UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

REBECCA GOETZ, et al., Plaintiffs, v. CAPITAL HEALTH SYSTEMS, INC., et al., Defendants.	CIVIL ACTION NO. 04-1662 (MLC) **MEMORANDUM OPINION**

THE PLAINTIFFS MOVING, in effect, pursuant to Federal Rule of Civil Procedure ("Rule") 60(b)(1) for relief from an order and judgment entered May 28, 2004 ("Order & Judgment") dismissing the complaint for lack of jurisdiction under 28 U.S.C. § ("Section") 1332;[1] and the Court deciding the motion on an expedited basis in the interest of justice;[2] and

THE PLAINTIFFS HAVING brought an action, inter alia, to recover damages for medical malpractice in federal court, and alleging jurisdiction under Section 1332 (Compl. at 2); and the Court having issued an order to show cause ("Order to Show Cause") as to why the complaint should not be dismissed for lack

[1] The plaintiffs' counsel moves "to vacate the Order" (Not. of Mot. at 1) without citing any rule or statute in support, suggesting that it consulted neither the Federal Rules of Civil Procedure nor the Local Civil Rules. In addition, the plaintiffs' counsel cites no case law in support of the motion.

[2] The plaintiffs' counsel neither set a return date nor sought relief on an expedited basis.

of jurisdiction on April 29, 2004 (dkt. entry no. 2); and the plaintiffs' counsel having failed to respond to the Order to Show Cause; and the Court having granted the Order to Show Cause in the Order & Judgment; and the Court having been concerned, as the plaintiffs are Pennsylvania citizens, that one of the defendants could be deemed a Pennsylvania citizen; and the Court having explicitly stated — in both the Order to Show Cause and the memorandum opinion ("Memorandum Opinion") accompanying the Order & Judgment — that the plaintiffs' counsel had failed to allege the citizenship of the defendants Capital Health Systems, Inc., Capital Health Systems Services, Lawrence Ob-Gyn Associates, P.C., and Laboratory Corporation of America (Ord. to Show Cause at 1-2, Mem. Op. at 2); and the Court having also explicitly stated therein that the plaintiffs' counsel had failed to allege the citizenship of the defendants Daniel Small and William Stanell, and noting that allegations on where these defendants were licensed and employed were insufficient (Ord. to Show Cause at 2, Mem. Op. at 2); and the Court specifically requiring, and providing guidance to, the plaintiffs' counsel to remedy these oversights (Ord. to Show Cause at 1-3, Mem. Op. at 1-3); and

THE PLAINTIFFS' COUNSEL NOW CLAIMING that "[o]n June 24, 2004 [it] received for the first time" the Order & Judgment and it "never received the Order to show cause until June 25, 2004" (Not. of Mot. at 1); and the plaintiffs' counsel claiming further

that it was "totally unaware" of the Order to Show Cause (Mem. in Supp. at 2); and the plaintiffs' counsel not addressing the Court's concerns as to jurisdiction under Section 1332; and

A PLAINTIFF MOVING for relief under Rule 60(b)(1) being required, inter alia, to (1) demonstrate "inadvertence, surprise, or excusable neglect," Fed.R.Civ.P. 60(b)(1), and (2) assert a defense on the merits against the underlying motion, see James v. Int'l Bus. Machs. Corp., No. 88-6285, 1991 WL 86918 (E.D. Pa. May 20, 1991)[3], Andrews v. Time, Inc., 690 F. Supp. 362 (E.D. Pa. 1988)[4], see also Lorenzo v. Griffith, 12 F.3d 23, 27 (3d Cir. 1993) (requiring Rule 60(b) movant to identify factual or legal errors in court's determination); and

THE PLAINTIFFS' COUNSEL ARGUING, in effect, that its "total unawareness" of the Order to Show Cause until June 24, 2004, constitutes inadvertence, surprise, or excusable neglect; and it

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[3] The James court denied a plaintiff's Rule 60(b) motion because, inter alia, even if the plaintiff "could demonstrate a sufficient legal basis to warrant Rule 60(b) relief for her prior attorney's failure to provide an adequate response to the motion for partial summary judgment, she must also assert a meritorious defense to that motion in order to prevail; she did not do so." 1991 WL 86918, at *3 (citations omitted).

[4] The Andrews court denied a plaintiff's Rule 60(b) motion because, inter alia, the plaintiff failed to show that a motion to dismiss — which was granted unopposed in the order from which the plaintiff sought relief — would have been denied on the merits if she had timely opposed. See 690 F. Supp. at 365.

being apparent that — as the Court issued the Order to Show Cause on April 29 — the plaintiffs' counsel failed to check the Court's docket for two months; and it appearing that the alleged failure to be aware of the Order to Show Cause for two months is not excusable in light of the access afforded to the docket by the Court's electronic-filing system, which has been in place for six months, see Fox v. Am. Airlines, 295 F. Supp. 2d 56, 59 (D.D.C. 2003) (stating parties have duty to monitor court's electronic docket); and the plaintiffs' counsel thus failing to show inadvertence, surprise, or excusable neglect; and

EVEN ASSUMING, ARGUENDO, that inadvertence, surprise, or excusable neglect has been demonstrated, it appearing that the plaintiffs' counsel has failed to assert a defense on the merits against the Order to Show Cause, i.e., stating the citizenship of each defendant to show jurisdiction under Section 1332; and the plaintiffs' counsel, now well-aware of the contents of the Order to Show Cause, the Memorandum Opinion, and the Order & Judgment, thus having failed to heed the Court's concerns and guidance provided therein; and the plaintiffs' counsel being advised that when choosing to proceed in federal court rather than state court, jurisdiction must be ascertained in good faith before commencing a federal action, see Techstar Inv. P'ship v. Lawson, No. 94-6279, 1995 WL 739701, at *4 (E.D. Pa. Dec. 8, 1995) (stating unsupported allegation of Section 1332 jurisdiction may

be violation of Rules 11(b)(2) and (c)(1)(B)), see also Cohen v. Kurtzman, 45 F. Supp. 2d 423, 436-38 (D.N.J. 1999) (granting Rule 11 motion for unsupported allegation of Section 1332 jurisdiction), Hussey Copper v. Oxford Fin. Group, 121 F.R.D. 252, 253-54 (W.D. Pa. 1987) (same); and

IT APPEARING that the plaintiffs' counsel may be concerned about the limitations period for commencing this action in state court, see N.J.S.A. § 2A:14-2 (stating two-year limitations period for medical-malpractice action in New Jersey), 42 Pa.C.S. § 5524 (stating same for Pennsylvania); and the Court, in the interest of justice, intending to modify the Order & Judgment — sua sponte, as the plaintiffs' counsel failed to seek such relief — to dismiss the complaint for lack of jurisdiction under Section 1332 without prejudice to the plaintiffs to re-commence the action in an appropriate state court by July 30, 2004; and for good cause appearing, a separate order and judgment will be issued.

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge