

the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2)(“CAFA”)¹ and diversity jurisdiction. The Court finds the plaintiff’s argument that jurisdiction exists under CAFA is ill-founded. The case from which this matter was severed, *Adams v. American Security Insurance Co.*, Civ. Act. No. 09-2609 “K” was also based on diversity jurisdiction under Section 1332(a), not CAFA. In addition, the claims from which the *Adams* claims were severed, *Abadie v. Aegis Security Insurance Co.*, Civ. Act. 06-5164 “K” and *Abadie v. Aegis Security Insurance Co.*, 07-5112 “K” were declared misjoined. *In re Katrina Canal Breaches Consolidated Litigation*, Civ. Act. No. 05-4182 “K”, Rec. Docs. 17017, 19561. The plaintiff does not and can not argue that any order recognized previous joined claims as properly joined under CAFA or otherwise. In addition, no class relevant to the instant claims has ever been recognized under CAFA or otherwise in the history of the expanded litigation from which these claims were severed. Any class action has been dismissed, and “a severed action must have an independent jurisdictional basis.” *Honeywell International Inc. v. Phillips Petroleum Co.*, 415 F.3d 429, 432 (5th Cir. 2005). See also *Washington v. American Security Insurance Co.*, Civ. Act. 10-685 “S”, Rec. Doc. 8.

With respect to diversity jurisdiction, the parties represent that the policy limits are \$57,000/\$5,700. Ordinarily, policy limits do not determine the amount in

¹ Section 1332(d)(2)(A) allows for original jurisdiction where the amount in controversy exceeds \$5,000,000 in class actions in which “any member of a class of plaintiffs is a citizen of a State different from any defendant.”

controversy, unless the value of the claim exceeds the value of the policy. *Hartford Insurance Group v. Lou-Con, Inc.*, 293 F.3d 908, 911 (5th Cir. 2002). Here, the figures fall short of the jurisdictional minimum necessary for diversity jurisdiction under Section 1332(a) no matter how they are viewed.²

The figures provided in response to the Court's orders do not otherwise support subject matter jurisdiction. The parties represent that approximately \$11,542 was paid under the policy in October 2005 and November 2006. The plaintiff also presents an undocumented demand and "loss breakdown/wind" for \$80,922 outstanding as of November 2006.

With regard to the existence of the jurisdictional minimum, the parties may neither consent to nor waive federal subject matter jurisdiction. *Simon v. Wal-Mart Stores, Inc.*, 193 F.3d 848 (5th Cir. 1999). "The court's obligation to determine that the requisite jurisdictional amount is present is independent of the parties' assertions or desires." Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, 14AA *Federal Practice & Procedure* 3702 (West). Here, the plaintiff bears the burden of establishing subject matter jurisdiction by showing that it does not appear to a legal certainty that

²The claim for statutory penalties is speculative for purposes of determining the jurisdictional minimum. Facts indicating the propriety of such penalties must be presented. *Magee v. American Security Insurance*, 2009 WL 1707920 (E.D.La.); *Schaeffer v. Allstate Insurance Co.*, 2008 WL 4058867 (E.D.La.).


the claim for relief is for less than the statutorily prescribed jurisdictional amount of \$75,000. *Id.*; *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283 (1938). “[T]he plaintiff must demonstrate that there is a *possibility* of recovering more than the jurisdictional minimum, and must do so by a preponderance of the evidence supported by competent proof.” James Wm. Moore, *15 Moore’s Federal Practice* §102.107[1] (Lexis 2009)(emphasis original). Here, the figures fall short of the jurisdictional minimum necessary for diversity jurisdiction under Section 1332(a).³

Sufficient opportunity has been provided to file in state court.

Accordingly,

IT IS ORDERED that this matter be and hereby is DISMISSED for lack of subject matter jurisdiction.

New Orleans, Louisiana, this 30th day of June, 2010.


HELEN G. BERRIGAN
UNITED STATES DISTRICT JUDGE

³The claim for statutory penalties is speculative for purposes of determining the jurisdictional minimum. Facts indicating the propriety of such penalties must be presented. *Magee v. American Security Insurance*, 2009 WL 1707920 (E.D.La.); *Schaeffer v. Allstate Insurance Co.*, 2008 WL 4058867 (E.D.La.).