IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
– Southern Division –

PATRICIA HALE-SAVOY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. AW-08-2163
	)	
HARRAH'S OPERATING COMPANY, INC., *et al.*,	)	
	)	
	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO REMAND

Defendants Harrah's Operating Company, Inc., Harrah's Entertainment, Inc., and Harrah's Hotel and Casino[1] ("Harrah's") hereby oppose Plaintiff's Motion to Remand this case to the Circuit Court for Prince George's County.

I. INTRODUCTION

Plaintiff's Motion to Remand is grounded on the unsupported assertions that her initial settlement demands in excess of $75,000 were the product of mere "chest thumping" and do not reflect the actual amount in controversy. Pl. Motion at ¶ 9. Plaintiff concedes that she "purposefully limited" her claim to $74,999, to prevent removal of this diversity action to federal court. *Id.* at ¶ 10. Plaintiff's calculated efforts to defeat removal jurisdiction through the manipulation of her damages claim must fail. Plaintiff's own words and actions in this case, along with the extent of the spinal injuries that she claims to have suffered as a result of Defendants' alleged negligence,

[1] The Complaint improperly named the Harrah's Hotel and Casino in Atlantic City as a defendant.

demonstrate that this case involves an amount far in excess of $75,000. Indeed, Defendants need only show that this case involves $1.01 more than the amount Plaintiff has alleged in her Complaint. Defendants have easily satisfied this burden.

II. JURISDICTIONAL FACTS

Plaintiff alleges in her Complaint that she was injured at an Atlantic City hotel and casino owned by Defendants when she tripped and fell down a single step while exiting a theater. On November 15, 2007, Plaintiff's counsel detailed the injuries that Plaintiff alleges were caused by her fall in a letter to Defendants' insurance adjuster. Ex. 1, Letter from Mr. Gillcrist to Ms. Grant, dated November 15, 2007. Plaintiff complained of and received treatment for a host of injuries, including several types of spinal injuries. *Id.* Plaintiff itemized her medical expenses up to that date, which totaled nearly $30,000. *Id.*

At some point prior to filing suit, Plaintiff's counsel made a settlement demand of $120,000. Plaintiff's Motion to Remand at ¶ 7 & n.1; Ex. 2, Email exchange between Mr. Gillcrist and Mr. Shaffer, dated August 18, 2008. This settlement demand was followed by a second demand for $90,000. *Id.* After these demands were rejected, Plaintiff filed suit against Harrah's in the Circuit Court for Prince George's County on June 23, 2008, and demanded in her Complaint a judgment in the amount of $74,999.

Defendants removed this action to this Court on August 18, 2008 after speaking with Plaintiff's counsel and hearing that Plaintiff had made an earlier settlement demand of $90,000, but might be willing to accept a counter-offer in the amount pleaded in the Complaint, $74,999.

III. STANDARD OF REVIEW

On a motion to remand, the court must "strictly construe the removal statute and resolve all doubts in favor of remanding the case to state court." *Richardson* v. *Phillip Morris Inc.*, 950 F. Supp. 700, 701-02 (D. Md. 1997) (internal quotation omitted); *see also Mulcahey* v. *Columbia Organic Chems. Co., Inc.*, 29 F.3d 148, 151 (4th Cir. 1994). The court determines diversity jurisdiction as of the date the suit was filed in state court and at the time of removal. *See, e.g., Porsche Cars N. Am., Inc.* v. *Porsche.net*, 302 F.3d 248, 255-56 (4th Cir. 2002); *Kessler* v. *Home Life Ins. Co.*, 965 F. Supp. 11, 12 (D. Md. 1997). Thus, even if "the plaintiff after removal, by stipulation, by affidavit, or by amendment of his pleadings, reduces the claim below the requisite amount, this does not deprive the district court of jurisdiction." *Gallagher* v. *Federal Signal Corp.*, 524 F. Supp. 2d 724, 726 (D. Md. 2007) (citing *St. Paul Mercury Indem. Co.* v. *Red Cab Co.*, 303 U.S. 283, 292 (1938); *see also Gardner* v. *AMF Bowling Ctr., Inc.*, 271 F. Supp. 2d 732, 733 (D. Md. 2003) (citing *St. Paul*).

The burden is on the defendant to support the exercise of jurisdiction when a case is removed from state court. *Delph* v. *Allstate Home Mortg., Inc.*, 478 F. Supp. 2d 852, 854 (D. Md. 2007).

IV. ARGUMENT

The diversity jurisdiction statute, 28 U.S.C. § 1332(a), provides federal jurisdiction over disputes between citizens of different States, "where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs." The parties do not dispute that they are diverse, only that the amount in controversy exceeds $75,000. In determining whether an amount in controversy is sufficient to confer

jurisdiction, this court applies one of two legal standards depending on whether the damages are specified or unspecified in the complaint. *Delph*, 478 F. Supp. 2d at 854.[2] "Where [as here] a plaintiff claims a specific amount in damages that is less than $75,000, removal is proper only if the defendant can prove to a 'legal certainty' that the plaintiff would actually recover more than that if she prevailed." *Gallagher*, 524 F. Supp. 2d at 726.

Despite Plaintiff's calculated attempt to preempt removal by claiming to seek only $74,999 in her Complaint, the Plaintiff's two pre-suit offers to settle her claim for $120,000 and then $90,000, respectively, demonstrate to a legal certainty that the amount in controversy exceeds $75,000. In addition, Plaintiff's post-suit indication, through counsel, that she would accept the sum of $74,999 to settle the case, coupled with evidence that she sustained serious and possibly permanent injuries, makes clear that Plaintiff values her case in excess of $75,000. Moreover, although Defendants dispute Plaintiff's claim, they nonetheless believe that if Plaintiff were to prevail, she would recover far in excess of $75,000.[3]

Plaintiff's initial settlement offers establish that she values her case at well more than $75,000 and provides a sufficient basis for subject matter jurisdiction.[4] Plaintiff

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[2] As noted in *Delph*, the Fourth Circuit has yet to weigh in on the appropriate standard to apply to determine the amount in controversy. While Defendants believe that the preponderance of the evidence standard should be applied, the evidence in this case makes clear that the case involves more than the jurisdictional minimum no matter what standard is applied.

[3] Indeed, had Plaintiff sought $75,000 as opposed to $74,999, the amount-in-controversy requirement of 28 U.S.C. § 1332(a) would still not have been met facially because the diversity statute provides for federal jurisdiction over matters between citizens of different States "where the matter in controversy ***exceeds*** the sum or value of $75,000." (Emphasis added.) Plaintiff's unnecessary use of the $74,999 figure underlines her manipulation of her damages request to deter and defeat removal in this case.

[4] This Court is not precluded by Federal Rule of Evidence 408 from considering Plaintiff's settlement offer to determine whether the jurisdictional amount-in-controversy requirement has been satisfied. *See Vermande* v. *Hyundai Motor America, Inc.*, 352 F. Supp. 2d 195, 202 (D. Conn. 2004)

acknowledges in her Motion to Remand that she sent letters to Defendants' insurance adjuster making two separate settlement demands in excess of $75,000. *See* Plaintiff's Motion at ¶ 7 & n.1. Indeed, Plaintiff first requested $120,000 and then $90,000 to settle her claim – $45,000 and $15,000 above the jurisdictional threshold, respectively. *Id.* Plaintiff's settlement demands are clear evidence that this case involves in excess of $75,000. *See Fairchild* v. *State Farm Mut. Auto. Ins. Co.*, 907 F. Supp. 969, 971 (M.D. La. 1995) ("Despite the plaintiffs' arguments to the contrary, the settlement letter is valuable evidence to indicate the amount in controversy at the time of removal.").

Plaintiff now attempts to downplay these settlement offers by arguing that they were part of a negotiating strategy. Plaintiff's Motion at ¶ 8. But Plaintiff at no point asserts that she in fact values her case at less than the jurisdictional threshold and presents no argument as to why this case should be valued at less than this amount. In fact, Plaintiff concedes that she "***purposefully limited*** her *ad damnum* clause [to $74,999]" to avoid the expense of litigating in federal court. Plaintiff's Motion at ¶ 10 (emphasis added). Plaintiff's telling use of the word "limited" again verifies that Plaintiff views her case as worth more than the jurisdictional minimum.

Plaintiff's argument that her initial settlement offers were inflated solely as a negotiating tactic does not defeat removal. In addition to conceding that Plaintiff has limited her claim in an attempt to defeat removal jurisdiction, Plaintiff maintains that she is willing to settle this case at $1.01 below the jurisdictional threshold – establishing that she continues to value her case at more than the requisite amount. Plaintiff's counsel stated in an email on August 18, 2008 to Defendant's counsel that "to be clear, the claim

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(observing that "most courts have sensibly concluded that Rule 408 does not prevent them from considering a settlement demand for purposes of assessing the amount in controversy" and citing authority).

is only for the amount prayed for in the Complaint, [$74,999] and I have conferred with my client and she will accept this amount to settle the claim." Ex. 2, Email from Mr. Gillcrist to Mr. Shaffer, dated August 18, 2008; *see also* Pl. Motion at 4 n.1. Plaintiff's statement that she is now willing to settle the case for $74,999 negates her claim that the amount in controversy does not exceed this amount. As several courts have recognized, a plaintiff's claim that the case can be settled for an amount at or near the jurisdictional threshold, is powerful evidence that the case involves an amount in excess of the jurisdictional threshold. *See e.g., Sayre* v. *Potts*, 32 F. Supp. 2d 881, 888 (S.D. W.Va. 1999).

In *Sayre*, the plaintiffs, in a motion to remand, stated that "this case can be settled *today* for less than $75,000," citing an offer to settle the case for $74,500 made after removal. The court rejected this argument, observing that:

> [S]uch an argument ignores the inherent nature of negotiations. Parties routinely offer and accept settlement amounts significantly below the total amount placed into controversy by the case in order to avoid the risks that accompany a trial. In determining their settlement figures, the parties calculate the probability of a plaintiff victory in connection with the potential damages that the plaintiff may recover at trial. Such calculations may result in substantial discounting and settlement figures below the jurisdictional amount even though the amount in controversy exceeds the statutory limit. Thus, it is entirely consistent that the amount in controversy exceed the jurisdictional requirement despite the fact that the parties are negotiating at levels below the limit.
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> Despite their arguments, the plaintiffs' post-removal settlement offer of $74,500-$500 below the statutory limit-does not prove that the action fails to satisfy the jurisdictional amount. To the contrary, such a settlement offer lends credence to the proposition that the amount in controversy at the time of removal actually exceeded the $75,000 threshold. "In order to allow for the hazards and

> cost of litigation, settlement offers routinely represent a discount from the damages plaintiffs will attempt to prove at trial."

Id. (citing *Mullins* v. *Harry's Mobile Homes, Inc.*, 861 F. Supp. 22, 24 (S.D. W.Va. 1994); *see also Stephens* v. *Mitsubishi Electric Automotive America, Inc.*, 2002 WL 551033, at *2 (E.D. Mich. 2002) ("For the same reasons, this Court finds that Plaintiff's settlement offers in this case, falling just a shade below the $75,000 jurisdictional threshold, tend to suggest that the amount in controversy actually exceeds this threshold."); *Hollon* v. *Consumer Plumbing Recovery Center*, 417 F. Supp. 2d 849, 854 (E.D. Ky. 2006) ("Further, the fact that Plaintiff attempted to settle the claim for less than the amount in controversy is not probative of the true amount because litigants often settle claims for less than the amount in controversy.") (citing *Stephens*); *Carnahan* v. *Southern Pacific R.R. Transp. Co.*, 914 F. Supp. 1430, 1431-32 (E.D. Tex. 1995) (finding that the jurisdictional threshold amount was met and observing that "[a]s economics help us understand, the rational amount for which one is willing to settle is generally less than the maximum jury award that is reasonably plausible at the conclusion of a successful trial.").

Plaintiff's reliance on *Delph*, *supra*, and *Conrad Associates* v. *Hartford Acc. & Indem. Co.*, 994 F. Supp. 1196, 1198 (N.D. Cal. 1998) is misplaced. Neither case involved repeated affirmations by the plaintiff that the case involved more than the jurisdictional minimum or settlement demands for amounts in excess of the jurisdictional threshold. The defendants in both *Delph* and *Conrad Associates* argued that their cases involved more than $75,000 based on the fact that the plaintiffs in those cases made unspecified claims for attorney's fees and punitive damages in addition to claims for

amounts well below the $75,000 threshold. The defendant in *Conrad Associates* estimated plaintiff's likely amount of attorney's fees in the matter and pointed to the average punitive damages award in the State of California.[5] The court appropriately found both estimates to be too speculative to support diversity jurisdiction. Similarly, this Court in *Delph* rejected defendants argument that a request for attorney's fees and punitive damages, without more, was sufficient to show that a claim for $35,851.95 met the jurisdictional threshold. Unlike *Delph* and *Conrad Associates*, there is substantial evidence showing that this case clearly involves more than $75,000. Plaintiff herself has demonstrated this fact.

Although Plaintiff has attempted to "limit" her claim in the initial pleading stage to frustrate Defendants' right of removal, she is not bound in state court by her allegation that she suffered $74,999 in damages because she can later seek to amend her Complaint – a likely scenario were this case to be remanded. *See* Maryland Rule 2-341. She may even seek leave to amend her Complaint after a jury verdict is returned. *Id.* (committee note). Moreover, if such an amendment were to be made more than one year after the initial filing date – a distinct possibility given the customary length of time to bring a case to trial by jury in state court – Defendants will have no ability to remove the case even though the requirements of subject matter jurisdiction would clearly be met. *See* 28 U.S.C. § 1446(b) (providing "that a case may not be removed on the basis of jurisdiction conferred by section 1332 of [title 28] more than 1 year after commencement of the action.").

[5] The court in *Conrad Associates* also declined to presume that the plaintiff's failure to stipulate that the claim was not worth more than $75,000 was evidence that the claim was in fact worth more than $75,000. The failure to enter into such a stipulation differs materially from affirmatively requesting amounts in excess of $75,000 to settle the case as was done in this case.

As of November 15, 2007, Plaintiff had incurred almost $30,000 in special damages in the form of medical bills. Ex. 2, Letter from Mr. Gillcrist to Ms. Grant dated November 15, 2007. Plaintiff has complained of and received medical attention for a wide-ranging list of ailments including, but not limited to, a cervical sprain, headaches, disc bulging, disc protrusion, disc degeneration, chronic low back pain, mid-foot sprain, tendonitis, and bone marrow edema potentially due to trauma. *See id.* Given these wide-ranging and substantial allegations of injuries, combined with Plaintiff's allegation that some of her injuries may be permanent, Complaint at 6, it is certain that if Plaintiff were to prevail in this case she would recover well in excess of $75,000.[6] *See Pease* v. *Medtronic, Inc.*, 6 F. Supp. 2d 1354, 1357 (S.D. Fla. 1998) (finding that defendant proved to a legal certainty that plaintiff's case against a manufacturer of pacemakers, which typically involved medical bills of less than $20,000, met the $75,000 threshold when considering the likely non-economic damages and claim for punitive damages).

In sum, the record in this case demonstrates that the amount-in-controversy requirement is satisfied, and removal was proper.

[6] Plaintiff has also alleged lost income, but has not yet itemized these losses. Complaint at 6.

V. CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff's Motion to Remand.

Dated: September 15, 2008

Respectfully submitted,

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