

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

STEPHEN WRIGHT : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA/CITY OF :
 PHILADELPHIA POLICE DEPT., ET AL. : NO. 00-5505

MEMORANDUM and ORDER

Hutton, J. March ,2001

Presently before this Court are Defendant Pennsylvania Financial Responsibility Assigned Claims Plan's Motion to Remand and/or to Dismiss (Docket No. 4), Plaintiff's Petition for Remand to State Court (Docket No. 5), Defendants Timoney, Anastasi, City of Philadelphia Police Department and the City of Philadelphia's Response to Codefendant Pennsylvania Financial Responsibility Assigned Claims Plan's Motion for Remand (Docket No. 6), City of Philadelphia, Timoney and Anastasi's Response to Plaintiff's Motion for Remand (Docket No. 8), and Plaintiff's Petition for Leave to Make Substitute Service on Defendant James Omak (Docket No. 12). For the following reasons, Defendant Pennsylvania Financial Responsibility Assigned Claims Plan's Motion to Remand and/or to Dismiss is **GRANTED** and Plaintiff's Petition for Remand to State Court and Plaintiff's Petition for Leave to Make Substitute Service are **denied as moot**.

I. INTRODUCTION

This case arises from an accident in which Plaintiff, while a

pedestrian, was struck by a motorist who was being chased by a Philadelphia Police Department Officer. A lawsuit was commenced in the Philadelphia Court of Common Pleas on October 13, 2000. On or about October 30, 2000, Defendants City of Philadelphia and its employees filed a petition to remove the case from the Philadelphia Court of Common Pleas to this Court. Jurisdiction was based on 28 U.S.C. § 1331. Pennsylvania Financial Responsibility Assigned Claims Plan (the "Plan"), a Defendant and movant in this instant Motion, was served with Plaintiff's Complaint on November 1, 2000. The Plan neither joined in the Petition for removal nor was aware of its filing. The Plan maintains that it did not and does not consent to removal. The Plan filed the instant motion to remand on November 21, 2000.

II. DISCUSSION

Section 1446(a) of 28 U.S.C. requires that "[a] defendant or defendants desiring to remove any civil action . . . shall file . . . a notice of removal" See 28 U.S.C. § 1446(a). Despite the ambiguity of the term "defendant or defendants, it is well established that removal generally requires unanimity among defendants. See *Balazik v. Co. of Dauphin*, 44 F.3d 209, 213 (3d Cir. 1983); *Shepard v. City of Phila.*, No. CIV.A.00-6706, 2001 WL 92300, at *1 n. 1 (E.D. Pa. Jan. 31, 2001). The "unanimity rule" may be disregarded where a non-joining defendant is a nominal party. See *id.* To establish that a non-removing party is a

nominal party, the removing party must show that there is no possibility that the plaintiff would be able to establish a cause of action against the non-removing defendant in state court. See *Farias v. Bexar County Board of Trustees*, 925 F.2d 866, 871 (5th Cir. 1991); 955 F. Supp. 315, 310 (D. N.J. Nov. 8, 1996). Because removal statutes are an infringement on the power of the states, they "must be strictly construed in favor of state court jurisdiction." *Landman v. Borough of Bristol*, 896 F.Supp. 406, 408 (E.D.Pa. 1995) (citing *Boyer v. Snap-On Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990)). Accordingly, any doubts concerning the removal procedure should be resolved in favor of remand. *Id.* (same).

Here, Defendants Timoney, Anastasi, City of Philadelphia Police Department and the City of Philadelphia (the "Municipal defendants") assert that they did not need the Plan's consent to the removal of this matter because the Plan is a nominal defendant. The Municipal Defendants present several reasons why the Plan is a nominal defendant and the Court will discuss each reason.

First, the Municipal defendants assert that plaintiff makes no independent allegation of tortious conduct against the Plan. Rather, Plaintiff's claim against the Plan is reported to be pursuant to *Tubner v. State Farm Mutual Ins. Co.*, 436 A.2d 621 (Pa. 1981) and the Pennsylvania Motor Vehicle Financial Responsibility Act, 75 Pa.C.S.A. §1752. The Municipal Defendants fail to cite any

authority to support their contention that Plaintiff must assert a tort claim against a defendant in order for the defendant to be considered a defendant, rather than a nominal defendant. Here, Plaintiff claims that under Pennsylvania law, he may be eligible to recover benefits from the Plan. While the Plan has contested Plaintiff's claim, it is by no means certain at this point that Plaintiff is unable to establish a cause of action against the Plan. As a result, the Court cannot conclude that the Plan is a nominal defendant because it seeks uninsured motorist benefits.

Municipal defendants also assert that the Plan has specifically denied that it caused and/or contributed to the incident that is the subject of the Complaint and that the Plan has asserted an affirmative defense. The Court fails to see how the Plan's denial of Plaintiff's allegations renders it a nominal defendant and the Municipal Defendants fail to cite any authority to support this assertion.

The Court concludes that the removing parties have failed to show that there is no possibility that Plaintiff would be able to establish a cause of action against the Plan in state court.

An appropriate Order follows.

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ORDER

AND NOW, this day of March 2001, upon consideration of Defendant Pennsylvania Financial Responsibility Assigned Claims Plan's Motion to Remand and/or to Dismiss (Docket No. 4), Plaintiff's Petition for Remand to State Court (Docket No. 5), Defendants Timoney, Anastasi, City of Philadelphia Police Department and the City of Philadelphia's Response to Codefendant Pennsylvania Financial Responsibility Assigned Claims Plan's Motion for Remand (Docket No. 6), City of Philadelphia, Timoney and Anastasi's Response to Plaintiff's Motion for Remand (Docket No. 8), and Plaintiff's Petition for Leave to Make Substitute Service on Defendant James Omak (Docket No. 12), IT IS HEREBY ORDERED that Defendant Pennsylvania Financial Responsibility Assigned Claims Plan's Motion to Remand and/or to Dismiss is **GRANTED**.

IT IS FURTHER ORDERED that the above captioned case is **REMANDED** to the Philadelphia Court of Common Pleas.

IT IS FURTHER ORDERED that Plaintiff's Petition for Remand to State Court and Plaintiff's Petition for Leave to Make Substitute

Service on Defendant James Omak are **denied as moot.**

BY THE COURT:

HERBERT J. HUTTON, J.