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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 Tuco Devenport and Crystal Diana Kay  
9 Devenport,

No. CV11-1450-PHX-DGC

10 Plaintiffs,

**ORDER**

11 vs.

12 Milbank Insurance Company, a foreign  
13 corporation; State Automobile Mutual  
14 Insurance Company, a foreign corporation;  
15 State Auto Property & Casualty Insurance  
16 Company, a foreign corporation; John and  
17 Jane Does 10V; Black and White  
18 Corporations I-V,

19 Defendants.

20 Plaintiffs filed a Complaint in Maricopa County Superior Court against  
21 Defendants Milbank Insurance Company (“Milbank”), State Automobile Mutual  
22 Insurance Company (“State Mutual”), and State Auto Property & Casualty Insurance  
23 Company (“State Auto”), all foreign corporations, alleging that they had not been  
24 properly compensated for a robbery that occurred at their Glendale home. Doc. 1.1 at 2-  
25 3. Defendants removed the case to District Court. State Mutual and State Auto then filed  
26 a motion to dismiss Plaintiffs’ complaint as against them, asserting that they were  
27 improper parties to Plaintiffs’ breach of contract and bad faith claims. Doc. 5. Plaintiff  
28 does not oppose this motion. Doc. 14. Plaintiff, however, filed a motion to remand to  
Maricopa County Superior Court for lack of subject matter jurisdiction and for late filing

1 for removal. Doc. 13. Plaintiff maintains that dismissal should take place in Superior  
2 Court. Doc. 13 at 2. For the reasons set forth below, the Court will grant Plaintiffs’  
3 motion to remand. The Court therefore makes no ruling on Defendants’ motion to  
4 dismiss.

5 Plaintiffs also requests Attorneys’ fees and costs related to filing their motion to  
6 remand. The Court will deny this request.

7 **I. Removal and Remand Standards.**

8 Pursuant to the removal statute, 28 U.S.C. § 1441, any civil action brought in state  
9 court over which the federal district courts have original jurisdiction may be removed to  
10 the federal district court for the district where the action is pending. 28 U.S.C. § 1441(a).  
11 Courts strictly construe the statute against removal jurisdiction. *Gaus v. Miles, Inc.*,  
12 980 F.2d 564, 566 (9th Cir. 1992). Indeed, there is a “strong presumption” against  
13 removal and “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of  
14 removal in the first instance.” *Id.* “The ‘strong presumption’ against removal jurisdiction  
15 means that the defendant always has the burden of establishing that removal is proper.”  
16 *Id.* “If at any time before final judgment it appears that the district court lacks subject  
17 matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

18 **II. Motion to Remand.**

19 This Court has subject matter jurisdiction over cases in which the parties are  
20 diverse and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332. Plaintiff  
21 argues that the amount in controversy is not met in this case. Doc. 13 at 2. Plaintiffs’  
22 prayer for relief includes actual and punitive damages, attorneys’ fees, and allowable  
23 interest, but it is silent as to an actual dollar amount. *See* Doc. 1.1 at 5. Defendants  
24 therefore “bear[] the burden of establishing, by a preponderance of the evidence, that the  
25 amount in controversy exceeds [\$75,000].” *Sanchez v. Monumental Life Ins. Co.*, 102  
26 F.3d 398, 404 (9th Cir. 1996). To meet this burden, Defendants “must provide evidence  
27 establishing that it is ‘more likely than not’ that the amount in controversy exceeds  
28 [\$75,000].” *Id.*; *see Gaus*, 980 F.2d at 566-67 (“If it is *unclear* what amount of damages

1 the plaintiff has sought, . . . then the defendant bears the burden of actually proving the  
2 facts to support jurisdiction, including the jurisdictional amount.”) (emphasis in original);  
3 *McNutt v. GM Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936) (“[T]he court may  
4 demand that the party alleging jurisdiction justify his allegations by a preponderance of  
5 evidence.”).

6 Defendants allege that the amount in controversy is more likely than not to exceed  
7 \$75,000 based upon two specific findings of fact: (1) Plaintiffs’ February 22nd  
8 “Certificate Regarding Compulsory Arbitration” claiming that the amount of damages in  
9 this case exceeds \$50,000, and (2) an affidavit from Defense attorney Michael Hensley  
10 estimating the likely amount of attorneys’ fees to be between \$50,000 and \$75,000. Doc.  
11 16.1 & 16.4 at 2. This estimate “includes the possibility of multiple depositions, expert  
12 fees, and motion practice.” Doc. 16 at 6. Defendants conclude that “assuming Plaintiffs’  
13 claims are true, the attorneys’ fees, along with Plaintiffs’ actual and punitive damages  
14 more likely than not will exceed the \$75,000 amount in controversy limit.” *Id.*

15 Although Plaintiffs’ Certificate Regarding Compulsory Arbitration establishes that  
16 prior to removal Plaintiffs sought an award in excess of \$50,000, whether the actual  
17 amount of damages sought along with the addition of punitive damages and attorneys’  
18 fees would push the amount in controversy above the \$75,000 jurisdictional threshold is  
19 speculative. Litigation often is expensive and frequently proceeds beyond the early  
20 stages; however, the Court will not assume that to be inevitable. Moreover, on August 1,  
21 2011, Plaintiff served an offer of judgment to Defendant Milbank for the sum of \$45,000  
22 “inclusive of all damages, taxable court costs, interest and attorneys’ fees incurred to  
23 date.” Doc 13.B. Defendants note that Plaintiffs filed this offer subsequent to removal  
24 for an amount less than Plaintiffs’ earlier certification, but Plaintiffs’ offer is nonetheless  
25 relevant to the current determination because the Court is bound to remand “[i]f *at any*  
26 *time* before final judgment it appears that the district court lacks subject matter  
27 jurisdiction.” 28 U.S.C. § 1447(c) (emphasis added).  
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1 Under these facts, Defendants’ speculation “neither overcomes the ‘strong  
2 presumption’ against removal jurisdiction, nor satisfies [Defendants’] burden of setting  
3 forth . . . the *underlying facts* supporting its assertion that the amount in controversy  
4 exceeds [\$75,000].” *Gaus*, 980 F.2d at 567 (emphasis in original). Accordingly, the  
5 Court will remand to state court. *See* 28 U.S.C. § 1447(c); *Valdez*, 372 F.3d at 1118 (“If  
6 the district court determines that it is sufficiently doubtful that the amount-in-controversy  
7 requirement has been met and thus that federal subject matter jurisdiction is lacking, the  
8 district court should . . . remand to state court.”); *Matheson*, 319 F.3d at 1090 (“Where  
9 doubt regarding the right to removal exists, a case should be remanded to state court.”);  
10 *Sanchez*, 102 F.3d at 406 (directing the district court to remand to state court where the  
11 defendant had failed to establish the jurisdictional amount by a preponderance of the  
12 evidence).

### 13 **III. Attorneys’ Fees.**

14 Plaintiffs have requested an award of attorneys’ fees related to their costs for filing  
15 the motion to remand. Doc. 13 at 4. Plaintiffs fail to provide a specific statutory basis  
16 for this request but argue that Defendants lacked an objectively reasonable basis to  
17 remove the case. *Id.* Under 28 U.S.C. § 1447(c), “[a]n order remanding the case may  
18 require payment of just costs and any actual expenses, including attorney fees, incurred  
19 as a result of the removal.” 28 U.S.C. § 1447(c). The Supreme Court has stated that  
20 “[a]bsent unusual circumstances, courts may award Attorneys’ fees under § 1447(c) only  
21 where the removing party lacked an objectively reasonable basis for seeking removal.  
22 Conversely, when an objectively reasonable basis exists, fees should be denied.” *Martin*  
23 *v. Franklin Capital Corp.*, 546 U.S. 132 (2005). Here, the Court would have had  
24 original jurisdiction over Plaintiffs’ claims under 28 U.S.C. § 1332 if the amount in  
25 controversy exceeded \$75,000. While the Court finds that Defendants have not  
26 established by a preponderance of the evidence that the amount in controversy meets this  
27 threshold, the Court nonetheless finds that at the time of removal Defendants had an  
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1 objectively reasonable basis for such a claim. Therefore, Plaintiffs' request for attorneys'  
2 fees is denied.

3 **IV. Motion to Dismiss.**

4 Pursuant to the Court's order to remand this case to state court, the Court lacks  
5 jurisdiction to rule on Defendants' motion to dismiss.

6 **IT IS ORDERED:**

- 7 1. Plaintiffs' motion to remand (Doc. 13) is **granted**.
- 8 2. Plaintiffs' request for attorneys' fees (Doc. 13) is **denied**.
- 9 3. Defendants' motion to dismiss (Doc. 5) is **remanded** to Maricopa County  
10 Superior Court.

11 Dated this 8th day of September, 2011.

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15 David G. Campbell  
16 United States District Judge  
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