

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

07C ✓ 4379  
ADMTAJB

Eyebalster, Inc.,

Plaintiff,

vs.

Federal Insurance Company,

Defendant.

**NOTICE OF REMOVAL**

TO: CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, AND PLAINTIFF ABOVE NAMED AND ITS ATTORNEY ROBERT P. THAVIS, LEONARD, STREET AND DEINARD, 150 SOUTH FIFTH STREET, SUITE 2300, MINNEAPOLIS, MN 55402-4238

PLEASE TAKE NOTICE that Defendant Federal Insurance Company, through its undersigned counsel, remove this action to the United States District Court for the District of Minnesota under 28 U.S.C. §§ 1332 and 1441, *et seq.* In support of this removal, Defendant states as follows:

1. On October 5, 2007, Defendant Federal Insurance Company received a Summons and Complaint entitled *Eyebalster, Inc. v. Federal Insurance Company*, venued in the Hennepin County District Court, in the Fourth Judicial District for the State of Minnesota; Case No. 27-CV-07-20329. A copy of the Summons and Complaint is attached hereto as Exhibit 1.

2. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after receipt by Defendant of the initial pleading setting forth the claim for relief upon which this action is based.

3. Defendant Federal Insurance Company is an Indiana corporation with its principal place of business in New Jersey.

**SCANNED**

OCT 26 2007

U.S. DISTRICT COURT MPLS

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4. Plaintiff Eyeblaster, Inc. is a Delaware corporation which has its corporate headquarters and its principal place of business in New York.

5. The amount in controversy in this case exceeds Seventy-Five Thousand and no/100 Dollars (\$75,000.00), exclusive of interest and costs. The Complaint alleges that Defendant owes Plaintiff a duty to defend it from and an duty to indemnify it from any potential damage award in an action filed against Plaintiff by David Sefton in the United States District Court for the Southern District of Texas, Houston Division (Civil Action No. 4:06-CV-03484) ("*Sefton* action"). The Second Amended Complaint in the *Sefton* action, which is attached as Exhibit B to the Summons and Complaint attached hereto as Exhibit 1 alleges compensatory damages in excess of \$50,000.00 together with a cause of action for treble statutory damages and damages under the Texas Consumer Spyware Act of \$300,000.00 per occurrence.

6. Diversity jurisdiction of this action is vested in this Court pursuant to 28 U.S.C. § 1332.

7. Removal of this action is proper pursuant to 28 U.S.C. § 1441 because this Court has original jurisdiction of this matter under diversity of citizenship jurisdiction afforded by 28 U.S.C. § 1332.

8. Removal to the United States District Court for the District of Minnesota is proper pursuant to 28 U.S.C. § 1441(a) because the state court case is pending in the district court for Hennepin County, State of Minnesota.

9. Promptly after filing this Notice of Removal, Defendants will give written notice of the filing of this notice to all adverse parties and will file a copy of that notice of filing with the Clerk of Court for the District Court for Hennepin County, State of Minnesota.

WHEREFORE, Defendant Federal Insurance Company requests that the action entitled "Eyeblaster, Inc. v. Federal Insurance Company" currently venued in the District Court for Hennepin County, State of Minnesota, Court File No. 27-CV-07-20329, be removed to the United States District Court for the District of Minnesota and that all further proceedings be conducted in this court.

**BASSFORD REMELE**  
*A Professional Association*

Dated: October 25, 2007

By



Dale M. Wagner (#118554)

Brian H. Sande (#284014)

*Attorneys for Defendant Federal Insurance Company*

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CL 41439

**Brian H. Sande**  
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RECEIVED  
07 OCT 25 PM 2:28  
CLERK, U.S. DISTRICT COURT  
MINNEAPOLIS, MN  
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October 25, 2007

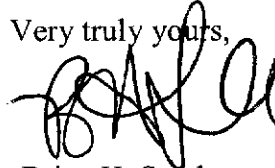
HAND DELIVERED  
Richard D. Sletten, Clerk  
U. S. District Court  
U. S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

RE: Eyeblander, Inc. v. Federal Insurance Company

Dear Clerk:

Enclosed please find for filing in the above matter the following documents:

1. Civil Cover Sheet;
2. Notice of Removal;
3. Copy of Notice of Filing Removal;
4. Affidavit of Brian H. Sande; and
3. Our firm check in the amount of \$350 for filing fees.

Very truly yours,  
  
Brian H. Sande

JSW/nms/6121-1/63296  
Enclosures  
cc (w/encl.): Robert P. Thavis, Esq.