and intelligently conclude from the pleadings that the amount in controversy exceeds the jurisdictional minimum.” *Carroll*, 7 F. Supp. 2d 516, 521. When diversity exists between the parties in a personal injury suit, “allegations of severe injuries along with pain and suffering will alert the defendant that an amount in excess of the jurisdictional amount is at issue and trigger the running of the thirty-day removal period.” *Carroll*, 7 F. Supp. 2d at 521; *see also Ferketich v. Carnival Cruise Lines*, Civ.

A. No. 02-3019, 2002 U.S. Dist. LEXIS 16266, at *5 (E.D. Pa. Aug. 13, 2002). Based on the averments in Plaintiff's Complaint, Defendants knew or should have known that the amount in controversy exceeded \$75,000. Because Defendants failed to file a notice of removal within the time period provided by 28 U.S.C. § 1446(b), we must remand this matter to the Court of Common Pleas of Philadelphia County.

An appropriate Order follows.

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PERKINELMER INSTRUMENTS, LLC,	:	
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ORDER

AND NOW, this 31st day of March, 2005, upon consideration of Plaintiff's "Petition to Remand" (Doc. No. 3, No. 04-CV-3773), and all papers filed in support thereof and in opposition thereto, it is ORDERED that Plaintiff's Motion is GRANTED and the Clerk of Court is directed to REMAND this case to the Court of Common Pleas of Philadelphia County.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge