UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

SILVIA LORENZ,	:	
Plaintiff,	:	
	:	
-vs-	:	Civil No. 3:02cv2277 (PCD)
	:	
GUARDIAN LIFE INSURANCE	:	
COMPANY OF AMERICA &	:	
BERKSHIRE LIFE INSURANCE	:	
COMPANY OF AMERICA,	:	
Defendants.	:	

RULING ON MOTION TO REMAND

Plaintiff moves to remand the present action to state court. For the reasons set forth herein, the motion is denied.

I. BACKGROUND

The following is taken from the allegations set forth in the complaint. Defendants insured plaintiff for disability due to injury or sickness. On July 23, 1997, plaintiff became disabled due to multiple sclerosis. On March 31, 1998, plaintiff submitted a claim to defendant Guardian Life Insurance Company of America ("Guardian"). Guardian thereafter paid disability benefits pursuant to two separate policies with plaintiff. In July, 2001, Berkshire Life Insurance Company of America ("Berkshire") assumed claims management responsibilities for its parent company Guardian. On May 23, 2002, Berkshire terminated plaintiff's disability payments. Plaintiff is presently forty-nine years of age and will require disability payments until age sixty-five.

Plaintiff filed a complaint in the Connecticut Superior Court for the Judicial District of Stamford/Norwalk alleging a breach of the insurance contract and violation of the Connecticut Unfair

Trade Practices Act ("CUTPA"), CONN. GEN. STAT. § 42-110a *et seq*. Defendants removed the action to this Court on diversity grounds. Plaintiff now moves to remand the action to state court for failure to establish diversity pursuant to 28 U.S.C. § 1332.

II. DISCUSSION

Plaintiff concedes the issue of diversity of citizenship, arguing only that defendant cannot establish the amount in controversy as required by 28 U.S.C. § 1332. Defendant responds that there is sufficient evidence to establish that the amount in controversy exceeds the jurisdictional amount.

A. Standard

Defendant bears the burden of showing that removal was proper. *United Food & Commercial Workers Union v. CenterMark Props. Meriden Square, Inc.*, 30 F.3d 298, 300 (2d Cir. 1994). "A party invoking the jurisdiction of the federal court has the burden of proving that it appears to a 'reasonable probability' that the claim is in excess of the statutory jurisdictional amount." *Tongkook Am., Inc. v. Shipton Sportswear Co.*, 14 F.3d 781, 784 (2d Cir.1994) . Doubts as to the existence of federal jurisdiction are to be resolved in favor of state court jurisdiction. *Lupo v. Human Affairs Int'l, Inc.*, 28 F.3d 269, 273 (2d Cir. 1994).

B. Amount in Controversy

Defendants argue that there is a reasonable probability that the amount in controversy will exceed $75,000, *see* 28 U.S.C. § 1332(a), because monthly payments previously made to plaintiff, the same payments sought through the present complaint for the next sixteen years, easily establish an amount in controversy in excess of the jurisdictional amount. Under the two insurance polies at issue, she would be entitled to monthly payments of $8,330 as evidenced by prior monthly payments to

plaintiff. As such, payments per year would equate to $99,960, annually, a total claim of approximately $1.6 million. Either way the claim exceeds $75,000. Plaintiff has provided no evidence to dispute defendants' evidence, thus defendant have have established a reasonable probability that the amount in controversy exceeds $75,000.[1]

III. CONCLUSION

Plaintiff's motion to remand (Doc. No. 7) is **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, February ___, 2003.

Peter C. Dorsey
United States District Judge

[1] Although plaintiff argues that she has never alleged an amount in controversy greater than the $15,000 allegation in her complaint filed in state court, she leaves defendant to its evidence, providing no evidence that would somehow mitigate damages to an amount below $75,000. *See, e.g., Bush v. Roadway Express, Inc.*, 152 F. Supp. 2d 1123, 1126-27 (S.D. Ind. 2001) (holding amount in controversy not met by lost wages claim based on evidence of subsequent employment that mitigated potential damages award to less than $75,000). The fact that plaintiff has complied with CONN. GEN. STAT § 52-91(1) by alleging that "the amount, legal interest or property in demand is fifteen thousand dollars or more, exclusive of interest and costs," does not withstand defendants' evidence that the claim is reasonably in excess of such amount. In light of potential compensatory damages at issue, this Court need not consider whether the amount in controversy is established by punitive damages sought for the alleged CUTPA violation.