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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY E. KWIATKOWSKI,

Plaintiff - Appellant,

v.

HARTFORD FIRE INSURANCE
COMPANY, et al.,

Defendants - Appellees.

No. 09-17664

D.C. No. 2:08-cv-00730-RCJ-LRL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert C. Jones, District Judge, Presiding

Argued and Submitted February 18, 2011
San Francisco, California

Before: O'SCANNLAIN and TROTT, Circuit Judges, and Campbell,** District
Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Tena Campbell, Senior United States District Judge
for the District of Utah, sitting by designation.

Mary Kwiatkoswki appeals the district court's orders dismissing her claim under Nevada Revised Statute section 613.200 and granting summary judgment for the Defendants on her remaining claims. The facts need not be repeated here because they are already known by the parties. We have jurisdiction under 28 U.S.C. § 1291, and we remand.

We conclude that it is not "facially apparent" from Ms. Kwiatkowski's complaint that more than \$75,000 is in controversy. See Singer v. State Farm Mut. Auto. Ins. Co., 116 F.3d 373, 377 (9th Cir. 1997). And the record available to the court is devoid of any evidence that Hartford proved, by a preponderance of the evidence, that the amount in controversy meets the jurisdictional threshold. See Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003). The court cannot consider the merits of the appeal before assuring itself that the district court had jurisdiction. Id. at 1091. For that reason, we remand this matter to the district court for a determination of whether the amount in controversy is sufficient to establish jurisdiction.

REMANDED.