

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

JOYCE BRYANT and : CIVIL ACTION
LEONARD BRYANT :
 :
v. :
 :
 :
FERGUSON ENTERPRISES, INC. : No. 02-1677

MEMORANDUM ORDER

This is an automobile accident case. A vehicle operated by defendant's agent allegedly collided with a vehicle operated by Joyce Bryant in Wilmington, Delaware. Plaintiffs filed suit in the Court of Common Pleas of Philadelphia. Defendant timely filed a Notice of Removal to this court and plaintiffs have filed a Motion to Remand for lack of subject matter jurisdiction.

Complete diversity of citizenship is clear and uncontested. The sole issue is whether the requisite amount in controversy is satisfied.

The party asserting the sufficiency of the amount in controversy bears the burden of demonstrating that the jurisdictional minimum has been met. See McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 222 (3d Cir. 1999).

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., Inc., 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 may clarify the damages. See Singer v. State Farm Mut. Auto. Ins. Co., 116 F.3d 373, 377 (9th Cir. 1997); Angus v. Shiley, Inc., 989 F.2d 142, 145-6 (3d Cir. 1993). The amount in controversy in the case of an unliquidated damages claim is measured by "a reasonable reading of the value of the rights being litigated." Id. at 146.

Plaintiffs allege that Mrs. Bryant sustained "serious and permanent injuries" including "orthopedic, neurological and internal injuries" and "post-concussion syndrome." Plaintiffs allege that Mrs. Bryant has been disabled from performing her usual occupation.

A reasonable jury clearly could award more than \$75,000 in damages if plaintiffs' averments are substantiated. Indeed, following removal plaintiffs' attorney certified that damages recoverable "exceed the sum of \$150,000 exclusive of interest and costs."

ACCORDINGLY, this day of May, 2002, upon consideration of plaintiffs' Motion to Remand (Doc. #6) and defendant's cross-Motion for Sanctions (Doc. #8) **IT IS HEREBY ORDERED** that said Motions are **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.