

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

<b>JOHN MANGANO,</b>	:	<b>CIVIL ACTION</b>
	:	
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>ALICIA HALINA,</b>	:	
	:	
<b>Defendant.</b>	:	<b>NO. 97-1678</b>

**MEMORANDUM**

**Reed, J.**

**November 3, 1997**

Before the Court is plaintiff John Mangano's petition to remand this case to the Court of Common Pleas of Philadelphia County (Document No. 3) where Mangano originally filed this motor vehicle personal injury case. Because I find that defendant Alicia Halina's notice of removal was untimely and that Halina did not satisfy her burden to establish that the amount in controversy in this case meets the jurisdictional requirements of 28 U.S.C. § 1332 by a preponderance of the evidence, this case will be remanded to the Court of Common Pleas.

**I. BACKGROUND**

In December of 1994, Mangano and Halina were involved in a car accident in the vicinity of Front and Reed Streets in Philadelphia, Pennsylvania. Mangano commenced suit against Halina by filing a praecipe for a writ of summons in the Court of Common Pleas of Philadelphia County on November 27, 1996. The praecipe, the writ of summons, and the civil cover sheet were served on Halina on November 30, 1996. (Def.'s Notice of Removal ¶ 1; Def.'s

Response to Petition to Remand at ¶ 3). Mangano did not file and serve the complaint, however, until February 18, 1997. The writ of summons contained the diverse state residential addresses of the parties and a statement that the case was listed as “major non-jury case.” In the civil cover sheet, Mangano certified that the amount in controversy exceeded \$50,000.<sup>1</sup>

On March 7, 1997, Halina filed a notice of removal to this Court based on its diversity jurisdiction, in which she alleged that the parties were of diverse citizenship and that Mangano’s complaint sought damages “in excess of fifty thousand dollars [sic](\$75,000).” (Def.’s Notice of Removal at ¶ 4). Mangano then petitioned to remand the case to state court alleging that Halina’s filing of her notice of removal was not timely.

In order to effect removal to a federal district court, a defendant must satisfy the procedural requirements of 28 U.S.C. §§ 1441 and 1446, as well as establish that the federal court has jurisdiction over the case. Halina’s attempts to clear each of these hurdles will be discussed in turn.

## **II. TIMELINESS OF THE NOTICE OF REMOVAL**

Any civil action may be removed to the federal district court in the district where the action is pending if the district court would have had original jurisdiction over the matter. See 28 U.S.C. § 1441(a). One basis for removal is diversity jurisdiction. To establish diversity jurisdiction under 28 U.S.C. § 1332, diversity of citizenship and an amount in controversy in

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<sup>1</sup> Under Pennsylvania law, Mangano was required to allege in the pleading whether damages were in excess of \$50,000 to signal if the case should be assigned to compulsory arbitration. See Pa. R. Civ. P. 1021(c); Pl.’s Mem. of Law in Support of Petition to Remand at 2.

excess of the jurisdictional amount are required. There is a limited window of time, however, during which removal is permissible. 28 U.S.C. § 1446(b) provides that:

[t]he notice of removal of a civil action or proceeding shall be filed within thirty days after the 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 period is shorter.

Mangano claims that the writ of summons should count as the “initial pleading” referenced in § 1446(b) because it listed the diverse residential addresses of the parties and that it was a “major non-jury case,” indicating that damages exceeded \$50,000. Thus, Mangano argues, because Halina was on notice that the case met the diversity jurisdictional requirements, the thirty-day period began to run on November 30, 1996, when the summons were served. Halina counters that the thirty-day period did not begin until Mangano served the complaint on February 18, 1997, because the summons were insufficient to put her on notice that the case met the jurisdictional requirements of § 1332.

The inquiry into what documents trigger the thirty-day period in § 1446(b) is not a new one. The Court of the Appeals for the Third Circuit addressed this recurring issue in Foster v. Mutual Fire, Marine & Inland Insurance Co., 986 F.2d 48, 49 (3d Cir. 1993).<sup>2</sup> After describing the split in authority between “subjective inquiry cases,” which held that the thirty-day period is triggered when the defendant has knowledge that the case is removable, and “bright

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<sup>2</sup> Even though Foster is a case from the Court of Appeals for the Third Circuit directly on point, neither party cited this case in their memoranda of law to this Court.

line cases,” which held that the summons can never constitute an initial pleading so as to trigger the thirty-day period, the court sought to “carve out a middle ground that would ensure prompt removal and yet not involve courts in arduous inquiries into defendants’ state of mind.” Id. at 51-53. Adopting the rationale of the district court in Rowe v. Marder, the Foster court held that “[t]he inquiry is succinct: whether the document informs the reader, to a substantial degree of specificity, whether all the elements of federal jurisdiction are present” is the standard for determining when the thirty-day period begins to run. Id. at 53 (quoting Rowe v. Marder, 750 F. Supp. 718, 721 (W.D. Pa. 1990), aff’d, 935 F.2d 1282 (3d Cir. 1991)). The Foster court noted with approval that the Rowe court had limited its inquiry to court-related documents, stating that “at a minimum, anything considered a pleading must be something of the type filed with a court.” Foster, 986 F.2d at 54 (quoting Rowe, 750 F. Supp. at 721 n.1). In addition, the Foster court approved of the Rowe court’s focus on the language of the relevant documents, not the subjective state of mind of the parties, and the court’s examination of only the four corners of the pleading. See id. at 53. Consistent with rejecting a bright line rule for what will trigger the time period in § 1446(b), the Foster court observed that although previous district court cases in the Third Circuit have held that the praecipe and writ of summons did not trigger the thirty-day period, those cases “do not hold that these documents may never serve notice of removability.” Id.

In Scerati v. Lewellyn Manufacturing, Inc., No. 96-3628, 1996 WL 334376 (E.D. Pa. June 18, 1996), Judge Yohn considered information available to the defendant from the civil cover sheet in determining that the thirty-day period under § 1446(b) began to run when the praecipe, writ of summons, and civil cover sheet were served on the defendant. Analyzing the

issue under Foster, Judge Yohn observed that “[a]lthough the precise language of the Foster holding leaves open the question of whether courts should consider a civil cover sheet as part of the initial pleading, [the] cover sheet is clearly ‘something of the type filed with a court.’” Id. at \*2. Judge Yohn refused to make a distinction between a civil cover sheet and other court documents from which indications of diversity jurisdiction are gleaned. See also Schnable v. Drexel University, No. 95-21, 1995 WL 412415, at \*3 (E.D. Pa. July 10, 1995) (holding that a draft complaint sent to the defendant that clearly set forth a basis for federal jurisdiction was a document “something of the type filed with a court” and thus triggered the thirty-day period under § 1446(b) and Foster).

Thus, to determine when the thirty-day period began to run in this case, I must examine the documents that were served on Halina. The civil cover sheet, the original of which is included in the docket sent to this Court from the Court of Common Pleas and a copy of which is attached to Halina’s notice of removal, is clearly a document filed with a court. In addition, Halina concedes in her notice of removal and her response to the petition to remand that the civil cover sheet was served on her with the praecipe and writ of summons and that it indicated damages in excess of \$50,000. (Def.’s Notice of Removal ¶ 1; Def.’s Response to Petition to Remand at ¶ 3). It is clear that the civil cover sheet was in Halina’s possession on November 30, 1996.

I agree with and adopt the reasoning of Scerati. I find that the papers that were initially served on Halina -- the praecipe, the writ of summons, and the civil cover sheet -- constitute the “initial pleading” under § 1446(b). The civil cover sheet clearly indicates the

diverse residential addresses of the parties<sup>3</sup> and that the amount in controversy exceeds the jurisdictional amount. Mangano served the initial pleading on Halina on November 30, 1996, but Halina did not file her notice of removal until March 7, 1997. Thus, because Halina did not file her notice of removal within thirty days of receipt of the initial pleading in this case, this Court will remand this action to the Court of Common Pleas for Philadelphia County. “Where court documents clearly provide notice to defendants of removability, they should do so, rather than protracting the litigation.” Foster, 986 F.2d at 53.

This Court acknowledges that there are cases in this circuit holding that the writ of summons did not give sufficient notice to the defendant of the presence of diversity jurisdiction. See, e.g., Stransky v. American Isuzu Motors, Inc., No. 93-2027, 1993 WL 220690, at \*1 (E.D. Pa. June 9, 1993) (rejecting defendants’ argument in its motion for reconsideration that the designation of the case as a “major case” and the entry on the Court of Common Pleas docket that the “amount at issue is more than \$50,000.00” was sufficient to demonstrate the jurisdictional amount under Foster); Flamer v. Trump’s Castle Associates, No. 89-0752, 1989 WL 41404, at \*1 (E.D. Pa. April 29, 1989) (holding that the writ of summons, which indicated the addresses of the parties as diverse and labeled the case “a Major Non-jury matter,” did not provide sufficient notice to the defendant that the case was removable to trigger the thirty-day period). However, as Foster instructs, there is no bright line rule for triggering the thirty-day period and it depends on the content of the notice given to a removing defendant in each case.

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<sup>3</sup> Under other circumstances, the inclusion of only the addresses of the parties may not be enough to notify a defendant of the removability of a case based on diversity of citizenship. See Robinson v. Nutter, No. 94-7758, 1995 WL 61158, at \*2 (E.D. Pa. Feb. 14, 1995) (finding that the praecipe did not qualify as an initial pleading because it indicated only the addresses but not the citizenships of the parties). Here, however, it is clear, and defendant has conceded, that the diversity of citizenship was evident to her from the writ of summons. See infra note 5.

My finding that the thirty-day period was triggered by the praecipe, writ of summons, and civil cover sheet in this case does not mean that I would find these documents to be sufficient in every case. Here, however, where the defendant admits that she received the civil cover sheet with the writ of summons and she has conceded that the civil cover sheet clearly indicates to her the diverse citizenships of the parties, see infra note 5, and an amount in controversy over the jurisdictional amount required at the time, it is clear that the document “informs the reader, to a substantial degree of specificity, whether all the elements of federal jurisdiction are present.”

### **III. PRESENCE OF AN AMOUNT IN CONTROVERSY**

#### **SUFFICIENT TO SATISFY § 1332**

Although the untimeliness of Halina’s notice of removal justifies granting Mangano’s petition to remand, there is an obstacle to establishing removal diversity jurisdiction in this Court that neither party addressed in their formal arguments. In January of this year, the jurisdictional amount required under 28 U.S.C. § 1332 was raised from \$50,000 to \$75,000. See Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, 110 Stat. 3847 (enacted October 19, 1996, and effective January 17, 1997). The existence of subject matter jurisdiction is determined as of the time the petition for removal is filed. See Westmoreland Hospital v. Blue Cross of Western Pennsylvania, 605 F.2d 119, 123 (3d Cir. 1979). Halina filed her notice of removal in March of 1997, so the increased jurisdictional amount applies to this case. However, Mangano alleged in the complaint only that the damages would be in excess of \$50,000. Mangano did not initially argue that this case should be remanded because the jurisdictional

amount required under § 1332 is not satisfied;<sup>4</sup> however, this Court is bound to assess its subject matter jurisdiction at all times and should review sua sponte whether its subject matter jurisdiction has been properly invoked by a removal petitioner. See Medlin v. Boeing Vertol Co., 620 F.2d 957, 960 (3d Cir. 1980).

The burden is on the removing defendant to show that jurisdiction exists to allow removal of the claim to federal court.<sup>5</sup> See Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 359 (3d Cir. 1995); Steel Valley Authority v. Union Switch and Signal Division, 809 F.2d 1006, 1010 (3d Cir. 1987). Exactly what the burden is, however, to establish the amount in controversy is a matter of some debate among the federal courts. Courts have imposed three different burdens on removing defendants, requiring them to show that the amount in controversy is greater than the jurisdictional amount (1) to a legal certainty, (2) by a preponderance of the evidence, or (3) to a reasonable probability. See Mercante v. Preston Trucking Co., No. 96-5904, 1997 WL 230826, at \*1 (E.D. Pa. May 1, 1997) (discussing the three burdens). I noted in Mercante that the Court of Appeals for the Third Circuit had not delineated which one of the three burdens a removing defendant must meet. Id. Given that no further guidance has been handed down from the Court of Appeals since that decision, I will apply the same standard as I did in Mercante: “for a defendant to defeat a motion for remand after removing a complaint seeking unspecified

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<sup>4</sup> In a letter to the Court dated September 17, 1997 (Document No. 9), Mangano’s counsel asserts that the amount in controversy threshold has not been met and the Court lacks subject matter jurisdiction. While the factual and legal basis for this assertion by plaintiff is not evaluated here, the letter is cited to demonstrate that Mangano is resolute in pursuing his wish that the case be remanded for want of jurisdiction.

<sup>5</sup> It is apparent from the civil cover sheet and writ of summons and clear from the notice of removal that the parties are of diverse citizenship as required under § 1332. In addition, Mangano so alleges in ¶ 3 of his Petition to Remand (Document No. 3) and Halina admitted this allegation in ¶ 3 of her response (Document No. 4). Thus, the diversity of citizenship element of jurisdiction and notice thereof to Halina by November 30, 1996 have been conclusively established.

damages and originally filed in state court, the defendant must show by a preponderance of the evidence that the plaintiff's claims exceed the jurisdictional amount." Id. at \*2.

To determine if the jurisdictional amount is satisfied and Halina has met her burden, this Court can look to several sources: first, I should examine the complaint itself; second, if the damages are unspecified in the complaint, I can look to defendant's notice of removal; third, I can independently assess the value of the claim. See Angus v. Shiley Inc., 989 F.2d 142, 145 (3d Cir. 1993); Omega Sports, Inc. v. Sunkyong America, Inc., 872 F. Supp. 201, 202 (E.D. Pa. 1995); Corwin Jeep Sales & Service, Inc. v. American Motors Sales Corp., 670 F. Supp. 591, 596 (M.D. Pa. 1986).

The complaint contains no specific allegations of the amount in controversy other than that damages are in excess of \$50,000. The only reference Halina makes in her notice of removal to the amount in controversy is to quote Mangano's statement of damages from the complaint as "fifty thousand dollars" and to inexplicably add "\$75,000" parenthetically following reference to the lower number. This unsupported, unexplained assertion of an amount in controversy equal to the jurisdictional amount clearly is not enough to satisfy Halina's burden to establish damages in excess of \$75,000 by a preponderance of the evidence. In addition, there is nothing else in the record which establishes the value of the claim to the satisfaction of the Court through an independent assessment that the claim exceeds the requisite damage value. From the description of the injuries alleged by Mangano in his complaint, I am not persuaded that plaintiff is entitled to damages over \$75,000, and Halina has neither provided evidence nor

pointed to anything in the record to support such a conclusion.<sup>6</sup> “The [mere] possibility that the damages may aggregate to more than the jurisdictional amount does not, in itself, show that the amount in controversy exceeds the jurisdictional amount by a preponderance of the evidence.” Mercante, 1997 WL 230826, at \*3. Thus, because I find that Halina has not established the amount in controversy to be in excess of \$75,000 by a preponderance of the evidence, this Court is without jurisdiction to hear this case and Mangano’s petition to remand will be granted on this additional ground.

#### IV. CONCLUSION

For the reasons given above, Mangano’s petition will be granted and this case will be remanded to the Court of Common Pleas of Philadelphia County.

An appropriate Order follows.

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<sup>6</sup> In the complaint, the description of the alleged injuries, medical care, and disability set forth soft tissue injuries. In addition, no surgery, hospitalization, or permanent physical injury is alleged, and no specific sum for medical expenses, lost time from work, or lost earnings realized is indicated. (Pl.’s Complaint at 8-9).

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<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>ALICIA HALINA,</b>	:	
	:	
<b>Defendant.</b>	:	<b>NO. 97-1678</b>

**ORDER**

**AND NOW**, this 3rd day of November, 1997, upon consideration of the petition to remand by plaintiff John Mangano (Document No. 3), the response of defendant Alicia Halina (Document No. 4), and the briefs related thereto, having found that defendant failed to file her notice of removal within the thirty-day period set forth in 28 U.S.C. § 1446(b), and that defendant did not establish by a preponderance of the evidence that the amount in controversy exceeds \$75,000, and for the reasons set forth in the foregoing memorandum, it is hereby **ORDERED** that the petition of plaintiff is **GRANTED** and this case is **REMANDED** to the Court of Common Pleas of Philadelphia County at November Term 1996, Civil Action No. 2941, for failure of defendant to perfect a timely removal and for want of subject matter jurisdiction.

The Clerk of Court shall forthwith return the record to the Prothonotary of the Court of Common Pleas of Philadelphia County and close this file.

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**LOWELL A. REED, JR., J.**