

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

<b>SHELLER, LUDWIG &amp; SHELLER, P.C.</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 06-CV-3806</b>
	:	
<b>CATALANO &amp; PLACHE, PLLC, <u>et al.</u></b>	:	

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**October 27, 2006**

In May 2005, Plaintiff Sheller, Ludwig & Sheller, P.C. (“Plaintiff”) commenced this action in the Court of Common Pleas of Philadelphia. On August 25, 2006, Defendants removed the action to federal court. Now before the Court is Plaintiff’s Motion for Remand. For the reasons that follow, the Motion will be denied.

**I. Background**

On or about May 19, 2005, Plaintiff filed a Writ of Summons in the Court of Common Pleas. See Plaintiff’s Motion for Remand, at ¶ 3. On November 8, 2005, Defendants sought to remove the action to this Court on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332. Id. at ¶ 4. Plaintiff subsequently filed a motion for remand. Id. at ¶ 5. On July 12, 2006, this Court granted Plaintiff’s motion for remand, finding that since a complaint had not yet been filed, removal was premature. Plaintiff filed and served a complaint on August 14, 2006. On August 25, 2006, Defendants removed the action to federal court on the basis of diversity jurisdiction.

Plaintiff alleges that Defendants’ second Notice of Removal was untimely because it was filed more than fifteen months after the commencement of Plaintiff’s state action. Defendants

argue that removal was timely because the 30-day limitations period did not begin to run until Plaintiff filed the complaint on August 14, 2006.

## **II. Legal Standard**

“A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal.” 28 U.S.C. § 1446(a). In the case of civil actions, the notice of removal must be filed

**within 30 days after receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court, and is not required to be served on the defendant, whichever is shorter.**

**If the case stated by the initial pleading is not removable,** a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

28 U.S.C.A. § 1446(b) (emphasis added).

## **III. Discussion**

Defendants argue that their notice of removal was timely because it was filed within 30 days of the service of the complaint. Plaintiff responds that the limitations period was triggered by the filing and service of the Writ of Summons on May 19, 2005, rendering Defendants’ second removal notice untimely. See Motion for Remand, ¶¶ 1-2, 9-10. Plaintiff relies on the second paragraph of § 1446(b), which states in pertinent part that “a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title [i.e. diversity jurisdiction] more than 1

year after commencement of the action.

The Third Circuit's holding in Sikirica v. Nationwide Ins. Co., 416 F.3d 214, 222-23 (3d Cir. 2005) is dispositive of this issue. In that case, the Court held that a writ of summons does not constitute an "initial pleading" that triggers the 30-day period for removal under 28 U.S.C. § 1446(b). Rather, it was the complaint that provided notice of the basis for diversity jurisdiction. See id. at 223. The Court further held that if the initial pleading sets forth the grounds for removal, the second paragraph of § 1446(b) does not apply. See id. at 220-21. See also Marchiori v. Vanguard Car Rental USA, Inc., 2006 WL 724445, at \*1 (E.D. Pa. March 17, 2006). In so concluding, the Court sought to shield defendants from having to "decide whether to remove without seeing the complaint or knowing the nature of the cause of action." Sikirica, at 222-23.

Applying the Sikirica holding to the facts at bar, it is clear that Plaintiff's Writ of Summons did not trigger the 30-day removal period. The limitations period did not begin to run until the filing of the complaint on August 14, 2006. Accordingly, Defendants' Notice of Removal, filed on August 28, 2006 – well within the 30-day period – was timely. Finally, because the complaint provided notice of the grounds for federal diversity jurisdiction, the second paragraph of § 1446(b) does not apply. See Sikirica, 416 F.3d at 223; see also Gladkikh v. Lyle Industries, Inc., 2006 WL 266100, at \*2 (M.D. Pa. Feb.1, 2006) (following the holding in Sikirica and rejecting plaintiff's argument that writ of summons provided adequate notice of diversity of the parties); Mulrine v. Air Contact Transport, Inc., 2006 WL 2598013, at \*1 (E.D. Pa. Sept. 11, 2006).

Plaintiff does not dispute that complete diversity exists in this action, nor that the amount in controversy exceeds \$75,000. See Memorandum in Support of Motion for Remand, at 4.

Opposition to removal rests solely on the basis of its alleged untimeliness. Having concluded, however, that Defendants' Notice of Removal was timely-filed, no basis for remand exists.

#### **IV. Conclusion**

Because Defendants' Notice of Removal filed on August 28, 2006 satisfies the requirements of 28 U.S.C. § 1446(b), Plaintiff's Motion for Remand will be denied. An appropriate Order follows.

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<b>CATALANO &amp; PLACHE, PLLC, <u>et al.</u></b>	<b>:</b>	

**ORDER**

**AND NOW**, this 27<sup>th</sup> day of October, 2006, upon consideration of Plaintiff's Motion for Remand (docket no. 6), and all responses thereto, and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Motion is **DENIED**.

**BY THE COURT:**

/s/ Bruce W. Kauffman  
**BRUCE W. KAUFFMAN, J.**