IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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| ALBERT SNYDER, | * | |
| Plaintiff, | * | |
| v. | * | Civil Action No. RDB-06-1389 |
| FRED W. PHELPS, SR., *et al.*, | * | |
| Defendants. | * | |

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**MEMORANDUM ORDER**

Pending before this Court is a Motion for Reconsideration filed by the Defendants in the captioned matter, Fred W. Phelps, Sr., Shirley L. Phelps-Roper, Rebekah A. Phelps-Davis, and Westboro Baptist Church, Inc. (collectively, "Defendants"). On October 31, 2007, Defendants were found liable for $10.9 million in compensatory and punitive damages to the Plaintiff, Albert Snyder, for acts of intentional infliction of mental and emotional distress, invasion of privacy by intrusion upon seclusion, and civil conspiracy. Defendants subsequently filed a string of post-trial motions. In particular, Defendants filed a Motion for Remittitur, which this Court granted in part and denied in part. (Paper No. 242.) The jury's compensatory award of $2.9 million was upheld, but this Court granted Defendants' motion with respect to the punitive damages award, which was reduced from $8 million to $2.1 million. In the Memorandum Opinion that accompanied the Order (Paper No. 242), this Court rejected Defendants' argument that Maryland's statutory cap on noneconomic damages limited Plaintiff's recovery to $665,000 and refused Defendants' invitation to certify the question to the Court of Appeals of Maryland. In this Motion for Reconsideration, Defendants ask this Court to revisit its prior decision on both

grounds.

Defendants argue once again that *Cole v. Sullivan*, 676 A.2d 85 (Md. Ct. Spec. App. 1996), was incorrectly decided. *Cole* plainly held that Maryland's statutory cap on noneconomic damages, embodied in section 11-108 of the Courts and Judicial Proceedings Article, "does not apply to intentional torts, whether or not personal bodily injuries are involved." *Id*. at 92. Therefore, this Court found that the statutory cap did not apply because Defendants were found liable for intentional conduct. By reference, Defendants largely rely on arguments contained in their prior submissions to this Court. These arguments were considered and rejected by this Court in its prior Memorandum Opinion and will not be altered by a Motion for Reconsideration.

Defendants allege also that the statutory cap, as interpreted in *Cole* and applied to them in this case, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Defendants claim that section 11-108, insofar as it was passed to protect insurance companies, violates their equal protection rights. This argument is without merit. The Equal Protection Clause requires a very strong showing for this Court to invalidate non-suspect legislative classifications, especially when those classifications are economic in nature. *See, e.g., FCC v. Beach Communications, Inc*., 508 U.S. 307 (1993); *New Orleans v. Dukes*, 427 U.S. 297 (1976) (per curiam). Defendants make no showing as to how the classification, assuming it exists, fails rational basis review.

In the alternative, Defendants ask this Court to reconsider its refusal to certify a question to the Court of Appeals under section 12-603 of the Courts and Judicial Proceedings Article. This Court determined in its prior Memorandum Opinion that it did not have statutory authority to certify the question requested by Defendants because *Cole* is a "controlling appellate

decision" under the statute. *See In re Microsoft Corp. Antitrust Litig.*, 241 F. Supp. 2d 563 (D. Md. 2003) (finding that there is no statutory authority to certify a question to the Court of Appeals where the issue was directly addressed by the Court of Special Appeals). Defendants point to *United States v. Ambrose*, 06-438 (Md. February 20, 2008), decided only yesterday, in which the Court of Appeals issued a decision on two questions certified to it by this Court, even though the Court of Special Appeals had addressed the issues twice before. In this case, *Cole* is a controlling appellate decision, and this Court once again refuses to certify Defendants' suggested question on this ground. Nonetheless, even if this Court were able to certify the question, it would use its discretionary authority to refrain from doing so.

Accordingly, it is this 21st day of February 2008, hereby ORDERED that:

1. The Motion for Reconsideration filed by Fred W. Phelps, Sr., Shirley L. Phelps-Roper, Rebekah A. Phelps-Davis, and Westboro Baptist Church, Inc. (Paper No. 246) is DENIED; and
2. The Clerk of the Court transmit copies of this Memorandum Order to counsel of record and the *pro se* Defendants.

/s/
Richard D. Bennett
United States District Judge