

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

MAJEK FIRE PROTECTION, INC. : CIVIL ACTION  
 :  
 v. : 03-3692  
 :  
 CARUSONE CONSTRUCTION, INC. and :  
 GREAT AMERICAN INSURANCE GROUP :

**MEMORANDUM AND ORDER**

**JOYNER, J.**

**June 13, 2006**

Via the letter submitted to this Court on May 2, 2006, Plaintiff seeks remand of this case to state court. For the reasons outlined below, the motion shall be denied.

**Background**

Plaintiff commenced this action in this Court on June 18, 2003, asserting diversity jurisdiction under 28 U.S.C. § 1332. Defendants filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(3) and 12(b)(6). After conducting some preliminary discovery, the parties stipulated that "the Court shall enter its Order granting the parties' motion to dismiss this civil action pursuant to Rule 12(b)(3) Fed. R. Civ. P. without prejudice to institute the same action in the Philadelphia Court of Common Pleas." (Stipulation signed January 7, 2004 (the "Stipulation").) Based on the Stipulation, this Court entered an Order on January 13, 2003 granting Defendants' motion to dismiss as a joint motion to dismiss the case without prejudice.

Plaintiff, by way of its letter of May 2, 2006, now asks this Court to "open this case and remand the matter to state court for consolidation with the other cases." Plaintiff apparently filed its state court complaint on December 2, 2004. Plaintiff complains that Defendants moved in state court to dismiss on the basis that the statute of limitations expired February 17, 2004. Although this motion was denied by the state court, Plaintiff fears that this defense may be asserted later in the proceedings, and seeks to have this Court re-open the case and take some action that would send this case directly to state court. Plaintiff apparently believes that such action by this Court would cure any statute of limitations defects.

#### **Discussion**

We treat Plaintiff's letter request as a motion to remand or transfer. Plaintiff, however, presents no legal authority - nor can we find any - supporting the assumption that this Court has the power to remand or transfer this case to state court.

This Court has no power or authority to "remand" this case to state court. A district court is empowered to remand a case or claims to a state court only where a case was removed from state court pursuant to federal statute. See 28 U.S.C. § 1441 et seq. This case was never removed from any state court such that it could be remanded. See McLaughlin v. Arco Polymers, Inc., 721 F.2d 426, 429 (3d Cir. 1983) (finding § 1447(c) inapplicable where the action was never removed from state court). Rather,

Plaintiffs initiated the case in this Court. Under such circumstances, we cannot remand this case to state court.

Even if we treat Plaintiff's request for remand as a motion to transfer, this Court has no authority to effect such transfer. While transfer to a more appropriate federal court for improper venue or want of jurisdiction may be available pursuant to federal law, no federal statute empowers a district court to transfer a civil action originally filed in federal court to a state court. See McLaughlin, 721 F.2d at 428-29 (finding that neither 28 U.S.C. § 1631 nor § 1447 gave a district court authority to transfer a case originally filed in that district court to any state court). Furthermore, while 42 Pa. C.S. § 5103 allows for transfer of a case from federal to state court where federal jurisdiction is found to be lacking, such power lies with the parties themselves, not with the district court.<sup>1</sup> Id. at

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<sup>1</sup>42 Pa. C.S.A. § 5103 provides as follows:

(b) FEDERAL CASES.--

(1) Subsection (a) shall also apply to any matter transferred or remanded by any United States court for a district embracing any part of this Commonwealth. In order to preserve a claim under Chapter 55 (relating to limitation of time), a litigant who timely commences an action or proceeding in any United States court for a district embracing any part of this Commonwealth is not required to commence a protective action in a court or before a magisterial district judge of this Commonwealth. Where a matter is filed in any United States court for a district embracing any part of this Commonwealth and the matter is dismissed by the United States court for lack of jurisdiction, any litigant in the matter filed may transfer the matter to a court or magisterial district of this Commonwealth by complying with the transfer provisions set forth in paragraph (2).

430-31. Thus, we have no authority to order the transfer of any case to the state court even where the state statute permitting such transfer applies. Rather, the parties are responsible for effecting transfer.

Here, the parties, in recognition of the absence of any power of this Court to transfer or remand, agreed to dismissal of this case pursuant to Rule 12(b)(3) so that the case could be re-initiated in state court. This was not a transfer as described by § 5103, because the basis of the dismissal was improper venue, not jurisdictional defect. The dismissal of this case on the basis of improper venue apparently excludes Plaintiffs from the relation-back protections of § 5103. Any statute of limitations difficulties that arise from Plaintiff's decision to stipulate to dismissal pursuant to Rule 12(b)(3) or to wait nearly a year to file in state court are now for that state court - not this Court - to resolve.

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(2) Except as otherwise prescribed by general rules, or by order of the United States court, such transfer may be effected by filing a certified transcript of the final judgment of the United States court and the related pleadings in a court or magisterial district of this Commonwealth. The pleadings shall have the same effect as under the practice in the United States court, but the transferee court or magisterial district judge may require that they be amended to conform to the practice in this Commonwealth. Section 5535(a)(2)(i) (relating to termination of prior matter) shall not be applicable to a matter transferred under this subsection.

### **Conclusion**

For the reasons set forth above, this Court is without authority to act as requested by Plaintiff, and Plaintiff's motion is, therefore, DENIED pursuant to the attached order.

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GREAT AMERICAN INSURANCE GROUP	:	

**ORDER**

AND NOW, this 13th day of June, 2006, upon consideration of Plaintiff's Motion to Remand or Transfer submitted by Letter of May 2, 2006, the motion is hereby DENIED for the reasons set forth in the preceding Memorandum Opinion.

BY THE COURT:

s/J. Curtis Joyner  
J. CURTIS JOYNER, J.