

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

Civil Action No. 07-cv-01041-WDM-MEH

ADLP-84th, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

EVANSTON INSURANCE COMPANY, an Illinois corporation,

Defendant.

---

**ORDER OF REMAND**

---

Miller, J.

This case is before me on the Notice of Removal filed by Defendant. Defendant removed this case to this Court on May 17, 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 in its Notice of Removal that the amount in controversy "may exceed" \$75,000. However, because no facts or evidence are provided 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

PDF FINAL

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). There is a presumption against removal jurisdiction and, therefore, all doubts are resolved in favor of remand. *See, e.g., Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1289 (10th Cir. 2001); *Fajen v. Found. Reserve Ins. Co.*, 683 F.2d 331, 333 (10th Cir. 1982).

I cannot determine from the face of the complaint the amount in controversy. Defendant conclusorily asserts that the allegations in the complaint show that damages "may exceed \$75,000" but provides no argument, evidence, facts, or information that would demonstrate this. In light of the presumption against removal, and since no other facts or evidence are included in the Notice of Removal sufficient for me to find by a preponderance of the evidence that the requirements of section 1332 are met, remand is appropriate.

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 May 23, 2007.

BY THE COURT:

s/ Walker D. Miller  
United States District Judge