

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

AWILDA MARIE MOORE and  
GERRICK D. MOORE, her husband

CASE NO.:

Plaintiffs,

vs.

STRYKER CORPORATION, STRYKER  
SALES CORPORATION, BREG, INC., I-  
FLOW CORPORATION, MCKINLEY  
MEDICAL, LLC., MOOG, INC., CURLIN  
MEDICAL, INC., DJO, LLC, f/k/a DJ  
ORTHOPEDICS, INC.,

Defendants.

**DEFENDANTS, STRYKER CORPORATION AND STRYKER SALES  
CORPORATION'S, NOTICE OF REMOVAL**

Defendants, STRYKER CORPORATION and STRYKER SALES CORPORATION (hereinafter referred to collectively as "Stryker Defendants"), by and through their undersigned counsel, hereby file this Notice of Removal of this action, currently pending in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Case No. 50-2011-CA-008067-XXXX-MB, to the United States District Court for the Southern District of Florida, West Palm Beach Division. In support of this Notice of Removal, Stryker Defendants state the following:

**Short and Plain Statement of Grounds for Removal**

**THE REMOVED CASE**

1. The removed case is a civil action filed on June 1, 2011 in the Fifteenth

Judicial Circuit, in and for Palm Beach County, Florida, and captioned *Awilda Maria Moore and Gerrick D. Moore, her husband, v. Stryker Corporation, Stryker Sales Corporation, Breg, Inc., I-Flow Corporation, McKinley Medical, LLC, MOOG, Inc., Curlin Medical, Inc., DJO, LLC, f/k/a DJ Orthopedics, Inc.*, Case No. 50-2011-CA-008067-XXXX-MB.

2. This action arises out of an injury allegedly sustained by Plaintiffs in connection with the use of a postoperative infusion pump (“pain pump”) designed and manufactured by one of the aforementioned defendants, referred to in the Complaint as “Defendant Pain Pump Manufacturers”. *See* Complaint at ¶ 28. Plaintiffs’ Complaint seeks to recover damages from the Pain Pump Manufacturers.

#### **PAPERS FROM THE REMOVED ACTION**

3. Pursuant to Title 28 U.S.C. § 1446(a), Stryker Defendants attach to this Notice of Removal a copy of all pleadings, orders and other papers or exhibits of every kind currently on file in the state court action. *See* composite Exhibit 1, attached hereto.

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

4. The Stryker Defendants were served with the complaint in this matter on August 31, 2011. This notice of removal is filed within thirty (30) days of receipt of the summons and complaint. Accordingly, this Notice of Removal is timely filed under Title 28 U.S.C. § 1446(b).

#### **VENUE IS PROPER**

5. Venue is proper in the West Palm Beach Division of this Court because this action is being removed from the Fifteenth Judicial Circuit, in and for Palm Beach

County, Florida and the acts complained of in Plaintiffs' Complaint occurred, upon information and belief, in Palm Beach County, Florida, which is within the geographical boundaries of this Division. *See* Complaint at ¶ 2; Local Rule 3.4(d).

**DIVERSITY OF CITIZENSHIP EXISTS BETWEEN THE PARTIES**

6. At all times material hereto, Plaintiffs AWILDA MARIE MOORE and GERRICK D. MOORE were residents and citizens of Wellington, Palm Beach County, Florida. *See* Complaint at ¶¶ 3 and 4.

7. At all times material hereto, the Stryker Defendants were and are Michigan corporations with their principal place of business in Michigan. *See* Complaint at ¶ 5.

8. All of the other Defendant Pain Pump manufacturers are companies organized under the laws of states other than Florida, and all of them have their principal places of business in states other than Florida. *See* Complaint at ¶¶ 6 – 21.

9. Because Plaintiffs are citizens of Florida, and the defendants are not, complete diversity exists under 28 U.S.C. § 1332.

**THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED**

10. Plaintiffs' state court complaint alleges that this is "an action for damages that exceeds the jurisdictional amount of this court." *See* Complaint at ¶ 1. While that statement may announce only that Plaintiffs are seeking to recover something in excess of \$15,000.00, (the jurisdictional minimum of Florida's circuit courts), a fair and reasonable interpretation of *all* the allegations of Plaintiffs' claimed damages, together with the Declaration of Francis M. McDonald, Jr., Stryker Defendants' counsel, attached

hereto as Exhibit 2, satisfies the amount in controversy requirement for federal court diversity matters.

11. Plaintiffs contend that the use of a postoperative pain pump has caused Plaintiff AWILDA MARIE MOORE to experience bodily injury, pain and suffering, disability, physical impairment, mental anguish, inconvenience, aggravation of a pre-existing condition, loss of the capacity for the enjoyment of life, the costs of medical care and expenses, loss of earnings and loss of the ability to earn money, all of which damages and losses will continue in the future. *See* Complaint at ¶ 48. Even though the Complaint does not claim a specific amount of monetary damages, removal from state court is jurisdictionally proper if it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement. *Williams v. Best Buy Co., Inc.*, 269 F.3d 1316, 1319 (11<sup>th</sup> Cir. 2001). Given these allegations, it strains reason to conclude that the monetary jurisdictional requirement has not been met. Moreover, the Declaration of Francis M. McDonald, Jr. provides additional support that the \$75,000.00 floor for the requisite amount in controversy has been fulfilled. Through their counsel, Plaintiffs have placed a value on this case of over twenty times the jurisdictional limit (\$75,000.00) of this Court.<sup>1</sup> Taken together, the allegations of the Complaint as well as Plaintiffs' settlement demand establish that the amount in controversy in this action satisfies 28 U.S.C. § 1332(a).

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<sup>1</sup> Pursuant to *Pretka v. Kolter City Plaza, II, Inc.*, 608 F.3d 744, 751 (11<sup>th</sup> Cir. 2010), courts are permitted to consider evidence of amount in controversy where a complaint does not contain a specific amount of claimed damages. One of the permissible forms of evidence is an affidavit and declaration, which are not limited in scope by the substantive jurisdictional requirements of removal. *Id.* at 755.

**Filing Of Removal Papers**

12. Pursuant to 28 U.S.C. § 1446(d), written notice of the removal of this action will be promptly served on Plaintiffs' counsel.

13. Concurrent with the filing of this Notice of Removal, the Stryker Defendants have filed a Notice of Filing the Notice of Removal, including a true and correct copy of the Notice of Removal with the Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. See Exhibit 3, attached hereto without accompanying exhibits.

14. The undersigned counsel is authorized by the Stryker Defendants to file this Notice of Removal, is licensed in the State of Florida and is a member in good standing of the Bar of this Court.

Dated: September 14, 2011.

Respectfully submitted,

s/ Francis M. McDonald, Jr.  
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***Attorneys for Defendants***

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Removal was electronically filed with the Clerk of the Court using CM/ECF on September 14, 2011; and served by U. S. mail on all counsel or parties of record on the Service List below.

/s/ Francis M. McDonald, Jr.  
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FRANCIS M. McDONALD, JR., ESQ.  
Florida Bar No. 0327093

**SERVICE LIST**

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