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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Allison Wood,
Plaintiff,
vs.
State Farm Mutual Automobile
Insurance Company, et al.,
Defendants.

No. CV-15-00525-PHX-PGR

ORDER

Pending before the Court is plaintiff Allison Wood’s Motion to Remand (Doc.6), wherein she argues that this action should be remanded to the Maricopa County Superior Court for lack of subject matter jurisdiction because the amount in controversy does not exceed the statutory jurisdictional threshold required for diversity of citizenship jurisdiction. Having considered the parties’ memoranda in light of the relevant record, the Court finds that the Motion to Remand should be denied.

Background

The plaintiff commenced this action in the Maricopa County Superior Court on January 23, 2015. Defendant State Farm Mutual Automobile Insurance Company, the sole named defendant, removed this action on the basis of diversity of citizenship jurisdiction on March 23, 2015.

1 The plaintiff's claims arise out of an accident in which the plaintiff's vehicle
2 was struck by a non-party's vehicle. The plaintiff settled her claims against the at-
3 fault non-party for \$30,000, which was the "per occurrence" limit of that person's
4 automobile liability insurance policy. The plaintiff thereafter sought underinsured
5 motorist benefits from the defendant, her automobile liability insurer, which the
6 defendant has not paid. The complaint, which alleges claims for breach of contract,
7 bad faith, and underinsured motorist benefits, seeks judgment, in relevant part, "for
8 the full amount of underinsured motorist benefits[,]" for special and general damages
9 and for punitive damages, and for attorneys' fees pursuant to A.R.S. § 12-341.01.
10 Concomitantly with the complaint, the plaintiff filed a Certificate on Compulsory
11 Arbitration wherein she stated that the largest award she was seeking, including
12 punitive damages but excluding interest, attorneys' fees and costs, exceeded the
13 amount set by the Maricopa County Superior Court's local rule for compulsory
14 arbitration; that limit is \$50,000. The plaintiff, through counsel, sent the defendant
15 a settlement demand letter prior to the commencement of this action wherein she
16 demanded the "Underinsured Motorists Limits."

17 On April 1, 2015, the same day she filed her Motion to Remand, the plaintiff
18 sent the defendant an Offer of Judgment whereby she offered to allow judgment to
19 be taken against the defendant "in the total amount of \$ 75,000.00 and taxable
20 costs incurred to date (it being understood that such taxable costs do not include
21 attorneys' fees[;])" the next day she sent the defendant her First Amended Offer of
22 Judgment wherein she stated that she would allow judgment to be taken against the
23 defendant "in the total amount of \$ 75,000.00." Both offers of judgment specifically
24 stated that they were pursuant to Ariz.R.Civ.P. 68, and both were captioned as being
25 filed in the Maricopa County Superior Court case notwithstanding that this action had
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1 been removed approximately one month earlier.

2 Discussion

3 In an action such as this one where the complaint does not specify the amount
4 of damages the plaintiff is seeking, removal is appropriate if the removing defendant
5 proves by a preponderance of evidence that the amount in controversy exceeds the
6 \$75,000 jurisdictional threshold.

7 The amount in controversy includes the amount of damages in dispute,
8 including punitive damages. Gibson v. Chrysler Corp., 261 F.3d 927, 945 (9th Cir.
9 2001) (“It is well established the punitive damages are part of the amount in
10 controversy in a civil action.”); the plaintiff could potentially recover punitive damages
11 here under Arizona law given her bad faith claim. See Filasky v. Preferred Risk
12 Mutual Insurance Co., 734 P.2d 76, 83 (Ariz.1987) (“Punitive damages may be
13 awarded in a bad faith insurance case.”) The amount in controversy also includes
14 reasonable attorneys’ fees if such fees are allowed by the governing law. Galt G/S
15 v. JSS Scandinavia, 142 F.3d 1150, 1156 (9th Cir.1998) (“We hold that where an
16 underlying statute authorizes an award of attorneys’ fees, either with mandatory or
17 discretionary language, such fees may be included in the amount in controversy.”);
18 the plaintiff could potentially recover her attorneys’ fees under Arizona law pursuant
19 to A.R.S. § 12-341.01 since this is a contested action arising out of a contract. If it
20 is not apparent from the face of the complaint that the amount in controversy is over
21 \$ 75,000, the Court may consider facts in the notice of removal, which in this case
22 includes the defendant’s statement, which the plaintiff has neither objected to nor
23 controverted, that “Plaintiff carried \$100,000 per person limits of underinsured
24 motorist coverage under a State Farm policy which she contends she is owned in
25 its entirety.”

1 The Court concludes that the defendant has satisfied its burden of setting forth
2 underlying facts sufficient to overcome the strong presumption against removal
3 jurisdiction. The evidence relied upon by the defendant at the time of removal meets
4 the preponderance of the evidence standard because (1) the plaintiff had asserted
5 the value of her claim by sending the defendant a pre-suit demand letter in which
6 she asked for the full amount of her policy's underinsured motorist benefits
7 coverage, which is \$100,000. See Cohn v. Petsmart, Inc., 281 F.3d 837, 840 (9th
8 Cir.2002) (In determining whether the removal amount in controversy was met, the
9 court stated that “[a] settlement letter is relevant evidence of the amount in
10 controversy if it appears to reflect a reasonable estimate of the plaintiff’s claim.”); (2)
11 the plaintiff reiterated this value by specifically stating in her state court complaint
12 that she was seeking as damages the full amount of her underinsured motorist
13 benefits; (3) the plaintiff stated in her complaint that she was additionally seeking
14 punitive damages for her separate bad faith claim; and (4) she further stated in her
15 complaint that she was seeking her attorneys’ fees. These facts, taken in the
16 aggregate, clearly show an amount in controversy of over \$75,000.

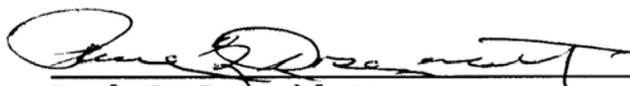
17 The Court is unpersuaded by the plaintiff’s argument that the jurisdictional
18 amount in controversy is not met here, and that remand is required by 28 U.S.C. §
19 1447(c), because she has “clearly and timely offered to settle for \$75,000.00,
20 period.” While the Court is required to remand an action pursuant to § 1447(c) “if
21 at any time before final judgment it appears that the district court lacks subject
22 matter jurisdiction[,]” the plaintiff’s offer of judgment is not sufficient to divest the
23 Court of jurisdiction. First, the plaintiff’s post-removal attempt to reduce her total
24 recovery below the jurisdictional minimum does not establish that removal was
25 improper because “diversity jurisdiction is determined at the time the action
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1 commences, and a federal court is not divested of jurisdiction if ... the amount in
2 controversy drops below the minimum jurisdictional level[.]” Hill v. Blind Industries
3 and Services of Maryland, 179 F.3d 754, 757 (9th Cir.1999); *accord*, St. Paul Mercury
4 Indemnity Co. v. Red Cab Co., 303 U.S. 283, 292 (1938) (“[If] the plaintiff after
5 removal, by stipulation, by affidavit, or by amendment of his pleadings, reduces his
6 claim below the requisite amount, this does not deprive the district court of
7 jurisdiction. Events occurring subsequent to removal which reduce the amount
8 recoverable, whether beyond the plaintiff’s control or the result of his volition, do not
9 oust the district court’s jurisdiction once it has attached.”) (footnotes omitted).

10 Second, the plaintiff’s offer of judgment is merely a post-removal offer to settle
11 this matter for \$75,000.¹ The offer does not establish, as the plaintiff seems to
12 argue, that federal jurisdiction has now ceased to exist for § §1447(c) purposes
13 because it does not establish that the plaintiff will not seek an amount greater than
14 \$75,000 if her settlement offer is not accepted. Therefore,

15 IT IS ORDERED that the plaintiff’s Motion to Remand (Doc. 6) is denied.

16 DATED this 29th day of June, 2015.

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19 Paul G. Rosenblatt
United States District Judge

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23 Since the offer of judgment was made post-removal, it was improperly
24 captioned as being filed in the state court action, and was improperly based on
25 Ariz.R.Civ.P. 68. Any offer of judgment made after removal is required to be made
26 in this action and solely pursuant to Fed.R.Civ.P. 68, which only permits “a party
defending against a claim” to make an offer of judgment. See Fed.R.Civ.P. 81(c)(1)
(stating that “[t]hese [federal procedural] rules apply to a civil action after it is
removed from a state court.”)