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

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9 Erik Obertubbesing, a single man; Adam
Henry, a single man; and Michael Niebo, a
10 single man,

11 Plaintiffs,

12 vs.

13 GEICO General Insurance Company; X, Y
and Z Companies; and Black and White
14 Corporations,

15 Defendants.

No. CV-11-01481-PHX-NVW

ORDER

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17 Before the Court is Plaintiffs' "Motion to Remand" (Doc. 11). For the reasons
18 stated below, the Court will grant the motion.

19 **I. LEGAL STANDARD**

20 Federal courts may exercise removal jurisdiction over a case only if subject matter
21 jurisdiction exists. 28 U.S.C. § 1441(a). The removing party bears the burden of
22 establishing subject matter jurisdiction as a basis for removal. *Emrich v. Touche Ross &*
23 *Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988). To satisfy this burden, the removing party
24 must demonstrate that either diversity or federal question jurisdiction existed at the time
25 of removal. *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (citing 28
26 U.S.C. § 1441). In particular, "[w]here it is not facially evident from the complaint that
27 more than \$75,000 is in controversy, the removing party must prove, by a preponderance
28 of the evidence, that the amount in controversy meets the jurisdictional threshold."

1 *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). “The
2 strong presumption against removal jurisdiction means that . . . the court resolves all
3 ambiguity in favor of remand to state court.” *Hunter*, 582 F.3d at 1042 (internal
4 quotation marks omitted). If at any time before final judgment it appears that the district
5 court lacks subject matter jurisdiction over a case removed from state court, the case must
6 be remanded. 28 U.S.C. § 1447(c).

7 **II. BACKGROUND**

8 In March 2010, Plaintiffs got into a car accident. At the time, Plaintiff
9 Obertubbesing was driving and Plaintiffs Henry and Neibo were passengers. All three
10 Plaintiffs suffered injuries and were partially compensated by the other driver’s
11 insurance, but that driver was underinsured. Plaintiffs then made a claim on
12 Obertubbesing’s GEICO insurance policy, invoking his underinsured motorist coverage
13 for the balance of their losses. That coverage provided \$15,000 per person or \$30,000
14 per occurrence. Defendants GEICO refused the claim, stating that Obertubbesing had
15 rejected underinsured motorist coverage when he bought his policy.

16 Plaintiff sued GEICO in Maricopa County Superior Court on various theories,
17 including breach of contract and bad faith denial of insurance benefits. Plaintiffs asked
18 for general, special, and punitive damages, and attorneys fees, but made no specific
19 monetary demand. Plaintiffs then filed a certificate regarding compulsory arbitration
20 stating that their damages exceed \$50,000.

21 GEICO has now removed to this Court, claiming diversity jurisdiction. Plaintiffs
22 have moved to remand, arguing that the amount in controversy does not exceed \$75,000.

23 **III. ANALYSIS**

24 Excluding for the moment the possibility of punitive damages and attorneys fees,
25 GEICO’s maximum exposure in this case is \$30,000. GEICO nonetheless values this
26 case in excess of \$75,000 primarily by arguing that Neibo also has a GEICO policy, that
27 Neibo’s underinsured motorist coverage is \$100,000/\$300,000, that Neibo has made a
28 claim on that policy, and that GEICO has yet to pay out. However, Plaintiffs have made

1 no claim under Neibo's policy. Because Neibo's policy is not in controversy here, it
2 cannot be considered part of the amount in controversy.

3 Concerning punitive damages and attorneys fees, the face of the complaint
4 discloses no reason to expect an award of punitive damages, and attorneys fees must be
5 judged as of the removal date. *Dukes v. Twin City Fire Ins. Co.*, No. CV-09-2197-PHX-
6 NVW, 2010 WL 94109, at *2 (D. Ariz. Jan. 6, 2010). Certainly attorneys fees have not
7 accumulated significantly at this early stage.

8 The only evidence weighing in GEICO's favor is Plaintiffs' compulsory
9 arbitration certificate claiming more than \$50,000. But given Obertubbesing's policy
10 limits and the low probability of punitive damages, the arbitration certificate is not
11 enough to satisfy GEICO's burden to show the jurisdictional amount in controversy by a
12 preponderance of the evidence. This case will therefore be remanded.

13 IT IS THEREFORE ORDERED that Plaintiffs' "Motion to Remand" (Doc. 11) is
14 GRANTED. The Clerk shall remand this action to the Maricopa County Superior Court.

15 Dated this 6th day of October, 2011.

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20 Neil V. Wake
21 United States District Judge
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