

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

DAVID MEIER and	:	CIVIL ACTION
BARBARA MEIER	:	
	:	
v.	:	
	:	
JERRY M. BARNER & SONS, INC.,	:	NO. 99-269
d/b/a BARNER TRUCKING	:	

MEMORANDUM ORDER

AND NOW, TO WIT, this day of March, 1999, presently before the court are plaintiffs David and Barbara Meier's ("Plaintiffs") unopposed motion to remand. For the reasons set forth below, the court will deny the motion.

Plaintiffs commenced this action in the Philadelphia Court of Common Pleas by Writ of Summons on October 27, 1998. (Pls.' Mot. Ex. A.) The Praecipe to Issue Writ of Summons ("Writ") in this civil action contains the following relevant jurisdictional information: (1) Plaintiffs are citizens and residents of Pennsylvania; (2) defendant Jerry M. Barner & Sons, Inc., d/b/a Barner Trucking ("Defendant") is a New Jersey corporation and a citizen of New Jersey; and (3) damages are in excess of \$75,000 for each Plaintiff, exclusive of interest and costs. (Pls.' Mot. Ex. A.) On November 9, 1998, Plaintiffs served Defendant with the Writ. (Pls.' Mot. Ex. B.) On January 19, 1999, Defendant filed its Notice of Removal. (Pls.' Mot. Ex. D.)

Plaintiffs' motion to remand is based upon Defendant's untimely removal of this action. Under the removal statute,

"[n]otice of removal of a civil action or proceeding shall be filed within 30 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." 28 U.S.C. § 1446(b). The Third Circuit has held that "§ 1446(b) requires defendants to file their Notices of Removal within thirty days after receiving a writ of summons, praecipe, or complaint which in themselves provide adequate notice of federal jurisdiction." Foster v. Mutual Fire, Marine & Inland Ins. Co., 986 F.2d 48, 54 (3d Cir. 1993). In determining whether a document provides such adequate notice, "the relevant test is not what the defendants purportedly knew, but what these documents said." Id.

Upon its face, the Writ does not provide adequate notice of federal diversity jurisdiction pursuant to 28 U.S.C. § 1332.¹ While the Writ shows that Defendant is a New Jersey corporation, it does not allege where Defendant has its principal place of business, as required by 28 U.S.C. § 1332(c). (Pls.' Mot. Ex. A.) Consequently, Plaintiffs' Writ--served upon Defendant on November 9, 1998--did not provide Defendant with adequate notice of federal diversity jurisdiction. See Carolina Cas. Ins. Co. v. Insurance Co. of N. Am., 595 F.2d 128, 130 n.1 (3d Cir. 1979) (finding that pleading which failed to allege

¹ District courts have jurisdiction over cases between citizens of different states when the amount in controversy is in excess of \$75,000. 28 U.S.C. § 1332.

corporation's principal place of business was inadequate to establish jurisdiction under 28 U.S.C. § 1332). Thus, the court finds that Defendant's January 19, 1999 Notice of Removal was timely.

Accordingly, IT IS ORDERED that Plaintiffs' motion to remand is DENIED.

LOUIS C. BECHTLE, J.