

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**PAUL SNIDER, on behalf of himself and
others similarly situated,**

Plaintiffs,

v.

Case No. 2:17-cv-04388

**SURNAIK HOLDINGS OF WV, LLC, a
West Virginia limited liability
company,**

**Removed from the Circuit Court of
Wood County, West Virginia
Civil Action No. 17-C-377**

Defendant.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, 28 U.S.C. § 1446, and 28 U.S.C. § 1453, Defendant hereby removes the above-referenced civil action from the Circuit Court of Wood County, West Virginia, to the United States District Court for the Southern District of West Virginia, Charleston Division, for further proceedings, reserving any and all defenses and exceptions. As grounds for removal, Defendant states as follows:

1. On or about October 30, 2017, Plaintiff initiated this case on behalf of himself and a proposed class by filing a class action complaint against the Defendant in the Circuit Court for Wood County, West Virginia. That state court is within the United States District Court for the Southern District of West Virginia, Charleston Division, and venue is proper.

2. Copies of the docket sheet, and all process, pleadings, and orders filed or served upon the Defendant are attached and incorporated by reference as Exhibits A (docket sheet) and Exhibit B (process, pleadings, and orders).

3. This Notice of Removal is timely pursuant to 28 U.S.C. §§ 1446(b), 1453(b). This Notice of Removal has been filed in this court within thirty days of the date on which the Defendant was served.

4. This court has jurisdiction of this case under 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005 (“CAFA”). Removal to this court and jurisdiction in this court are proper because:

- a. The plaintiff and proposed class members are citizens of West Virginia and Ohio, as set forth in the complaint. Comp. ¶1, 38. The complaint alleges that Defendant is a West Virginia limited liability company. Compl. ¶3.
- b. The complaint alleges that the proposed class includes six population centers in the State of West Virginia and one in the State of Ohio, for a total class that exceeds 90,000. Compl. at ¶¶ 4, 37-39.
- c. As defined by CAFA, the amount in controversy exceeds the sum of \$5 million, exclusive of interest and costs, based on the complaint’s allegations of the size of the proposed class, and the fact that its members seek, among significant other relief, damages for diminution in property values, damages for lost profits of businesses, damages for personal injuries, punitive damages, and attorney’s fees and litigation costs. As noted, the complaint alleges that the proposed class includes six population centers in the State of West Virginia and one in the State of Ohio, for an alleged total class that exceeds 90,000. Compl. at ¶¶ 4, 37-

39. For example, the class is alleged to have suffered injuries as a result of inhalation of smoke and suspended particulate matter, causing respiratory ailments ranging from irritation to exacerbation of serious preexisting conditions. The class is also alleged to have been injured as a result of soot, ash, and particulate matter deposition necessitating clean-up and presenting an ongoing health risk from potential contact, inhalation, or ingestion. Compl. ¶22. The \$5,000,000 amount in controversy requirement is satisfied by estimating just \$60 per member of the alleged putative class, an amount easily dwarfed by any actual cleanup costs and/or medical damages.

5. Written notice has been properly served this date to Plaintiff's attorneys of record.

6. A copy of this Notice of Removal is being filed with the clerk of court in Case No. 17-C-377 in the Circuit Court of Wood County, West Virginia.

7. This Notice of Removal is filed subject to and without waiver of any defenses or objections to the complaint that the Defendant may have.

Defendants hereby request that this Notice of Removal be deemed sufficient and that this matter be removed to this court.

Respectfully submitted,

DEFENDANT,

BY COUNSEL:

/s/ Michael B. Hissam

Michael B. Hissam (WVSB #11526)

Ryan M. Donovan (WVSB #11660)

Isaac R. Forman (WVSB #11668)

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of November, I served via facsimile transmission and regular United States mail postage prepaid the “*Notice of Removal*” on the individuals listed below. I also filed the pleading with the Clerk of the Court using the CM/ECF system, which may send notification of such filing to any of the following if they are CM/ECF participants:

Alex McLaughlin
John H. Skaggs
Melissa H. Luce
The Calwell Practice PLLC
Law and Arts Center West
500 Randolph Street
Charleston, WV 25302

/s/ Michael B. Hissam
Michael B. Hissam (WVSB #11526)