

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 15-cv-01678-PAB-MJW

JOCELYN MYERS,

Plaintiff,

v.

SAFECO INSURANCE COMPANY OF AMERICA and
CHRISTINA ANDREWS,

Defendants.

ORDER

This matter is before the Court on plaintiff Jocelyn Myers' Motion to Remand to Denver County District Court [Docket No. 21]. Plaintiff initiated this suit against defendant Safeco Insurance Company of America ("Safeco") in the District Court for the City and County of Denver, Colorado on July 7, 2015. Docket No. 1-1. At the time she filed her complaint, plaintiff had not named Christina Andrews as a defendant. Plaintiff alleges claims for breach of contract and statutory and common law insurance bad faith related to Safeco's non-payment of damages that plaintiff suffered as a result of an accident with an under-insured motorist. *See Id.* at 1-2. On August 6, 2015, Safeco removed the action to this Court, stating that the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 since the parties are citizens of different states and plaintiff sought a judgment in excess of \$75,000. Docket No. 1 at 3-5, ¶¶ 14-23.

In its answer to plaintiff's complaint, defendant raised as an affirmative defense that plaintiff has not resolved her claims against an additional tortfeasor, Christina

Andrews, whom Safeco alleges was an additional driver who is also responsible for plaintiff's injuries. Docket No. 13 at 9; *see also id.* at 2, ¶¶ 4-5 (describing Ms. Andrews' role in the car accident that caused plaintiff's injuries). On September 14, 2015, plaintiff filed two motions: the instant remand motion and a motion to amend her complaint. Docket Nos. 20-21. Plaintiff's proposed amended complaint added Ms. Andrews, a Colorado citizen, as an additional defendant. Docket No. 20 at 1; *see also* Docket No. 20-1. Plaintiff states that, once Ms. Andrews is added as a defendant in this matter, diversity of citizenship will no longer exist and the Court would lack subject matter jurisdiction. Docket No. 21 at 1.¹ Plaintiff's motion to amend her complaint was granted on September 15, 2015. Docket No. 24.

Safeco opposed plaintiff's remand motion as premature because, at the time Safeco filed its response, Ms. Andrews had not yet entered an appearance as a defendant in this matter. Docket No. 31 at 2, ¶¶ 5-6. Ms. Andrews, however, filed an answer to plaintiff's amended complaint on October 23, 2015 and admitted that she is a citizen of Colorado. Docket No. 36 at 1, ¶ 2 (admitting paragraph 3 of the amended complaint).

Given that Safeco's lone ground for opposing remand has been rendered moot by Ms. Andrews' appearance and admission of Colorado citizenship, it is

ORDERED that plaintiff Jocelyn Myers' Motion to Remand to Denver County District Court [Docket No. 21] is **GRANTED**. This case is remanded pursuant to 28 U.S.C. § 1447(e) to the District Court for the City and County of Denver, Colorado,

¹In the proposed amended complaint, plaintiff alleged that Ms. Andrews is "an individual and resident of the State of Colorado." Docket No. 20-1 at 1, ¶ 3.

where it was filed as Case No. 2015CV32437.

DATED November 9, 2015.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge