

Apr 2021 | [Articles Blog: The Westchester Litigator](#)

## Show Me the Money: Satisfying the Amount in Controversy Requirement for Removal under 28 U.S.C. 1332(a)

A defendant seeking to remove a state court case to federal court based on diversity jurisdiction bears the burden of proving two things: 1) diversity of citizenship and 2) an amount in controversy exceeding \$75,000. Sometimes the amount in controversy is obvious: The plaintiff's complaint seeks damages that clearly exceed the removal threshold. But what happens when the complaint is silent on the matter, because either the plaintiff chose not to include a specific demand or because state rules prohibit a plaintiff from pleading an amount? Two recent cases heard by Judge Philip Halpern in the Southern District of New York make clear that the defendant seeking to remove such a case is out of luck, at least until the plaintiff produces discovery that specifies damages sought in excess of \$75,000.

### **The Cases: *Coyukiat v. Stryker Corp.* / *Justino v. Wal-Mart Stores, Inc.***

In *Coyukiat v. Stryker Corp.*, 2021 WL 961763 (S.D.N.Y. Mar. 15, 2021), the plaintiff filed a civil claim in Rockland County Supreme Court claiming injuries from a defective medical implant designed, manufactured, and distributed, by the defendant. Under New York's procedural rules, the plaintiff was prohibited from seeking specific damages in the complaint and instead included "a prayer for general relief." The defendant removed the case to federal court, stating in its notice of removal that the damages "will exceed 75,000."

In *Justino v. Wal-Mart Stores, Inc.*, 2021 WL 961764 (S.D.N.Y. Mar. 15, 2021), the plaintiff filed an employment discrimination, retaliation, and sexual harassment action in Orange County Supreme Court. The plaintiff did not specify the amount of damages requested and instead sought "an amount to be determined at the time of trial. . . ." In its notice of removal, the defendant asserted that "it is readily apparent that . . . plaintiff . . . will be eligible to recover substantially more than \$75,000," but provided no additional support for this assertion.

In addressing both removal attempts, Judge Halpern noted that the burden falls on the defendant to prove by a preponderance of the evidence that "it appears to a reasonable probability that the claim is in excess of the statutory jurisdictional amount." In both cases, Judge Halpern was unpersuaded by the defendants' conclusory assertions that the monetary threshold was met and so remanded both to state court. In small consolation to the defendants, the court noted that the Second Circuit has a "bright line rule" that the deadline to remove a case to federal court does not run until 30 days after the defendant receives a paper from the plaintiff explicitly setting forth the amount of controversy. Thus, in both cases, the defendants were forced to begin the litigation in state court with the potential for removal later in the litigation.

### **Takeaway**

In our practice, we have seen defendants file notices of removal without much supporting evidence in the hope that neither the

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plaintiff nor the court will object to proceeding in federal court. The above cases serve as a warning to defense counsel that an attempted removal may not go unchallenged and conclusory assertions of the amount of controversy simply will not cut it on a motion to remand.