

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

TIMOTHY HOWARD,	:	CIVIL ACTION
Plaintiff,	:	NO. 06-04017
	:	
v.	:	
	:	
ALLSTATE INSURANCE COMPANY,	:	
Defendant.	:	

MEMORANDUM AND ORDER

Stengel, J.

September 28, 2006

Timothy Howard ("Plaintiff") filed two separate actions for breach of contract and bad faith in state court seeking to recover benefits from a homeowners policy. Allstate Insurance Company ("Defendant") removed the case to federal court on the basis of diversity jurisdiction. Plaintiff moves to remand the case on two grounds: (1) Defendant cannot demonstrate that the amount in controversy exceeds \$75,000 and (2) Defendant's removal was untimely. For the reasons described below, I will grant the motion to remand.

I. Background

On June 20, 2006, Plaintiff filed a complaint against Defendant in Philadelphia County Court of Common Pleas. Plaintiff brought two state law claims: (1) breach of insurance contract for failure to make payment and (2) bad faith under 42 PA. CONS. STAT. § 8371 (2006). Plaintiff seeks actual damages in the amount of \$14,089.64 and

includes a claim for punitive damage and attorneys fees under the Pennsylvania bad faith statute. Both counts of the Complaint seek damages "not in excess of \$50,000" and the civil cover sheet for the case lists damages as \$50,000 or less. Moreover, the case was designated for compulsory arbitration. This statute caps the total amount of damages recoverable in the arbitration at \$50,000. See 42. PA. CONS. STAT. § 7361 (2006).

Defendant petitioned for removal on September 11, 2006 based on diversity jurisdiction under 28 U.S.C. §1332. Plaintiff filed a motion for remand on September 12, 2006 alleging that (1) the amount of controversy does not exceed \$75,000 and (2) Defendant's notice of Removal was untimely. Neither party disputes that the claims arise entirely under Pennsylvania law. Therefore, the only basis for federal jurisdiction is diversity.

II. Standard of Review

Defendants in state court actions have a statutory right to remove "any civil action brought in a state court of which the district courts of the United States have original jurisdiction . . . to the district court . . . embracing the place where such action is pending." 28 U.S.C. § 1441(a). Federal district courts have original (subject matter) jurisdiction over all civil actions between citizens of different states when the amount in controversy exceeds \$75,000.00, excluding interest and costs. 28 U.S.C. § 1332(a). Complete diversity between all plaintiffs and defendants is required to remove a case on the basis of diversity jurisdiction. See Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996);

Strawbridge v. Curtiss, 7 U.S. 267, 267–68 (1806).

Removal statutes are "strictly construed against removal and all doubts should be resolved in favor of remand." Batoff v. State Farm Ins. Co., 977 F.2d 848, 851 (3d Cir. 1992) (quotation and citation omitted). The defendant or party asserting jurisdiction bears the burden of establishing removal is proper. Samuel-Bassett v. KIA Motors Am. Inc., 357 F.3d 392, 396 (3d Cir. 2004). If the defendant cannot show to a "legal certainty" that the amount in controversy exceeds the statutory minimum, the court must grant the motion to remand. Id. at 397-98. If a federal court determines that it does not have subject matter jurisdiction over a removed action, or if the defendant did not follow proper removal procedures, the court must remand the action to state court. See 28 U.S.C. § 1447(c); Balazik v. County of Dauphin, 44 F.3d 209, 213 (3d Cir. 1995).

III. Discussion

A. Defendant Cannot Establish To a Legal Certainty that the Amount in Controversy Exceeds \$75,000

Defendant incorrectly states that the Third Circuit is split on the process by which a defendant establishes the amount in controversy for diversity jurisdiction purposes. In 2004, the Third Circuit directly addressed the issue. After surveying the different standards applied by district courts, the court determined that "it would be helpful if consistent language were used by the District Courts within the Circuit" and adopted Meritcare's test of "legal certainty" when relevant facts are not in dispute. Samuel-

Basset, 357 F.3d at 397-398. This test states that “[w]hen it appears to a legal certainty that the plaintiff [is not] entitled to recover the minimum amount set by Section 1332, the removed case must [be] remanded even if the jurisdictional deficiency becomes evident only after trial.” Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 217 (3d Cir. 1999). If facts are in dispute, the court should apply a preponderance of the evidence standard to determine the facts and then apply the legal certainty test to ascertain jurisdiction. Samuel-Basset, 357 F.3d at 398. The amount claimed by the plaintiff controls the inquiry as long as the claim is made in good faith. State Farm Mut. Auto. Ins. Co. v. Powell, 87 F.3d 93, 96 (3d Cir. 1996)(citing St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283 (1937)).

Defendant cannot meet its burden of establishing to a legal certainty that the amount in controversy exceeds \$75,000 because Plaintiff’s damages are capped at \$50,000 under the compulsory arbitration statute. See 42. PA. CONS. STAT. § 7361 (2006). Many courts have recognized that a defendant cannot establish the basis for diversity jurisdiction if the case is being arbitrated under this statute. D’Achino v GNOC Corp., No. 05-4380, 2005 U.S. Dist. LEXIS 31123 (E.D. Pa. Dec. 5, 2005)(granting plaintiff’s motion for remand when plaintiff’s damages were capped at \$50,000 by the compulsory arbitration statute); Augustine v. Chubb Group of Ins. Cos., No. 05-2073, 2005 U.S. Dist. LEXIS 15977 (E.D. Pa. July 27, 2005) (same); O’Toole v. State Farm Fire & Cas. Co., No. 03-5442, 2004 U.S. Dist. LEXIS 9426 (E.D. Pa. May 20, 2004)

(same). Under Samuel-Basset and Meritcare, it is legally certain that Plaintiff cannot recover the jurisdictional amount and Defendant's removal to federal court is improper.

Defendant cannot base diversity jurisdiction on the mere possibility that damages could exceed \$75,000 if punitive damages and/or attorney fees were awarded. Defendant served Plaintiff with Requests for Admissions asking that Plaintiff admit or deny that damages did not exceed \$50,000, \$75,000, or \$150,000. Def. Notice Removal Ex. B. Plaintiff responded that "Plaintiff cannot state with certainty that should bad faith damages be awarded" his damages would exceed this threshold. Def. Notice Removal Ex. C. Plaintiff's refusal to speculate that damages could exceed \$50,000 will not confer diversity jurisdiction. See Horos v. Allstate Ins. Co., No. 03-3654, 2003 U.S. Dist. LEXIS 18170 (E.D.Pa. Sept. 22, 2003)(holding that a plaintiff's refusal to stipulate that damages would not exceed \$75,000, when the civil cover sheet listed the amount as \$50,000 or less, was insufficient to confer federal jurisdiction.)

B. Timeliness of Removal is Moot

Since Defendant has not met its burden of proving that the amount in controversy exceeds \$75,000, timeliness of removal is moot. I will, however, briefly address the issue.

The procedure for removal is dictated by 28 U.S.C. § 1446(b). The procedure requires that the notice of removal be filed within thirty days after the defendant receives

the initial pleading setting forth the claim or service of summons if the initial pleading does not have to be served on the defendant. 28 U.S.C. § 1446(b). Additionally, if another paper, such as an amended pleading, motion, or order, makes it clear the case is now removable, defendant may remove within 30 days of receiving the other document as long as no more than one year has passed since the action commenced. Id.

Defendant did not remove within thirty days of the initial complaint. Plaintiff argues this is procedurally improper, conveniently skipping over the second paragraph of Section 1446, which allows for removal after the complaint if the case later becomes removable. Defendant relies not on the complaint as its basis for removal but the Requests for Admissions that Plaintiff admit or deny that damages did not exceed \$50,000, \$75,000, or \$150,000. Plaintiff responded on August 16, 2006 that he “cannot state with certainty that should bad faith damages be awarded” his damages would exceed this threshold. Defendant filed for removal on September 11, 2006, within a month of this other paper as required by Section 1446.

Defendant could not remove the case on the basis of the initial complaint, which claimed damages of \$50,000 or less. As analyzed above, Plaintiff’s response of August 16, 2006 does not make the case removable either. See Section III.A. supra. Defendant’s removal is improper, not untimely, because there was never a basis for federal jurisdiction – either when Plaintiff filed the Complaint or when Plaintiff responded to Defendant’s Request for Admission.

IV. Conclusion

Plaintiff's motion to remand is granted because Defendant has not met its burden of demonstrating that federal jurisdiction is proper. An appropriate Order follows.

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v.	:	
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ALLSTATE INSURANCE COMPANY,	:	
Defendant.	:	

ORDER

AND NOW, this 28th day of September, 2006, upon consideration of Plaintiff's Motion to Remand (Document No. 2) and Defendant's response (Documents No. 5) thereto, it is hereby **ORDERED** that the motion is **GRANTED**. It is hereby **ORDERED** that the case is summarily remanded to the Court of Common Pleas of Philadelphia County. The Clerk of Court shall mark this case closed for all purposes.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.