

This clause literally does not apply to the instant dispute as it is undisputed that the amount in controversy exceeds \$100,000. Plaintiff contends, however, that the clause contains a typographical error and should read "the total amount of such dispute does exceed \$100,000." To support this proposition plaintiff points to the preceding paragraph which provides that any dispute not in excess of \$100,000 shall be resolved by final and binding arbitration. Plaintiff suggests that it would be inconsistent for both paragraphs to address claims "not in excess of \$100,000" and the parties intended that any dispute in excess of \$100,000 be resolved in the Court of Common Pleas of Schuylkill County.

The existence of jurisdiction is determined by statute and not by contract. The Court clearly has subject matter jurisdiction. Plaintiff also has identified no procedural defect in the removal. Thus, a remand is not authorized pursuant to § 1447(c). It also, however, is not prohibited. Courts may remand cases based on a forum selection clause under a waiver theory. See Foster v. Chesapeake Ins. Co., Ltd., 933 F.2d 1207, 1215-17 (3d Cir. 1991).

The clear language of the clause at issue, however, plainly limits its applicability to claims not exceeding \$100,000. Plaintiff has never sought or obtained a reformation of the contract to reflect the purported intent of the parties,

and such requires proof by clear and convincing evidence that as the result of a mistake the writing does not reflect the actual intent of the parties. See International Union of Electronic, Elec., Salaried, Machine and Furniture Workers v. Murata Erie North America, Inc., 980 F.2d 889, 907 (3d Cir 1992).

The arbitration provision and forum selection clause are not necessarily irreconcilable. As defendant suggests, disputes can and do arise about the enforceability of particular arbitral awards which must be resolved by a court. Parties may also designate a court for purposes of entry of a judgment upon an arbitral decision and for resolution of any subsequent dispute regarding satisfaction or execution upon a judgment.

ACCORDINGLY, this day of June, 1999, upon consideration of plaintiff's Motion for Remand (Doc. #9) and defendants' response, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.