

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL CASE NO. 1:12cv19

CINCINNATI FINANCIAL CORPORATION,)
a/b/a CINCINNATI INSURANCE COMPANY,)
a/s/o DELTA PARTNERS, INC.,)

Plaintiffs,)

vs.)

ELKAY MANUFACTURING COMPANY,)
d/b/a HALSEY TAYLOR, EMBRACO)
NORTH AMERICA, INC., and)
GENERAL ELECTRIC COMPANY,)

Defendants.)

CONSENT ORDER OF REMAND

THIS MATTER is before the Court on the Plaintiff's Motion for Remand.

[Doc. 17].

On January 27, 2012, this case was removed from state court by Defendant Elkay Manufacturing Company (Elkay) based on diversity jurisdiction. [Doc. 1]. On February 9, 2012, Defendant General Electric Company (GE) filed a Consent to Removal.¹ [Doc. 12]. The Plaintiffs' cause

¹Defendant Embraco North America, Inc. did not file such a consent and the Notice of Removal does not contain a provision that it consented. The omission,

of action arises from a water leak which occurred at property owned by Delta Partners, Inc. (Delta). [Doc. 1-1 at 12-24]. The insurance claim for the damage was paid by Plaintiff Cincinnati Financial Corporation (Cincinnati) which now seeks to assert its right of subrogation against the Defendants. [Id.]. The water leak is alleged to have occurred as a result of a defective drinking fountain. [Id.].

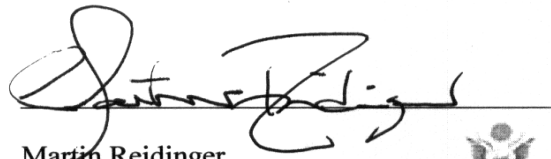
After the case was removed, the Plaintiffs timely moved to remand to state court on the ground that the amount in controversy does not exceed the sum of \$62,511.18, exclusive of costs. [Doc. 17-1 at 2]. The Plaintiffs also concede that an award of attorneys' fees is not available in this matter. [Id. at 5]. Attached to the motion is a Sworn Statement of Loss in the amount of \$62,511.18. [Doc. 17-3]. As a result, the threshold for diversity jurisdiction is not met. 28 U.S.C. §1332(a) (the matter in controversy must exceed \$75,000.00). Based on this statement by the Plaintiffs, Embraco and Elkay both filed responses in which they consented to remanding the case to state court. [Doc. 22; Doc. 23]. Although Defendant GE did not file a response, it did advise the Court that it also consents to remand. Having reviewed the matter and the parties consenting, the Court finds that the case should be

however, is not relevant in view of the parties' agreement to remand the case.

remanded to state court since diversity jurisdiction does not exist. 28 U.S.C. §1332.

IT IS, THEREFORE, ORDERED that the Plaintiff's Motion for Remand [Doc. 17], which is consented to by the Defendants, is hereby **GRANTED** and this action is hereby **REMANDED** to the Cleveland County Superior Court.

Signed: March 19, 2012


Martin Reidinger
United States District Judge

