

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

TODD TELLER : CIVIL ACTION
 :
 v. :
 :
 THE EQUITABLE LIFE ASSURANCE SOCIETY : NO. 98-3382

MEMORANDUM AND ORDER

HUTTON, J.

October 2, 1998

Presently before the Court are Plaintiff Todd Teller's Motion for Remand (Docket No. 8) and Defendant Equitable Life Assurance Society's opposition thereto (Docket No. 10). For the following reasons, the Motion for Remand is denied.

I. BACKGROUND

Plaintiff, Todd Teller, filed a complaint against Defendant, Equitable Life Assurance Society ("Equitable"), seeking damages for breach of a disability income insurance contract. Plaintiff filed the complaint in the Philadelphia Court of Common Pleas. Plaintiff contends that he is unable to perform the substantial and material duties of his regular occupation as a licensed chiropractor. He further states that Defendant was obligated to pay him disability benefits under an insurance contract.

In his complaint, Plaintiff brought two counts. Count I alleges breach of contract and seeks a "judgment against defendant

in the amount of Two Thousand Dollars (\$2,000.00) per month commencing as of February 1, 1998 until the date of trial plus return of insurance premiums paid from October 31, 1997 through the date of the trial together with costs and interest." Count II alleges bad faith on the part of the Defendant in rejecting Plaintiff's claim for disability benefits. Thus, in Count II, Plaintiff requested the following relief pursuant to 42 Pa. Cons. Stat. § 8371: (1) award of interest on the amount of Plaintiff's claim against Defendant from the date the claim was made at a rate of the prime rate plus three percent; (2) punitive damages; and (3) court costs and attorneys' fees.

Thereafter, Defendant filed an answer and asserted several affirmative defenses. Two of the affirmative defenses are relevant to this action. First, Defendant raised the defense that Plaintiff may have made material and/or fraudulent misrepresentations regarding his prior health history when applying for disability insurance with the Defendant. Second, Defendant raised the defense that the policy is void ab initio.

After filing the answer, on July 2, 1998, Defendant filed a Notice of Removal predicated upon diversity of citizenship pursuant to 28 U.S.C. § 1332. Plaintiff then filed this Motion to Remand. The parties do not contest diversity of citizenship. Rather, Plaintiff argues that the amount in controversy does not exceed \$75,000.

II. Standard of Review

In general, a defendant may remove a civil action filed in state court if the federal court would have had original jurisdiction to hear the matter. See 28 U.S.C. § 1441(b) (1994 & Supp. 1997); see also Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990), cert. denied, 498 U.S. 1085 (1991). Once the case has been removed, however, the federal court may remand if there has been a procedural defect in removal, or if the court determines that it lacks federal subject matter jurisdiction to hear the case. See 28 U.S.C. § 1447(c) (1994 & Supp. 1997); see also Township of Whitehall v. Allentown Auto Auction, 966 F. Supp. 385, 386 (E.D. Pa. 1997). Upon a motion to remand, it is always the moving party's burden to establish the propriety of removal, and all doubts as to the existence of federal jurisdiction must be resolved in favor of remand. See Batoff v. State Farm Ins. Co., 977 F.2d 848, 851 (3d Cir. 1992); Independent Mach. Co. v. International Tray Pads & Packaging, Inc., No. CIV.A.97-2987, 1998 WL 35002, at *2 (D.N.J. Jan. 5, 1998).

III. DISCUSSION

Defendant's Notice of Removal invokes the Court's diversity jurisdiction. Under diversity jurisdiction, a district court has jurisdiction over a civil action if the parties are citizens of different states and the amount in controversy exceeds

\$75,000.¹ See 28 U.S.C. § 1332(a) (1994 & Supp. 1997). If either of these requirements are not met, the court may remand a removed case to the state court for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c).² The parties do not dispute their diversity of citizenship, rather, the issue is whether the amount in controversy exceeds \$75,000.

¹ The statute now provides as follows:

The district court 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--

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For purposes of this section, section 1355, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

28 U.S.C. § 1332(a) (1994 & Supp. 1997).

² Congress has provided that:

A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expense, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

28 U.S.C. § 1447(c) (1994 & Supp. 1997).

To determine the amount in controversy, the Court must look at the complaint itself. See Angus v. Shiley, Inc., 989 F.2d 142, 145 (3d Cir. 1993). The Court makes this determination by examining the jurisdictional amount in effect on the date of removal. TJS Brokerage & Co. v. CRST, Inc., 958 F. Supp. 220, 221 (E.D. Pa. 1997).

Although the standard of proof is unclear in the Third Circuit, this Court recently concluded that the defendant must prove the amount in controversy by a preponderance of the evidence. See Feldman v. New York Life Ins. Co., No. CIV.A.97-4684, 1998 WL 94800, at *2 (E.D. Pa. Mar. 4, 1998) ("[D]efendant must prove the amount in controversy by a preponderance of the evidence."); see also Mercante v. Preston Trucking Co., No. CIV.A.96-5904, 1997 WL 230826, at *2 (E.D. Pa. May 1, 1997) (analyzing circuit split concerning standard for amount in controversy and concluding that preponderance of the evidence is appropriate). If the Court concludes by a preponderance of the evidence that the claim is really for less than the jurisdictional amount, the case must be remanded to the state court. See St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1939); Suber v. Chrysler Corp., 104 F.3d 578, 583 (3d Cir. 1997); Garnder v. Beasley FM Acquisition Corp., No. CIV.A.97-2900, 1997 WL 325794, at *3 (E.D. Pa. June 6, 1997).

In the instant case, the Plaintiff objects to Defendant's removal of this case to federal court because he argues the amount in controversy is less than \$75,000. Defendant states that the amount in controversy exceeds \$75,000 if the following are added together: past benefits allegedly due under the policy, potential future benefits, punitive damages sought in Count II, and attorneys' fees sought in Count II. This Court agrees with the Defendant, and therefore, denies the Plaintiff's motion to remand.

A. Premiums and Benefits Due Under the Policy (Count I)

Plaintiff makes two demands for relief relevant to this motion in Count I. First, Plaintiff requests the return of insurance premiums. The quarterly premium paid by the Plaintiff was \$206.08. Twenty quarters have passed. Thus, Plaintiff's request for insurance premium in Count I states a claim for \$4,121.60.

Second, Plaintiff requests the benefits due under the policy as damages under Count I. Starting from February 1, 1998, Plaintiff seeks \$2,000 per month in disability benefits. This request places the entire amount of the benefits over life expectancy of the Plaintiff in controversy. On September 8, 1993, the effective date of the insurance, Plaintiff was 27 years old. Given Plaintiff's age, Defendant could be expected to make payments of \$24,000 a year for over thirty years. Thus, this claim alone is worth tens of thousands of dollars.

Plaintiff cites Laver v. Chubb Life Insurance Co. of America, No. CIV.A.96-587, 1996 WL 162337 (E.D. Pa. Apr. 4, 1996), as authority for the proposition that future benefits under insurance policies should not be counted as amounts in controversy. In Laver, the plaintiff filed an action in state court to collect unpaid insurance benefits totaling \$4,996.43. See Laver, 1996 WL 162337, at *1. Judge Waldman concluded that possible future benefits due under the policy should not be used in calculating the amount in controversy because "[t]he court does not consider possible future benefits claims as part of the amount in controversy where the validity of the policy itself is not at issue." Id. (emphasis added).

This Court finds that Laver is distinguishable on three grounds. First, the plaintiff in Laver sought a specified amount of \$4,996.43 whereas the Plaintiff in this case requests an open ended amount of \$2,000 per month from February 1, 1998. Second, the plaintiff in Laver did not seek punitive damages or attorneys' fees under Pennsylvania's bad faith statute. Third, the defendant in Laver did not seek to rescind the contract by affirmative defense which is what the Defendant in this case seeks to do. In other words, in this case, the entire amount of the policy is in dispute. Defendant raises two possible affirmative defenses that, if proven, would void or rescind Plaintiff's policy. These

defenses place possible future amounts owed to Plaintiff in controversy for jurisdictional purposes.

B. Punitive Damages Under Count II

Plaintiff also seeks punitive damages under a Pennsylvania statute that permits a court to assess punitive damages if the insurer acted in bad faith towards the insured. The statute provides:

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

(1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.

(2) Award punitive damages against the insurer.

(3) Assess court costs and attorney fees against the insurer.

42 Pa. Cons. Stat. § 8371 (1995).

When both actual and punitive damages are recoverable, punitive damages are properly considered in determining whether the jurisdictional amount has been satisfied. See Bell v. Preferred Life Assur. Soc'y, 320 U.S. 238, 240 (1943); see also Agnus, 989 F.2d at 145-46. Moreover, because Plaintiff's request for punitive damages contains no specific dollar amount, this Court will consider that request as open ended. In the Third Circuit, "the amount in controversy is not measured by the low end of an open-ended claim, but rather by reasonable reading of the value of the

rights being litigated." Id. This determination should also be made with a generous reading of the complaint. See id.

C. Attorneys' Fees Under Count II

Finally, Plaintiff seeks attorneys' fees under the same Pennsylvania statute that provides for punitive damages. See 42 Pa. Cons. Stat. § 8371. Attorneys' fees must also be included in determining the amount in controversy. See Neff v. General Motors Corp., 163 F.R.D. 478, 482 (E.D. Pa. 1995). As was the case with punitive damages, the court may award attorneys' fees if the insurer acted in bad faith towards the insured. See 42 Pa. Cons. Stat. § 8371. This Court will consider attorneys' fees by arriving at a reasonable value. See Agnus, 989 F.2d at 145-46.

D. Total Amount in Controversy

In this case, the Plaintiff claims that Defendant refuses to honor an insurance disability contract once he became disabled. Plaintiff also states that the Defendant acted in bad faith in refusing to honor this contract. This places the full value of the Plaintiff's insurance, which is worth tens of thousands of dollars, in dispute. Furthermore, Plaintiff may be entitled to punitive damages and attorney fees if he convinces a jury that the Defendant acted in bad faith. See 42 Pa. Cons. Stat. § 8371. Considering the above, the Court finds by a preponderance of the evidence that the value of the Plaintiff's claim reasonably exceeds \$75,000.

An appropriate Order follows.

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O R D E R

AND NOW, this 2nd day of October, 1998, upon consideration of Plaintiff Todd Teller's Motion for Remand and Defendant Equitable Life Assurance Society's Opposition thereto, IT IS HEREBY ORDERED that the Motion for Remand is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.