

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

JOHN DANIELS : CIVIL ACTION
 :
 v. :
 :
 KOHL'S DEPARTMENT STORES, INC. :
 :
 v. :
 :
 DON THOMPSON ENTERPRISES : NO. 03-06024-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 15, 2004

Plaintiff is a citizen of Pennsylvania. The defendant is a citizen of Delaware. Without objection from plaintiff, defendant has joined Don Thompson Enterprises, a citizen of Pennsylvania, as a third-party defendant. Plaintiff has now filed a "Motion to Assert a Negligence Claim Directly Against Third-Party Defendant." Although the defendant has not responded to that motion, it is apparent that this court lacks subject matter jurisdiction over a claim by one Pennsylvania citizen against another predicated upon state law; and the supplemental jurisdiction statute, 28 U.S.C. § 1367, does not extend to "claims by plaintiffs against persons made parties under Rule 14 ..."

There are two possibilities: denying plaintiff's motion to file a direct claim against a third-party defendant, or remanding the case to the state court from which it was removed.

Counsel for the parties will be invited to express their views as to which alternative should be chosen.

An Order follows.

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AND NOW, this 15th day of November 2004, IT IS
ORDERED:

That counsel for the parties are invited to advise this court, within 10 days, whether they prefer to have the case remain in this court without a direct claim by plaintiff against the additional defendant, or to have the case remanded to the state court from whence it was removed.

BY THE COURT:

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