

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

BENJAMIN POLESIR	:	CIVIL ACTION
	:	
v.	:	
	:	
DAVID VASCONI, II	:	NO. 08-cv-04752-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

January 12, 2009

Confusion reigns. On October 3, 2008, plaintiff filed his complaint in this personal injury case, asserting a claim in excess of \$150,000. On November 6, 2008, defendant filed a motion to dismiss for lack of jurisdiction, asserting that plaintiff's claim could not possibly exceed the jurisdictional amount of \$75,000. Plaintiff has not responded to the defendant's motion, but it is far from clear that the motion has actually been served upon plaintiff or his counsel. Defendant's proof of service of the motion states that it was filed electronically in February 2008 (which seems quite unlikely). I therefore decline to grant the motion to dismiss as unopposed. I note, further, that the only basis for the defense claim that damages will not exceed \$75,000 is the alleged fact that, after the case was filed, plaintiff's counsel expressed a willingness to settle the case for \$65,000. Assuming that to be true, it certainly does not establish that, to a legal certainty, plaintiff's damages when the case was filed could not have been evaluated as in excess of \$75,000.

In short, defendant's motion will be denied. An Order follows.

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DAVID VASCONI, II : NO. 08-cv-04752-JF

ORDER

AND NOW, this 12th day of January 2009, IT IS ORDERED:

That the defendant's motion to dismiss for lack of
jurisdiction is DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.