

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Christine M. Arguello**

Civil Action No. 10-cv-00547-CMA

STRACY LASTER,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant.

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**ORDER REMANDING CASE**

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This matter comes before the Court *sua sponte*.

Plaintiff sued Defendant in El Paso County District Court, bringing various claims in connection with unpaid insurance benefits. In her complaint, she requests no specific monetary relief. (Doc. # 1-3.) Defendant then removed the case to this Court, asserting diversity jurisdiction under 28 U.S.C. § 1332.<sup>1</sup> As to diversity of citizenship, there is no dispute. Plaintiff is a citizen of Colorado; Defendant, of Illinois. As to the amount in controversy, however, there is a problem.

The amount in controversy is ordinarily determined by the allegations of the

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<sup>1</sup> 28 U.S.C. § 1332(a) provides in part that “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States . . .”

complaint or by the allegations in the notice of removal. See *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995) (citation omitted). However it is done, a removing defendant must “prove jurisdictional facts by a preponderance of the evidence.” *McPhail v. Deer & Co.*, 529 F.3d 947, 952-53 (10th Cir. 2008).

The “preponderance of evidence” standard is not difficult to meet; yet, other than the complaint, Defendant provides *no* evidence. In its Notice of Removal, Defendant states that “Plaintiff has alleged that the UM insurance contract has unpaid benefits of \$75,000, that her recoverable medical expenses exceed \$50,000 . . .” (Doc. # 1, ¶ 2.) If Plaintiff has made such allegations, the Court has no proof of it. Her complaint contains no such figures. Defendant’s matter-of-fact averment that the amount in controversy exceeds \$75,000—the jurisdictional minimum under § 1332—will not do.<sup>2</sup> As Defendant is aware, “removal statutes are to be strictly construed, and all doubts are to be resolved against removal.” *Fajen v. Foundation Reserve Ins. Co., Inc.*, 683 F.2d 331, 333 (10th Cir. 1982) (internal citation omitted).

Accordingly, because Defendant has failed to prove the amount in controversy by a preponderance of evidence, the Court must remand this case to state court.

See 28 U.S.C. § 1447(c).

IT IS THEREFORE ORDERED that this action is REMANDED to the El Paso

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<sup>2</sup> See *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir.1995); Also see *Gaus v. Miles, Inc.*, 980 F.2d 564, 566-67 (9th Cir. 1992) (“If it is unclear what amount of damages the plaintiff has sought . . .then the defendant bears the burden of actually proving the facts to support jurisdiction, including the jurisdictional amount.”); *TIC-The Industrial Co. v. Liberty Mut. Ins. Co.*, No. 09-cv-00763, 2009 WL 1796071, \*1 (D. Colo. June 23, 2009) (noting the case had been remanded previously because of the removing defendant’s “matter-of-fact averment”).

County District Court.

DATED: March 31, 2010.

BY THE COURT:

A handwritten signature in cursive script that reads "Christine M. Arguello". The signature is written in black ink and is positioned above a horizontal line.

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CHRISTINE M. ARGUELLO  
United States District Judge