

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

WENDY L. BROWN, et al.,	:	CIVIL ACTION
	:	
Plaintiffs,	:	NO. 06-02868
	:	
v.	:	
	:	
LIBERTY MUTUAL FIRE INSURANCE,	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

Stengel, J.

October 19, 2006

Wendy L. Brown and David H. Brown ("Plaintiffs") filed an action in state court against their automobile insurer Liberty Mutual Group ("Liberty Group"). Further discovery revealed that the policy as issue was insured by a different group, Liberty Mutual Fire Insurance Company ("Liberty Fire"). Plaintiffs filed a second complaint against Liberty Fire, intending to join this complaint to the first complaint. Liberty Fire removed the second case to federal court before this could be accomplished. Plaintiffs' motion to remand the Liberty Fire case is now before this court. For the reasons described below, I am required to deny the motion.

I. BACKGROUND

Plaintiffs originally commenced this action by filing a complaint on June 12, 2006 against Liberty Fire in the Court of Common Pleas of Lehigh County, Pennsylvania, as Docket No. 2006-C-1694 (the "Liberty Fire Case"). Plaintiffs seek to recover benefits under an automobile insurance policy issued to them by Liberty Fire (the "Policy"), and

their complaint alleges claims for: (1) breach of contract; and (2) bad faith pursuant to 42 PA. CONS. STAT. § 8371.

The Liberty Fire Case is related to an action currently pending in the Lehigh County Court of Common Pleas. On May 12, 2004, Plaintiffs filed this earlier case against defendant Liberty Mutual Group ("Liberty Group") in the Lehigh County Court of Common Pleas as Docket No. 2004-C-1252, and alleged the same claims under the Policy (the "Liberty Group Case"). Liberty Group's Answer in the Liberty Group Case stated that the Policy was not issued by Liberty Group. Instead, Liberty Group averred that the Policy had been issued by Liberty Fire, which was not a defendant in the Liberty Group Case.

On June 1, 2006, Plaintiffs and Liberty Group held a status conference in the Liberty Group Case before the Honorable Alan Black of the Lehigh County Court of Common Pleas. This status conference led Liberty Fire's counsel to believe that Plaintiffs would simply add Liberty Fire as a defendant to the Liberty Group Case. Plaintiffs, however, allege that "despite the clear indication on Plaintiff's [sic] policy that it was issued by Liberty Mutual Group, in an abundance of caution, [Plaintiffs' counsel] would file a second Complaint naming [Liberty Fire as a defendant], which would then be joined by Motion to the original Complaint [in the Liberty Group Case]." Plaintiffs filed the separate Liberty Fire Case on June 12, 2006, and Liberty Fire removed that case

to this Court on June 30, 2006. According to Plaintiffs, Liberty Fire removed the case "before Plaintiff [sic] could file the Motion for Joinder." Plaintiffs filed the instant motion to remand on July 19, 2006.

II. STANDARD OF REVIEW

Defendants in state court actions have a statutory right to remove "any civil action brought in a state court of which the district courts of the United States have original jurisdiction . . . to the district court . . . embracing the place where such action is pending." 28 U.S.C. § 1441(a). Federal district courts have original (subject matter) jurisdiction over all civil actions between citizens of different states when the amount in controversy exceeds \$75,000.00, excluding interest and costs. See 28 U.S.C. § 1332(a). Complete diversity between all plaintiffs and defendants is required to remove a case on the basis of diversity jurisdiction. See Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996); Strawbridge v. Curtiss, 7 U.S. 267, 267–68 (1806).

A defendant may remove a case to an appropriate district court that has jurisdiction. 28 U.S.C. § 1441(a). The process for removal is governed by 28 U.S.C. § 1446. Removal statutes are "strictly construed against removal and all doubts should be resolved in favor of remand." Batoff v. State Farm Ins. Co., 977 F.2d 848, 851 (3d Cir. 1992) (quotation and citation omitted). The defendant bears the burden of establishing removal jurisdiction and demonstrating compliance with all pertinent procedural requirements. Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1991).

There are limited grounds for remand. If a federal court determines that it does not have subject matter jurisdiction over a removed action, or if the proper removal procedures were not followed by the defendant, the court must remand the action to state court. See 28 U.S.C. § 1447(c); Balazik v. County of Dauphin, 44 F.3d 209, 213 (3d Cir. 1995). Aside from these specific exceptions, cases that are properly within the federal court’s jurisdiction after removal “may not be remanded for discretionary reasons not authorized by the controlling statute.” Thermtron Prods., Inc. V. Hermansdorfer, 423 U.S. 336, 345 n.9 (1976).¹

III. DISCUSSION

A. Plaintiffs' Arguments

Plaintiffs seek to remand this case to state court by arguing that the Liberty Fire Case is "part and parcel" to the Liberty Group Case, and that the two actions essentially comprise one case. Plaintiffs' part and parcel argument² urges me to find that the Liberty Fire Case commenced on that date as well, despite the fact that this case began with a separate complaint filed more than two years after the Liberty Group Case commenced. Plaintiffs therefore contend that the Liberty Fire Case can not be removed pursuant to 28 U.S.C. § 1446(b), which provides that a case may not be removed on the basis of

¹In contrast, a district court has discretion to consider judicial economy, fairness to litigants, and procedural convenience in remanding supplemental state law claims under the doctrine of supplemental jurisdiction when all federal law claims drop out of the lawsuit and only pendant state law claims remain. Hewlett v. Davis, 844 F.2d 109, 116 (3d Cir. 1988).

²Plaintiffs do not support their “part and parcel” argument by reference to any caselaw or other authority.

diversity jurisdiction more than one year after being filed in state court.

Second, Plaintiffs argue that Liberty Fire has failed to meet the procedural requirements of removal because it did not attach to its notice of removal "a copy of all process, pleadings, and orders served upon [Liberty Fire]" in the Liberty Fire Case. See 28 U.S.C. § 1446(a). Specifically, Plaintiffs argue that Liberty Fire should have attached all of the section 1446(a) information from the Liberty Group Case, as well as the section 1446(a) information from the Liberty Fire Case, to the notice of removal in this case.

B. Liberty Fire Properly Removed This Case to Federal Court

Liberty Fire has properly removed this case to federal court. First, the Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.00. District courts look to the face of the complaint to determine if an action may be removed on the basis of diversity jurisdiction. See Levy v. Weissman, 671 F.2d 766, 767 (3d Cir. 1982). The face of the Complaint makes clear that Plaintiffs are domiciled in Pennsylvania, and that they are therefore citizens of the Commonwealth for diversity jurisdiction purposes. See 28 U.S.C. § 1332(a). The Complaint also states that Liberty Fire is a Massachusetts corporation, with its principal place of business in Boston, Massachusetts. Liberty Fire is therefore domiciled in Massachusetts and is a citizen of a different state than Plaintiffs. See 28 U.S.C. § 1332(c). Plaintiffs have demanded in excess of \$50,000.00 for each of their two claims in the Complaint. Accordingly, the

total amount in controversy in this case exceeds \$75,000.00, and the Court has subject matter jurisdiction on the basis of diversity. See id.

Second, Liberty Fire has met the procedural requirements of removal in this case. Liberty Fire is the only defendant named in this case, and therefore all of the defendants have joined in the notice of removal. See Balazik, 44 F.3d at 213 (holding that removal generally requires unanimity among all defendants). A "copy of all process, pleadings, and orders served upon" Liberty Fire in the Liberty Fire Case has been filed with its notice of removal. See 28 U.S.C. § 1446(a). Finally, Liberty Fire removed the case to federal court within 30 days of being served with the pleadings in state court and within the one year time limit imposed on diversity actions originally filed in state court. See 28 U.S.C. § 1446(b).

The Liberty Fire case is properly before this court because diversity jurisdiction is appropriate and there were no defects in the removal process. Therefore, this court does not have discretion to remand the case under 28 U.S.C. § 1447(c). See Thermtron Prods., 423 U.S. at 344-45 (holding that a district court had no discretion to remand a diversity case properly before it because the court had a crowded docket, even though the case involving an automobile accident arose entirely under state law); see also Feidt v. Owens Corning Fiberglas Corp., 153 F.3d 124, 128 (3d Cir. 1998) (emphasizing that judicial economy is not a valid basis for remand).

Moreover, in the abstention context, the Third Circuit has emphasized the “well

recognized” rule “that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction. The general rule regarding simultaneous litigation of similar issues in both state and federal courts is that both actions may proceed until one has come to judgment, at which point that judgment may create a res judicata or collateral estoppel effect on the other action.”” Ryan v. Johnson, 115 F.3d 193, 195 (3d Cir. 1997)(citations omitted). Federal courts have a “virtually unflagging obligation...to exercise the jurisdiction given them.” Id.³

The mere fact that the Liberty Group Case and the Liberty Fire Case seem to arise out of the same set of circumstances is irrelevant to my analysis. Plaintiffs had the opportunity to add Liberty Fire as a defendant in the Liberty Group Case in state court. Instead, they chose to file a separate action against Liberty Fire, and thereafter failed to consolidate the two cases before Liberty Fire removed the case to this Court. Accordingly, I find that the removal to federal court was proper, and I will deny the motion to remand.⁴

³The Third Circuit has emphasized that a pending related state case is no reason to stay a federal action. The Third Circuit overturned a district court’s ruling staying a federal action in favor of parallel state actions in related cases arising from a collapse of a roof. Spring City Corp. v. Bradeen, No. 98-105, 1998 U.S. Dist. LEXIS 3941 (E.D. Pa. Mar. 12, 1998) overruled by 193 F.3d 165 (3d Cir. 1999). In granting the stay, the district court emphasized that abstention was appropriate to avoid piecemeal litigation and adjudicate state law issues in state court. 1998 U.S. Dist. LEXIS 3941 at *14. While the Third Circuit stated that “[w]e cannot disagree that it would be more efficient to hold the federal cases in abeyance until the conclusion of the state case. But...abstention must be grounded on more than just the interest in avoiding duplicative litigation” and only “exceptional circumstances” justify abstention. 193 F.3d 171-72.

⁴I note that Plaintiffs may still voluntarily withdraw this case and, in accordance with the procedural rules of the Court of Common Pleas of Lehigh County, add Liberty Fire as a defendant to the Liberty Group Case in state court.

IV. CONCLUSION

Liberty Fire properly removed this case to federal court, and Plaintiffs' motion to remand is denied. An appropriate Order follows.

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v.	:	
	:	
LIBERTY MUTUAL FIRE INSURANCE,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 19th day of October, 2006, upon consideration of Plaintiffs' Motion to Remand (Docket No. 6) and Liberty Fire's response thereto, it is hereby **ORDERED** that the motion is **DENIED**.

BY THE COURT:

/s/ Lawrence F. Stengel _____

LAWRENCE F. STENGEL, J.