

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

DIANA L. SCOTTO, et al.,	:	
Plaintiffs,	:	
	:	CIVIL ACTION
v.	:	NO. 18-285
	:	
KOHL’S CORPORATION, et al.,	:	
Defendants.	:	

EXPLANATION AND ORDER

Plaintiffs Diana L. Scotto (“Diana Scotto”) and Michael Scotto (collectively, “the Scottos”) bring suit against Defendants Kohl’s Corporation and Kohl’s Department Stores, Inc. (collectively, “Kohl’s”) for state law claims of negligence and vicarious liability. The Scottos allege that Diana Scotto was seriously injured while shopping at a Kohl’s store when a mannequin fell onto her.

The Scottos originally filed this action in the Court of Common Pleas of Philadelphia County. Kohl’s removed this action to the United States District Court for the Eastern District of Pennsylvania based on diversity jurisdiction. A district court exercises diversity jurisdiction over an action “where the matter in controversy exceeds the sum or value of \$75,000, exclusive or interest and costs, and is between . . . citizens of different states.” 28 U.S.C. § 1332(a)(1). The Scottos agree that they are citizens of a different state than Kohl’s. The Scottos challenge whether the amount in controversy exceeds \$75,000.

A defendant need only include a “plausible allegation” that the amount in controversy exceeds \$75,000 in the notice of removal. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 135 S. Ct. 547, 554 (2014). If, however, “the plaintiff contests, or the court questions, the defendant’s allegation,” then evidence establishing the amount in controversy is required. *Id.* (citing 28 U.S.C. § 1446(c)(2)(B)). “[W]hen a defendant’s assertion of the amount

in controversy is challenged . . . , both sides submit proof and the court decides, by a preponderance of the evidence, whether the amount-in-controversy requirement has been satisfied.” *Id.* In determining whether the amount-in-controversy exceeds \$75,000, “[t]he court must measure the amount ‘not . . . by the low end of an open-ended claim, but rather by a reasonable reading of the value of the rights being litigated.’” *Werwinski v. Ford Motor Co.*, 286 F.3d 661, 666 (3d Cir. 2002) (quoting *Angus v. Shiley Inc.*, 989 F.2d 142, 146 (3d Cir. 1993)).

As proof of the amount-in-controversy, Defendants offer several of Diana Scotto’s answers to interrogatories, a statement from her deposition, as well as report from Bucks County Orthopedic Specialists. In her answers to interrogatories, Diana Scotto describes “the nature and duration of the pain suffering and inconvenience” that she suffers as a result of the accident as follows: “Plaintiff suffers from a full thickness rotator cuff tear, continuous shoulder pain, headaches, post-concussion syndrome, pain and injuries to her knees, back, contusions, cervical sprain/strain, mild traumatic brain injury and other daily pain and physical limitations.” ECF No. 34, Ex. D ¶ 8. Additionally, Diana Scotto states that she “continues to have post concussive syndrome symptoms with severe headaches and shoulder pain.” *Id.* ¶ 9.

The report from Bucks County Orthopedic Specialists supports Diana Scotto’s assertion that she continues to suffer shoulder pain. The report states that Diana Scotto has “a complete rotator cuff tear which has retraction and atrophy, it is not amenable to repair.” ECF No. 34, Ex. B. The report also states that Diana Scotto’s “pain is severe to the point that she has had emergency room visits and cortisone injections as well as physical therapy without significant relief.” *Id.* The report recommends that Diana Scotto undergo “a reverse total shoulder arthroplasty.” *Id.* Diana Scotto’s deposition also supports that she continues to have severe headaches. Diana Scotto explains that due to her headaches she no longer goes to church and no

longer participates in church or senior center activities. ECF No. 34, Ex. C at 71:1-22. Based on “a reasonable reading of the value of the rights being litigated,” *Werwinski*, 286 F.3d at 666 (quoting *Angus*, 989 F.2d at 146), Kohl’s has established by a preponderance of the evidence that the amount-in-controversy exceeds \$75,000. The Scottos have offered no evidence to the contrary. Accordingly, this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332.

ORDER

AND NOW, this 23rd day of May, 2019, it is **ORDERED** that Plaintiffs' request to have the matter remanded to the Court of Common Pleas of Philadelphia County for lack of subject matter jurisdiction is **DENIED**.

/s/ Anita B. Brody
ANITA B. BRODY, J.

Copies **VIA ECF** on 5.23.19