

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SYDNEY GOFFIN,

Plaintiff,

v.

BANKERS LIFE & CASUALTY COMPANY,

Defendant.

OPINION AND
ORDER

03-C-96-C

This is a civil action for breach of contract, originally filed in the Circuit Court for Sawyer County, Wisconsin. Defendant Bankers Life & Casualty Company removed the action to this court pursuant to 28 U.S.C. § 1441. In its notice of removal, defendant asserted that federal jurisdiction was present under 28 U.S.C. § 1332. Under that statute, federal courts have subject matter jurisdiction to hear cases between citizens of different states when the amount in controversy is greater than \$75,000.

Presently before the court is plaintiff Sydney Goffin's motion to remand this case to state court. Plaintiff's primary contention is that defendant has failed to demonstrate that the amount in controversy is greater than \$75,000. I agree.

It is well established that in determining the existence of jurisdiction, the burden of

proof is on the proponent of the exercise of jurisdiction. FW/PBS, Inc. v. City of Dallas, 492 U.S. 215, 231 (1990); NLFC, Inc. v. Devcom Mid-America, Inc., 45 F.3d 231, 237 (7th Cir. 1995). In a removed case such as this one, defendants must show that removal is proper by a preponderance of the evidence and with “competent proof,” that is, proof to a “reasonable probability” that jurisdiction exists. Chase v. Shop ‘N Save Warehouse Foods, Inc., 110 F.3d 424, 427 (7th Cir. 1997); Shaw v. Dow Brands, Inc., 994 F.2d 364 (7th Cir. 1993); see also McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936) (“If [party’s] allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof.”). All doubt regarding removal should be resolved in favor of remand. Doe v. Allied Signal Inc., 985 F.2d 908, 911 (7th Cir. 1993).

In his complaint, plaintiff seeks \$15,000 in actual damages. He also requests an unspecified amount of punitive damages for defendant’s alleged bad faith. In determining the amount in controversy, a court should aggregate actual and punitive damages. Sharp Electric Corp. v. Copy Plus, Inc., 939 F.2d 513, 515 (7th Cir. 1991). This does not mean, however, that the amount in controversy requirement of § 1332 is met in each case that a plaintiff seeks punitive damages. See In re Brand Name Prescription Drugs Antitrust Litigation, 123 F.3d 599 (7th Cir. 1997) (“[T]he defendants cannot simply wave the statute [providing for punitive damages] in our faces.”). Rather, defendant “must present *evidence*

of federal jurisdiction once the existence of that jurisdiction is fairly cast into doubt.” Id.; see also 15 Moore’s Federal Practice § 102.107[3], at 102-188 (“The preponderance burden forces the defendant to do more than point to a state law that might allow the plaintiff to recover more than what is pleaded.”)

Defendants provide no reason to believe that there is a reasonable probability that plaintiff will recover \$60,000 in punitive damages. They argue only that plaintiff refused to stipulate that his total recovery would be less than \$75,000. As plaintiff points out, the absence of a stipulation does not mean that a court may assume that the jurisdictional minimum has been satisfied. In re Brand Name Prescription Drugs Antitrust Litigation, 248 F.3d 668, 671 (7th Cir. 2001). *Defendant* must prove that jurisdiction exists; it is not plaintiff’s burden to prove that jurisdiction does *not* exist. Because plaintiff has failed to point to any evidence demonstrating the existence of federal jurisdiction, I will grant plaintiff’s motion to remand this action to state court.

I reject defendant’s suggestion that the court should issue an order “limit[ing] the value of the case to less than \$75,000.” Dft.’s Br., dkt. #10, at 3. This request goes beyond the scope of this court’s inquiry. The role of the court is to determine whether the proponent of jurisdiction has presented sufficient evidence to show that the jurisdictional minimum is satisfied *as of the time the case is filed in federal court*. Uhl v. Thoroughbred Technology and Telecommunications, Inc., 309 F.3d 978, 983 (7th Cir. 2002); Workman

v. United Parcel Service, Inc., 234 F.3d 998, 1000 (7th Cir. 2000). I am deciding only that defendant has *failed to prove* that the amount in controversy is greater than \$75,000, not that it is *impossible* that plaintiff may recover such a sum. In any event, defendant points to no authority that would permit this court to order a state court to limit the relief it may grant, even if I were inclined to do so.

Plaintiff seeks costs and attorney fees under 28 U.S.C. § 1447(c), which provides, “An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of removal.” In its response, defendant argues that it, not plaintiff, is entitled to costs and fees under § 1447. The decision to award costs or fees is a discretionary one. Wisconsin v. Hotline Industries, Inc., 236 F.3d 363 (7th Cir. 2000).

Defendant’s argument that it is entitled to costs and attorney fees is untenable given my conclusion that it has no basis to believe that federal jurisdiction exists in this case. Further, defendant is incorrect to the extent it suggests that an award of costs and fees under § 1447 is inappropriate absent bad faith. Garbie v. DaimlerChrysler Corp., 211 F.3d 407, 410 (7th Cir. 2000) (“§ 1447 is *not* a sanctions rule; it is a fee-shifting statute, entitling the district court to make whole the victorious party.”) Rather, an award is proper when “[r]emoval [is] unjustified under settled law.” Id. In this case, the only authority relied on by defendant is a 1967 decision from the District of Hawaii. See Duarte v. Donnelly, 266

F. Supp. 380 (D. Haw. 1967). However, in this circuit, it is well-settled that the availability of punitive damages and a plaintiff's refusal to stipulate to limit his damages do not provide a basis for federal jurisdiction by themselves. Therefore, I conclude that plaintiff is entitled to reimbursement for its costs and attorney's fees in challenging the removal of this case.

ORDER

IT IS ORDERED that

1. Plaintiff Sydney Goffin's motion to remand this case to state court is GRANTED.
2. Plaintiff's motion for costs and attorney fees under 28 U.S.C. § 1447(c) is GRANTED.
3. Plaintiff may have until June 12, 2003, in which to submit a form of judgment listing the reasonable attorney fees and costs incurred in responding to defendant's removal.
4. Defendant Bankers Life & Casualty Company may have until June 19, 2003, to file an objection to the form of judgment.
5. The clerk of court is directed to return the record in case number 03-C-96-C

to the Circuit Court for Sawyer County, Wisconsin.

Entered this 3rd day of June, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge