

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DHIMITRI MASKUTI and	:	CIVIL ACTION
VALENTINA MASKUTI, h/w,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 05-5294
	:	
ALLSTATE INSURANCE COMPANY,	:	
	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J.

NOVEMBER 4, 2005

Presently before the Court is a Motion to Remand filed by Plaintiffs Dhimitri and Valentina Maskuti (“Plaintiffs”) and the Response filed by Defendant Allstate Insurance Company (“Defendant”). Upon review of the parties’ respective filings, the motion is granted.

This action is based upon Defendants’ alleged refusal to make payment to Plaintiffs under a homeowners policy. In the Complaint, Plaintiffs assert the following two counts against Defendant: breach of insurance contract; and bad faith based upon 42 Pa.C.S.A. § 8371. This action was originally filed in the Court of Common Pleas of Philadelphia County on June 23, 2005. On August 30, 2005, Defendant forwarded to Plaintiffs’ counsel a set of Requests for Admission regarding the total actual damages, punitive, consequential or other. On or about September 13, 2005, Plaintiffs’ counsel responded to Defendant’s Requests. Based upon Plaintiffs’ Responses to its Requests, Defendants filed a Notice for Removal with this Court. Defendants premised their Notice for Removal upon the argument that diversity jurisdiction exists in this case because the parties are citizens of different states and the amount in

controversy exceeds \$75,000.¹ (Def.'s Not. For Removal). While the parties are citizens of different states, the amount in controversy required for diversity jurisdiction has not been met in this action.²

On November 3, 2005, the Court conducted a telephone conference with counsel for both parties. Plaintiffs' counsel admitted that the total actual damages, punitive damages, consequential damages, or any other damages set forth in the Complaint, being sought in this case do not exceed \$75,000, exclusive of costs and interest. The admission by Plaintiffs' counsel is identical to Plaintiffs' Response to Defendant's Request for Admissions in which Plaintiffs admitted that "[t]he total actual damages, punitive damages, consequential damages, or any other damages set forth in Plaintiff(s) Complaint, being sought in this case do not exceed Seventy Five Thousand Dollars (\$75,000), exclusive of costs and interest." (Id., Exs. B, C).

In light of the above, this Court lacks diversity jurisdiction because the threshold jurisdictional amount for diversity jurisdiction requiring the amount in controversy to exceed \$75,000 has not been met. According to the remand statute, 28 U.S.C. § 1447(c), "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." *See* 28 U.S.C. § 1447(c). The Court lacks subject matter jurisdiction

¹ 28 U.S.C. § 1332 states, in pertinent part, that "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States." 28 U.S.C. §1332(a)(1).

² Plaintiffs are citizens of Pennsylvania and Defendant is a citizen of the state of Illinois, with its principal place of business in Northbrook, Illinois.

over the removed case; therefore, it must be remanded.³

An appropriate Order follows.

³ Plaintiffs' Motion for Remand is based upon the argument that remand is proper because Defendant did not file its Notice for Removal within the requisite thirty day time period after receipt of Plaintiffs' Complaint. I have not granted Plaintiffs' Motion for Remand based upon this premise. Plaintiffs' argument is flawed because Defendant's Notice for Removal was timely pursuant to the second paragraph under 28 U.S.C. § 1446(b)(providing that a notice of removal may be filed within thirty days of the defendant's receipt "of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable").

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DHIMITRI MASKUTI and	:	
VALENTINA MASKUTI, h/w,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	No. 05-5294
	:	
ALLSTATE INSURANCE COMPANY,	:	
	:	
Defendant.	:	
	:	

ORDER

AND NOW, this 4th day of November, 2005, upon consideration of Plaintiffs' Motion for Remand (Doc. No. 2), the Response filed by Defendant, and the discussion and admissions made during the November 3, 2005 telephone conference, it is hereby **ORDERED** that Plaintiffs' Motion is **GRANTED** and the case is **REMANDED** to the Court of Common Pleas for Philadelphia County.

BY THE COURT:

s/ Robert F. Kelly _____
Robert F. Kelly, Sr. J.