

Primer on Amount in Controversy – How Do Court’s Determine It?

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Many insurance cases are filed in state court against out-of-state insurance companies. These insurance companies like to remove the case to federal court because federal courts are seen as a friendly forum for insurance companies. In order to remove a case to federal court there must be complete diversity of citizenship between the plaintiff and the defendant, and the amount in controversy must exceed \$75,000. How do you determine “amount in controversy?” [In a May 7, 2016 blog](#) I discussed the *Cantu*¹ case where Cantu argued that the amount in controversy was \$23,945.43 because that was the amount of actual damages. However, the court found the amount in controversy to exceed \$75,000 because Cantu had alleged statutory and common law bad faith damages, which the court found would push the amount in controversy past \$75,000. The recent [Puente v. State Farm Lloyds](#)² case from the Brownsville Division of the Southern District shows exactly how the amount in controversy should be determined. Just because the Plaintiff alleges exemplary damages does not mean that the amount in controversy is automatically in excess of \$75,000.

Puente sent a notice and demand letter to State Farm itemizing damages totaling \$29,870.82. The categories of damages alleged in the notice and demand letter included “policy claim” damages, statutory 18% interest, mental anguish, pre-suit attorney fees, taxable costs, and pre-judgment interest. The demand letter did not include trebling of damages, which is allowed under chapter 541 of the Insurance Code. After suit and removal, Puente filed a motion to remand. State Farm’s position was that the trebling of damages would push the amount in controversy past \$75,000.

The court pointed out that the defendant bears the burden of proving, by a preponderance of the evidence, that the amount in controversy exceeds \$75,000 at the time of removal. The \$75,000 is figured exclusive of interest and costs. Attorney fees are included in the computation of amount in controversy. The court may consider a pre-suit demand letter in determining the value of the plaintiff’s claims at the time of removal. When determining amount in controversy courts should look at (a) actual damages, (b) statutory penalties, (c) exemplary damages, and (d) attorney fees.

As for actual damages, the court added the policy damages (\$12,673.88) and mental anguish damages (\$5,000) alleged in the demand letter find the actual damages amount of \$17,673.88. The court trebled this number to \$53,021.64 and used that number for the damage amount in its calculations. The court looked at the date the claim was made and the date of the suit being filed to determine that one year of 18% interest on \$12,673.88 (the actual damages without mental anguish and before trebling) should be applied. The interest was \$2,027.82. The court pointed out that the law prohibits a person receiving exemplary damages if he elects to have his recovery multiplied under another statute. Therefore, Puente could recover either treble damages or exemplary damages, but not both. Because the court computed exemplary damages as per Chapter 41 of the Texas Civil Practice and Remedies Code to be less than the trebled damage figure, court used the treble damages figure.

As for attorney fees Puente had alleged \$7,874.56 in attorney fees up to the time of the writing of the letter. State Farm argued that the attorney fees would be substantial and push the amount in controversy past \$75,000. However, the court pointed out that it is not allowed to “guesstimate” attorney fees and that any ambiguity should be found in favor remand. Therefore, the court only considered the attorney fee amount asserted in the demand letter.

\$53,021.64 (3 times actual damages of \$17,673.88)

\$ 2,027.82 (18% interest for one year on \$12,673.88)

\$ 7,874.56 (Attorney fees)

\$62,924.02 Amount in Controversy

The court found the amount in controversy was \$62,924.02 and remanded the case. The important point is that courts and defendants must show their math when determining amount in controversy. Courts cannot use generalities to find amount in controversy. The court must look at each element and do the math to determine if the amount in controversy is exceeded. If the defendant cannot prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000 then the court cannot bridge the gap for the defendant. Rather any ambiguity in amounts must be found in favor of remand.

¹ [Cantu v. Allstate Vehicle and Prop. Ins. Co., No. 7:16-CV-084, 2016 WL 1695284 \(S.D. Tex. April 28, 2016\).](#)

² [Edith Puente v. State Farm Lloyds, No. B-15-190, 2016 WL 1733472 \(S.D. Tex. April 29, 2016\).](#)