

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>BRIAN IPJIAN AND BARBARA</b>	:	
<b>IPJIAN, H/W, AND AS PARENTS AND</b>	:	
<b>NATURAL GUARDIANS OF THEIR</b>	:	
<b>MINOR CHILDREN, THERESA</b>	:	
<b>IPJIAN, BRIANNA IPJIAN, ALAINNA</b>	:	
<b>IPJIAN, AND REBECCA IPJIAN,</b>	:	
<b>Plaintiffs</b>	:	
	:	<b>CIVIL ACTION NO. 1:CV-02-2117</b>
<b>v.</b>	:	<b>(Judge Kane)</b>
	:	
<b>RONALD D. CONAWAY, and CTS</b>	:	
<b>CAPITAL CORPORATION,</b>	:	
<b>Defendant</b>	:	

**MEMORANDUM AND ORDER**

\_\_\_\_\_ Before the Court is Defendants’ motion to reconsider this Court’s order remanding the above-captioned case to the Court of Common Pleas of Dauphin County Pennsylvania. The motion is ripe for disposition. For the following reasons, the motion will be denied.

**I. Background**

Plaintiffs filed suit for personal injuries resulting from a car accident in Pennsylvania on November 20, 2001. Plaintiffs brought their case in the Court of Common Pleas of Dauphin County on October 23, 2002. Defendant Conanway filed notice of removal in this Court on November 20, 2002. Plaintiffs’ complaint established diversity of the parties and demanded damages in “an amount in excess of the compulsory arbitration limits, plus costs and interest.” Following an examination of the complaint and a telephone conference with the parities, this Court remanded the action to state court for lack of diversity jurisdiction based on an inadequate amount in controversy. Following the telephone conference but before the order of remand issued, Plaintiffs filed an amended complaint adding Defendant CTS Capital Corporation, a New Jersey company. Defendants now move for reconsideration of the remand.

## **II. Discussion**

Defendants request reconsideration of the motion to remand on two grounds. First, Defendants contend the jurisdictional amount in controversy is satisfied and removal based on diversity is proper since the amended complaint seeks an excess of \$75,000. Second, Defendants contend that at least one of the Plaintiffs meets the jurisdictional requirement, allowing this Court to exercise supplemental jurisdiction over the remaining claims regardless of the amount in controversy of each individual claim. Each argument will be considered in turn.

### **A. Jurisdictional Amount**

Federal courts have an obligation to address questions of subject matter jurisdiction sua sponte. Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 217 (3d Cir. 1999). Removal by Defendant is appropriate in “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). “The propriety of removal thus depends on whether the case originally could have been filed in federal court.” City of Chicago v. International College of Surgeons, 522 U.S. 156 (1997). A removed action must be remanded “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction.” 28 U.S.C. § 1447(c). Moreover, §1441 is to be strictly construed against removal to honor the congressional intent of restricting federal diversity litigation. Meritcare Inc., 166 F.3d at 217 (citing Nelson v. Keefer, 451 F.2d 289, 293-95 (3d Cir. 1971) (federal judiciary has been “too timid” in eliminating the “plethora of cases which do not belong in federal courts”). Accordingly, all doubts must be resolved in favor of remand. Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir.1990) (citations omitted). Having removed this action to federal court, Defendants bear the burden of demonstrating the facts establishing this Court's jurisdiction. McNutt v. General Motors Acceptance Corp., 298 U.S.

178, 189 (1936). The amount in controversy is measured as of the date of removal. Meritcare Inc., 166 F.3d at 216.

Where two or more plaintiffs have joined their claims in state court, the rule is “long-standing and seemingly well-settled . . . that the claims of several plaintiffs, if they are separate and distinct, cannot be aggregated for purposes of determining the amount in controversy.” Id. (citing 14B Wright, Miller & Cooper, Federal Practice and Procedure § 3704 at 134 (1994)). “This rule applies even if the plaintiffs have a community of interest, but fall short of establishing a single title or right in which they have a common and undivided interest.” Id. (citations omitted). In these cases, “the claims of those plaintiffs who fail to meet the amount in controversy must be remanded.” Id. In the present case, since Plaintiffs do not have common and undivided interests, their claims cannot be aggregated. Defendants, therefore, had the burden to show that diversity jurisdiction was proper by evidencing that each of the Plaintiffs’ claims exceed the \$75,000 requirement to establish diversity jurisdiction over the case. Defendant failed to do so and the case was remanded.

Moreover, Defendants failed to show that any one of the Plaintiffs, individually, met the \$75,000 jurisdictional amount in this case. At the time of removal, Plaintiffs’ complaint simply demanded judgment in “an amount in excess of the compulsory arbitration limits, plus costs and interest.” (Doc. No. 1, Exh. A). Generally, the damages clause of the complaint is used as reference point to ascertain the amount in controversy. Since many state court rules limit the amounts that may be recited in damages clauses, the clause is “little more than an open-ended claim that fails to answer the amount in controversy inquiry” Id. at 217. In cases involving claims for personal injuries, where damages are indeterminate prior to resolution on the merits by the fact-finder, the plaintiff’s demand supplies the presumptive, although not conclusive, amount

in controversy. See St. Paul Mercury Ins. Co. v. Red Cab Co., 303 U.S. 283, 291-92, 294 (1938). When there is no specific demand for damages in such cases, the court must independently appraise the plaintiff's claims and take the measure of the amount in controversy "by a reasonable reading of the value of the rights being litigated." Angus v. Shiley Inc., 989 F.2d 142, 145 (3d Cir. 1993) (citations omitted).

When Defendant filed for removal, Plaintiff's complaint contained no dollar amount at all. The Court requested a telephone conference with the parties to clarify the issue of amount in controversy. During the conference, Plaintiffs' attorney indicated that only one Plaintiff alone, if any, of the six individual Plaintiffs may be able to meet the jurisdictional requirement of damages in excess of \$75,000. This Court took the statement of Plaintiffs' counsel into consideration when it evaluated the rights being litigated in this case, but still came to the determination that Defendants had not shown that the jurisdictional requirements of § 1332 were met. Accordingly, Defendants failed to meet their burden of showing that the jurisdictional requirements could be met without aggregating the claims of all the Plaintiffs. Since the interests of each of the Plaintiffs are not undivided in the present case, aggregation of claims would be inappropriate.

After the telephone conference, but before the order to remand issued, Plaintiffs amended the complaint to add Defendant CTS Capital Corporation. In their amended complaint, Plaintiffs stated that jurisdiction was proper in federal court because the parties were diverse and the amount in controversy was in excess of \$75,000. This assertion in the amended complaint does not establish jurisdiction. The value of the individual claims and division of interest amongst the Plaintiffs remains the same in the amended complaint as it was in the original complaint.

Defendants, therefore, failed to demonstrate that the jurisdictional requirements for diversity were met for any Plaintiff, let alone every Plaintiff. Accordingly, Defendants' motion to reconsider must be denied on this ground.

**B. Supplemental Jurisdiction**

Alternatively, Defendants argue that they have shown at least one Plaintiff's claim meets the jurisdictional requirements of §1332 and therefore this Court may exercise supplemental jurisdiction over the claims of the others pursuant to 28 U.S.C. §1367. As discussed above, Defendants have not established that any Plaintiff's claim, standing alone, meets the jurisdictional requirements of §1332. On this basis alone, supplemental jurisdiction does not exist in this case. Assuming, arguendo, that one Plaintiff did make a claim in excess of \$75,000, this Court still could not exercise supplemental jurisdiction over the remaining claims. Under Third Circuit precedent, when jurisdiction is based solely on diversity of citizenship, a plaintiff with claims worth less than the jurisdictional amount for diversity cannot invoke supplemental jurisdiction based on a co-plaintiff's claims. Meritcare Inc., 166 F.3d at 218-221. Accordingly, Defendants' motion to reconsider the Court's order remanding the case for lack of jurisdiction must be denied on this ground.

Defendants have asserted insufficient grounds for granting reconsideration of the order to remand. The Court considered all avenues of jurisdiction when it remanded the case to the Court of Commons Pleas of Dauphin County Pennsylvania.

**IV. Order**

Accordingly, **IT IS ORDERED THAT** Defendants' motion to reconsider remand to the court of common pleas (Doc. No. 8) is **DENIED**. The Clerk of Court shall mail a certified copy of this Order to the Clerk of the Court of Common Pleas of Dauphin County, Pennsylvania and close the file.

s/ Yvette Kane  
Yvette Kane  
United States District Judge

Dated: February 13, 2003

Filed: February 13, 2003