

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

<p>BRODAL FARMS, LTD.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p>ARCHER-DANIELS-MIDLAND COMPANY,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No.</p> <p style="text-align: center;">DEFENDANT’S NOTICE OF REMOVAL</p>
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Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Archer-Daniels-Midland Company hereby removes the civil action pending in the North Dakota District Court in and for Burke County, captioned as Brodal Farms, Ltd. v. Archer-Daniels-Midland Company, Case No.: 07-2021-CV-00041 (the “State Action”), to the United States District Court for the District of North Dakota, Bismarck Division. In support thereof ADM states as follows:

On August 31, 2021, Archer-Daniels-Midland Company (“ADM”) submitted a letter to the National Grain and Feed Association (“NGFA”) requesting that the NGFA initiate arbitration between ADM and Brodal Farms, Ltd. (“Brodal Farms”). (See Ex. A p. 12, St. Dkt. No. 4, Ex. 1 to Plfs’ Mot. to Term. Arb. Proc. (the “Request for Arbitration”). As described by ADM’s Request for Arbitration, ADM claims that Brodal Farms breached a contract with ADM by failing to tender 1133.98 metric tons of canola, as required by the parties’ written contract, and ADM sought an arbitration award against Brodal Farms in the amount of \$245,008.74 (before interest and costs) for ADM’s resulting damages. (Request for Arbitration pp. 1-2).

Plaintiff commenced the State Action on October 6, 2021, in the North Dakota District Court in and for Burke County, by filing a Motion for Termination of Arbitration Proceedings Pursuant to N.D.C.C. § 32-39.3-05, naming ADM as Defendant and seeking to terminate the arbitration requested by ADM. (See Ex. A p. 3, St. Dkt. No. 2, Plfs' Mot. for Term. Arb. Proc. ¶¶ 1-2 (the "Motion")). Also on October 6, 2021, ADM's counsel was first provided with a copy of the Motion by email.

The parties have stipulated to a deadline of November 12, 2021, for ADM to submit its opposition to the Motion. (Ex. A p. 61, St. Dkt. No. 18, Sip. Reg. Def. Time to Resp. to Mot. for Term. Of Arb. Proc.).

REMOVAL IS PROPER

A. Subject Matter Jurisdiction Exists Under 28 U.S.C. § 1332.

Plaintiff Brodal Farms, Ltd. is a North Dakota corporation with its principal place of business and headquarters in or near Columbus, North Dakota. Brodal Farms therefore is a citizen of the state of North Dakota for the purposes of determining diversity jurisdiction. (See Ex. A p. 4, St. Dkt. No. 3, Br. in Supp. Mot. for Term. Of Arb. Proc. ¶ 2 (the "Brief") ("Brodal Farms Ltd. is a farm/ranch corporation incorporated under the laws of North Dakota, with its principal address at 10131 County Road 6 – Columbus, North Dakota 58727-9583.")).

Defendant Archer-Daniels-Midland Company is a Delaware corporation with its principal place of business and headquarters in Chicago, Illinois. Defendant ADM is therefore a citizen of Delaware and Illinois for purposes of determining diversity jurisdiction.

Accordingly, complete diversity exists among the parties at the time this Notice of Removal is filed.

Where, as here, one party seeks arbitration of a dispute while the other party resists arbitration, courts consider the damages sought through arbitration when determining whether the amount in controversy requirement is met for diversity jurisdiction purposes. *See CMH Homes, Inc. v. Goodner*, 729 F.3d 832, 837–38 (8th Cir. 2013) (“To resolve the jurisdictional question in this case, therefore, we consider whether the amount in controversy between the [parties] satisfies the jurisdictional minimum by looking through to the entire, actual controversy between the parties, as they have framed it.”) (quoting *Vaden v. Discover Bank*, 556 U.S. 49, 66 (2009)); *see also Republic Bank & Tr. Co. v. Kucan*, 245 F. App’x 308, 314 (4th Cir. 2007) (“When determining whether the jurisdictional amount is satisfied in a case involving a petition to compel arbitration, it is appropriate to look through the petition to compel to the controversy underlying the arbitration request.”); *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 877 (3d Cir. 1995) (“[T]he amount in controversy in a petition to compel arbitration or appoint an arbitrator is determined by the underlying cause of action that would be arbitrated.”).

ADM seeks an arbitration award against Brodal Farms in the amount of \$245,008.74, before interests, fees, and costs, satisfying the \$75,000 amount in controversy requirement. (Request for Arbitration p. 2); *see* 28 U.S.C. § 1332(a); *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) (“[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”).

This Court therefore has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, and under 28 U.S.C. §§ 1441 and 1446, it may be removed to this Court. Removal under section 1441 is appropriate when (1) complete diversity of citizenship exists between the plaintiff and the defendant and (2) the amount in controversy exceeds \$75,000,

exclusive of interest and costs. Furthermore, ADM is not a citizen of the State of North Dakota, and therefore, removal is not barred by 28 U.S.C. § 1441(b)(1).

B. This Court is the Proper Venue

Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) because the State Action was originally filed in Burke County, North Dakota, which is within this Court's district and division.

C. Removal is Timely

Removal is timely under 28 U.S.C. § 1446(b) because ADM filed this Notice of Removal within thirty days after first receiving a copy of the Motion on October 6, 2021.

Furthermore, removal is not barred by 28 U.S.C. § 1446(c)(1) because it occurred not more than one year from the commencement of the original action. *See* 28 U.S.C. § 1446(c)(1) ("A case may not be removed [] on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action. . .").

D. All Other Removal Requirements Have Been Met

This action has not been previously removed to federal court.

Removal of the State Action, brought pursuant to North Dakota's Uniform Arbitration Act, is not otherwise barred by 28 U.S.C. § 1445 (listing nonremovable actions).

Pursuant to 28 U.S.C. 1446(a), a copy of all process, pleadings, and orders served upon ADM and those available to ADM through the state court's electronic case management system are attached as **Exhibit A**.

Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Court for the North Dakota District Court in and for Burke County and is

being served on counsel for Plaintiff. A true and accurate copy of the Notice to State Court and Plaintiffs is attached hereto as **Exhibit B**.

WHEREFORE, Defendant Archer-Daniels-Midland Company gives notice that the State Action is removed from the North Dakota District Court in and for Burke County to the United States District Court for the District of North Dakota, Bismarck Division.

Dated: November 5, 2021

/s/ Ian R. McLean

Ronald H. McLean (#
Ian R. McLean (#07320)
SERKLAND LAW FIRM
10 Roberts Street North
P.O. Box 6017
Fargo, ND 58108-6017
701.232.8957
rmclean@serklandlaw.com
imclean@serklandlaw.com

and

Jacob D. Bylund (IA #AT0001399)
Christopher A. Kreuder (IA #AT0013264*)
**pro hac vice pending*
FAEGRE DRINKER BIDDLE & REATH LLP
801 Grand Avenue, 33rd Floor
Des Moines, IA 50309
515.248.9000
jacob.bylund@faegredrinker.com
christopher.kreuder@faegredrinker.com

ATTORNEYS FOR DEFENDANT