

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE WALKER D. MILLER

Civil Action No. 07-cv-00051-WDM-BNB

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY,

Plaintiff,

v.

TRANSCONTINENTAL TITLE COMPANY,

Defendant.

ORDER OF REMAND

Miller, J.

This case is before me on the Notice of Removal filed by Defendant Transcontinental Title Company. Defendant removed this case to this Court on January 9, 2007 on the basis of diversity jurisdiction. 28 U.S.C. § 1332. In its notice, Defendant asserts that there is complete diversity of citizenship between the parties. Although Plaintiff's complaint does not allege a specified amount of damages, Defendant alleges that its counterclaims are in excess of \$75,000. However, because no facts are alleged that would support this assertion, I cannot find that the requirements of diversity jurisdiction are met.

In a removed case, a defendant's claim that the amount in controversy meets the jurisdictional requirement of section 1332 does not enjoy a presumption of accuracy. *Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1289 (10th Cir. 2001). The amount in controversy is determined by the allegations of the complaint or, if the complaint is not

dispositive, by the allegations in the notice of removal. *Id.* at 1290. When the plaintiff's damages are unspecified, as they are here, the defendant must establish the jurisdictional amount by a preponderance of the evidence; the requisite amount in controversy "must be *affirmatively established* on the face of either the petition or the removal notice." *Id.* (citations omitted; emphasis in the original).

I cannot determine from the face of the complaint the amount in controversy. Defendant appears to concede that the allegations in the complaint, by themselves, are insufficient to establish that damages exceed \$75,000. Defendant's mere assertion that the its counterclaims meet the jurisdiction threshold, however, is not sufficient to meet its burden of establishing by a preponderance of the evidence facts supporting the existence of jurisdiction. No facts are alleged in the notice of removal that would permit me to determine that the amount in controversy exceeds the requisite amount.

Accordingly, it is ordered:

1. This case shall be remanded to the District Court, City and County of Denver, Colorado.

DATED at Denver, Colorado, on January 16, 2007.

BY THE COURT:

s/ Walker D. Miller
United States District Judge