

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LISA M. RUDOLPH and )  
KEVIN M. RODOLPH, )  
 )  
Plaintiffs, )  
 )  
v. ) Civ. No. 03-505-SLR  
 )  
JOSEPH M. TAYLOR and )  
TAYLOR TRUCKING, )  
 )  
Defendants and )  
Third-Party )  
Plaintiffs, )  
 )  
v. )  
 )  
DAVID'S TRANSPORT INC., )  
 )  
Third-Party )  
Defendant. )

**MEMORANDUM ORDER**

**I. INTRODUCTION**

Plaintiffs filed suit on October 15, 2002 in the Superior Court of the State of Delaware in and for Kent County. (D.I. 18, ex. A) On April 8, 2003, defendant Joseph Taylor filed a third-party complaint against third-party defendant David's Transport Inc. On May 23, 2003, third-party defendant filed a notice of removal pursuant to 28 U.S.C. § 1446. (D.I. 1) Plaintiffs' claims stem from a vehicular collision occurring in Kent County on December 8, 2000, and alleging negligence and seeking damages for medical expenses, property damages, mental anguish, pain,

suffering and loss of consortium. Defendants' third-party claim against David's Transport seeks indemnification and damages for breach of contract. (D.I. 18, ex. B)

## **II. STANDARD OF REVIEW**

28 U.S.C. § 1441 provides for the right of defendants in state court proceedings to remove those cases to federal court if, based upon the face of the filed pleadings, subject matter jurisdiction would have existed in federal court for the plaintiff's claims. Where subject matter jurisdiction is claimed pursuant to the court's diversity jurisdiction, there must be both complete diversity of the parties and the requisite jurisdictional amount of at least \$75,000.00. 28 U.S.C. § 1332. On a motion to remand, it must "appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1938). It is the general rule that the amount in controversy is determined from the complaint itself. See Horton v. Liberty Mutual Ins. Co., 367 U.S. 348, 353 (1961). Where the amount in controversy is ambiguous in the pleadings, the court must conduct its own independent appraisal of the allegations to determine whether the value of claims exceed the jurisdictional amount. See Angus v. Shiley Inc., 989 F.2d 142, 146 (3d Cir. 1993). The amount in controversy is "not measured by the low end of an open-ended claim, but rather by a reasonable

reading of the value of the rights being litigated.” Id. The party seeking removal, of course, has the burden of showing by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional amount. See Penn v. Wal-Mart Stores, Inc., 116 F. Supp. 2d 557 (D. N.J. 2000). See also Gilman v. BHC Securities, 104 F.3d 1418, 1421 (2d Cir. 1997); De Aguilar v. Boing Co., 47 F.3d 1404, 1411-12 (5th Cir. 1995); Shaw v. Dow Brands, Inc., 994 F.2d 364, 366 (7th Cir. 1993). In other words, it must be more likely than not that the amount in controversy will be \$75,000 or greater.

### **III. DISCUSSION**

In their motion for remand, plaintiffs submit an affidavit whereby plaintiffs stipulate that they do not seek to obtain more than \$74,999.00. (D.I. 14 at ex. B) A party, by subsequent affidavits or pleadings, may not withdraw subject matter jurisdiction from the court. See Angus, 989 F.2d at 145 (holding that a plaintiff’s subsequent stipulation that her damages do not exceed the jurisdictional amount “has no legal significance because a plaintiff following removal cannot destroy federal jurisdiction simply by amending a complaint that initially satisfied the monetary floor.”). The Third Circuit in Angus, however, indicated that a court may consider a plaintiff’s affidavit as a clarification of the damages to be sought. See id. at 145 n.3.

Defendants and third-party defendant rely upon bare assertions that the amount in controversy is met. Defendants contend that "counsel's own words provide basis for federal court jurisdiction." (D.I. 18 at 3) Defendants assert that plaintiffs' counsel claimed "Rudolph's permanent cervicothoracic spine, future medical expenses in excess of \$60,000,.00 and the life expectancy of 47.0 more years to deal with her chronic pain." (Id.) Strikingly absent from defendants' brief, however, is any citation to any pleading, exhibit, deposition, affidavit, or other source for this purported statement. Consequently, the court is without any factual basis by which it can reasonably appraise the value of plaintiffs' claims. Merely asserting that the jurisdictional amount is met, without more, does not satisfy the defendants' burden to show that it is more likely than not that the amount in controversy is \$75,000 or more. See McNutt v. General Motors Acceptance Corp. of Indiana, 298 U.S. 178, 189 (1936) ("If his allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof."). Moreover, in light of plaintiffs' affidavit, which is considered as a clarification rather than as an amendment, the court concludes that the defendants and third-party defendant have failed to prove by a preponderance of the evidence that the jurisdictional amount is present.

**IV. CONCLUSION**

Therefore, at Wilmington, this 5th day of January, 2004, having reviewed the motion of plaintiffs to remand (D.I. 14) and defendant's and third-party defendant's responses thereto;

IT IS ORDERED that plaintiffs' motion to remand is **granted**.  
(D.I. 14)

Sue L. Robinson  
United States District Judge