

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

PETER DERITO and	:	CIVIL ACTION
TRIPLE A POULTRY	:	
	:	
v.	:	
	:	
UNDERWRITERS AT LLOYD'S,	:	No. 99-4019
LONDON	:	

ORDER-MEMORANDUM

AND NOW, this 23rd day of August, 1999, upon plaintiffs Peter DeRito and Triple A Poultry's response to defendant Underwriters at Lloyd's notice of removal, this case is remanded to the Philadelphia Court of Common Pleas, Pa. 28 U.S.C. § 1446(c)(4).

On June 15, 1999, the amended complaint in state court was served on defendant. On August 9, 1999, defendant filed a notice of removal asserting diversity jurisdiction - well beyond the 30 days prescribed by statute. 28 U.S.C. § 1446(b). On August 17, 1999, plaintiff filed a response to the notice of removal that timely requests remand.¹

"While the time limitations of 28 U.S.C. § 1446(b) are not jurisdictional, they are mandatory and are to be strictly construed when asserted

¹Ordinarily, plaintiffs should frame their request for remand in the form of a motion which must be made within 30 days of the filing of the notice of removal. 28 U.S.C. § 1447(c). Because plaintiffs' response requests remand and clearly sets forth appropriate grounds, it will be treated as a motion and granted accordingly.

by a party." Weinstein v. Paul Revere Ins. Co., 15 F. Supp. 2d 552, 559 (D.N.J. 1998). See also Ogletree v. Barnes, 851 F. Supp. 184, 190 (E.D. Pa. 1994) (collecting cases).²

Edmund V. Ludwig, J.

²It also appears that the amount in controversy has not been met. This amended complaint sets forth three separate causes of action, each requesting "an amount not in excess of \$50,000.00." 28 U.S.C. § 1332(a); def. notice, ex. B. "[I]f upon the face of the complaint, it is obvious that the suit cannot involve the necessary amount, removal will be futile and remand will follow." Int'l Fleet Auto Sales, Inc. v. Nat'l Auto Credit, 1999 WL 95258, *3 (E.D. Pa. Feb. 22, 1999) (quoting St. Paul Mercury Ins. Co. v. Red Cab. Co., 303 U.S. 283, 291-92, 58 S.Ct. 586, 82 L.Ed. 845 (1938)).