

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

MARILYN PRITCHARD

PLAINTIFF

vs.

4:08CV01861-WRW

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY**

DEFENDANT

ORDER

Pending is Plaintiff's Motion to Remand (Doc. No. 8). Defendant has responded.¹

Plaintiff asserts that the case should be remanded because the amount in controversy does not meet the jurisdictional minimum of \$75,000.²

I. BACKGROUND

On November 15, 2007, Plaintiff filed this action in the Circuit Court of Saline County, Arkansas.³ Plaintiff filed her First Amended Complaint on August 4, 2008.⁴ Plaintiff seeks \$25,000 in compensatory damages on an underinsured motorist policy for injuries she suffered in a motor vehicle accident on August 21, 2005.⁵ Plaintiff also asserts that Defendant has acted in bad faith because "for the past several years it has been the policy of State Farm to not settle claims involving uninsured motorist and underinsured motorist claims (except for catastrophic injury) against it without litigation."⁶ Plaintiff contends that Defendant is engaging in similar

¹Doc. No. 12.

²Doc. No. 8.

³Doc. No. 2.

⁴Doc. No. 5.

⁵Doc. No. 2.

⁶Doc. No. 5.

conduct and seeks punitive damages for Defendant's alleged bad faith, in addition to the 12% penalty under Ark. Code Ann. § 23-89-208, attorney's fees, and costs.⁷

II. DISCUSSION

When considering a motion to remand, "the Court must resolve all doubts in favor of remand to state court."⁸ If the complaint fails to allege a specific amount of damages, the defendant has the burden of establishing by a preponderance of the evidence that the amount in controversy requirement is met.⁹ "The complaint will be dismissed if it appears to a legal certainty that the value of the claim is actually less than the required amount."¹⁰

In her First Amended Complaint, Plaintiff seeks damages in an amount "not to exceed the amount required for federal diversity jurisdiction."¹¹ Defendant asserts that Plaintiff may recover in excess of \$75,000 if she is awarded the full \$25,000 on the policy, the 12% penalty, punitive damages for bad faith, and attorney's fees.¹²

After a review of Plaintiff's First Amended Complaint, it does not appear to me that the amount in controversy exceeds \$75,000. The claim for compensatory damages on the policy is only \$25,000. When the \$3,000 for the 12% penalty is added, the total compensatory damage

⁷*Id.*

⁸*Toller v. Sagamore Ins. Co.*, 558 F. Supp. 2d 924, 926-27 (E.D. Ark. 2008) (citing *In re Business Men's Assurance Co. of Am.*, 922 F.2d 181, 183 (8th Cir. 1993)).

⁹*Id.* at 927 (citing cases).

¹⁰*In re Minn. Mut. Life Ins. Co. Sales Practices Litig.*, 346 F.3d 830, 834 (8th Cir. 2003) (quoting *Trimble v. Asarco, Inc.*, 232 F.3d 946, 959 (8th Cir. 2000)).

¹¹Doc. No. 5.

¹²The penalty is included in the calculation of the amount in controversy. See *Peacock & Peacock, Inc. v. Stuyvesant Ins. Co.*, 332 F.2d 499, 502 (8th Cir. 1964).

claim comes to \$28,000. To reach \$75,000, the punitive damages and attorney's fees together must total \$47,000.

Defendant's response focuses on bad faith case law in Arkansas where plaintiffs have recovered large amounts of punitive damages bringing the total amount in controversy above \$75,000.¹³ The dishonest or malicious conduct of the insurance companies is dissimilar to the allegations here. Defendant has failed to show that the damages in this case exceed \$75,000; therefore, this Court lacks jurisdiction under 28 U.S.C. § 1332.

CONCLUSION

Based on the findings of fact and conclusions of law above, Plaintiff's Motion to Remand (Doc. No. 8) is GRANTED. Accordingly, this case is REMANDED to the Circuit Court of Saline, County, Arkansas.

IT IS SO ORDERED this 26th day of September, 2008.

/s/Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

¹³Doc. No. 13.