

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

VIRGINIA J. KESTING :
 :
 : CIVIL ACTION
 :
 v. :
 : NO. 06-CV-2458
 :
 GRAYSON MITCHELL, INC. and :
 WILLIAM A. LEE :

SURRICK, J.

AUGUST 4, 2006

MEMORANDUM & ORDER

Presently before the Court is Plaintiff Virginia J. Kesting's Motion To Remand (Doc. No. 3). For the following reasons, the Motion will be granted.

Plaintiff commenced this action by filing a Complaint in the Court of Common Pleas of Philadelphia County on May 9, 2006. (Doc. No. 3 at Ex. A.) The Complaint alleged damages "in an amount in excess of the arbitration limits, plus interest and costs." (*Id.*) The arbitration limits in the Court of Common Pleas of Philadelphia County are \$50,000. 42 Pa. Cons. Stat. § 7361. On June 9, 2006, Defendants filed a Notice of Removal to this Court, asserting that "a fair reading of the Complaint reveals that an amount in excess of \$75,000 is at controversy in this suit." (Doc. No. 1 at 3.) Plaintiff responds that the Complaint requests damages in excess of \$50,000 and that there is no evidence that the value of the case exceeds \$75,000, the amount necessary for federal jurisdiction. 28 U.S.C. § 1332(a). On July 6, 2006, during a Conference in Chambers, Plaintiff's counsel advised the Court and counsel for Defendant that Plaintiff's medical expenses were approximately \$2500 and that Plaintiff had no claim for loss of earnings. Counsel advised that Plaintiff was not seeking recovery in an amount in excess of the \$75,000

jurisdictional limit. Thereafter, Plaintiff's counsel filed a Notice To Remand (Doc. No. 8), dated July 21, 2006 and signed by Plaintiff, which provides as follows:

Plaintiff, Virginia J. Kesting, stipulates to the following:

1. Plaintiff will not be presenting a claim for lost wages;
2. The medicals Plaintiff intends to place into evidence will consist solely of the health insurance lien, assuming that the insurance carrier can prove that they are ERISA certified. The anticipated amount of such a lien is approximately \$2,500.00;
3. Plaintiff stipulates that the value of this claim is not greater than \$74,999.99, and;
4. If Plaintiff Virginia J. Kesting is awarded an amount in excess of \$74,999.99 she will not seek to enforce the excess judgment.

(*Id.*)

Defendants argue, based on *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283 (1938), that the Court must consider only the amount in controversy alleged in the Complaint. (Doc. No. 4 at 9.) Defendants argue that based upon the Third Circuit's decision in *Angus v. Shiley, Inc.*, 989 F.2d 142 (3d Cir. 1993), Plaintiff's Stipulation has no legal significance and cannot operate to destroy federal jurisdiction. *See id.* at 145 (plaintiff's "stipulation that her damages do not exceed \$50,000 has no legal significance because a plaintiff following removal cannot destroy federal jurisdiction simply by amending a complaint that initially satisfied the monetary floor" (citing *St. Paul Mercury Indem. Co.*, 303 U.S. at 293-94)).

Significantly however, the Third Circuit in *Angus v. Shiley* also indicated that there could be exceptions to the above rule when a complaint is ambiguous. The Court explained that "it is conceivable that a court justifiably might consider a subsequent stipulation as clarifying rather than amending an original pleading. There is, after all, a distinction between explaining and amending a claim." *Angus*, 989 F.2d at 145 n.3; *see Meritcare Inc. v. St. Paul Mercury Ins. Co.*,

166 F.3d 214, 223 (3d Cir. 1999) (citing *Angus* with approval), *overruled on other grounds by Exxon Mobil Corp. v. Allapattan Servs., Inc.*, 125 S.Ct. 2611 (2005). This exception clearly applies to the instant matter. Plaintiff's Complaint did not specify an exact amount of damages, nor did it demand damages in excess of the federal jurisdictional amount. Instead, Plaintiff's Complaint demanded damages in excess of \$50,000 and Defendants removed based on speculation that the actual amount in controversy would exceed \$75,000. We consider Plaintiff's Stipulation that she has no wage loss, that the medical expenses are only approximately \$2500, that the value of the claim is not in excess of \$74,999.99, and that she will not seek to recover any more than this amount to be a clarification of the original Complaint and not an amendment to it. *Cf. Reiff v. Convergent Techs.*, Civ. A. No. 95-3575, 1995 WL 619944, at *5 n.4 (D.N.J. Oct. 20, 1995) (distinguishing case from exception detailed in *Angus* where plaintiff was unwilling to waive claim in excess of jurisdictional amounts). Accordingly, we conclude that it appears to a legal certainty that the Plaintiff cannot recover the minimum jurisdictional amount required for federal jurisdiction to attach. We are therefore compelled to remand for lack of subject matter jurisdiction. *St. Paul Mercury Indem. Co.*, 303 U.S. at 289; 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."). Plaintiff's Motion to Remand will be granted.

An appropriate Order follows.

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ORDER

AND NOW, this 4th day of August, 2006, upon consideration of Plaintiff's Motion To Remand (Doc. No. 3) and Defendants' response thereto, it is ORDERED that the Motion is GRANTED. The Clerk is directed to remand this matter to the Court of Common Pleas of Philadelphia County.

IT IS SO ORDERED.

BY THE COURT:

S/R. Barclay Surrick

R. Barclay Surrick, Judge