



Accordingly, VWGoA is now and was at all relevant times a citizen of New Jersey and Virginia for purposes of determining diversity under 28 U.S.C. § 1332(c)(1).

8. Because Plaintiff was and is a citizen of Kentucky and VWGoA was not and is not a citizen of Kentucky, complete diversity exists under 28 U.S.C. § 1332.

**THE AMOUNT-IN-CONTROVERSY  
REQUIREMENT IS SATISFIED**

9. A case may be removed where the defendant establishes by a preponderance of the evidence that the amount in controversy exceeds \$75,000. 28 U.S.C. §1332(a)(1).

10. Plaintiff seeks the following categories of damages and equitable relief against VWGoA: (a) “an award of money damages in an amount to be determined by the jury”; (b) “[t]hat, in the alternative, he receive rescission and restitution, upon tendering his vehicle back to VW”; (c) “costs and attorneys’ fees, as may be permitted by law”; and (d) “punitive damages . . . based upon VW’s deceitful and wrongful acts that were directed at the Plaintiff.” *See* Complaint, Prayer for Relief.

11. Pursuant to Kentucky Civil Rule 8.01(2), Plaintiff is not permitted to, and did not, specify the amount of relief he is seeking. *See* Ky. R. Civ. P. 8.01(2) (prohibiting a complaint from including “any sum as alleged damages other than an allegation that damages are in excess of any minimum dollar amount necessary to establish the jurisdiction of the court.”). Rather, Plaintiff pled only that he seeks “not a penny more than \$74,000” in damages. *See* Complaint, Prayer for Relief. *See also id.* at ¶ 26.

12. Nevertheless, the amount in controversy here exceeds \$75,000. If “State

practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded” then “the notice of removal may assert the amount in controversy . . . .” 28 U.S.C. § 1446(c)(2)(A)(ii). See also *Jefferson v. Hyatt Corp.*, 2015 U.S. Dist. LEXIS 46837 at \*5 (W.D. Ky. Apr. 9, 2015); *Tankersley v. Martinrea Heavy Stampings, Inc.*, 33 F. Supp. 3d 775, 777 (E.D. Ky. 2014); *Proctor v. Swifty Oil Co., Inc.*, 2012 U.S. Dist. LEXIS 141323 at \*2 (W.D. Ky. Oct. 1, 2012); *Cook v. Estate of Moore*, 2012 U.S. Dist. LEXIS 157486 at \*1 (W.D. Ky. Nov. 2, 2012). Accordingly, this removal is proper because VWGoA can establish, “by a preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).” 28 U.S.C. §1446(c)(2)(B).

13. Although VWGoA denies liability for any and all of Plaintiff’s claims, Plaintiff’s allegations of damages described above indicate that the amount in controversy is more than \$75,000 in damages, thus exceeding the threshold for federal diversity jurisdiction. 28 U.S.C. §1332(a). VWGoA’s discussion of Plaintiff’s damages below is not, and should not be construed as, an admission of liability or that Plaintiff is entitled to any of the relief he has requested.

14. First, while Plaintiff has not pled a specific amount of damages, he is permitted to recover an amount greater than that referenced in his Complaint. Pursuant to Kentucky Rule of Civil Procedure 54.03(2), “every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.”

15. Second, Plaintiff’s first four causes of action all seek recovery of money

Even a conservative attorney fee award will contribute significantly to satisfying the \$75,000 threshold. For example, 100 hours of work at \$200 per hour adds \$20,000 to the amount in controversy. *See, e.g., Alexander v. S & M Motors, Inc.*, 28 S.W.3d 303, 305 (Ky. 2000) (trial court found a claim for over \$26,000 in fees to be reasonable).

18. Therefore, Plaintiff's claimed damages and equitable remedies are more than sufficient to satisfy the \$75,000 amount in controversy required under 28 U.S.C. § 1332(a)(1).

#### **THE REMOVAL IS TIMELY**

19. Plaintiff commenced this action on October 6, 2015. VWGoA was served with the summons and Complaint on October 13, 2015. Therefore, this Notice of Removal is timely-filed pursuant to 28 U.S.C. § 1446(b)(1).

#### **FILING OF REMOVAL PAPERS**

20. Pursuant to 28 U.S.C. § 1446(d), written notice of the removal of this action will be promptly served to Plaintiff's counsel, and a Notice of Filing of Notice of Removal is simultaneously being filed with the Clerk of the Circuit Court in and for Kenton County, Kentucky. A true and correct copy of this Notice is attached as Exhibit 4.

21. Thus, the state-court action may be removed to this Court by VWGoA and in accordance with the provisions of 28 U.S.C. § 1441(a) because (1) this action is a civil action pending within the jurisdiction of the United States District Court for the Eastern District of Kentucky, Northern Division, at Covington; (2) this action is between citizens of different states; and (3) the amount in controversy exceeds Seventy-Five Thousand