

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

VIRGINIA SANDY : CIVIL ACTION  
 :  
 v. :  
 :  
 HYGRADE FOOD PRODUCTS :  
 CORPORATION AND SARA LEE :  
 CORPORATION : NO. 99-2188

**MEMORANDUM AND ORDER**

HUTTON, J.

September 13, 1999

Presently before the Court is Plaintiff's Motion to Remand (Docket No. 2) and Defendant's opposition thereto. For the reasons to follow, the Court grants the Plaintiff's motion.

**I. BACKGROUND**

Plaintiff, Virginia Sandy, filed a Civil Action Complaint on April 1, 1999 in the Court of Common Pleas of Philadelphia Pennsylvania against Defendants, Hygrade Food Products Corporation and Sara Lee Corporation. Plaintiff's complaint alleges, injuries resulting from a slip on fall on the Defendants' premises. Defendants removed the claim to this Court asserting diversity of citizenship.

**II. STANDARD OF REVIEW**

Generally, a Defendant may remove a civil action filed in state court if the federal court would have original jurisdiction to hear the matter. See 28 U.S.C. § 1441 (1999); see also Boyer v.

Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990). Once a case is removed, the federal court may remand if there has been a procedural defect in removal, or if the court determines that it lacks federal subject matter jurisdiction. See 28 U.S.C. § 1447(c)(1999). Courts strictly construe the removal statute and resolve all doubts in favor of remand. See Boyer, 913 F.2d at 111. In removal cases, the burden of establishing the amount in controversy rests on the Defendant. Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 222 (3d Cir. 1999). While not specifically articulated by the Third Circuit, this Court has previously stated that the applicable standard of proof attributable to the Defendant is one of a preponderance of the evidence in the context of a motion to remand. Feldman, 1998 WL 94800, at \*3-4; see Mercante v. Preston Trucking Co., No. CIV.A.96-5904, 1997 WL 230826, at \*2 (E.D. Pa. May 1, 1997) (analyzing the circuit split and arriving at the preponderance standard).

### **III. DISCUSSION**

Defendants' Notice of Removal invokes the Court's diversity jurisdiction. In diversity a district court has jurisdiction over a civil action if the parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs. See U.S.C. § 1332(a) (1999).

Although the parties dispute diversity of citizenship, this court is unable to consider the issue because the Defendants'

Notice of Removal is facially deficient in establishing that the amount in controversy exceeds \$75,000. Defendants' Notice of Removal states "[t]his Civil Action seeks damages exclusive of interest and cost in excess of \$50,000 and unliquidated damages for personal injury." (Def.'s Notice of Removal ¶ 3). Thus, Defendants fail to comply with the requirements of 28 U.S.C. § 1332(a).

Plaintiff's Complaint does not establish that more than \$75,000 is in dispute because it only states that damages are in excess of \$50,000 (Pl.'s Compl. at ¶ 15). Moreover, the language of Defendants' Notice of Removal fails to assert that the amount in controversy in this matter exceeds \$75,000, exclusive of interest and costs. Given these circumstances, the Defendants have not met their burden of demonstrating that the requisite amount in controversy is satisfied. Since this Court is without subject matter jurisdiction this matter is remanded to State Court. See 28 U.S.C. § 1447(c).

An appropriate Order follows.

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O R D E R

AND NOW, this 13<sup>th</sup> day of September, 1999, upon consideration of Plaintiff's Motion to Remand (Docket No. 2) and Defendant's Response thereto, IT IS HEREBY ORDERED that Plaintiff's Motion is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk of Court is directed to **REMAND** this action to the Court of Common Pleas of Philadelphia County, Pennsylvania.

BY THE COURT:

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HERBERT J. HUTTON, J.