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

JUANITA SIMPKINS, ET AL.	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 04-CV-3803
	:	
MICHAEL STRZALKO	:	

SURRICK, J. **MAY 16, 2005**

MEMORANDUM & ORDER

Presently before the Court is Plaintiffs' Motion for Reconsideration of the Dismissal of Plaintiffs' Complaint for Lack of Subject Matter Jurisdiction. (Doc. No. 14.) For the following reasons, Plaintiffs' Motion will be denied.

I. BACKGROUND

On or about February 4, 2003, Plaintiff Juanita Simpkins was driving her vehicle in Essington, Pennsylvania. (Compl. ¶ 12.) Plaintiffs Hubert Clarke, Angela Simpkins, Ta'china Chamberlain, and Kathleen Clarke were passengers in her vehicle. (*Id.* ¶¶ 13-16.) While Juanita Simpkins's car was stopped in traffic, a vehicle driven by Defendant Michael Strzalko struck Plaintiffs' car from behind. (*Id.* ¶¶ 18-19.) As a result of the impact, Plaintiffs suffered various injuries. (*Id.* ¶¶ 23, 26, 29, 30, 33.) Plaintiffs filed the Complaint in this action on August 11, 2004. Defendant filed a Motion to Dismiss Plaintiffs' Complaint for Lack of Subject Matter Jurisdiction (Doc. No. 8), which was granted on April 4, 2005. *Simpkins v. Strzalko*, Civ. A. No. 04-CV-3803, 2005 U.S. Dist. LEXIS 5715 (E.D. Pa. Apr. 4, 2005). Plaintiffs then filed the instant Motion for Reconsideration. (Doc. No. 14.)

II. LEGAL STANDARD

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). Courts should grant these motions sparingly, reserving them for instances when: (1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to correct a clear error of law or fact or to prevent manifest injustice. *See, e.g., Temple Univ. v. Brown*, Civ. A. No. 00-CV-1063, 2001 U.S. Dist. LEXIS 13495, at *8 (E.D. Pa. Aug. 24, 2001); *Gen. Instrument Corp. v. Nu-Tek Elecs.*, 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), *aff'd*, 197 F.3d 83 (3d Cir. 1999).

III. LEGAL ANALYSIS

In granting Defendant's Motion to Dismiss, we concluded that none of the Plaintiffs had demonstrated that the matter in controversy exceeded $75,000, as required by 28 U.S.C. § 1332(a). After explaining that the Plaintiffs may not aggregate their separate and distinct claims, we determined that it appeared to a legal certainty that Plaintiffs' individual claims were less than the required $75,000. *Simpkins*, 2005 U.S. Dist. LEXIS 5715, at *3-5. In reaching this conclusion, we relied in part on Plaintiffs' Supplemental Joint Case Report (Doc. No. 9), which detailed the settlement demand for each Plaintiff as follows: (1) Juanita Simpkins – $20,000; (2) Angela Simpkins – $12,000; (3) Ta'china Chamberlain – $5,000; (4) Hubert Clarke – $50,000; and (5) Kathleen Clarke – $22,500. (*Id.*)

Plaintiffs' Motion for Reconsideration asserts that the Court made a clear error of law when it dismissed their claims based on the settlement demands contained in the Supplemental Joint Case Report. Plaintiffs argue that they should be allowed to proceed with their claims

because "Plaintiffs supplied settlement demands in the Supplemental Joint Case Report for the limited purpose of settlement negotiations." (Doc. No. 14 ¶ 11.) Plaintiffs contend that despite the amount of these settlement demands, "plaintiffs clearly value their claims at trial above the jurisdictional limits."[1] (*Id.* ¶ 10.)

Under Federal Rule of Civil Procedure 12(b)(1), a court must grant a motion to dismiss if it lacks subject matter jurisdiction over the case. Fed. R. Civ. P. 12(b)(1). In reviewing the basis for its jurisdiction, a district court "may examine the complaint, the parties' memoranda, the settlement negotiation history of a case, and the representations made by the parties during those negotiations." *Faulkner v. Astro-Med, Inc.*, No. C 99-2562 SI, 1999 U.S. Dist. LEXIS 15801, at *7-8 (N.D. Cal. Oct. 4, 1999); *see also Dempsey v. Fed. Express Corp.*, Civ. A. No. 01-CV-3229, 2001 U.S. Dist. LEXIS 17942, at *5-6 (E.D. Pa. Nov. 2, 2001). Clearly, Plaintiffs' settlement demands were properly considered in assessing the value of Plaintiffs' individual claims. *See Simpkins*, 2005 U.S. Dist. LEXIS 5715, at *5 ("Because district courts must strictly construe the amount in controversy requirement, we give great weight to Plaintiffs' valuation of their individual cases."). Moreover, a review of the medical reports from Hubert Clarke's doctors also supports the conclusion that Plaintiffs are not able to satisfy the amount in controversy requirement. "A Rule 12(b)(1) motion may be treated as either a facial or factual challenge to the court's subject matter jurisdiction."[2] *Gould Elecs., Inc. v. United States*, 220

[1]Plaintiffs' Memorandum of Law in support of the motion for reconsideration cites no legal authority whatsoever.

[2]A facial challenge attacks the sufficiency of the averments in a plaintiff's complaint, while a factual challenge questions the existence of a court's subject matter jurisdiction over a plaintiff's claims. *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977).

F.3d 169, 176 (3d Cir. 2000). Here, Defendant raises a factual challenge because he questions the existence of the court's subject matter jurisdiction over Plaintiffs' claims. When a defendant raises a factual challenge, "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977).

Of the five Plaintiffs, the injuries to Hubert Clarke are apparently more serious than those of the other Plaintiffs. This is reflected in his settlement demand of fifty thousand dollars ($50,000).[3] Notwithstanding the fact that this amount comes closer to satisfying the jurisdictional requirement than the settlement demands of the other Plaintiffs, the evidence presented by this Plaintiff fails to establish subject matter jurisdiction over his claim. Plaintiff Hubert Clarke asserts that as a result of the accident, he incurred $20,037.51 in unpaid medical bills (Pls.' Resp. in Opp'n to Mot. to Dismiss, Doc. No. 12, Ex. H), and that he experienced pain and suffering, mental anguish, and loss of life's pleasures. (Compl. ¶¶ 30g-i.) Initially, we would note that a significant portion of Clarke's medical expenses are attributable to physical therapy.[4] Moreover, merely pleading harm such as pain and suffering is insufficient to invoke this Court's jurisdiction. S*ee Nelson v. Keefer*, 451 F.2d 289, 294 (3d Cir. 1971); *see also*

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[3]As mentioned above, Juanita Simpkins, Angela Simpkins, Ta'china Chamberlain, and Kathleen Clarke each place the value of their claim at $22,500 or less. None of these Plaintiffs points to anything in the record that would demonstrate that the settlement demand reflected anything other than a realistic assessment of what they could recover at trial.

[4]The records submitted by Plaintiff's counsel reflect that Clarke received $9,735.48 worth of physical therapy, with the last physical therapy session being on May 29, 2003. (Doc. No. 12 Exs. H, L.) The record also reflects that Plaintiff received treatment at Crozer-Chester Medical Center on three separate days within one month after the accident, February 13, 2003, February 14, 2003, and March 5, 2003. (Doc. No. 12 Ex. H.) The total bill for that three days of treatment was $12,170. (*Id.*)

McDonald v. Landrum, 48 F. Supp. 2d 450, 452 (D. Del. 1999) ("[W]hile a federal court must of course give due credit to the good faith claims of the plaintiff, a court would be remiss in its obligations if it accepted every claim of damages at face value . . . ." (quotation omitted)).

When Plaintiff Clarke went to the emergency room on February 4, 2003, the day of the accident, he complained to Gregory P. Cuculino, M.D., of "some mild anterior head pain" but stated that there was "no neck pain or numbness or tingling." (Doc. No. 12 Ex. K.) Dr. Cuculino indicated that there was no reproducible neck tenderness and no reproducible back pain. Plaintiff was discharged with a diagnoses of "minor head injury" and "cervical strain." (*Id.*)

On March 24, 2003, Vidyadhar S. Chitale, M.D., F.A.C.S., submitted a report to Plaintiffs' treating physician. (Doc. Nos. 8 Ex. F, 14 Ex. B.) The report indicated that Plaintiff Clarke had been having some neck and left shoulder pain related to the accident, but that as a result of physical therapy three times per week, the pain had been reduced by fifty (50) percent. Dr. Chitale also indicated that Plaintiff denied having lower back pain and denied having radiating of pain into the arms. Dr. Chitale anticipated that another four (4) to six (6) weeks of physical therapy would resolve Plaintiff's problems. He also noted that spondylotic ridges and disc protrusions shown on MRI were age appropriate and resulted from spondylotic disease which existed prior to the accident.[5]

In September of 2003, John William Boor, M.D., performed a neurological evaluation of Plaintiff Clarke and reported to Dr. Bunt as follows: "I performed an extensive data review of the chart and conferred with the patient regarding the multiple diagnoses including cervical

[5]Plaintiffs' Complaint does not allege that Clarke suffered from aggravation of a pre-existing injury or condition.

radiculopathy and herniated cervical disc. The patient symptoms had improved and he wishes to be discharged and I discharged him." (Doc. Nos. 8 Ex. D., 14 Ex. B.)

An independent medical examination was done by Scott H. Jaeger, M.D., P.C., a physician retained by Defendant. In his report dated October 22, 2004, Dr. Jaeger made the following observations with regard to Hubert Clarke:

> A review of imaging reveals that the patient had significant preexisting degenerative changes in his spine. These changes are quite severe and global and include both degenerative joint disease as well as degenerative disc disease. There is no evidence that any acute changes occurred as a result of the motor vehicle accident and . . . there is no evidence of any persisting neurological deficit as a result of the accident. Therefore, after careful consideration of the patient's history, the medical records, the post-injury imaging and the physical examination, it is my opinion, with a reasonable degree of medical certainty, that this patient has recovered completely from any and all injures [sic] that he may have suffered as a result of the February 4, 2003 accident, that he has no permanent limitations and that he needs no further medical treatment. In addition, there is no evidence that there has been any significant progression of his preexisting degenerative spinal conditions as a result of this motor vehicle accident.

(Doc. Nos. 8 Ex. B, 14 Ex. B.) Plaintiff fails to counter Dr. Jaeger's assessment with any medical evidence. Moreover, Clarke testified in his deposition that notwithstanding the cervical strain, there is nothing that he cannot do now that he could do before the accident. (Clarke Dep. at 60.) After reviewing Plaintiffs' settlement demands, the Complaint, the medical reports submitted by counsel, and the deposition testimony, we are again compelled to conclude that "it appears to a legal certainty that Plaintiffs' claims are, in fact, less than $75,000."[6] *Simpkins*, 2005 U.S. Dist. LEXIS 5715, at *5. Accordingly, we will deny Plaintiffs' Motion for Reconsideration.

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[6]We note that "'legal certainty' does not require absolute certainty." *Flail v. Travelers Cos.*, Civ. A. No. 98-1254, 1998 U.S. Dist. LEXIS 15964, at *4 (E.D. Pa. Oct. 6, 1998).

An appropriate Order follows.

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ORDER

AND NOW, this 16th day of May, 2005, upon consideration of Plaintiffs' Motion for Reconsideration of the Dismissal of Plaintiffs' Complaint for Lack of Subject Matter Jurisdiction (Doc. No. 14, 04-CV-3808), and all papers submitted in support thereof, it is ORDERED that the Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge