

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION**

CIVIL ACTION NO. 4:11CV-00040-JHM

DAVID MARTIN

PLAINTIFF

V.


GEORGE UTLEY, Jr.

DEFENDANT

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Plaintiff's Motion to Remand [DN 6]. Plaintiff's complaint asserts a simple negligence claim but does not claim a specified amount of damages. Defendant removed the case on the basis of diversity. Defendant has the burden to show the amount in controversy exceeds \$75,000. In attempting to carry that burden, Defendant engages in speculation as to the amount of the claim. The Court concludes that this matter is not removable based on the simple allegations of the complaint and the Defendant's speculation fails to convince it that the amount in controversy exceeds \$75,000. Thus, this case will be remanded to state court. Once there, Defendant should seek to discover the amount of Plaintiff's claim. Pursuant to 28 U.S.C. § 1446(b), the case may be removed within one year of its commencement if it is ascertained that the amount in controversy exceeds \$75,000. For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion to Remand.

cc: counsel of record
Henderson Circuit Court



The image shows a handwritten signature in black ink that reads "Joseph H. McKinley, Jr.". The signature is written over a circular official seal of the United States District Court for the Western District of Kentucky, Owensboro Division. The seal features the text "UNITED STATES DISTRICT COURT" and "WESTERN DISTRICT OF KENTUCKY" around the perimeter, with a central emblem.

**Joseph H. McKinley, Jr., Judge
United States District Court**

April 29, 2011