

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

**ELICIA WILLIAMS**

**CIVIL ACTION**

**VERSUS**

**NO. 24-426-BAJ-RLB**

**ATLANTIC SPECIALTY  
INSURANCE COMPANY**

**NOTICE**

Please take notice that the attached Magistrate Judge's Report has been filed with the Clerk of the United States District Court.

In accordance with 28 U.S.C. § 636(b)(1), you have fourteen (14) days after being served with the attached Report to file written objections to the proposed findings of fact, conclusions of law and recommendations therein. Failure to file written objections to the proposed findings, conclusions, and recommendations within 14 days after being served will bar you, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions of the Magistrate Judge which have been accepted by the District Court.

**ABSOLUTELY NO EXTENSION OF TIME SHALL BE GRANTED TO FILE  
WRITTEN OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT.**

Signed in Baton Rouge, Louisiana, on October 16, 2024.



**RICHARD L. BOURGEOIS, JR.  
UNITED STATES MAGISTRATE JUDGE**

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**MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

This Report and Recommendation is issued *sua sponte*. For the following reasons, the undersigned recommends that this action be remanded to State Court.

**I. Background**

On or about April 29, 2024, Elicia Williams (“Plaintiff”) filed this action in State court seeking recovery under an uninsured/underinsured motorist (“UM”) insurance policy issued by Atlantic Speciality Insurance Company (“Defendant” or “ASIC”). (R. Doc. 1-1). Plaintiff alleges that in the underlying motor vehicle accident, she was driving a 2011 GMC Savana and the underinsured tortfeasor was driving a 2023 Camaro. (R. Doc. 1-1 at 4).<sup>1</sup> In the Petition, Plaintiff does not identify the specific amount of coverage provided under the UM insurance policy or otherwise identify the amount in controversy. Furthermore, Plaintiff does not seek recovery of any attorney’s fees or statutory bad faith penalties under La. R.S. 22:1892 or La. R.S. 22:1973.

On May 30, 2024, ASIC removed this action asserting that the Court can exercise diversity jurisdiction under 28 U.S.C. § 1332. (R. Doc. 1). The Notice of Removal asserts that there is complete diversity because Plaintiff is a citizen of Louisiana and ASIC is a citizen of New York and Minnesota. (R. Doc. 1 at 2). The Notice of Removal also asserts that the

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<sup>1</sup> Although not alleged in the Petition, the Intervenor Redwood Fire and Casualty Insurance Company asserts that the incident occurred while Plaintiff was “in the course and scope of her employment as a delivery truck driver” employed by Custom Delivery Services, Inc. (R. Doc. 15 at 1-2).

jurisdictional amount in controversy requirement is satisfied in light of Plaintiff's alleged damages and because Plaintiff is seeking "at least" \$100,000 pursuant to the UM insurance policy. (R. Doc. 1 at 3-4). As with the Petition, the Notice of Removal does not identify the specific amount of coverage provided by the UM insurance policy. In a subsequently filed Answer, however, ASIC asserts that the "limit of the UM coverage under the ASIC Policy is the "minimum statutory 'Combined Single Limit' that is required by 'applicable law'." (R. Doc. 6 at 2; *see* R. Doc. 6 at 4).

The parties filed a Joint Status Report stating the following with respect to the jurisdictional amount in controversy:

At the heart of this dispute is the limit of liability for Uninsured and/or Underinsured benefits provided by the ASIC policy. ASIC's contention is that the limit of liability is \$25,000. Plaintiff contends that the limit of liability is (at least) \$100,000. **ASIC has already tendered Plaintiff \$25,000.** Therefore, the amount in dispute is at least \$75,000.

(R. Doc. 12 at 1) (emphasis added). Elsewhere in the same filing, Plaintiff asserts that the policy limit at issue is exactly \$100,000 based on the policy language and applicable Mississippi law.

(R. Doc. 12 at 1-2). Plaintiff further states that it "has made formal demands for the full \$100,000 in policy limits" without indicating how any liability under the UM policy would exceed that amount. (R. Doc. 12 at 9).<sup>2</sup> ASIC, on the other hand, asserts that the policy limit is \$25,000 based on the policy language and applicable Mississippi law. (R. Doc. 12 at 3).<sup>3</sup> If the maximum policy limit is \$100,000 and ASIC has tendered \$25,000, then the amount in controversy would be exactly \$75,000. Federal diversity jurisdiction requires an amount greater than \$75,000.

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<sup>2</sup> Both the Notice of Removal and the Joint Status Report indicate that Plaintiff is seeking "at least" \$100,000 under the UM insurance policy without providing any explanation how any recovery under the policy could exceed \$100,000, the maximum policy limit as argued by Plaintiff.

<sup>3</sup> The parties appear to dispute whether the policy limit is \$100,000 or \$25,000 based on Mississippi Administrative Code of Rules Title 19, Pt. 4, R. 2.03.

Based on the foregoing, the Court ordered the parties to file appropriate briefs addressing the jurisdictional amount in this action. (R. Doc. 17). The Court ordered the parties to submit a joint filing if ASIC tendered \$25,000 to Plaintiff after removal, which would indicate that the amount in controversy requirement (the fully \$100,000 sought by Plaintiff) was satisfied at the time of removal. The Court otherwise ordered the parties to file separate briefs regarding whether the jurisdictional amount is satisfied. The Court also provided the parties with the opportunity to file a joint motion to remand for lack of subject matter jurisdiction if the parties agreed the jurisdictional amount is not satisfied.

The parties (1) did not submit a joint filing indicating that ASIC tendered payment of \$25,000 after removal and (2) did not file a joint motion for remand. Instead, ASIC filed a Memorandum Regarding the Amount in Controversy Requirement for Diversity Jurisdiction, which states the following:

After review of the Court's Order . . . , ASIC agrees with the Court that Plaintiff has admitted that she does not seek to recover any damages in excess of \$100,000 (or, an additional \$75,000) from ASIC. In light of that, and in light of ASIC's position that the limits of the uninsured/underinsured motorists coverage provided by the ASIC Policy are only \$25,000, ASIC has no objection to a remand of this suit to state court.

(R. Doc. 19). Neither Plaintiff nor the Intervenor filed any brief regarding the amount in controversy requirement.

## **II. Law and Analysis**

### **A. Legal Standards**

“Federal courts are courts of limited jurisdiction [and] possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). “[Federal courts] must presume that a suit lies outside this limited jurisdiction, and the burden of establishing

federal jurisdiction rests on the party seeking the federal forum.” *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001); *Getty Oil Corp., a Div. of Texaco v. Ins. Co. of N. Am.*, 841 F.2d 1254, 1259 (5th Cir. 1988) (“The burden of proving that complete diversity exists rests upon the party who seeks to invoke the court’s diversity jurisdiction.”). Furthermore, a federal court has an independent duty to determine whether it has subject matter jurisdiction over a case.

*Abdalmatiyn v. Harrison*, No. 13-1935, 2013 WL 12126287, at \*1 (N.D. Tex. May 24, 2013) (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (“[S]ubject-matter delineations must be policed by the courts on their own initiative even at the highest level.”); *McDonal v. Abbott Labs.*, 408 F.3d 177, 182 n.5 (5th Cir. 2005) (A “federal court may raise subject matter jurisdiction *sua sponte*.”)); *see also* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

A defendant may remove “any civil action brought in a State court of which the district courts of the United States have original jurisdiction. . . .” 28 U.S.C. § 1441(a). Federal courts have original diversity jurisdiction where the cause of action is between “citizens of different States” and the “matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.” 28 U.S.C. § 1332(a)-(a)(1) (emphasis added). Subject matter jurisdiction must exist at the time of removal to federal court, based on the facts and allegations contained in the complaint. *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998) (“[T]he jurisdictional facts must be judged as of the time the complaint is filed.”). With respect to the amount in controversy requirement, Defendants “may make this showing by either (1) demonstrating that it is facially apparent that the claims are likely above \$75,000, or (2) setting

forth facts in controversy that support a finding of the jurisdictional minimum.” *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999).

Remand is proper if at any time the court lacks subject matter jurisdiction. *See* 28 U.S.C. § 1447(c). The removal statute, 28 U.S.C. § 1441, is strictly construed and any doubt as to the propriety of removal should be resolved in favor of remand. *Gasch v. Hartford Acc. & Indem. Co.*, 491 F.3d 278, 281-82 (5th Cir. 2007). The removing party has the burden of proving federal diversity jurisdiction. *Garcia v. Koch Oil Co. of Tex. Inc.*, 351 F.3d 636, 638 (5th Cir. 2003).

The value of the claim for coverage under an insurance policy determines the amount in controversy unless the value of the claim exceeds the value of the policy. *See Hartford Ins. Grp. v. Lou-Con Inc.*, 293 F.3d 908, 911 (5th Cir. 2002); *see Lewis v. Lexington Ins. Co.*, No. 07-8295, 2008 WL 4862034, at \*2 (E.D. La. Nov. 6, 2008). “[I]f an insurance policy limits the insurer’s liability to a sum below the jurisdictional threshold, the fact that a claimant wants more money does not increase the amount in controversy.” *Hartford*, 293 F.3d at 911; *see Robles v. Allstate Fire & Cas. Ins. Co.*, No. 20-00396, 2020 WL 3895778, at \*3 (W.D. Tex. July 10, 2020), *report and recommendation adopted*, 2020 WL 6054942 (W.D. Tex. July 29, 2020) (“Because [the underinsured motorist coverage] policies only allow Robles to recover a maximum of \$60,000 in damages, the amount in controversy falls below the jurisdictional minimum for establishing this Court’s diversity jurisdiction.”).

## **B. Analysis**

As an initial matter, the Court concludes that the amount in controversy is not facially apparent based solely on the Petition. Plaintiff does not identify the policy limits, which would control the upper limit of the amount in controversy in this insurance recovery action. *See Hartford*, 293 F.3d at 911.

Furthermore, even if Plaintiff alleges that the policy limits exceeded the jurisdictional amount, Plaintiff does not raise specific allegations sufficient to establish the underlying value of the claim. In the Petition, Plaintiff alleges that she “suffered severe and disabling injuries to her entire body” without any specific descriptions of the actual injuries. (R. Doc. 1-1 at 3). Plaintiff then lists general categories of damages, again without any specifics from which the Court can discern the amount in controversy. “Courts have routinely held that pleading general categories of damages, such as ‘pain and suffering, disability, lost wages, loss of earning capacity, medical expenses, etc.,’ without any indication of the amount of the damages sought, does not provide sufficient information for the removing defendant to meet his burden of proving that the amount in controversy is satisfied under the ‘facially apparent’ test.” *See Davis v. JK & T Wings, Inc.*, No. 11-501, 2012 WL 278728, at \*3 (M.D. La. Jan. 6, 2012) (citing *Alderdice v. Lowe's Home Centers, Inc.*, 2010 WL 371027 (M.D. La. Jan. 29, 2010); *Nelson v. Wal-Mart Stores, Inc.*, 2009 WL 1098905 (W.D. La. Apr. 22, 2009), and numerous cases cited therein, *Fontenot v. Granite State Ins. Co.*, 2008 WL 4822283 (W.D. La. Nov. 3, 2008); and *Bonck v. Marriot Hotels, Inc.*, 2002 WL 31890932 (E.D. La. Dec. 30, 2002)), *report and recommendation adopted*, 2012 WL 278685 (M.D. La. Jan. 31, 2012). “When, as in the instant case, the petition is vague regarding the types of injuries incurred and any future problems resulting from the incident, ‘the court must conclude that it was not ‘facially apparent’ that the amount of damages would exceed \$75,000.’” *Dunomes v. Trinity Marine Products, Inc.*, No. 14-1968, 2014 WL 7240158, at \*4 (E.D. La. Dec. 19, 2014) (quoting *Broadway v. Wal-Mart Stores*, No. 00-1893, 2000 WL 1560167, at \*2 (E.D. La. Oct. 18, 2000)).

Given that the jurisdictional amount is not facially apparent, the Court turns to whether facts set forth in the record otherwise establishes the jurisdictional amount is satisfied. In the

Notice of Removal, AISC states that Plaintiff is seeking “at least \$100,000 pursuant to a policy of insurance issued by ASIC.”(R. Doc. 1 at 3). As discussed above, there is no dispute that the applicable policy limit, at most, is \$100,000. Furthermore, the record supports a finding that ASIC tendered \$25,000 prior to removal, thus reducing the amount recoverable under the policy, at the time of removal, to \$75,000. Plaintiff does not seek any extra-contractual relief, including statutory bad faith penalties and fees. Given the foregoing, the Court concludes that ASIC has failed to meet its burden that the amount in controversy requirement is satisfied. Indeed, the only brief submitted regarding the amount in controversy requirement is ASIC’s memorandum providing that the record does not support a finding that the amount in controversy requirement is satisfied and stating that ASIC “has no objection to a remand of this suite to state court.” (R. Doc. 19).

In sum, the record supports a finding that, at most, the “amount in controversy” at the time of removal would be exactly \$75,000, *i.e.*, the \$100,000 policy limits sought by Plaintiff minus the \$25,000 already tendered. *See Henderson v. Allstate Fire & Cas. Ins. Co.*, 154 F. Supp. 3d 428, 432 (E.D. La. 2015) (“Here, plaintiff’s insurance policy limits Allstate’s maximum liability to \$50,000. Allstate has already paid plaintiff \$7,500, so the maximum amount that plaintiff can recover from Allstate under the policy is \$42,500.”). This exact amount of \$75,000 in controversy is not sufficient to sustain diversity jurisdiction. *See Stonewall Ins. Co. v. Lopez*, 544 F.2d 198, 199 (5th Cir. 1976) (federal court lacks diversity jurisdiction when the amount in controversy exactly equals the jurisdictional amount); *Primerica Life Ins. Co. v. Martinez*, No. 10-660, 2011 WL 13324194, at \*14 (W.D. Tex. Apr. 7, 2011), *report and recommendation adopted*, 2011 WL 13324203 (W.D. Tex. Apr. 25, 2011) (dismissing



interpleader action pertaining to life insurance policy providing coverage exactly in the amount of \$75,000).

### **III. Conclusion**

Based on the foregoing,

**IT IS RECOMMENDED** that this action be **REMANDED** to the 19th Judicial District Court, East Baton Rouge Parish, Louisiana, for lack of subject matter jurisdiction.

Signed in Baton Rouge, Louisiana, on October 16, 2024.



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**RICHARD L. BOURGEOIS, JR.**  
**UNITED STATES MAGISTRATE JUDGE**