

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

EDNA JONES : CIVIL ACTION  
 :  
 v. :  
 :  
 : No. 04-5229  
 CITY OF PHILADELPHIA, et al. :

**ORDER-MEMORANDUM**

AND NOW, this 8<sup>th</sup> day of February, 2005, “Plaintiff’s Motion to Remand Pursuant to 28 U.S.C. Section 1447(c)” is granted, because defendant Amtrak’s Notice of Removal was not filed within thirty days of service of plaintiff’s writ of summons in the state court action. 28 U.S.C. 1447(c).<sup>1</sup> This case is remanded to the Philadelphia County Court of Common Pleas.

BY THE COURT:

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Edmund V. Ludwig, J.

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<sup>1</sup> 28 U.S.C. 1447(c) permits remand “on the basis of any defect in the removal procedure.” Filing a removal notice more than thirty days after defendant’s receipt of the initial pleading constitutes such a defect. See Willis v. City of Philadelphia, 2004 WL 292480, at \*1 (E. D. Pa. , Feb. 10, 2004), citing Foster v. Mutual Fire, Marine & Inland Ins. Co., 986 F.2d 48, 53 (3d Cir. 1993). A writ of summons may trigger the 30-day period, where the writ “provide[s] adequate notice of federal jurisdiction.” Foster, 986 F.2d at 53. Here, Amtrak concedes that diversity jurisdiction does not exist because the amount in controversy is less than \$75,000. See Writ of Summons, Exhibit “A” to Plaintiff’s Motion to Remand (amount in controversy is “\$50,000 or less.”). See also Defendant, Amtrak’s Answer to Motion to Remand, ¶ 9. Amtrak premises federal jurisdiction on 28 U.S.C. § 1331, because “Amtrak is a corporation created by Act of Congress and wherein the federal government owns more than 50% of the capital stock of the defendant railroad.” Defendant, Amtrak’s Answer to Motion to Remand, ¶ 6. The status of Amtrak as a railroad owned in part by the federal government was clear upon service of the writ on September 28, 2004, and the existence of federal jurisdiction should have been clear at that time. Amtrak’s Notice of Removal was not filed until November 9, 2004, more than 30 days after service of the writ, and, therefore, was untimely under 28 U.S.C. § 1446(b).