

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

COREY OFFUTT

PLAINTIFF

v.

CIVIL ACTION NO. 3:13CV751-S

WALMART STORES EAST, LP

DEFENDANT

**MEMORANDUM OPINION**

This matter is before the court on motion of the plaintiff, Corey Offutt, for reconsideration of the court's memorandum opinion and order denying his motion to remand the action to the Jefferson County, Kentucky, Circuit Court.

In that opinion, the court found that Offutt's "Supplemental Responses" filed with his motion to remand constituted his first and only itemization of damages in the case, evidencing that his damages total \$47,745.00. The court denied remand, however, as Offutt failed to file a binding stipulation with his motion upon which the court could base a remand of the action.

Offutt has now submitted a binding stipulation and again seeks remand. In the sworn statement he states:

I am not making a claim over \$75,000.00 in the above reference [sic] matter, to date my damages are as follows: \$7,745.00 for past medical expenses, \$10,000.00 for future medical expenses and \$30,000.00 for both past and future pain and suffering. I hereby stipulate and agree that my claimed damages will not exceed \$75,000.00, nor will I ask the jury for more than \$75,000, nor will I accept more than \$75,000 from any jury verdict.

This statement surely meets the requirement of a clear and unequivocal stipulation limiting any potential judgment in the case. Further, the court previously rejected the argument that this

stipulation constitutes a reduction rather than a clarification of Offutt's damages. *See* DN 15, p. 2 (Supplemental Responses were Ofutt's first response to interrogatories and his only itemization of damages).

Walmart has expressed some concern that the stipulation may not be watertight in state court. We reiterate what we have stated in similar cases. While an unscrupulous party might seek to abuse the process, this court is placing absolute reliance upon counsel's statement limiting damages as an essential component of our order of remand. While the court has no doubt as to the unequivocal statement of the plaintiff, we note that any attempt to void the commitment will be considered to be sanctionable conduct and may justify re-removal. *See, VanEtten v. Boston Scientific*, 2009 WL 3485909, \*2 (W.D.Ky. Oct. 23, 2009); *Moore v. Humana Insurance Company*, No. 3:11CV-46-S, DN 14.

Therefore, motion having been made and for the reasons set forth herein and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the motion of the plaintiff, Corey Offutt, to reconsider the court's order denying his motion to remand (DN 5) is **GRANTED** and this action is **REMANDED TO THE JEFFERSON COUNTY, KENTUCKY, CIRCUIT COURT, DIVISION THIRTEEN (13), FOR ALL FURTHER PROCEEDINGS.**

There being no just reason for delay in its entry, this is a final order.

**IT IS SO ORDERED.**

April 10, 2014



**Charles R. Simpson III, Senior Judge  
United States District Court**