

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**IN RE LORAZEPAM & CLORAZEPATE
ANTITRUST LITIGATION**

**MDL Docket No. 1290 (TFH)
Misc. No. 99ms276 (TFH)**

This Opinion applies to:

DOROTHY KENDRICK, et al.,

Plaintiffs,

v.

MYLAN LABORATORIES, INC. et al.,

Defendants.

Civ. No. 03-1650 (TFH)

MEMORANDUM OPINION

Pending before the Court is Plaintiffs' Motion to Remand ("Motion"). Upon careful review of Plaintiffs' motion, Defendants' opposition, and the entire record herein, the Court will deny the motion.

I. BACKGROUND

Plaintiffs initially filed this action in the Circuit Court for Hinds County, Mississippi, on December 31, 2002, demanding, *inter alia*, compensatory damages in an amount less than \$74,975 per plaintiff, plus statutory penalties pursuant to Miss. Code § 75-21-9. See Complaint at 10. An Amended Complaint was filed on March 23, 2003, and sought additional relief in the

form of punitive damages plus attorneys' fees and all other expenses and costs. See Amended Complaint at 10–11. On May 5, 2003, Defendants removed the case to the United States District Court for the Southern District of Mississippi based upon complete diversity of the parties and, in light of the claim for punitive damages and attorneys fees, the fact that the complaint on its face sought relief in excess of \$75,000. See Notice of Removal at 2–4. On June 4, 2003, Defendants filed a Motion for Judgment on the Pleadings, arguing, *inter alia*, that punitive damages are not recoverable under the Mississippi Antitrust Act ("Act"). See Motion for Judgment on Pleadings at 8–10. On June 20, 2003, Plaintiffs filed a pleading in which they "stipulate[d] to Defendants' assertion that punitive damages (and the related attorneys fees) are not applicable in this case. . . . [T]herefore, the claims of the Plaintiffs fall below the \$75,000 jurisdictional threshold" and so this case should be remanded. Opposition to Defendants' Motion for Judgment on the Pleadings at 1.¹ Finally, on June 26, 2003, Plaintiffs filed the Motion to Remand, in which they argue that since "they have bound themselves by the wording of the Complaints and the stipulation that they are not entitled to punitive damages," the amount in controversy does not exceed \$75,000 per plaintiff as is required by 28 U.S.C. § 1332. Motion at 2.

II. DISCUSSION

"Where both actual and punitive damages are recoverable under a complaint each must be considered to the extent claimed in determining jurisdictional amount." Bell v. Preferred Life Assur. Soc. of Montgomery, Ala., 320 U.S. 238, 240 (1943). "It is well settled that claims for

¹ Defendants question the sufficiency of this stipulation. See Opposition to Motion to Remand at 2 n.1.

punitive damages are included in the calculation of the amount in controversy." Amos v. CitiFinancial Corp., 243 F. Supp. 2d 587, 590 (N.D. Miss. 2003) (citing, *inter alia*, St. Paul Reinsurance Co., Ltd. v. Greenberg, 134 F.3d 1250, 1253 (5th Cir.1998)). Moreover, "under Mississippi law the amount of such an alleged award [of punitive damages] is counted against each plaintiff's required jurisdictional amount." Allen v. R & H Oil & Gas Co., 63 F.3d 1326, 1335 (5th Cir. 1995). This is because

the unique nature of [punitive damages] awards requires, at least in Mississippi, that the full amount of alleged damages be counted against each plaintiff in determining the jurisdictional amount. As punitive damages are collective awards, each plaintiff has an integrated right to the full amount of an award. An award's ultimate distribution does not change this result.

Id. at 1333–34. It is also clear that attorney's fees should be factored into the jurisdictional amount. See Foret v. Southern Farm Bureau Life Ins., 918 F.2d 534, 537 (5th Cir. 1991).

In light of the above legal standard, Plaintiffs' demand for relief in the Amended Complaint leaves no doubt that the alleged amount in controversy, for jurisdictional purposes, exceeds \$75,000 per plaintiff. If awarded, attorneys' fees combined with the desired compensatory damages of an amount less than \$74,975 per plaintiff could clearly cause the monetary amount to exceed the jurisdictional limit. Punitive damages, if warranted, would do the same.

When this case was removed to federal district court on May 5, 2003, the relief sought in the Amended Complaint of March 23, 2003 controlled the jurisdictional limit. Plaintiffs may not "return[] the Complaint to the damages sought on December 31, 2002 [which were] below \$75,000 per Plaintiff." Motion at 1. The Supreme Court has long ago provided guidance for a situation such as this:

[I]f, upon the face of the complaint, it is obvious that the suit cannot involve the necessary amount, removal will be futile and remand will follow. But the fact that it appears from the face of the complaint that the defendant has a valid defense, if asserted, to all or a portion of the claim, or the circumstance that the rulings of the district court after removal reduce the amount recoverable below the jurisdictional requirement, will not justify remand. And though, as here, the plaintiff after removal, by stipulation, by affidavit, or by amendment of his pleadings, reduces the claim below the requisite amount, this does not deprive the district court of jurisdiction.

Thus events occurring subsequent to removal which reduce the amount recoverable, whether beyond the plaintiff's control or the result of his volition, do not oust the district court's jurisdiction once it has attached.

St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 292–93 (1938) (footnotes omitted).

Plaintiffs themselves indicate the tenuousness of their argument when they state that "Defendants cannot show that the amount in controversy *now* exceeds \$75,000 per Plaintiff." Motion at 2 (emphasis added). As previously explained, this is not the standard by which amount in controversy is measured. "To determine whether the jurisdiction is present for removal, [courts] consider the claims in the state court petition at the time they existed at the time of the removal."

Manguno v. Prudential Prop. and Cas. Co., 276 F.3d 720, 723 (5th Cir. 2002).

III. CONCLUSION

For the reasons stated above, the Court denies Plaintiffs' Motion to Remand. An appropriate Order will accompany this Opinion.

January 12, 2004

/s/
Thomas F. Hogan
Chief Judge

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ORDER

Pending before the Court is Plaintiffs' Motion to Remand.¹ For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that the motion is **DENIED**.

SO ORDERED.

January 12, 2004

/s/

Thomas F. Hogan
Chief Judge

¹ This motion was originally filed on June 26, 2003 in the United States District Court for the Southern District of Mississippi under Civ. No. 03-626. The motion has not been assigned a docket entry number in the United States District Court for the District of Columbia.