

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

**ELECTRONICALLY FILED**

PAUL R. SCHURMAN	)	
	)	
PLAINTIFF	)	
	)	
v.	)	CIVIL ACTION NO. <u>3 : 12 CV - 23 - S</u>
	)	
REED ELSEVIER, INC.	)	
	)	
DEFENDANT	)	
_____	)	

**NOTICE OF REMOVAL**

\* \* \* \* \*

Please take notice that Defendant LexisNexis, a div. of Reed Elsevier Inc.,<sup>1</sup> (“LexisNexis”), by counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, hereby submits this notice of removal of the above-captioned case, which was originally filed in Jefferson Circuit Court, Division 3, as Civil Action No. 11-CI-07966. In support of removal, LexisNexis states as follows.

1. On December 12, 2011, the plaintiff, Paul R. Schurman, filed a complaint in Jefferson Circuit Court (No. 11-CI-07699) against LexisNexis.
2. LexisNexis received a copy of the complaint on December 14, 2011.
3. The Jefferson Circuit Court is located within the Louisville Division of the Western District of Kentucky.

<sup>1</sup> The proper defendant in this action is LexisNexis, a div. of Reed Elsevier Inc.

4. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served upon Reed Elsevier are attached as **Exhibit 1**.

5. This Court has original jurisdiction over this action under 28 U.S.C. § 1332, and this action is therefore removable, because the parties are citizens of different states and the amount claimed in controversy exceeds \$75,000, exclusive of interest and costs.

6. Plaintiff Paul R. Schurman, upon information and belief, at the time of the commencement of this action, was and ever since has been a citizen of the Commonwealth of Kentucky.

7. Defendant LexisNexis is a division of Reed Elsevier Inc., which is now, and was at the time this Action was commenced, a citizen of Massachusetts, New York, and Ohio within the meaning of 28 U.S.C. §1332(c), because Reed Elsevier Inc. is a Massachusetts corporation with LexisNexis' principal places of business in Ohio and New York.

8. Plaintiff's complaint does not state a specific dollar amount of damages. Rather, the plaintiff's prayer for relief demands an amount which "exceeds the jurisdictional threshold of this Court." Complaint at ¶ 3.

9. Despite the lack of a demand for a specific dollar amount in the complaint, a cause of action may be removed where the defendant establishes by a preponderance of the evidence that the amount in controversy exceeds \$75,000. *Hayes v. Equitable Energy Resources Co.*, 266 F.3d 560, 572 (6th Cir. 2001); *Rogers v. Wal-Mart Stores, Inc.*, 230 F.3d 868, 873 (6th Cir. 2000) *abrogated on other grounds by Powerex Corp. v. Reliant Energy Services*, 551 U.S. 224, 232 (2007); *Gafford v. General Electric Co.*, 997 F.2d 150, 158 (6th Cir.

1993) *abrogated on other grounds by Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1191 (2010). The preponderance of evidence standard requires only that the defendant allege facts sufficient to establish that the plaintiff would more likely than not recover more than the jurisdictional amount. *Id.*

10. Plaintiff claims he was injured due to the conversion of his domain name, [www.kentucky-lawyer.com](http://www.kentucky-lawyer.com) and/or negligence by Defendant in using the domain name [www.kentucky-lawyer.com](http://www.kentucky-lawyer.com) in conjunction with the website of Plaintiff's law firm. As a result of Defendant's alleged conduct, he claims that he has lost revenue and the opportunity to receive a financial benefit from the use of his domain name. Complaint at ¶¶ 22-23. He demands judgment against Reed Elsevier for consequential, compensatory, and punitive damages.

11. After the complaint was filed, counsel for LexisNexis received correspondence from Plaintiff's counsel further elucidating the damages he demanded in the complaint. *See Exhibit 2*. In response to Defendant's inquiry about Plaintiff's claimed damages in this case, Plaintiff's counsel noted that "I can assure you at this time, however, that the claim is in excess of 75,000 dollars." *See id.*

12. Under 28 U.S.C. § 1446(b), "[i]f a case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by defendant . . . 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 . . ." (emphasis added).

13. Numerous courts have held that a post-complaint letter from counsel that sets forth information meeting the amount in controversy requirement constitutes an “other paper” under § 1446(b) sufficient to trigger removal. *Addo v. Globe Life & Acc. Ins. Co.*, 230 F.3d 759, 761-62 (5th Cir. 2000); *Babasa v. LensCrafters, Inc.*, 498 F.3d 972, 975 (9th Cir. 2007); *Rollo v. Keim*, No. 3:09-cv-146, 2009 U.S. Dist. LEXIS 56292, at \*7-\*9 (N.D. Fl. June 16, 2009); *Techdisposal.com, Inc. v. Ceva Freight Mgmt.*, No. 2:09-cv-356, 2009 U.S. Dist. LEXIS 111059, at \*8 n.4 (S.D. Ohio Nov. 30, 2009); *Stramel v. GE Capital Small Business Fin. Corp.*, 955 F. Supp. 65, 67 (E.D. Tex. 1997); *Rodgers v. Northwestern Mut. Life Ins. Co.*, 952 F. Supp. 325, 327 (W.D. Va. 1997).

12. Accordingly, the preponderance of evidence standard is met because the amount in controversy more likely than not exceeds the \$75,000 jurisdictional limit.

13. This Notice of Removal is timely filed in this Court within thirty (30) days after receipt by the Defendant of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based.

14. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal, as well as a Notice of Filing for this Notice of Removal, is being filed with the Clerk of the Jefferson Circuit Court, and a copy of the same is being served upon all parties. A copy of this filing is attached at **Exhibit 3**.

15. LexisNexis reserves the right to amend or supplement this Notice of Removal or to present additional arguments in support of its entitlement to remove this case.

16. LexisNexis reserves all defenses and objections, including, without limitation, the defenses of insufficiency of process, insufficiency of service of process, lack of personal jurisdiction, and any other defenses or objections available under applicable law, and the filing of this Notice of Removal is subject to, and without waiver of, any such defenses or objections.

Respectfully submitted,

s/Anthony M. Zelli

Richard H.C. Clay

Anthony M. Zelli

DINSMORE & SHOHL LLP

101 South Fifth Street

Suite 2500

Louisville, Kentucky 40202

Phone: (502) 581-8000

Fax: (502) 581-8111

richard.clay@dinsmore.com

anthony.zelli@dinsmore.com

*Counsel for Defendant LexisNexis, a div. of  
Reed Elsevier Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed electronically and sent to the following by U.S. Mail, postage prepaid on this 13th day of January, 2012:

I further certify that I mailed the foregoing document and the notice of electronic filing by first class mail to the following:

Donald L. Cox  
John D. Cox  
Lynch, Cox, Gilman & Goodman, P.S.C.  
500 West Jefferson Street, Suite 2100  
Louisville, Kentucky 40202  
*Counsel for Plaintiff*

s/ Anthony M. Zelli  
*Counsel for Defendant*