

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8  
9 MEGAN STONE and CHRISTINE  
CAROSI,

10 Plaintiffs,

11 v.

12 GOVERNMENT EMPLOYEES  
INSURANCE COMPANY, et al.,

13 Defendants.  
14

CASE NO. C16-5383 BHS

ORDER GRANTING  
PLAINTIFFS' MOTION TO  
REMAND

15 This matter comes before the Court on Plaintiffs Megan Stone ("Stone") and  
16 Christine Carosi's ("Carosi") (collectively, "Plaintiffs") motion to remand (Dkt. 16). The  
17 Court has considered the pleadings filed in support of and in opposition to the motion and  
18 the remainder of the file and hereby grants the motion for the reasons stated herein.

19 **I. PROCEDURAL AND FACTUAL BACKGROUND**

20 Stone was involved in a hit and run car accident on May 22, 2014. Dkt. 3-2 ¶ 1.3.  
21 Stone had an automobile insurance policy with Defendant Geico General Insurance  
22

1 Company (“Geico”). *Id.* ¶ 2.1; Dkt. 12-1. Stone was unable to use her car for about 105  
2 days while Geico investigated her claim and while her car was being repaired. Dkt. 3-2  
3 ¶ 1.5.

4 On June 17, 2015, Stone filed a class action complaint against Geico<sup>1</sup> in Pierce  
5 County Superior Court. *Id.* Stone claims Geico failed to pay her for “loss of use”  
6 damages. *Id.* ¶¶ 1.6–1.7. Stone sought to certify the following class:

7 All GEICO insureds with Washington policies issued in Washington  
8 State, where GEICO determined the loss to be covered under the  
9 Underinsured Motorist (UIM) coverage, and their vehicle suffered a loss  
requiring repair, or the vehicle was totaled, during which time they were  
without the use of their vehicle, for a day or more.

10 *Id.* ¶ 5.3. Stone claimed there would be about 5,000 class members and the average  
11 damages would be about \$140 per class member. *Id.* ¶¶ 3.2–3.3. Based on these  
12 numbers, Stone alleged the amount in controversy would be at most \$700,000. *Id.* ¶ 3.3.  
13 Stone asserted a single breach of contract claim, and sought compensatory damages,  
14 injunctive and equitable relief, and attorney fees. *Id.* ¶¶ 6.1–6.5, 7.1.

15 On February 18, 2016, Geico’s Rule 30(b)(6) designee, David Antonacci  
16 (“Antonacci”), was deposed. Dkt. 9-3, Deposition of David Antonacci (“Antonacci  
17 Dep.”). Antonacci testified that about 18,000 Geico insureds had filed UIM claims  
18 during the class period in Washington. *Id.* at 13:2–21. Antonacci further testified that  
19 Geico possessed information regarding the average price it paid for rental cars during the  
20 class period. *Id.* at 22:9–14, 39:24–40:21.

---

21  
22 <sup>1</sup> Stone named seven Geico-related insurers as defendants in her complaint. For  
simplicity, the Court refers to all defendants as “Geico” in this order.

1 On May 10, 2016, Stone filed an amended complaint, which added Carosi as a  
2 named plaintiff. Dkt. 1-2 (“Comp.”). Carosi was involved in a rear-end collision while  
3 insured by Geico. *Id.* ¶ 1.6. Carosi was unable to use her car for about 35 days while  
4 Geico investigated her claim and while her car was being repaired. *Id.* ¶¶ 1.6, 1.8, 3.2.  
5 Plaintiffs’ amended complaint contains the same proposed class definition, class  
6 allegations, breach of contract claim, and requests for relief. *Compare* Dkt. 3-2, *with*  
7 *Comp.*

8 On May 16, 2016, Plaintiffs moved for class certification. Dkt. 3-50. Plaintiffs  
9 sought to certify the same class pled in their original complaint. *Id.* To support their  
10 motion, Plaintiffs provided a declaration from their statistician, Dr. Bernard Siskin (“Dr.  
11 Siskin”), who explained how the number of class members and the average damages per  
12 class member could be determined. Dkt. 17-6, Declaration of Bernard Siskin (“Siskin  
13 Dec.”) ¶¶ 4–5.

14 On May 20, 2016, Geico removed the action to this Court under the Class Action  
15 Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). Dkt. 2-1. Geico alleges the proposed class  
16 may include as many as 22,929 members and the average damages may be \$321.30 per  
17 class member. *Id.* at 4. Based on these numbers, Geico asserts there is potentially  
18 \$7,367,087.70 in controversy. *Id.*

19 On June 14, 2016, Plaintiffs moved to remand. Dkt. 16. On July 5, 2016, Geico  
20 responded. Dkt. 23. On July 8, 2016, Plaintiffs replied. Dkt. 30. On July 13, 2016,  
21  
22

1 Geico filed a surreply, seeking to strike a declaration submitted by Plaintiffs with their  
2 reply.<sup>2</sup> Dkt. 33.

## 3 II. DISCUSSION

4 Plaintiffs move to remand, arguing Geico’s notice of removal is untimely and  
5 Geico has not shown the amount in controversy exceeds CAFA’s jurisdictional  
6 requirement of \$5,000,000. Dkt. 16.

7 “A defendant generally may remove a civil action if a federal district court would  
8 have original jurisdiction over the action.” *Allen v. Boeing Co.*, 784 F.3d 625, 628 (9th  
9 Cir. 2015). CAFA vests federal district courts with original jurisdiction over class  
10 actions involving more than 100 class members, minimal diversity, and at least  
11 \$5,000,000 in controversy, exclusive of interests and costs. *Dart Cherokee Basin*  
12 *Operating Co. v. Owens*, 135 S. Ct. 547, 552 (2014) (citing 28 U.S.C. § 1332(d)).

13 “The timeliness of removals pursuant to CAFA is governed by 28 U.S.C.  
14 § 1446(b).” *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 884 (9th Cir. 2010).  
15 “[S]ection 1446(b) identifies two thirty-day periods for removing a case.” *Id.* at 885.  
16 “The first thirty-day removal period is triggered ‘if the case stated by the initial pleading  
17 is removable on its face.’” *Id.* (quoting *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689,  
18 694 (9th Cir. 2005)). “The second thirty-day removal period is triggered if the initial  
19 pleading does not indicate that the case is removable, and the defendant receives ‘a copy

---

20  
21 <sup>2</sup> “As a general rule, a movant may not raise new facts or arguments in his reply brief.”  
22 *Karpenski v. Am. Gen. Life Co., LLC*, 999 F. Supp. 2d 1218, 1226 (W.D. Wash. 2014) (internal  
quotation marks omitted). In reaching its decision, the Court has not relied on the declaration  
that Geico seeks to strike.

1 of an amended pleading, motion, order or other paper’ from which removability may first  
2 be ascertained.” *Id.* (quoting 28 U.S.C. § 1446(b)). “If the notice of removal was  
3 untimely, a plaintiff may move to remand the case back to state court.” *Id.*

4         Neither party argues the first thirty-day removal period was triggered in this case.  
5 Geico asserts that Plaintiffs’ motion for class certification provided the first indication  
6 that the amount in controversy exceeds \$5 million, thereby triggering the second thirty-  
7 day removal period. Dkt. 2-1 at 2. According to Geico, Dr. Siskin’s declaration in  
8 support of Plaintiffs’ motion provided new information about the size of the proposed  
9 class and the average damages per class member, which caused Geico to reconsider the  
10 potential amount in controversy. Dkt. 23 at 13.

11         Dr. Siskin relied on Plaintiffs’ class definition and Antonacci’s deposition  
12 testimony to explain how the class size and the average damages for each class member  
13 could be determined. *See Siskin Dec.* ¶¶ 4–7 (citing Antonacci’s deposition testimony).  
14 The information that Geico claims made this case removable—the number of UIM claims  
15 in Washington and the average daily rental rate—was disclosed by its corporate  
16 representative in his deposition on February 18, 2016. Put another way, Plaintiffs’  
17 motion for class certification provided information that was already available to Geico.

18         Deposition testimony may constitute “other paper” that triggers the second thirty-  
19 day removal period under § 1446(b). *Carvalho*, 629 F.3d at 886–87. Here, Antonacci  
20 testified that about 18,000 Geico insureds had filed UIM claims in Washington and that  
21 Geico possessed information regarding the average price it paid for rental cars during the  
22 class period. Antonacci Dep. at 13:2–21, 22:9–14. Based on Antonacci’s testimony,

1 Geico could have reasonably determined the case was removable. *See Carvalho*, 629  
2 F.3d at 886–87. Antonacci’s deposition testimony therefore triggered the second thirty-  
3 day removal period. *See id.* Geico, however, did not file its notice of removal until May  
4 20, 2016—more than thirty days after Antonacci’s deposition. Because Geico’s notice of  
5 removal is untimely, the Court grants Plaintiffs’ motion to remand.

6 Having granted Plaintiffs’ motion to remand, the Court turns to their request for  
7 attorney fees. Dkt. 16 at 16–17. “An order remanding the case may require payment of  
8 just costs and any actual expenses, including attorney fees, incurred as a result of the  
9 removal.” 28 U.S.C. § 1447(c). “Absent unusual circumstances, courts may award  
10 attorney’s fees under § 1447(c) only where the removing party lacked an objectively  
11 reasonable basis for seeking removal.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132,  
12 141 (2005). Because the Court cannot conclude that Geico lacked an objectively  
13 reasonable basis for removing this case, Plaintiffs’ request for attorney fees is denied.

### 14 III. ORDER

15 Therefore, it is hereby **ORDERED** that Plaintiffs’ motion to remand (Dkt. 16) is  
16 **GRANTED** and Plaintiffs’ request for attorney fees (Dkt. 16) is **DENIED**. This action is  
17 **REMANDED** to Pierce County Superior Court. The Clerk shall remove all other  
18 pending motions from the Court’s calendar.

19 Dated this 28th day of July, 2016.

20   
21 \_\_\_\_\_  
22 BENJAMIN H. SETTLE  
United States District Judge