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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Janet E. Taylor,  
Plaintiff,  
vs.  
Transportation Insurance Company, a  
foreign licensed insurer,  
Defendant.

No. CV-10-2453-PHX-GMS

**ORDER**

Pending before the Court is a Motion to Remand (Doc. 7) filed by Plaintiff Janet E. Taylor (“Taylor”). For the following reasons, the Court denies the motion.

**BACKGROUND**

The Complaint alleges that Defendant Transportation Insurance Company (“Company”) “provided a workers’ compensation policy to the Plaintiff’s employer, Kelly Services, Inc., for the calendar year, 2006.” (Doc. 1, ¶ 3). This policy was in force on September 13, 2006, when Plaintiff sustained severe injuries to her left elbow and arm while walking to work at a radio station. (*Id.* at ¶¶ 3–4, 7). Plaintiff reported her injury to Defendant on the same day, but Defendant allegedly denied the claim for workers’ compensation in a notice sent to Plaintiff on October 12, 2006. (*Id.* at ¶¶ 8–9). On April 10, 2007, an Administrative Law Judge (“ALJ”) “found that the Plaintiff was injured on the premises of the radio station and that her injury arose out of and in the course of employment



1 first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citing *Libhart v. Santa*  
2 *Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)). Therefore, “the defendant always  
3 has the burden of establishing that removal is proper.” *Gaus*, 980 F.2d at 566; *see Prize*  
4 *Frize, Inc. v. Matrix Inc.*, 167 F.3d 1261, 1265 (9th Cir. 1999) (“The burden of establishing  
5 federal jurisdiction is on the party seeking removal, and the removal statute is strictly  
6 construed against removal jurisdiction.”) (citing *Emrich v. Touche Ross & Co.*, 846 F.2d  
7 1190, 1195 (9th Cir.1988)).

8 One way a district court may have removal jurisdiction is if the plaintiff and defendant  
9 are citizens of different states and the “matter in controversy exceeds . . . \$75,000, exclusive  
10 of interest and costs.” 28 U.S.C. § 1332(a). The burden of proof regarding the amount in  
11 controversy depends on whether the face of the plaintiff’s complaint alleges a specific  
12 amount or whether the complaint is ambiguous. *Guglielmino v. McKee Foods Corp.*, 506  
13 F.3d 696, 699 (9th Cir. 2007); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 402, 404  
14 (9th Cir. 1996). Where it is unclear from the face of the complaint whether the requisite  
15 amount in controversy is pled, the removing defendant bears the burden of establishing, by  
16 a preponderance of the evidence, that the amount in controversy exceeds \$75,000.  
17 *Guglielmino*, 506 F.3d at 699 (citing *Sanchez*, 102 F.3d at 404).

## 18 **II. Amount in Controversy**

19 Plaintiff’s Complaint neither alleges a specific dollar amount nor suggests what  
20 amount of damages Plaintiff seeks. In her Motion to Remand, Plaintiff confirms that “any  
21 damage awarded to Plaintiff is speculative and will be determined at a later stage by a jury.”  
22 (Doc. 7). Because Plaintiff’s complaint is “unclear or ambiguous,” *Guglielmino*, 506 F.3d  
23 at 699, Defendant “bears the burden of establishing, by a preponderance of the evidence, that  
24 the amount in controversy exceeds [\$75,000].” *Sanchez*, 102 F.3d at 404 (“[T]he defendant  
25 must provide evidence establishing that it is ‘more likely than not’ that the amount in  
26 controversy exceeds [\$75,000].”). The Court finds that Defendant has satisfied its burden.

27 In her Complaint, Plaintiff alleges that Defendant has either refused to pay or only  
28 partially paid the medical bills she incurred at the emergency room on the day of her injury,

1 and as a result of several subsequent surgeries and treatments that she underwent. (Doc. 1,  
2 ¶ 12, 18, 25, 33). This claim is relevant to the amount in controversy analysis given the  
3 extensive nature of Plaintiff’s alleged injuries arising out of the accident. These include a  
4 dislocated elbow, fractured left radius, shattered coronoid process, tendon, muscle, ligament  
5 and nerve damage, and other serious injuries to her neck, shoulder and knee. (Doc. 1, ¶ 7).  
6 Plaintiff further alleges that as a result of her direct injuries, she also sustained secondary  
7 complications, including the following: nerve and swallowing issues (¶ 22), bladder problems  
8 (¶ 22), urinary tract infection (¶ 28), deep vein thrombosis (¶ 34), crooking and deformation  
9 in her left hand (¶ 36), excessive uterine and rectal bleeding (¶ 43), depression (¶ 44), severe  
10 abdominal pain and inability to eliminate waste from her body (¶ 30). Plaintiff alleges that  
11 her complications have required her to undergo a wide range of surgical procedures,  
12 including “bowel resection and disimpaction” (¶ 31), “spinal fusion and discectomy” (¶ 22),  
13 and “surgery on her elbow to move the compressed ulnar nerve.” (Doc. 1, ¶ 38). In light of  
14 the scope and gravity of Plaintiff’s alleged direct and secondary injuries, and the significant  
15 medical procedures at play, it is more likely than not that the amount in controversy for her  
16 bad faith claim alone satisfies the \$75,000 threshold.

17 Defendant has also provided evidence that, as of October 25, 2010, it has paid over  
18 \$275,000 in Plaintiff’s medical bills.<sup>1</sup> (Doc. 8, Ex. A). Given the extent of Plaintiff’s injuries  
19 and complications, the evidence provided by Defendant, while not dispositive, strongly  
20 suggests that even if Plaintiff is alleging that a portion of her medical bills remain unpaid,  
21 the requisite amount in controversy is met.

22 Plaintiff also alleges that “on April 6, 2008, the Defendant sent a demand letter  
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24 <sup>1</sup>To determine if Defendant meets the preponderance of the evidence standard, the  
25 Court considers “facts presented in the removal petition as well as any  
26 summary-judgment-type evidence relevant to the amount in controversy at the time of  
27 removal.” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1090, 1009 (9th Cir. 2003)  
28 (internal quotation marks admitted). Because it is relevant to the amount in controversy, the  
Court considers Defendant's submission of its “payment query results,” attached to its  
Response. (Doc. 8, Ex. A).

1 demanding \$186,743.49 from the settlement through a third party lawsuit. On April 21, 2010  
2 the Defendant demanded repayment of \$282,476.40.” (Doc. 1, ¶ 21). Even though  
3 Defendant’s demand letters are not dispositive, “it may be relevant evidence of the amount  
4 in controversy if it appears to reflect a reasonable estimate of the plaintiff’s claim.” *Brown*  
5 *v. Bankers Life & Cas. Co.*, 2009 WL 2914215, at \*4 (D. Ariz. Sept. 8, 2009) (citing *Cohn*  
6 *v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (internal quotation marks omitted)). The  
7 amounts represented in the demand letters, in conjunction with the \$275,000 in medical bills  
8 Defendant has allegedly already paid, again suggest that the amount in controversy exceeds  
9 the threshold.

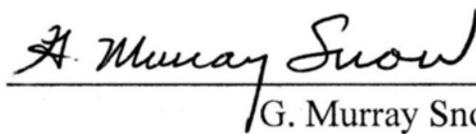
10 The extensive nature of Plaintiff’s injuries, as alleged by her, taken together with the  
11 medical bills already paid by Defendant, the figures mentioned in the demand letters, and the  
12 general nature of the bad faith claim being asserted here, all establish that Defendant has  
13 satisfied its burden regarding the amount in controversy requirement. The Court also takes  
14 note of Plaintiff’s unwillingness to state on the record, during a hearing on January 7, 2010,  
15 that the amount of damages she seeks would fall below the jurisdictional threshold.

### 16 CONCLUSION

17 In light of the foregoing facts and circumstances, removal to federal court was proper  
18 because Defendant has shown by a preponderance of the evidence that the amount in  
19 controversy exceeds \$75,000 to establish jurisdiction. As such, remand to Maricopa County  
20 Superior Court is inappropriate.

21 **IT IS THEREFORE ORDERED** that Plaintiff’s Motion to Remand (Doc. 7) is  
22 **DENIED.**

23 DATED this 18th day of February, 2011.

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25 \_\_\_\_\_  
26 G. Murray Snow  
27 United States District Judge  
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