

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

**WILLIAM MURPHY AND BEVERLY
MURPHY,**

Plaintiffs,

vs.

State Case No.: 2019-CA-001199

Federal Case No: _____

**THE FIRST LIBERTY INSURANCE
COMPANY,**

Defendant.

_____ /

DEFENDANT'S NOTICE OF REMOVAL

COMES NOW, the Defendant, THE FIRST LIBERTY INSURANCE COMPANY, ("First Liberty") pursuant to 28 U.S.C. §§ 1332, 1441, 1446, files this Notice of Removal ("Notice") of this action from the Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida to the United States District Court for the Middle District of Florida, Fort Myers Division, and in support of removal states:

INTRODUCTION

1. The Plaintiffs served this breach of contract action against First Liberty on April 26, 2019, in the Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida. The Plaintiffs, WILLIAM MURPHY AND BEVERLY MURPHY, allege that First Liberty breached its contract of insurance by failing to pay the full amount of Plaintiffs' damages. *See e.g.* Plaintiffs' Complaint ¶ 17, a copy of which is contained within the State Court file attached as Exhibit 1.

2. This Court has jurisdiction over this removed action pursuant to 28 U.S.C. § 1441. This breach of contract action could have been filed in this Court pursuant to 28 U.S.C. §

1332 because it is a civil action between citizens of different states and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. *See* 28. U.S.C. § 1332.

3. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders and other papers or exhibits filed in the State Court are attached as Exhibit 1.

DIVERSITY OF CITIZENSHIP EXISTS

4. The Plaintiff, WILLIAM MURPHY, is now and was at the time of the filing of the Complaint, a citizen of the State of Florida. *See* Compl. ¶ 2; Collier County Property Appraiser Record (indicating homestead status, attached as Exhibit 2).

5. The Plaintiff, BEVERLY MURPHY, is now and was at the time of the filing of the Complaint, a citizen of the State of Florida. *See* Compl. ¶ 2; Collier County Property Appraiser Record (indicating homestead status, attached as Exhibit 2).

6. First Liberty is now and was at the time of the filing of the Complaint a Wisconsin corporation, with its principal place of business in Boston, Massachusetts. Thus, First Liberty is a citizen of Wisconsin and Massachusetts. *See* 28 U.S.C. § 1332(c)(1).

THE AMOUNT IN CONTROVERSY REQUIREMENT IS MET

7. Plaintiffs' Complaint seeks damages "in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of attorneys' fees and costs." *See* Compl. ¶ 1.

8. The Complaint does not allege a specific amount of damages other than the jurisdictional threshold referenced above.

9. Prior to suit being filed, Plaintiffs' roofing contractor, Cathedral Roofing, provided Liberty Mutual with an estimate for a complete roof replacement to the property. The

estimate includes repair costs for damages related to the subject claim totaling \$67,750.00. A copy of the estimate is attached hereto as Exhibit “3.”

10. Prior to suit being filed, Liberty Mutual inspected the property and prepared an estimate for the covered damages which fell below the deductible - \$3,805.59. Accordingly, no payment was issued.

11. After being served with the Complaint and filing its answer and affirmative defenses, First Liberty served discovery on the Plaintiffs in the form of Interrogatories and a Request to Produce.

12. One of the requests to produce sought “[a]ll documents reflecting any claimed damages to the insured property which are the subject of this lawsuit.” *See* Defendant’s Request to Produce, ¶ 13, Exhibit “1.”

13. In response to the above-referenced request, Plaintiffs produced a new estimate from Cathedral Roofing. *Id.*

14. The Cathedral Roofing estimate, concludes that the repair cost with respect to Plaintiffs’ property totals in the amount of \$82,534.26, a copy of which is was produced in response to Defendant’s Request for Production on August 25, 2019. A copy of this estimate is attached hereto as Exhibit 4. *See* Compl. ¶1.

15. After subtracting the deductible from Plaintiff’s second estimate from Cathedral Roofing, the net amount in controversy is \$78,728.67.

16. Numerous courts in this District have recognized that estimates provided in connection with insurance claims are sufficient to establish the amount in controversy. *See, e.g., Gomez v. American Security Ins. Co.*, 2014 U.S. Dist. Lexis 25976, *9 (M.D. Fla. Feb. 28, 2014) (“Defendant’s removal based on the JFK Report was appropriate and timely”); *Baltazar v.*

Balboa Ins. Co., 2011 U.S. Dist Lexis 55087, *6 (M.D. Fla. May 24, 2011) (when “Balboa filed a signed copy of Baltazar’s retained expert’s report” it “satisfied [the] Court that the requirements for diversity of citizenship jurisdiction and for removal have been met”); *Zabala v. Geovera Specialty Ins. Co.*, 2010 U.S. Dist. Lexis 123594, *5 (M.D. Fla. Nov. 10, 2010) (“the repair estimates referenced in the pre-suit demand demonstrate costs for structural damages and cosmetic damages that substantially exceed \$75,000”); *Del Rio v. Scottsdale Ins. Co.*, 2005 U.S. Dist. Lexis 29992, **7-8 (M.D. Fla. Nov. 18, 2005) (“the Court finds that the Defendant has proven by a preponderance of the evidence that the amount in controversy exceeds \$75,000” relying on estimate of “repair costs to dwelling at issue”).

17. Therefore, the amount in controversy in this matter is in excess of the \$75,000.00 jurisdictional limits of the Court. See 28 U.S.C. § 1332(a).

REMOVAL IS OTHERWISE PROPER

18. First Liberty was served with the Plaintiffs’ Complaint on April 18, 2019.

19. The second Cathedral Roofing estimate was first received by First Liberty through discovery responses served by Plaintiffs in connection with the pending State Court lawsuit on August 25, 2019. See State Court file attached as Exhibit “1.”

20. 28 U.S.C. § 1446(b)(1) states “The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after service of 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.”

21. “[I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3).

22. “If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an “other paper” under subsection (b)(3).” 28 U.S.C. § 1446(c)(3)(A).

23. This matter was not removable until First Liberty received the second Cathedral Roofing estimate establishing the amount in controversy through the course of discovery in the State Court action on August 25, 2019.

24. Therefore, this Notice of Removal is timely and properly filed pursuant to 28 U.S.C. § 1446(b)(1), 28 U.S.C. § 1446(b)(3), and 28 U.S.C. § 1446(c)(1).

25. Venue exists in the Middle District of Florida, Fort Myers Division, because the Circuit Court of Collier County is located within this District and Division.

26. Written notice of the filing of the Notice of Removal will be promptly served on Plaintiffs’ Counsel, and a copy will be promptly filed with the Clerk of the Circuit Court for Orange County, Florida, pursuant to 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Notice of Removal to Federal Court is attached as Exhibit 5.

WHEREFORE First Liberty, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removes this action from the Circuit Court of Orange County, Florida to this Court.

/s/ Burks. A. Smith
BURKS A. SMITH, III, ESQUIRE
Florida Bar No: 13977
BILLIE BROCK, ESQUIRE
Florida Bar No: 111389

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this *9th day of October, 2019*, I presented the foregoing to the Clerk of the Court for Filing and uploading to the CM/EFC system, and that a copy was sent by eService to: to Brian Freeman, Esquire, The Freeman Law Firm, P.A., 4245 Fowler Street, Fort Myers, Florida 33901 at litigation@thefreemanlawfirmmpa.com; jboies@thefreemanlawfirmmpa.com; bfreeman@thefreemanlawfirmmpa.com.

/s/ Burks A. Smith, III, Esquire
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