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

BERNADETTE ESPINOSA	:	CIVIL ACTION
	:	
v.	:	
	:	
ALLSTATE INSURANCE COMPANY	:	NO. 07-0746

MEMORANDUM AND ORDER

McLaughlin, J. April 16, 2007

This bad faith insurance action was originally filed in Pennsylvania state court. The defendant, Allstate Insurance Company, removed the case to this Court and the plaintiff, Ms. Bernadette Espinosa, has now moved to remand. Ms. Espinosa's motion raises a recurring issue in this district concerning whether cases assigned for compulsory arbitration in the Pennsylvania courts can satisfy the amount in controversy requirement for federal diversity jurisdiction. It also raises a separate recurring issue about the ability of defendants to use requests for admissions as a basis for subsequently removing such a case.[1]

[1] The issues presented in this Motion to Remand are the same as those raised in a similar motion pending in an unrelated case also before this Court: Punzak v. Allstate Ins. Co., No. 07-1052 (E.D. Pa.). Although Punzak involves different plaintiffs, it involves the same defendant, the same defendants' counsel and the same plaintiffs' counsel. Because the issues presented and the arguments of counsel in the two cases are so similar, the Court is entering an essentially identical Memorandum and Order today in Punzak, deciding the pending remand motion in that case on the same grounds set forth here.

I. BACKGROUND

Ms. Espinosa filed this suit in the Philadelphia Court of Common Pleas on December 12, 2006. Her complaint alleges that Allstate wrongly refused to pay for $9,183.10 worth of property damage that was covered by her homeowners policy. She seeks compensation for the property damage, as well as punitive damages, counsel fees and costs, "in an amount not in excess of $50,000.00." Compl. at 5.

Because Ms. Espinosa's complaint seeks damages in an amount less than $50,000, her complaint was designated by the Philadelphia Court of Common Pleas for compulsory arbitration pursuant to 42 Pa. Cons. Stat. Ann. § 7361. That statute authorizes Pennsylvania courts to create rules providing for compulsory arbitration, but states no matter may be referred for arbitration which involves title to real property or "where the amount in controversy, exclusive of interest and costs, exceeds $50,000."

After being served with the complaint, Allstate served Ms. Espinosa with requests for admissions. These requests asked her to admit 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 [either $50,000, $75,000 or $100,000], exclusive of costs and interest." Exhibit A to Allstate's Opposition. Ms. Espinosa

responded to the admissions on January 24, 2007, stating that they were:

> Denied as averred. Although Plaintiff's actual damages are less than $50,000.00, $75,000.00 or $100,000.00, Plaintiff cannot state with certainty that should bad faith damages be awarded, his damages would not exceed $50,000.00, $75,000.00 or $100,000.00. However, any damages which would total in excess of these amounts would be mere speculation.

Exhibit B to Allstate's Opposition. On the basis of Ms. Espinosa's response to its admissions, Allstate filed a notice of removal on February 23, 2007. Ms. Espinoza filed this motion to remand three days later on February 26, 2007.

II. LEGAL ARGUMENT

Federal jurisdiction over this case is based solely on diversity, and therefore the amount in controversy must be greater than $75,000. 28 U.S.C. § 1332(a). The party seeking to establish jurisdiction, here Allstate, bears the burden of proving "to a legal certainty that the amount in controversy exceeds the statutory minimum." Samuel-Bassett v. KIA Motors America, Inc., 357 F.3d 392, 398 (3d Cir. 2004). Any doubts concerning the amount in controversy are to be resolved in favor of remand. Id. at 403. If disputed issues of fact must be resolved to determine the amount in controversy, the party

seeking to establish jurisdiction must prove them by a preponderance of the evidence. Id. at 397.

Both Allstate and Ms. Espinosa agree that this case was not removable when the complaint was filed. Ms. Espinosa takes this position because she does not believe her case has ever been removable. Allstate takes this position because, if the case had been removable when it was filed, then Allstate's removal petition, which was filed more than 30 days after the complaint was served, would be untimely. See 28 U.S.C. § 1446(b). The parties disagree as to whether Ms. Espinosa's subsequent responses to Allstate's requests for admissions made the case removable by increasing the amount in controversy.

A. This Action Was Not Removable on the Face of the Complaint.

In analyzing whether removal was proper, the Court begins with the allegations of the complaint. Samuel-Basset, 357 F.3d at 398-99 ("In removal cases, determining the amount in controversy begins with a reading of the complaint filed in the state court."). Although both parties assert the case was not removable on the face of the complaint, the Court must still independently consider the issue. Parties may not confer subject matter jurisdiction by agreement. Korytnyuk v. Ashcroft, 396 F.3d 272, 279 (3d Cir. 2005).

Ms. Espinosa's complaint alleges that Allstate breached its insurance contract with her and committed bad faith by failing to pay a claim under her homeowner's policy. Although Ms. Espinosa does not state in the complaint how much she claims was owed to her under the policy, she has attached an itemized estimate of the covered damages as an exhibit to her complaint, which states her damages as $9,183.10. In addition to the amount owed under the policy, Ms. Espinosa also seeks punitive damages, attorneys fees and costs as part of her bad faith claim. Ms. Espinosa's complaint also contains several ad damnum clauses, each stating that plaintiff's injuries and the judgment requested in the complaint are for an amount not in excess of $50,000.00. Compl. at ¶¶ 8, 10, 14.

Considered without reference to the ad damnum clauses, Ms. Espinosa's complaint would involve an amount in controversy greater than $75,000. Although Ms. Espinosa's compensatory claim is for only $9,183.10, her claim for punitive damages puts the amount in controversy over the jurisdictional limit. Where punitive damages are available under state law, and where the claim for punitive damages is not "patently frivolous and without foundation," then the amount in controversy will usually be satisfied. Golden v. Golden, 382 F.3d 348, 356 (3d Cir. 2004). Here, the Pennsylvania bad faith statute, 42 Pa. C.S.A. § 8371, authorizes punitive damages, and they have been awarded in

circumstances like this one where an insurer allegedly knew it lacked a reasonable basis to deny a claim. See, e.g., Willow Inn, Inc. v. Public Service Mut. Ins. Co., 399 F.3d 224 (3d Cir. 2005) (upholding a punitive damage award for an insurer's bad faith in knowingly or recklessly denying an insured's claim for property damage). Punitive damages are usually limited by due process considerations to a single digit ratio between punitive and compensatory damages. State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 425 (2003); Willow Inn at 234. Here, punitive damages of only slightly more than seven times Ms. Espinosa's claimed compensatory damages would put Ms. Espinosa's claim over the $75,000 jurisdictional threshold.

Although Ms. Espinosa's claims would otherwise be over $75,000, the ad damnum clauses in the complaint serve to limit the amount in controversy to $50,000. It had previously been an open question in this circuit whether a plaintiff's decision to limit her claim to less than the jurisdictional amount controlled the amount in controversy. See Angus v. Shiley Inc., 989 F.2d 142, 146 n.4 (3d Cir. 1993) (declining to address whether a plaintiff's express limitation of her claim to less than the jurisdictional amount required remand); see also 14B Charles Alan Wright, et al. Federal Practice and Procedure § 3702 at 46-47 (West 1997) ("Under well-settled principles, . . . if the plaintiff chooses to ask for less than the jurisdictional amount

only the sum actually demanded is in controversy."). The recent decision in Morgan v. Gay, however, resolved this issue, stating that a plaintiff, "if permitted by state laws, may limit her monetary claims to avoid the amount in controversy threshold" but that

> [e]ven if a plaintiff states that her claims fall below the threshold, this Court must look to see if the plaintiff's actual monetary demands in the aggregate exceed the threshold, irrespective of whether the plaintiff states that the demands do not. . . . [T]he plaintiff's pleadings are not dispositive under the legal certainty test.

Morgan v. Gay, 471 F.3d 469, 474-75 (3d Cir. 2006).[2]

Under Morgan, the mere fact that Ms. Espinosa has stated in her complaint that her claims are limited to $50,000 does not establish the amount in controversy. The Court must look beyond her pleadings to state law to understand the effect of the ad damnum clauses and determine the amount actually at issue in her claims. Under Pennsylvania's Rules of Civil Procedure, ad damnum clauses are usually not permitted for unliquidated claims, like Ms. Espinosa's claim for punitive damages. Pa. R. Civ. Pro. 1020(b). There is an exception, however, for complaints filed in counties that provide for

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[2] Although Morgan concerned removal of a class action under the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005), its discussion of the standard for proving the amount in controversy was not based on the terms of that act, but on general principles governing removal. Morgan at 474-75 (citing St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288 (1938); Samuel-Bassett, 357 F.3d at 398).

compulsory arbitration. In those counties, "the plaintiff shall state whether the amount claimed does or does not exceed the jurisdictional amount requiring arbitration referral under local rule." Pa. R. Civ. Pro. 1020(c). Here, Ms. Espinosa's complaint stated that her claims were "not in excess of $50,000.00," the jurisdictional limit for compulsory arbitration in Philadelphia County where her complaint was filed. Phila. Local Rule 1301.

Because Ms. Espinosa's complaint stated that her damages were no greater than $50,000, her claims were designated for compulsory arbitration by the Philadelphia Court of Common Pleas.[3] See Flynn v. Casa Di Bertacchi Corp., 674 A.2d 1099, 1106 (Pa. Super. Ct.) (holding that the amount claimed by the plaintiff is "conclusive" as to the amount in controversy for purposes of determining whether a case was properly referred to compulsory arbitration). The $50,000 limit for compulsory arbitration is set by statute and has been held to be jurisdictional. 42 Pa. C.S.A. § 7361; Robert Half Int'l Inc. v. Marlton Tech., Inc., 902 A.2d 519, 529-30 (Pa. Super Ct. 2006)

[3] Compulsory arbitration in Pennsylvania was established by statute, 42 Pa. C.S.A. § 7361. Section 7361 permitted courts to create rules providing for compulsory arbitration of claims not involving real property and not having an amount in controversy greater than $50,000. After arbitration, any party has the right to appeal to a trial de novo in common pleas court. § 7361(d). The procedural rules governing compulsory arbitration have been set out in both the Pennsylvania Rules of Civil Procedure and the Local Rules of the Philadelphia Court of Common Pleas. Pa. R. Civ. P. 1301-13; Phila. Local Rules 1301-1309.

(holding "the monetary limits of compulsory arbitration are jurisdictional" and vacating a default judgment for failure to appear at arbitration where the defendant's counterclaim had raised the amount in controversy over the jurisdictional limit); Flynn, 674 A.2d at 1105-06 (holding that a default judgment granted by the arbitration panel was null and void for want of jurisdiction, where a typographic error in the complaint stated that the plaintiffs sought more than $50,000 in damages).

Pennsylvania law, therefore, gives legal effect to the ad damnum clauses in Ms. Espinosa's complaint. Because her complaint claimed no more than $50,000 in damages, the Pennsylvania state court designated her claims for compulsory arbitration, a proceeding whose subject matter jurisdiction is limited to claims no greater than that amount. Under Morgan, because Ms. Espinosa's choice to limit her monetary claims is "permitted by state laws," her ad damnum clauses allow her "to avoid the amount in controversy threshold" for federal diversity jurisdiction. Morgan, 471 F.3d at 474. Ms. Espinosa's complaint therefore stated an amount in controversy less than $75,000 and was not removable at the time it was filed.[4]

[4] Prior decisions in this district have been divided over whether a Pennsylvania plaintiff can avoid removal by limiting her claim to no greater than $50,000 and having her claim referred to compulsory arbitration. The majority have held that being designated for arbitration will limit a case's amount in controversy below the jurisdictional threshold for federal jurisdiction. See, e.g., Howard v. Allstate Ins. Co., No. 06-

B. This Action Was Not Removable on the Basis of the Plaintiff's Responses to Requests for Admissions.

Having found that diversity jurisdiction did not exist over Ms. Espinosa's complaint when it was filed, the Court must consider whether Ms. Espinosa's subsequent responses to Allstate's request for admissions made the case removable. If a case is not immediately removable on the basis of its initial pleading, it may later be removed "within thirty days after receipt by the defendant, through service or otherwise, 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." 28 U.S.C. § 1446(b). Neither party disputes that a response to a request for admissions can constitute the

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4017, 2006 WL 2818479 at *2 (E.D. Pa. Sept. 28, 2006) ("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.") (collecting cases); see also Headley v. Allstate Ins. Co., No. 07-525 (E.D. Pa. February 12, 2007); Soffian v. Allstate Ins. Co., No. 06-4423 (E.D. Pa. October 26, 2006); Brownstein v. Allstate Ins. Co., No. 06-4759 (E.D. Pa. November 16, 2006) (all attached as Exhibit B to Plaintiff's Memorandum of Law); but see Valley v. State Farm Fire and Cas. Co., No. 06-4351, 2006 WL 3718007 at *4 (E.D. Pa. December 12, 2006) (holding that compulsory arbitration does not act as a limit on the amount in controversy and declining "to remand this action merely because it has been designated for arbitration in state court"); McFadden v. State Farm Ins. Co., No. 99-1214, 1999 WL 715162 (E.D. Pa. September 15, 1999) (holding that referral to compulsory arbitration does not limit a plaintiff's claim, but may be evidence of the amount in controversy).

subsequent "amended pleading, motion, order or other paper" necessary for removal under § 1446(b).[5]

Determining whether this case became removable turns on the effect of Ms. Espinosa's responses to the requested admissions. Rule 36 of the Federal Rules of Civil Procedure allows one party to serve upon another a request for admission "of the truth of any matters [generally discoverable] . . . set forth in the request that relate to statements or opinions of fact or of the application of law to fact." An answer must "specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter." A denial must "fairly meet the substance of the requested admission," and a party must specify whether any part of the requested admission is true "when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested." Fed. R. Civ. P. 36(a).

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[5] The United States Court of Appeals for the Third Circuit has not addressed the definition of "other paper" under the removal statute. The most recent decision in this district to consider the issue has held that responses to admissions can constitute the "other paper" providing notice that a case is removable. Marchiori v. Vanguard Car Rental USA, Inc., 2006 WL 72445 (E.D. Pa. March 17, 2006) (noting the majority of courts to consider the term have given it an "embracive construction including a wide array of documents and citing Akin v. Ashland Chem. Co., 156 F.3d 1030, 1036 (10th Cir. 1998) and 14C Charles Alan Wright, et al., Federal Practice and Procedure § 3732 (3d ed. 1998)) (other citations and internal quotations omitted). This Court agrees that a response to a request for admissions can constitute the "other paper" necessary for removal under § 1446(b).

The consequence of an admission is that the matter admitted is "conclusively established" for purposes of the litigation, unless the court permits the admission to be withdrawn. Fed. R. Civ. P. 36(b); see also Langer v. Monarch Life Ins. Co., 966 F.2d 786, 803 (3d Cir. 1992). The Rule gives no consequence for a denial of an admission, although it allows the requesting party to move to determine the sufficiency of a denial and, if a court determines an answer does not comply with the requirements of rules, the court may order that the matter be deemed admitted or that an amended answer be served. Fed. R. Civ. P. 36(b).

Here, Ms. Espinosa denied Allstate's requests for admission, although with an explanation. To Allstate's request that she admit that the "total actual damages" in her complaint did not exceed $50,000, $75,000 or $100,000, exclusive of costs or interest, she responded by denying the request "as averred" and adding that, although her "actual damages" (presumably meaning her compensatory damages) were less than those amounts, she could not "state with certainty" that, if bad faith damages were awarded, they might not exceed those amounts, although any such damages "would be speculative."

Because Ms. Espinosa denied Allstate's requested admissions and because Allstate has not moved to challenge the sufficiency of that denial, her responses are not admissions for

purposes of Rule 36 and therefore are not conclusive evidence of the amount in controversy here. Although Ms. Espinosa's responses are not Rule 36 admissions, they still may be considered as evidence bearing on the amount in controversy. See Fed. R. Evid. 801(d)(2). Ms. Espinosa's statements, however, are insufficient to overcome the effect of the ad damnum clauses in Ms. Espinosa's complaint and satisfy Allstate's burden of establishing "to a legal certainty" that the amount in controversy here is greater than the jurisdictional requirement for federal diversity jurisdiction.

Prior to removal, Ms. Espinosa had not moved to amend her pleadings to remove the ad damnum clauses from her complaint, nor had either party petitioned the state court to remove her case from compulsory arbitration, as permitted by local rule. Accordingly, at the time the case was removed, the ad damnum clauses were in effect and the suit remained subject to the jurisdictional limits of compulsory arbitration. Ms. Espinosa's responses to Allstate's admissions were not pleadings filed with the state court and therefore did not serve to amend her complaint or to oust the jurisdiction of the arbitration panel. Her statements that her punitive damage claim for bad faith might exceed $50,000, $75,000 or $100,000 are consistent with the Court's analysis that, absent the ad damnum clauses limiting her recovery, the amount in controversy on her claim might exceed the

amount required for federal jurisdiction. Because those ad damnum clauses remained in effect, however, the amount in controversy for her claims is, as stated in her complaint, an amount no greater than $50,000.[6]

In its opposition to Ms. Espinosa's motion for remand, Allstate argues that neither the ad damnum clauses nor the referral to arbitration should serve to limit the amount in controversy because Ms. Espinosa could, in the future, amend her pleadings to remove the clauses from her complaint or petition to have the case removed from compulsory arbitration. This argument is misplaced. As discussed above, Pennsylvania law gives legal effect to ad damnum clauses that allege damages below the jurisdictional threshold for compulsory arbitration. The fact that Ms. Espinosa could amend her complaint to remove those

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[6] The Court's holding is in accord with other decisions in this district which have held that a plaintiff's responses to requests for admissions are insufficient to overcome the effect of an ad damnum clause and a referral to compulsory arbitration. See, e.g., Howard, 2006 WL 2818479 at *2. At least one decision in this district has held that a plaintiff's responses to identical requests for admissions were sufficient to overcome the effect of the plaintiff's ad damnum clauses and allow removal. McGhee v. Allstate Ins. Co., No. 05-1813 (E.D. Pa. August 22, 2005) (holding that a plaintiff's responses to requests for admissions denying that his damages were less than $50,000, $75,000, or $100,000 were sufficient to allow removal, even though the complaint contained ad damnum clauses stating that for each of the two separate causes of action, the plaintiff sought less than $50,000) (attached as Exhibit B to Allstate's Opposition). McGhee was issued before Morgan v. Gay, the recent decision of the United States Court of Appeals for the Third Circuit which clarified the standards to be applied in determining the amount in controversy.

clauses or otherwise have her case made ineligible for compulsory arbitration in the future does not affect whether the case is removable now. If Ms. Espinosa takes actions in the future that raise the amount in controversy in her suit over the $75,000 threshold for federal jurisdiction, her case will become removable at that time, as long as no more than a year has passed since the suit was filed. 28 U.S.C. § 1446(b).

Allstate complains that Ms. Espinosa might wait to amend her complaint until after the expiration of the year-long period for removing a diversity case. This potential for unfairness is inherent in the time-limit established by Congress in amending § 1446(b). See 14C Federal Practice and Procedure § 3732 at 343-44. Some courts have attempted to deal with particularly egregious unfairness by permitting equitable exceptions to the one-year time limit. See, e.g., Tedford v. Warner-Lambert Co., 327 F.3d 423, 427 (5th Cir. 2003) (allowing removal outside one year time-limit under theory of equitable estoppel). Any argument Allstate may have concerning the inequity or unfairness of actions that Ms. Espinosa may take after the one-year limit has expired can be made if and when those actions occur.

III. CONCLUSION

As set out above, Ms. Espinosa's complaint was not removable at the time it was filed and did not become removable on the basis of her responses to defendant Allstate's requests for admissions. The case must therefore be remanded.

An appropriate Order follows.

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BERNADETTE ESPINOSA	:	CIVIL ACTION
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v.	:	
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ALLSTATE INSURANCE COMPANY	:	NO. 07-0746

ORDER

AND NOW, this 16th day of April, 2007, upon consideration of the plaintiff's Motion for Remand, and the defendant's response thereto, IT IS HEREBY ORDERED that the Motion is GRANTED for the reasons set forth in the accompanying memorandum, and the case is REMANDED to the Court of Common Pleas of Philadelphia County, Pennsylvania.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.