

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

JUSTIN BERNIER,

Plaintiff

v.

UNICCO SERVICE CO.,

Defendant

Civil No. 04-280-P-C

Gene Carter, Senior District Judge

**ORDER DENYING PLAINTIFF'S MOTION TO REMAND**

Plaintiff Justin Bernier originally brought this action in the Maine Superior Court. In his Complaint, Plaintiff alleges unlawful employment termination in violation of the Maine Human Rights Act, 5 M.R.S.A. § 4572.

On December 27, 2004, Defendant timely filed a Notice of Removal to this Court based on diversity jurisdiction under 28 U.S.C. § 1332. (Docket Item No. 1). Plaintiff is a citizen of Maine and Defendant is a Massachusetts Business Trust organized under the laws of the Commonwealth of Massachusetts and has a principal place of business in Newton, Massachusetts. In its Notice of Removal, Defendant alleges that the amount in controversy exceeds \$75,000.

Now before the Court is Plaintiff's Motion to Remand (Docket Item No. 6). Plaintiff contends that Defendant has not established that the amount in controversy

exceeds \$75,000, which is necessary to support federal diversity jurisdiction. For the reasons set forth below, the Court will deny Plaintiff's Motion.

Maine law prevents Plaintiff from stating a dollar figure in the *ad damnum* clauses of his complaint. *See* 14 M.R.S.A. § 52 ("No dollar amount or figure may be included in the demand in any civil case, but the prayer must be for such damages as are reasonable in the premises."). Without such a monetary demand in the Complaint, the Court must look to other pleadings in the case and evidence presented by Defendant to ascertain whether Defendant has met its burden to invoke federal jurisdiction.<sup>1</sup>

Plaintiff admits that his claim for back pay totals \$17,080 and his attorney's fees total \$7940 as of the date of his Motion to Remand. In addition to this \$25,020, Plaintiff's Complaint also seeks recovery for, *inter alia*, front pay, attorney's fees throughout the duration of the litigation, and punitive damages. When determining whether a plaintiff could recover damages above the jurisdictional amount, it is appropriate to examine similar cases from the similar locality. *Stewart v. Tupperware Corp.*, 356 F.3d 335, 339 (1st Cir. 2004). Defendant has proffered evidence that cases involving claims of intentional employment discrimination can lead to compensatory and/or punitive damage awards in excess of \$75,000 in this district. *See, e.g., Quint v. A.E. Staley Mfg. Co.*, 172 F.3d 1 (1st Cir. 1999); *Hogan v. Bangor & Aroostook R.R. Co.*, 61 F.3d 1034 (1st Cir. 1995).<sup>2</sup>

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<sup>1</sup> This Court has previously held that a defendant must establish by a preponderance of the evidence that the amount in controversy exceeds \$75,000. *See Doughty v. Hyster New England*, 344 F. Supp. 2d 217, 218-19 (D. Me. 2004).

<sup>2</sup> Although Plaintiff's assessment of the value of the case is not alone a determinative factor for satisfying the amount in controversy requirements of § 1332, *see Doughty*, 344 F. Supp. 2d at 219, the Court notes that Plaintiff's counsel is unwilling to stipulate to an amount in controversy below the jurisdictional threshold. *Cf. Satterfield v. F.W. Webb, Inc.*, 334 F. Supp. 2d 1, 4-5 (D. Me. 2004) (granting

The Court is satisfied that the predictable litigation value of the case, an amount arrived at by drawing all reasonable inferences in favor of the Plaintiff's Complaint, *see Doughty*, 344 F. Supp. 2d at 219, exceeds \$75,000. Accordingly, it is **ORDERED** that Plaintiff's Motion to Remand be, and it is hereby, **DENIED**.

/s/ Gene Carter \_\_\_\_\_  
**GENE CARTER**  
United States Senior District Judge

Dated at Portland, Maine this 7th day of February, 2005.

**Plaintiff**

**JUSTIN L BERNIER**

represented by **PETER L. THOMPSON**  
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V.

**Defendant**

**UNICCO SERVICE  
COMPANY**

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remand where Plaintiff stipulated that her claim was for less than \$75,000).

