IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CRAIG CONNELLY	:	**CIVIL ACTION**
	:	
v.	:	
	:	
JASON W. SCHLEEF and	:	
SHUSTER COMPANY	:	**NO. 01-5559**

MEMORANDUM ORDER

This is an automobile accident case. A vehicle operated by defendant Schleef in the course of his employment with defendant Shuster Company allegedly collided with a vehicle operated by plaintiff at an intersection in Philadelphia. Plaintiff filed suit in the Court of Common Pleas of Philadelphia. Defendants timely filed a Notice of Removal to this court pursuant to 28 U.S.C. § 1441(a). Plaintiff then filed a Motion to Remand for lack of subject matter jurisdiction. The citizenship of the parties is diverse. What is at issue is the amount in controversy.

The removing party bears the burden of proving that subject matter jurisdiction exists. See Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 222 (3d Cir. 1999); Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 359 (3d Cir.), cert. denied, 516 U.S. 1009 (1995); Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990), cert. denied, 498 U.S. 1085 (1991); Cartwright v. Thomas Jefferson Univ. Hosp., 99 F. Supp. 2d 550, 552 (E.D. Pa. 2000); Omega Sports, Inc. v. Sunkyong America, Inc., 872 F. Supp. 201, 202 (E.D. Pa. 1995). All doubts about

the existence of federal jurisdiction must be resolved in favor of remand. See Boyer, 913 F.2d at 111; Bachman Co. v. MacDonald, 173 F. Supp. 2d 318, 322 (E.D. Pa. 2001); Barkley v. City of Philadelphia, 169 F. Supp. 2d 346, 348-49 (E.D. Pa. 2001); Apian v. American Home Products, Corp., 108 F. Supp. 2d 454, 456 (E.D. Pa. 2000).

Some courts in this circuit have imposed a strict legal certainty standard in assessing the amount in controversy in removed cases involving unliquidated damage claims. See International Fleet Auto Sales, Inc. v. National Auto Credit, 1999 WL 95258, *4 n.7 (E.D. Pa. Feb. 22, 1999); Deep v. Manufacturers Life Ins. Co., 944 F. Supp. 358, 360 (D.N.J. 1996). Other courts have applied a preponderance of the evidence standard. See McFadden v. State Farm Ins. Co., 1999 WL 715162, *1 (E.D. Pa. Sept. 13, 1999); C.D. Peacock, Inc. v. The Neiman Marcus Group, Inc., 1998 WL 111738, *2 (E.D. Pa. Mar. 9, 1998); Feldman v. New York Life Ins. Co., 1998 WL 94800, *3 (E.D. Pa. Mar. 4, 1998); Mercante v. Preston Trucking Co., 1997 WL 230826, *2 (E.D. Pa. May 1, 1997). The result in the instant case would be the same under either standard.

In assessing whether the requisite jurisdictional amount is present, the court first looks to the complaint and then to any materials which clarify the damages. See Singer v. State Farm Mut. Automobile Ins. Co., 116 F.3d 373, 377 (9th Cir.

1997); Angus v. Shiley, Inc., 989 F.2d 142, 145-6 (3d Cir. 1993). In tort actions where damages are indeterminate, the plaintiff's demand is presumptively, if not conclusively, the amount in controversy. See Barry v. Edmunds, 116 U.S. 550, 560-61 (1886).

Plaintiff filed this action as an arbitration case. In his complaint, plaintiff seeks judgment "in an amount not in excess of Fifty Thousand ($50,000) Dollars." Plaintiff did reserve the right to seek more than $50,000 if the arbitration award were appealed.

That a party dissatisfied with an arbitration award may appeal and obtain a court trial at which plaintiff could possibly recover more than $50,000 is too theoretical to demonstrate that the amount in controversy exceeds $50,000 let alone $75,000. See Gottehrer v. State Farm Ins. Co., 1996 WL 210808, *1 (E.D. Pa. Apr. 30, 1996) (plaintiff can limit his initial right of recovery to below the federal diversity threshold); Di Filippo v. Southland Corp., 1994 WL 273310, *2 (E.D. Pa. June 21, 1994) (theoretical possibility that plaintiff could recover an amount in excess of $50,000 on appeal from arbitration too remote to confer federal jurisdiction); Westside Check Cashing and Pawn Shops, Inc. v. Wedderbern, 1994 WL 50308, *2 (E.D. Pa. Feb. 16, 1994) (plaintiff's motion to remand granted where plaintiff filed action in Court of Common Pleas of Philadelphia as arbitration case with damage cap of $50,000.00).

This is not a case in which the plaintiff appears to be attempting to manipulate jurisdiction. He seeks to have his case resolved by arbitration in the state court system and to recover $50,000. Plaintiff has offered in writing to settle this case for $50,000.

Defendants correctly note that plaintiff claims to have sustained disk herniation. This does not, however, demonstrate that the amount in controversy exceeds $75,000, particularly where the value plaintiff himself has placed on his injuries is $50,000.

Defendant's reliance on Dempsey v. Federal Express Corp., 2001 WL 1356505 (E.D. Pa. Nov. 2, 2001) is misplaced. Plaintiff in that case specifically demanded damages in excess of $50,000. Id. at *2. Also, the plaintiff in Dempsey demanded $125,000 to settle the case. Id. at *5. The Court noted that if the plaintiff's claim was worth less than $75,000, there is no valid reason why a demand for $50,000 more than that amount would be made. Id. at *6. Plaintiff in the instant case has specifically requested damages in an amount not to exceed $50,000, and has offered to accept $50,000 in total settlement of this action.

Defendants have not met their burden of demonstrating that the amount in controversy exceeds $75,000.

ACCORDINGLY, this day of January, 2002, upon consideration of plaintiff's Motion to Remand (Doc. #5) and defendants' response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and, pursuant to 28 U.S.C. § 1447(c), this case is **REMANDED** to the Court of Common Pleas of Philadelphia.

BY THE COURT:

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JAY C. WALDMAN, J.