

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF STATE  
INDIANAPOLIS DIVISION

FILED  
DISTRICT COURT  
INDIANAPOLIS DIVISION  
08 MAY 16 AM 11:14  
LACIA A. BAIGGS  
CLERK

JASON BOND and DAVID LEAR, )  
individually and as class representatives of )  
all those similarly situated, )

Plaintiffs, )

vs. )

VEOLIA WATER NORTH AMERICA )  
OPERATING SERVICES, INC.; VEOLIA )  
WATER NORTH AMERICA )  
OPERATING SERVICE, LLC; AND )  
VEOLIA WATER INDIANAPOLIS, LLC, )

Defendants. )

**1 : 08 -cv- 0634 -DFH -JMS**

Cause No.: \_\_\_\_\_

**NOTICE OF REMOVAL**

Defendants Veolia Water Indianapolis, LLC ("VWI"), Veolia Water North America Operating Services, Inc., now known as Veolia Water North America Operating Services, LLC, and Veolia Water North America Operating Services, LLC ("VWNA"), incorrectly identified in Plaintiffs' Complaint as Veolia Water North America Operating Service, LLC, pursuant to 28 U.S.C. §§ 1332(d)(2), 1441, and 1446, hereby file their Notice of Removal to the United States District Court for the Southern District of Indiana, Indianapolis Division. In support of their notice of removal, Defendants state:

1. VWI and VWNA are the only two defendants in this action. Veolia Water North America Operating Services, Inc. no longer exists. It is now known as VWNA.
2. Jason Bond and David Lear, individually and as class representatives of all those similarly situated, are plaintiffs in a lawsuit filed against VWI and VWNA in Marion Superior Court, State of Indiana, designated as cause number 49D07-0804-CC-18081 ("the Lawsuit").

3. In their Complaint, Bond and Lear allege that Defendants failed to read water meters in Indianapolis on a bi-monthly basis, as Plaintiffs claim is required. They further contend that because of Defendants' "failure to read . . . meters at least once every two months, [Plaintiffs] have overpaid Veolia[.]" Complaint ¶ 31. "[T]hese overpayments were based on a flawed and unapproved methodology for estimating water usage which tend to substantially overestimate water usage during periods of much reduced residential use[.]" *Id.* Plaintiffs' Complaint contains four counts: (1) Breach of Contract; (2) Negligence; (3) Deceptive Practices Act; and (4) Constructive Fraud.

4. This case is subject to removal to this Court under 28 U.S.C. § 1332(d)(2), commonly known as the Class Action Fairness Act ("CAFA").

5. "CAFA amended the diversity jurisdiction statute, 28 U.S.C. § 1332, by adding provisions that give federal courts original jurisdiction in class actions where: (1) the aggregate amount in controversy exceeds \$5,000,000; (2) any member of the plaintiff class is a citizen of a state different from any defendant ("minimal diversity"); (3) the primary defendants are not states, state officials, or other government entities against whom the district court may be foreclosed from ordering relief; and (4) the number of members of the plaintiff class is 100 or more." *Hart v. FedEx Ground Package Sys.*, 457 F.3d 675, 679 (7th Cir. 2006) (citing 28 U.S.C. §§ 1332(d)(2), (d)(5)).

6. This Court has original jurisdiction of this purported class action because all of the above-prerequisites are satisfied.

7. First, the aggregate amount in controversy exceeds \$5,000,000. Under CAFA, the proponent of federal jurisdiction has the burden of persuasion on the amount in controversy. *See Kessler v. Am. Resorts International's Holiday Network, Ltd.*, 2007 U.S. Dist. LEXIS 84450, \*30

(N.D. Ill. 2007). To carry this burden in the removal context, the removing litigant “must show a reasonable probability that the stakes exceed the minimum.” *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449 (7th Cir. 2005). “But this does not require him to prove that a favorable judgment for the plaintiff will exceed the statutory threshold; rather, ‘[t]he demonstration concerns what the plaintiff is claiming . . . , not whether plaintiff is likely to win or be awarded everything he seeks.’” *Kessler*, 2007 U.S. Dist. LEXIS 84450, \*31 (quoting *Brill*, 427 F.3d at 448, 449). Unless there is a ‘legal certainty’ that the judgment will be less, the amount in controversy requirement is satisfied. *Id.* (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938)).

8. Here, the allegations in Plaintiffs’ Complaint establish that a reasonable probability exists that the stakes exceed the \$5,000,000 minimum. “When a complaint alleges an amount in controversy, it controls unless recovering that amount is legally impossible.” See *Rising-Moore v. Red Roof Inns, Inc.*, 435 F.3d 813, 815 (7th Cir. 2006). In fact, “[i]n removed cases, the amount alleged in the plaintiff’s complaint, if sufficient to meet the jurisdictional requirements of § 1332, is presumed correct on the assumption that a plaintiff would not fabricate the amount in controversy to meet the federal diversity jurisdiction requirements and then file her suit in state court relying on the defendant to remove the case to federal court.” *Smith v. Am. Gen. Life & Accident Ins. Co.*, 337 F.3d 888, 892 (7th Cir. 2003).

9. Plaintiffs contend that the potential class consists of more than 250,000 members. Complaint ¶ 33. Plaintiffs also allege that each class member is entitled to damages of at least \$500 per violation under the Indiana Deceptive Practices Act. Complaint ¶ 53. The sought damages under that claim alone, and assuming one “violation” per class member is alleged, would equal \$125,000,000.

10. This case also satisfies the “minimal diversity” requirement of 28 U.S.C. § 1332(d)(2)(A) because Bond and Lear are citizens of a State different from any Defendant.

11. In their Complaint, Plaintiffs state that “Bond is an individual residing in Zionsville, Indiana” and that “Lear is an individual residing in Indianapolis, Indiana[.]” Complaint ¶¶ 1-2. Diversity jurisdiction depends on citizenship, not residence. *E.g., Steigleder v. McQuesten*, 198 U.S. 141, 143 (1905); *America’s Best Inns, Inc. v. Best Inns of Abilene, L.P.*, 980 F.2d 1072, 1074 (7th Cir. 1992). The citizenship of a natural person for diversity purposes is determined of course by the person’s domicile, *see Pollution Control Indus. of Am., Inc. v. Van Gundy*, 21 F.3d 152, 155 n.4 (7th Cir. 1994), which means the state where the person is physically present with an intent to remain there indefinitely. *See Perry v. Pogemiller*, 16 F.3d 138, 140 (7th Cir. 1993).

12. Here, Bond and Lear have had continuously active water accounts at their individual Indiana residences since April 28, 2004, and January 17, 1996, respectively. Further, Plaintiffs allege that Bond’s water meter was last read in October 2007, Complaint ¶ 23, and that Lear’s water meter was read “only twice” . . . “[o]ver the past seventeen (17) months[.]” Complaint ¶ 29. Their physical presence in Indiana, combined with their continuously active water accounts over an extended period, demonstrate their intent to remain in Indiana indefinitely. Thus, they are citizens of Indiana.

13. As to any party who is an LLC, a limited liability company’s citizenship “for purposes of the diversity jurisdiction is the citizenship of its members.” *Cosgrove v. Bartolotta*, 150 F.3d 729, 731 (7th Cir. 1998). Therefore, the Court must be advised of the citizenship of all the members of each LLC. *Hicklin Eng’g, L.C. v. Bartell*, 439 F.3d 346, 347 (7th Cir. 2006). Furthermore, citizenship must be “traced through multiple levels” for those members of each

LLC who are a partnership or a limited liability company, as anything less can result in a dismissal or remand for want of jurisdiction. *Mut. Assignment & Indem. Co. v. Lind-Waldock & Co., LLC*, 364 F.3d 858, 861 (7th Cir. 2004).

14. Here, VWI is a limited liability company whose sole member is VWNA. VWNA, in turn, is a limited liability company whose only member is Veolia Water America, LLC. Veolia Water America, LLC's only member is WASCO LLC. And WASCO LLC's only member is Veolia Environnement North America Operations, Inc., a Delaware corporation with its principal place of business in Delaware. Thus, both Defendants are citizens of the state of Delaware.

15. Minimal diversity exists because Defendants are Delaware citizens and Bond and Lear are Indiana citizens.

16. Finally, Defendants are not states, state officials, or other government entities against whom the district court may be foreclosed from ordering relief.

17. This Notice of Removal is timely filed pursuant to 28 U.S.C. §§ 1446(b) and 1453(b) because it was filed within thirty (30) days after receipt by Defendants, through service or otherwise, of a copy of the Complaint. Defendants received a copy of the Complaint on April 23, 2008.

18. This Notice is accompanied by copies of all process, pleadings and orders served upon or by the Defendants in this action, all of which are attached as Exhibit A.


19. This Notice of Removal is signed in accordance with Fed. R. Civ. P. 11.

20. Defendants will give written notice of this Notice of Removal to Bond and Lear pursuant to 28 U.S.C. § 1446(d).

21. A true and correct copy of this Notice of Removal will be promptly filed with the Clerk of the Marion Superior Court 7, State of Indiana, as provided by law.

22. For the reasons stated above, Defendants' removal to this Court is proper.

Respectfully submitted,

  
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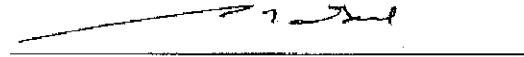
Telephone: 317-236-1313

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served this 16th day of May, 2008 by depositing a copy of the same in the United States mail, first-class postage prepaid to the following:

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