

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

JOHN E. MURPHY,

Plaintiff,

v.

Case No: 6:14-cv-1842-Orl-31DAB

ACUMED, LLC,

Defendant.

ORDER

This matter is before the Court on Plaintiff's Motion to Remand (Doc. 3) and Defendant's Response (Doc. 8).

By his Complaint (Doc. 2), Plaintiff seeks damages against Defendant in excess of \$15,000 for a clavicle plating system manufactured by Defendant that had been implanted in Plaintiff as a result of a prior accident. Plaintiff alleges that the clavicle plate broke, causing Plaintiff to suffer bodily injury, and resulting in pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life and the potential expense of hospitalization and medical care (Doc. 2, paragraph 11). Plaintiff claims that these losses are either permanent or continuing.

In his objection to removal (construed as a motion to remand), Plaintiff simply asserts that he is seeking less than \$75,000.00 and therefore the case should be remanded to state court for failure to meet the federal court's jurisdictional threshold.¹ Plaintiff's mere post-removal

¹ In paragraph 6 of his Complaint, Plaintiff alleges that there is diversity between Plaintiff and Defendant.

statement, however, is not enough to defeat federal jurisdiction in light of the serious bodily injury asserted in his Complaint.

Currently, the Court finds that the face of the Complaint asserts a claim that meets the amount in controversy threshold and the removing Defendant has met its burden. However, the Plaintiff may file a stipulation to the effect that at the time of removal the amount in controversy did not exceed \$75,000.00 exclusive of interest and taxable costs and that Plaintiff will not accept an award in excess of \$75,000.00. *C.f. Spencer v. Safeway Ins. Co. of Alabama*, No. CIV.A. 14-0380-CG-N, 2014 WL 5335825, at *3 (S.D. Ala. Oct. 20, 2014) (discussing plaintiff's stipulations agreeing to never seek damages or accept amounts in settlement or judgment in excess of \$72,500.00 where stipulations were unrevokable and binding on heirs and assigns). The Court will stay the effect of this Order for ten (10) days pending the filing of said stipulation.

It is therefore,

ORDERED that the Motion to Remand, (Doc. 3), is **DENIED**. The effect of this Order is stayed for ten (10) days, should the Plaintiff fail to file any additional documentation this Order will become final.

DONE and **ORDERED** in Chambers, Orlando, Florida on December 8, 2014.




GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party