

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

STEPHEN DROZDOWSKI, et al.,	:	CIVIL ACTION
Plaintiffs,	:	NO. 04-3624
	:	(related to 04-4899)
vs.	:	
	:	
SIGNATURE FLIGHT SUPPORT	:	
CORP., et al.,	:	
Defendants.	:	

MEMORANDUM AND ORDER

Tucker, J.

February _____, 2005

Presently before this Court is Plaintiffs' Motion to Remand and Supplemental Brief (Docs. 13, 15) and Defendants' Response and Reply thereto (Docs. 8, 12). Oral argument concerning this matter was held before this Court on January 26, 2005. For the reasons set forth below, this Court will deny Plaintiffs' Motion to Remand.

BACKGROUND

Plaintiffs Stephen and Barbara Drozdowski are residents of Avondale, Pennsylvania. Plaintiffs bring this action against Defendants Signature Flight Support, and Aircraft Service International Incorporated (collectively, "Defendants"), and Defendant Ventura Gonzalez ("Defendant Gonzalez"), an employee of the companies. Signature Flight Support conducts business at the Philadelphia International Airport and its principle place of business is in Florida. Aircraft Service International Inc. is licensed to do business in Pennsylvania, however, its principle

place of business is in Florida. Defendant Gonzalez is a Pennsylvania resident.

Plaintiff Stephen Drozdowski was employed by US Airways as a fleet service agent representative, which required him to operate a motor vehicle baggage tug. On July 13, 2003, as Plaintiff was operating the baggage tug, a fuel truck owned by Defendants and operated by Defendant Gonzalez, struck the baggage tug causing injuries to the Plaintiff. As a result of the accident, Plaintiff sustained multiple injuries and incurred various bills for medical treatment and care. Plaintiffs bring negligence and loss of consortium claims.

Plaintiffs filed the original action (case no. 04-3624) in Philadelphia Court of Common Pleas on July 7, 2004. Defendants removed the action from state court on July 30, 2004 pursuant to 28 U.S.C. §§1332 and 1441. Plaintiffs filed the second action (case no. 04-4899) in state court on October 4, 2004. The second action names Defendant Ventura Gonzalez in addition to the companies. Plaintiffs assert that Defendant Gonzalez was served on October 12, 2004. Defendants removed the second action on October 19, 2004 based on diversity of citizenship and supplemental jurisdiction over Defendant Gonzalez. On November 18, 2004, Plaintiffs filed a motion to remand.

STANDARD OF REVIEW

Generally, a defendant may remove a civil action filed in state court when the federal court could have original jurisdiction over the matter. See 28 U.S.C. § 1441(b) (1994); Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir.1990). Upon removal, however, the district court may remand the case to state court if there has been a procedural defect in the removal or if the court lacks subject matter jurisdiction. See 28 U.S.C. § 1447(c) (1994); Township of Whitehall v. Allentown Auto Auction, 966 F.Supp. 385, 386 (E.D.Pa.1997). Upon a motion to

remand, the moving party has the burden of establishing the propriety of removal. See Boyer, 913 F.2d at 111; Orndorff v. Allstate Ins. Co., 896 F.Supp. 173, 174 (M.D.Pa.1995); Corwin Jeep Sales & Serv. Inc. v. American Motors Sales Corp., 670 F.Supp. 591, 595 (E.D.Pa.1986). Removal jurisdiction is to be strictly construed, with all doubts as to its propriety to be resolved in favor of remand. Dempsey v. Federal Express Corp., 2001 WL 1356505 (E.D.Pa. 2001).

DISCUSSION

In sum, Plaintiffs filed two state court lawsuits based on the same incident. In the first complaint, Plaintiffs mention Defendants' "agent, employee, servant and/or workman" responsible for operating the vehicle, but do not specifically name Defendant Gonzalez in the caption. See First Complaint, ¶ 9. In the second complaint, Plaintiff specifically names Ventura Gonzalez as a defendant. See Second Complaint, ¶ 4. The complaints are identical in all other respects. Consequently, this Court will dismiss the second action as duplicative and add Defendant Gonzalez as a party to the first civil action. The first action was properly removed to this Court.

Plaintiffs, in their supplemental brief, assert that Defendant Gonzalez should be joined to the first action in the interest of judicial efficiency. The addition of Defendant Gonzalez, a non-diverse defendant, raises the issue of whether this court is the proper forum to adjudicate this matter.

1. Plaintiffs' Arguments

Plaintiffs contend that supplemental jurisdiction is not appropriate because Defendant

Gonzalez should be permitted to join this action pursuant to Federal Rule of Civil Procedure 20.¹ If Defendant Gonzalez is joined pursuant to that rule, the court is limited in its exercise of supplemental jurisdiction based on 28 U.S.C. §1367(b). Plaintiffs argue that Defendant Gonzalez should be permitted to join and the case should be remanded pursuant to 28 U.S.C. §1447(e), which provides, “if after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.”

Plaintiffs maintain that the addition of Defendant Gonzalez was not fraudulent or improper because Plaintiffs assert a “colorable” or “reasonable basis” for their claim against Gonzalez, namely, Gonzalez was the driver of the vehicle that struck Plaintiff. Plaintiffs claim that Defendant Gonzalez may have direct liability as well as joint and several liability with the other defendants.

2. *Defendants' Arguments*

Defendants assert that this Court has supplemental jurisdiction over Defendant Gonzalez under 28 U.S.C. § 1367(a), which provides that:

except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original

¹ FRCP 20(a) provides: All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons (and any vessel, cargo or other property subject to admiralty process in rem) may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.”

Defendants further assert that Defendant Gonzalez was fraudulently added in the second action in order to destroy diversity and defeat removal. Defendants claim that Gonzalez was never served in this matter, thus diversity still exists.² **Lastly, Defendants argue that Gonzalez should not be joined as party to this suit because joinder of a corporate employee should be denied where the corporate defendant would defend and indemnify its employee.**

ANALYSIS

Plaintiffs initially argue that this court can not exercise supplemental jurisdiction because 28 U.S.C. §1367(b) prohibits such jurisdiction when a defendant is joined pursuant to Federal Rules of Civil Procedure 20 (permissive joinder). Plaintiffs, however, have **mischaracterized** the nature of their strategic maneuvering. Plaintiffs have never moved this Court to join Defendant Gonzalez pursuant to FRCP 20. Neither filing a second action nor a delayed request in a supplemental brief qualifies as a motion for joinder. Plaintiffs cite Massaro v. Bard to support their contention that remand is necessary when joinder of non-diverse party destroys subject matter jurisdiction. 209 F.R.D. 363 (E.D. Pa. 2002). The procedural history in Massaro is distinguishable from the present case. In Massaro, the plaintiff filed a motion for joinder pursuant

² Plaintiffs submit that Defendant was served on October 12, 2004 and has provided a copy of the return of service stating that an adult family member, Defendant’s father, with whom the defendant resides, was properly served on that date. Defendants provided the court with a declaration that states, Defendant Gonzalez does not reside at the address at which service was effectuated, which was based on a January 11, 2005 telephone conversation with the Defendant’s father.

to FCRP 20 when, during discovery, plaintiff learned of the defective design and manufacture of the product at issue in the case. At that juncture, plaintiff requested that the non-diverse defendant be joined as defendant and sought remand to state court. The motion for joinder was based on information that was not previously known. Massaro at 365.

Here, from the outset of litigation, Plaintiffs knew that an “employee or agent” of the Defendants was responsible for operation of the fuel truck that struck Plaintiff’s baggage tug. Upon learning his identity and address, Plaintiffs filed a second action in state court even though the original action was removed to federal court. See Pl. Supplemental Brief, p. 8. Plaintiffs could have moved this court for leave to file an amendment pursuant to Federal Rule of Civil Procedure 15. Based on the procedural history, this Court considers the second action as an amendment to the first because the only difference is the naming of Defendant Gonzalez in the second complaint. This Court additionally **notes** that, Defendants have not made a persuasive showing that Plaintiffs have fraudulent intentions in seeking to add Defendant Gonzalez. **In order to succeed on that basis, Defendants have a heavy burden of persuasion. See Boyer v. Snap-on-Tools, 913 F.2d 108 (3d Cir. 1990)(stating that joinder is fraudulent where there is no reasonable basis in fact or colorable ground supporting the claim against the joined defendant, or no real intention, in good-faith to prosecute the action against the defendant or seek a joint judgment). Plaintiffs are not seeking to have a party who has no relation to the accident added.** As mentioned, Defendant Gonzalez was the driver of the vehicle involved in the accident, and as the driver, it is reasonable to assert a claim against the Defendant. Defendants’ argument that Defendant Gonzalez is only a nominal party in this action lacks merit. Furthermore, Defendants have provided no legal precedent to support their argument that Defendant Gonzalez, as a corporate

employee, should not be joined in this action because he will be indemnified by the corporate defendants.

This Court will exercise supplemental jurisdiction over the claims against Defendant Ventura Gonzalez. Section 1367 states that the federal courts "shall have supplemental jurisdiction" over claims which are "part of the same case or controversy" as a claim over which the court exercises original jurisdiction. The Supreme Court has held that federal courts have the power to hear state law claims that "derive from a common nucleus of operative fact" **with federal claims.** United Mine Workers of America v. Gibbs, 383 U.S. 715, 725 (1966). The federal and state claims must be such that "a plaintiff would ordinarily be expected to try them all in one proceeding." Id. Furthermore, the Third Circuit has held that in exercising its discretion, the district court should take into account generally accepted principles of judicial economy, convenience, and fairness to the litigants. Growth Horizons, Inc. v. Delaware County, Penn., 983 F.2d 1277, 1294 (3d Cir. 1993).³

Here, this action arises from a motor vehicle accident that involved the Plaintiff and Defendant Ventura Gonzalez on July 13, 2003. That incident has given rise to the negligence claim, *inter alia*, against all Defendants. There is a common nucleus of operative fact such that it would be expected that all claims would be tried in one judicial proceeding. It is a waste of judicial economy and efficiency to require Plaintiffs to pursue the action in state court under an identical basis, requiring duplicative discovery and motion practice, when this Court can decide the issues of negligence, and loss of consortium with ease. Moreover, this Court is not burdened

³ Although the federal statute was amended subsequent to Gibbs, most courts still use the Gibbs factors to determine when to exercise supplementary jurisdiction.

by retention of jurisdiction. Defendants have stated that any claims against Defendant Gonzalez would be subject to indemnification by them. Balancing the aforementioned factors, this Court will exercise its discretion and retain jurisdiction.

Therefore, the Court will not remand to state court.

CONCLUSION

In order to prevent inefficient and piecemeal litigation, the court dismisses the second action as duplicative and retains jurisdiction over the first action, which was properly removed.

An appropriate Order will be entered in accordance with this Memorandum.

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	___:	<u>(related to 04-4899)</u>
<u>vs.</u>	:	
	___:	
<u>SIGNATURE FLIGHT SUPPORT</u>	:	
<u>CORP., et al.,</u>		
<u>Defendants.</u>		

ORDER

AND NOW, this _____ day of February, 2005, upon consideration of Plaintiffs' Motion to Remand and Supplemental Brief (Docs. 13, 15) and Defendants' Response and Reply thereto

(Docs. 8, 12). IT IS HEREBY ORDERED AND DECREED that:

1. Plaintiffs' Motion to Remand is DENIED.
2. Civil case number 04-4899 is DISMISSED AS DUPLICATIVE. The clerk of court shall mark case number 04-4899 CLOSED.
3. The parties shall proceed under case number 04-3624 and comply with the Scheduling Order issued in conjunction with this Order.

BY THE COURT:

Hon. Petrese B. Tucker, U.S.D.J.