2009 WL 10688059
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United States District Court, N.D.
Alabama, Northwestern Division.

ARGONAUT MIDWEST INSURANCE COMPANY, Plaintiff,

v.

Mark Anthony COUGLE, d/b/a Tiny's Repo Service, Patricia Long and Thomas Long, Defendants.

3:09-cv-00995-JEO
|
Signed 12/11/2009

Attorneys and Law Firms

David M. Wilson, Jud C. Stanford, Wilson & Berryhill PC, Birmingham, AL, for Plaintiff.

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MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

John E. Ott, United States Magistrate Judge

***1** Before the court is the "Motion to Dismiss" (doc. 7)[1] filed by defendant Mark Anthony Cougle ("the defendant" or "Cougle"). The matter has been briefed by the parties and is appropriate for resolution at this juncture. Upon consideration, the court finds that the motion is due to be denied.

I. BACKGROUND

A. Procedural History

The plaintiff, Argonaut Midwest Insurance Company ("the plaintiff" or "Argonaut") filed this action seeking a declaratory judgment from this court finding that Argonaut does not owe a duty to defend or indemnify its insured, Cougle, doing business as Tiny's Repo Service ("Tiny's"), in a lawsuit brought against Tiny's in the Circuit Court of Lauderdale County, Alabama. (Doc. 1 ("Complaint")[2]). This court's authority to act is premised upon diversity jurisdiction under 28 U.S.C. § 1332. Defendant Cougle has moved to dismiss this action asserting that the plaintiff has failed to meet its burden of establishing the jurisdictional amount by a preponderance of the evidence. (Doc. 7 at pp. 3-4). Argonaut retorts that it has adequately demonstrate the requisite amount, and that the motion is due to be denied. (Doc. 9). For the reasons stated below, the court agrees with the plaintiff.

B. Underlying Complaint

Patricia and Thomas Long filed a complaint in Lauderdale County Circuit Court against Cougle, individually and doing business as Tiny's Repo Service, on August 12, 2008. It is premised on allegations that on December 21, 2006, Cougle trespassed on property belonging to the Longs to repossess a vehicle "that was nonexistent on the premises ... and not owned by [the Longs]." (Complaint at ¶¶ 8 & 11(b)). After entering on the property, the complaint alleges, Cougle sprayed Mrs. Long with pepper spray commonly known as CS Gas. (*Id.* at ¶ 8). As a consequence, Mrs. Long sustained multiple injuries, some of which are alleged to be permanent. The articulated claims include negligence/wantonness, negligence/wantonness per se, loss of services,[3] negligent/wanton infliction of emotional distress, breach of contract, and third-party beneficiary. (*Id.* at Counts I-VI).

Argonaut issued a Business Automobile Liability Policy ("Liability Policy")[4] to Cougle that was effective on the date of the alleged incident. It includes liability coverage up to $1,000,000.00 per incident. (Liability Policy at p. 11 of 42). Argonaut disputes whether the Liability Policy issued Cougle covers the claims asserted by the Longs in the underlying state court action. (Doc. 9 at p. 3). Accordingly, Argonaut is defending Cougle in that action under a full reservation of rights. (*Id.* at p. 4).

II. STANDARD OF REVIEW

As was recently stated in *QBE Ins. Corp. v. Dolphin Line, Inc.*, 2009 WL 3248016 (S.D. Ala. October 6, 2009), the applicable legal principles are as follows:

***2** Federal courts may exercise diversity jurisdiction over all civil actions where the amount in controversy exceeds $75,000, exclusive of interest and costs, and the action is between citizens of different states. 28 U.S.C. § 1332(a)

(1). "[T]he party invoking the court's jurisdiction bears the burden of proving, by a preponderance of the evidence, facts supporting the existence of federal jurisdiction." *McCormick v. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002).

> When a plaintiff seeks injunctive or declaratory relief, the amount in controversy is the monetary value of the object of the litigation from the plaintiff's perspective. A plaintiff satisfies the amount in controversy requirement by claiming a sufficient sum in good faith.
>
> Generally, [i]t must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal. However, where jurisdiction is based on a claim for indeterminate damages, the *Red Cab Co.*[5] legal certainty test gives way, and the party seeking to invoke federal jurisdiction bears the burden of proving by a preponderance of the evidence that the claim on which it is basing jurisdiction meets the jurisdictional minimum.

Federated Mut. Ins. Co. v. McKinnon Motors, LLC, 329 F.3d 805, 807 (11th Cir. 2003) (internal citations and quotation marks omitted); *see also Dairyland Ins. Co. v. Chadwick*, 2008 WL 912428, *2 (M.D. Fla. 2008) (same); *Clarendon America Ins. Co. v. Miami River Club, Inc.*, 417 F. Supp. 2d 1309, 1315 (S.D. Fla. 2006) (same).

QBE, 2009 WL 3248016 at *4. Citing United States District Judge Karon O. Bowdre, the *QBE* court also stated:

> Citing at some length from the Eleventh Circuit's decision in *Lowery v. Alabama Power Co.*, 483 F.3d 1184 (11th Cir. 2007), the United States District Court for the Northern District of Alabama indicated in *State Farm Fire & Cas. Co. v. Knoblett*, 561 F. Supp. 2d 1256 (N.D. Ala. 2008) that a party seeking to invoke federal jurisdiction in a declaratory judgment action may satisfy its burden of proof by producing a document from the plaintiff in the underlying action which establishes the value of its federal lawsuit. *See id.* at 1258 ("In *Lowery*, the Eleventh Circuit held that when the amount in controversy is based on the value of a lawsuit, the party asserting federal jurisdiction must provide a document containing 'an unambiguous statement that clearly establishes federal jurisdiction.' The Court of Appeals further held that the document establishing the jurisdictional amount must originate 'from the plaintiff [in the state action]—be it in the initial complaint or a later received paper....' As noted previously, however, the complaint in the underlying state suit does not provide an unambiguous statement that clearly establishes the jurisdictional amount. Accordingly, the complaint in that suit does not establish a basis for subject matter jurisdiction in the instant case. To establish jurisdiction, then, State Farm must look to some other document from the plaintiff in the underlying action.").

QBE, at * 4.

III. DISCUSSION

As noted by the plaintiff herein, the complaint in the underlying state court action contains six *ad damnum* clauses seeking unspecified and indeterminate amounts in damages from Cougle. (Doc. 9 at p. 5). Accordingly, Argonaut recognizes its burden of proving the jurisdictional amount in this case. (*Id.* at p. 6). It further argues, however, that it has met that burden premised on the settlement demand letter ("Demand Letter")[6] provided by counsel for the Longs to Cougle's insurer. (*Id.*)

***3** In resolving the jurisdictional question in this case, the court finds that the pre-suit demand letter from counsel for the Longs should be considered by the undersigned in determining whether the jurisdictional amount has been demonstrated. *See Free v. Baker*, 2009 WL 1748244 (M.D. Ala. 2009) (holding that "[f]or purposes of ascertaining the amount in controversy, consideration of the pre-suit demand letter is permitted by *Lowery*"); *see also Bankhead v. American Suzuki Motor Co.*, 529 F. Supp. 2d 1329 (M.D. Ala. 2008) (finding that a post-removal settlement letter was sufficient to prove that the amount in controversy had been established); *Constant v. International House of Pancakes*, 487 F. Supp. 2d 1308 (N.D. Ala. 2007) ("finding that 'the mere existence' of a settlement demand is not dispositive on the issue of the jurisdictional amount" on a remand issue); *Frazier ex rel. Corado v. Shelton and Tyrone Powe Logging*, 2009 WL 1598428 (S.D. Ala. June 3, 2009) (using pre-and post-suit demand letters to determine amount in controversy); *Tolbert v. MJM Investigations*, 1997 U.S. Dist. LEXIS 12454 (S.D. Ala. 1997) (finding that settlement discussions and statements by the plaintiff's counsel were adequate to demonstrate that the jurisdictional amount was satisfied for removal); and, *Golden Apple Management Co., Inc. v. GEAC Computers, Inc.*, 990 F. Supp. 1364 (M.D. Ala. 1998) (considering settlement letter on remand motion).

The next issue is the weight to be given the demand letter. In *Jackson*, the court noted that diversity jurisdiction questions involve a very case specific determination. That court stated:

> .... The question is whether this specific settlement demand, given all the evidence presented, established by a preponderance of that evidence that the amount in controversy exceeds $75,000. At bottom, the defendants insist that the plaintiffs' demand of $155,000 must meet this standard simply because the demand was made. The proper assessment of settlement offers is not so facile.
>
> "While [a] settlement offer, by itself, may not be determinative, it counts for something." *Burns v. Windsor Insurance Co.*, 31 F.3d 1092, 1097 (11th Cir. 1994). What it counts for, however, depends on the circumstances. Settlement offers commonly reflect puffing and posturing, and such a settlement offer is entitled to little weight in measuring the preponderance of the evidence.[ ] On the other hand, settlement offers that provide "specific information ... to support [the plaintiff's] claim for damages" suggest the plaintiff is "offering a reasonable assessment of the value of [his] claim" and are entitled to more weight. *Golden Apple Management Co. v. GEAC Computers, Inc.*, 990 F. Supp. 1364, 1368 (M.D. Ala. 1998).[ ] The Court has adopted this as the correct analysis, [ ] and it is consistent with that used by the Magistrate Judge.[ ]

Jackson, 2009 WL 2385084 *1 (footnotes omitted). In *Golden Apple Management Co.*, the court stated:

> This court finds that the more compelling consideration that should dictate whether a settlement negotiation letter should be considered "other paper" from which removability should have been ascertained is whether, under the circumstance of the case, the settlement letter includes the facts that are necessary to support removal.... While such an approach does not lend itself to a hard fast rule and requires case by case analysis, this court finds that this is the only reasonable means to balance the defendant's obligation to remove an action as early as possible with the plaintiff's practice of drafting a pleading that, on its face, does not state facts that support federal jurisdiction....
>
> At the onset, it is important to note that the relief requested in the complaint is stated in minimal terms solely to establish circuit court jurisdiction.[ ] Therefore, although the face of the complaint does not allege damages to satisfy the minimum requirement for federal jurisdiction, Geac is sufficiently on notice that this is an area for inquiry.... In lieu of filing a response to the complaint and pursuing discovery, Geac sought to engage in settlement negotiations and, therefore, requested that plaintiff provide "particulars of the actual amount" of damages claimed.... In response to that request, the June 6, 1997 settlement negotiation letter that plaintiff sent to Geac's associate counsel advises that the damages that it could "readily attribute to the defective condition of the Geac software" include Geac software costs, consultant costs and personnel costs which amount to $105,432 .... Given the specific information that the letter provides to support its claim for damages, it is apparent that plaintiff was offering a reasonable assessment of the value of its claim.[ ].... In addition to the specificity of the settlement negotiation letter thereby making the amount of damages sought easily ascertainable, the court finds particularly relevant the fact that the settlement negotiation letter was sought by Geac in lieu of using available discovery. A defendant cannot forgo one recognized means of obtaining information related to jurisdiction for another and then argue that the manner in which the information was provided, which was in compliance with defendant's request, precludes imputing knowledge of the information to the defendant.... Such manipulation would provide a windfall for the defendant which is clearly contravened by the removal statute's emphasis on effecting removal as soon as possible. If Geac had not requested "particulars of the actual amount claimed by [*Golden Apple*]," and had plaintiff's response not been so specific, this court's ruling might be different.... However, under the circumstances of this case, the court finds that it is not unreasonable to expect that Geac should have ascertained from the settlement letter that the amount in controversy exceeded the minimum requirement for federal court jurisdiction and should have removed the action accordingly.[ ]

***4** *Id.* at 1367-69 (citations and footnotes omitted).

The relevant question at this juncture is whether the settlement letter before the court in this case is sufficient to demonstrate that the plaintiff's claim exceeds the jurisdictional minimum. As noted above, this is a very specific, case-by-case consideration. In this instance, the court finds that the letter is sufficient. The demand letter is specific and supported by detailed facts. It includes a discussion of the relevant facts, the plaintiff's injuries, whether Cougle was acting in the line and scope of his employment, and the plaintiff's damages.[7] Premised on this court's experience and common sense, it finds that the jurisdictional amount is satisfied. *See Roe v. Michelin North America, Inc.*, 637 F. Supp. 2d 995 (M.D. Ala. 2009) ("Nothing in *Lowery* says a district court must suspend reality or shelve common sense in determining whether

the face of a complaint, or other document, establishes the jurisdictional amount.").

In support of its contention that the jurisdictional has been met in this case, the plaintiff also notes that the Longs have demanded punitive damages from Cougle in the state court matter. (Doc. 9 at p. 10). The plaintiff correctly notes that the jurisdictional amount may be satisfied by a demand that includes punitive damages. *Id.* (citing *Blackwell v. Great American Financial Resources*, 620 F. Supp. 2d 1289, 1290 (N.D. Ala. 2009) (noting that in " 'determining the jurisdictional amount in controversy in diversity cases, punitive damages must be considered ... unless it is apparent to a legal certainty that such cannot be recovered.') *Holley Equipment Co. v. Credit Alliance Corp.*, 821 F.2d 1531, 1535 (11th Cir. 1987) (citations omitted).").

Because the court has already determined that the amount in controversy is sufficient premised on the settlement demand letter, the court will not address the application of punitive damages in this case in great detail. However, in view of the claims presented in state court, the purported seriousness of the injuries to Mrs. Long, and the valuation of the claims and injuries by counsel for the Longs (articulated in the demand letter), the court is satisfied that the demand for punitive damages well exceeds the jurisdictional amount. Additionally, the defendant herein, Cougle, has offered nothing to seriously contest the plaintiff's argument and citations demonstrating that the amount in controversy exceeds the jurisdictional minimum when the prospect of punitive damages is considered. Accordingly, the court finds that the motion to dismiss is without merit.

IV. CONCLUSION

Premised on the foregoing, the court concludes that the amount in controversy is greater than the jurisdictional minimum. Accordingly, the court further finds that Cougle's motion to dismiss (doc. 7) is due to be denied.

***5** Any party may file specific written objections to this report and recommendation within fourteen (14) days from the date it is filed in the office of the Clerk. Failure to file written objections to the proposed findings and recommendations contained in this report and recommendation within fourteen (14) days from the date it is filed shall bar an aggrieved party from attacking the factual findings on appeal. Written objections shall specifically identify the portions of the proposed findings and recommendation to which objection is made and the specific basis for objection. A copy of the objections must be served upon all other parties to the action.

DONE, this the 11th day of December, 2009.

All Citations

Not Reported in Fed. Supp., 2009 WL 10688059

Footnotes

1 References herein to "Doc. ___" are to the document numbers assigned each pleading by the Clerk of the Court and located at the top of each document.
2 The complaint is located at document 9-2.
3 This claim is brought on behalf of Thomas Long. (Complaint at ¶¶ 14-15)
4 The Liability Policy is located at document 9-3 in the record.
5 *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288, 58 S. Ct. 586, 590, 82 L.Ed. 845 (1938).
6 The demand letter is located at document 9-4, p. 4 of 10.
7 The damages calculation included "medical specials," pain and suffering, mental anguish, loss of enjoyment of life, permanent injuries, and punitive damages. (Doc. 9-4 at pp. 8 & 9 of 10).

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