

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

THOMAS M. COOLEY LAW SCHOOL,

Plaintiff,

v.

Case No. \_\_\_\_\_

KURZON STRAUSS LLP, DAVID  
ANZISKA, and JESSE STRAUSS,

Defendants.

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**NOTICE OF REMOVAL**

TO: The Honorable Joyce Draganchuk  
Ingham County Circuit Court  
313 West Kalamazoo St.  
Lansing, MI 48933

Michael Coakley  
Paul Hudson  
MILLER, CANFIELD PADDOCK  
AND STONE, PLC  
Attorneys for Plaintiff  
150 West Jefferson, Suite 2500  
Detroit, MI 48226

PLEASE TAKE NOTICE that defendants Kurzon Strauss LLP (“Kurzon Strauss”), David Anziska and Jesse Strauss (collectively, “Defendants”), preserving all jurisdictional objections and other defenses, now removes this action from the Circuit Court for the County of Ingham to the United States District Court for the Western District of Michigan pursuant to 28 U.S.C.S §1332(a).

In support of their Notice of Removal, Defendants state:

1. On July 14, 2011, Plaintiff Thomas M. Cooley Law School (“Plaintiff” or “Thomas Cooley”), a Michigan nonprofit corporation, commenced this action in Ingham County Circuit Court by filing a complaint titled *Thomas M. Cooley Law School v. Kurzon Strauss LLP*, docketed as case number 11780-CZ (the “Complaint”). Plaintiff served Kurzon Strauss, a New York-based limited liability partnership, with the Complaint, but not the Summons, on July 14, 2011. It further served defendants Anziska and Strauss, both of whom are New York citizens and residents, with both the Summons and the Complaint on August 4, 2011. A true and accurate copy of the Summons and Complaint is attached as Exhibit A.

2. The Complaint asserts four separate claims against Defendants, including Defamation, Tortious Interference with Business Relations, Breach of Contract and False Light. For each claim Plaintiff seeks, among other relief, “damages in excess of \$25,000, plus interest, attorneys’ fees and costs.” Plaintiff further seeks substantial injunctive relief, including barring Defendants from “publishing the defamatory statements concerning Cooley,” which would essentially enjoin Defendants from communicating with prospective clients with legal disputes where Thomas Cooley is the adverse party because the statements that Cooley appears to allege were defamatory were made to communicate with such potential clients.<sup>1</sup> Thus, at the very least, Plaintiff seeks an aggregate,

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<sup>1</sup> On August 10, 2011, four graduates of Thomas Cooley filed a class action Complaint against Thomas Cooley, titled *MacDonald v. Thomas M. Cooley Law School*, Case No. 11-cv-00831 (W.D. Mich. Aug. 10, 2011), for misrepresenting its post-graduate placement rates and salary information, asserting three claims against the school. These four plaintiffs are represented in part by the Defendants and the alleged defamatory statements were made in communications with potential clients for that action.

cumulative total of monetary damages in excess of \$100,000, excluding its request for attorneys' fees.

3. Removal is proper pursuant to 28 U.S.C. §1332(a) based on diversity of jurisdiction because: (1) there is a complete diversity of citizenship between Plaintiff and Defendants, and (2) the actual amount of controversy exceeds \$75,000.

4. Specifically, upon information and belief and as alleged in the Complaint, Plaintiff is a Michigan nonprofit corporation with its principal place of business in Michigan. *See* Ex. A at ¶2. Kurzon Strauss is a New York-based limited liability partnership with its principal place of business in New York, and Messrs. Anziska and Strauss are both citizens and residents of New York. Ex. A at ¶3.

5. The amount in controversy exceeds \$75,000 since Plaintiff seeks: (1) an aggregate, cumulative total of monetary damages in excess of \$100,000 (2) the reimbursement of attorneys' fees and costs; and (3) to *de facto* enjoin Defendants from communicating with prospective clients with legal disputes with Thomas Cooley.

6. As to Plaintiff's request for attorney's fees and costs, Courts have consistently included attorneys' fees and costs for the purposes of determining the amount in controversy requirement for diversity cases. *See in general, Shannon v. J.P. Morgan Chase & Co.*, 2011 U.S. Dist. LEXIS 17455, at \*5; No. 10-cv-14695 (E.D. Mich. Feb. 23, 2011) (denying plaintiff's motion to remand; noting that "Plaintiffs' complaint states that they seek damages against Defendant 'in whatever amount above \$25,000 they are found to be entitled, *together with* statutory damages, treble damages, interest, costs and reasonable attorney fees as provided by statute.") (emphasis added). Plaintiffs' attempt to reformulate their damages in the instant motion and brief is unpersuasive.");

*Tech. Sales Assocs., Inc. v. Ohio Star Forge Co.*, 2008 U.S. Dist. LEXIS 87386, at \*11; No. 08-cv-13365 (E.D. Mich. Oct. 29, 2008) (denying plaintiff's remand motion because the amount in controversy exceeded \$ 75,000 when considering the undisclosed amount of attorney fees requested). This is especially true, where, as here, Plaintiff is being represented by one of the largest and most expensive law firms in Michigan whose billing rates for senior partners like Plaintiff's counsel Michael Coakley can exceed hundreds of dollars per hour, and for only a few months of work can easily total in the tens of thousands of dollars.

7. Similarly, Plaintiff, by seeking an order mandating that Defendants are enjoined from publishing allegedly defamatory statements contained in a draft class action complaint, essentially attempt to prevent Defendants from communicating with prospective clients with legal disputes with Thomas Cooley because Thomas Cooley appears to believe that communications between a lawyer and a party prior to the filing of a lawsuit are not subject to a privilege. Accordingly, Plaintiff's request constitutes substantial injunctive relief and must be included in calculating the amount in controversy threshold. *See in general, Bobel v. Met Life Home Loans, Inc.*, 2011 U.S. Dist. LEXIS 51388, at \*5-6; No. 11-cv-10574 (E.D. Mich. May 13, 2011) (denying remand motion because, despite not seeking monetary damages, plaintiff sought injunctive relief that exceeded \$75,000; "where a plaintiff seeks injunctive or declaratory relief, 'it is well-settled that the amount in controversy is to be measured for subject matter jurisdiction purposes by the value of the right that the plaintiff seeks to enforce or to protect against the defendant's conduct or the value of the object that is the subject matter of the action.'" [quotation omitted]); *Flores v. Dairyland Ins. Co.*, 2008 U.S. Dist

LEXIS 3524, at \*9-10; No. 07-cv-13878 (E.D. Mich. Jan. 17, 2008) (same; “As the Sixth Circuit has held, ‘[w]here a party seeks a declaratory judgment, ‘the amount in controversy is not necessarily the money judgment sought or recovered, but rather the value of the consequences which may result from the litigation.’” [quotation omitted]); *City of Ecorse v. United States Steel Corp.*, 2007 U.S. Dist. LEXIS 21065, at \*5-6; No. 05-cv-73826 (E.D. Mich. Mar. 26, 2007) (same); *Planning & Dev. Dep’t v. Daughters of Union Veterans of the Civil War*, 2005 U.S. Dist. LEXIS 31164, at \*20-21; No. 05-cv-72328 (E.D. Mich. Nov. 28, 2005) (same); *Great Lake Spice Co. v. GB Seasonings, Inc.*, 2005 U.S. LEXIS 9112; No. 05-cv-70387 (E.D. Mich. April 26, 2005).

8. Here, the injunctive relief sought if Plaintiff’s suit is successful, which would essentially bar Defendants from communicating with prospective clients who have legal disputes with Thomas Cooley, is exceptionally valuable. For example, in the suit where Defendants are, in part, representing clients in a putative class action against Thomas Cooley, the damages sought are in excess of \$250,000,000.

9. Service and Notice of the filing of this Notice of Removal will be given to Plaintiff as is required. A true and correct copy of this Notice will be filed with the Clerk of the Circuit Court for the County of Ingham, State of Michigan.

DATED: August 10, 2011

RESPECTFULLY SUBMITTED,

**HYDER LAW FIRM, P.C.**

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