IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

GRAHAM B. SPANIER Plaintiff, v. LOUIS J. FREEH and FREEH SPORKIN & SULLIVAN, LLP, Defendants.	Docket No. 2013-2707 Judge Jonathan D. Grine

DEFENDANTS' MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR RECONSIDERATION

On February 25, 2014, this Court entered an Opinion and Order (the "February 25 Order"), which granted Plaintiff Graham B. Spanier's ("Plaintiff") Motion to Stay this case pending the criminal proceedings against Plaintiff. (*See* Exhibit A.) Defendants respectfully submit that the Court's February 25 Order should be reconsidered for four reasons. First, the Court's Order was premised on Plaintiff's potential invocation of the Fifth Amendment, which Plaintiff has specifically disclaimed. Second, the Court did not consider the extraordinary factual circumstances of this case in which a civil *plaintiff* seeks to avoid his obligation to file a complaint in an action *he commenced* on the basis that he is a criminal defendant. Plaintiff has cited no authority—and Defendants are not aware

of any—in which a court permitted a civil plaintiff that has affirmatively commenced an action to avoid filing a complaint on the basis that he is a criminal defendant. Third, Plaintiff's failure to file a complaint threatens to jeopardize Defendants' right to remove this case to a federal forum in light of the one-year statutory limitation on removal from the commencement of an action. Fourth, recent developments in this case show that the Court's expectation that the criminal proceedings will be resolved "sometime this year" is unlikely to prove correct.

Furthermore, for the reasons set out below, Defendants respectfully request that the Court consider this Motion for Reconsideration on an expedited basis because of the potentially imminent deadline to remove this case to federal court, should Defendants choose to exercise this right.

For these reasons, Defendants respectfully request expedited reconsideration of the Court's February 25 Order. Defendants further request that the Court compel Plaintiff to file a Complaint in this matter within 20 days.

STATEMENT OF FACTS

Plaintiff filed a Praecipe for a Writ of Summons on September 12, 2013. In response to a Rule to File Complaint, Plaintiff filed a Motion to Stay Civil Proceedings on October 18, 2013. Defendants filed a response on November 12, 2013, and argument was held on Spanier's Motion on January 7, 2014. On

February 25, 2014, the Court granted Plaintiff's Motion to Stay this case pending the criminal proceedings against Plaintiff.

STATEMENT OF QUESTION INVOLVED

Should the February 25 Order be reconsidered and should this Court compel Plaintiff to file a complaint in this case?

Suggested Answer: Yes.

ARGUMENT

A court has the inherent power to reconsider its own rulings. *See Moore v. Moore*, 634 A.2d 163, 167 (Pa. 1993). The question of whether or not to exercise that authority is left to the sound discretion of the trial court. *Id.* Defendants respectfully submit that the Court's February 25 Order should be reconsidered for the reasons set out below.

A. Spanier Has Expressly Disavowed His Right to Invoke the Fifth Amendment

The Court observed that by filing a verified complaint, "Plaintiff may be at risk of exposing himself to criminal liability." (Order at 4.) This holding is premised on the assumption that Plaintiff has invoked, or will invoke, his Fifth Amendment right against self-incrimination. However, Plaintiff has not invoked his Fifth Amendment at any point during this proceeding.

In fact, at the January 7 hearing, Plaintiff's counsel expressly stated that Plaintiff would *not* invoke his Fifth Amendment right.[1] Furthermore, Plaintiff has expressly referred to the Fifth Amendment rights of third-party witnesses, not himself. In his Memorandum in support of his Motion to Stay, Plaintiff stated that the "question involved" was whether "civil proceedings [should] be stayed when the plaintiff is a defendant in a related criminal case . . . when requiring the plaintiff to continue to prosecute the civil case would burden *witnesses' rights* under both the United States and Pennsylvania constitutions." (Pl.'s Mem. at 4–5 (emphasis added); *see also id.* at 5–6 (arguing that the Court should stay this proceeding because the "failure to do so will unnecessarily force multiple witnesses to choose between testifying in this action or exercising their Fifth Amendment rights against self-incrimination").)

Accordingly, there is no basis in the record for the Court to make a finding that *Plaintiff*'s Fifth Amendment rights are implicated by filing a verified complaint. *See, e.g., Am. Indep. Ins. Co. v. E.S. ex rel. Crespo*, 809 A.2d 388, 393 (Pa. Super. Ct. 2002) ("[T]he record reveals no basis upon which to grant the

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[1] Defendants requested a copy of the transcript of the January 7, 2014 hearing on March 5, 2014. On March 17, 2014, the court reporter informed counsel for defendants that the estimated time for receiving the transcript is three to four weeks.

stay. As such, we find that the trial court abused its discretion in granting the stay, and we reverse that part of the order.").[2]

B. Defendants Know of No Other Court That Has Permitted a Civil Plaintiff to Refuse to File a Complaint Where He is a Criminal Defendant

In its opinion, the Court did not consider the extraordinary factual circumstance of this case—a civil *plaintiff* seeks to avoid his obligation to file a complaint in an action *he commenced* on the basis that he is a criminal defendant. Not to mention, a case in which Plaintiff has specifically disclaimed the invocation of his Fifth Amendment right. None of the cases cited by Plaintiff in his Motion to Stay support such a proposition.[3] Nor could Defendants locate a single case in Pennsylvania in which a court permitted a civil plaintiff to avoid his obligation to file a complaint where he is a criminal defendant—let alone one in which a

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[2] The Court also premised the February 25 Order on a finding that Plaintiff could be prejudiced if third-party witnesses "refuse to participate in the *discovery process*" or from "negative inferences that a *jury* is permitted to draw from the assertion of a witness's right against self-incrimination." (Order at 4) (emphasis added). This consideration is premature. As Defendants argued in their Opposition to the Motion to Stay and at oral argument, the alleged prejudice from *third-party witnesses* asserting their Fifth Amendment rights does not arise if Plaintiff files a complaint. As the Court's order acknowledges, this purported prejudice could only surface at the discovery phase of this proceeding or at trial, and the Court can revaluate at that point whether a stay is necessary.

[3] In the three cases cited in Plaintiff's Memorandum, stays were granted where the civil defendants were also criminal defendants. (*See* Pl.'s Mem. at 6–8.)

plaintiff has expressly disavowed the invocation of the Fifth Amendment. This Court's February 25 Order would be the only such case.

Therefore, Defendants respectfully request that the Court reconsider its ruling as to avoid this inequitable scenario—one in which Plaintiff has affirmatively commenced an action but has nevertheless been allowed to evade his obligation to file an actual complaint by using his criminal proceedings as a shield. This is all the more inequitable when Plaintiff has expressly disclaimed his invocation of the Fifth Amendment.

C. Defendants' Right to Remove to Federal Court May Be Irretrievably Lost

The February 25 Order threatens to deprive Judge Freeh and his law firm of their federal statutory right of removal set out in 28 U.S.C.§ 1446. The basis for federal subject matter jurisdiction of this action would be diversity jurisdiction under 28 U.S.C. § 1332(a). *See* 28 U.S.C. § 1332(a)(1) ("The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of different states.").

Under the federal remove statute, there is a one-year deadline to file for removal to federal court from the commencement of an action. 28 U.S.C. § 1446(c). Certain federal district courts in Pennsylvania have construed the one-year deadline as commencing from the date that the writ of summons—not the

complaint—is filed in Pennsylvania state court. *See Kowalski v. PBM Logistics, LLC*, No. 4:cv-12-1158, 2012 WL 3890249, at *5 (M.D. Pa. Aug. 6, 2012); *Corinthian Marble & Granite, Inc. v. T.D. Bank, N.A.*, No. 12-cv-3744, 2013 WL 272757, at *5 (E.D. Pa. Jan. 24, 2013) (attached as Ex. B). Furthermore, these courts have construed Third Circuit precedent as holding that a writ of summons alone cannot be removed to federal court. *See Gladkikh v. Lyle Indus., Inc.*, No. Civ.A. 3CV052402, 2006 WL 266100, at **1–2 (M.D. Pa. Feb. 1, 2006) (citing *Sikirica v. Nationwide Ins. Co.*, 416 F.3d 214, 222 (3d Cir. 2005) (attached as Ex. B).[4]

Under the reasoning of these district courts—which Defendants contest—their right of removal is paralyzed until Plaintiff files a complaint, and may be altogether lost if Plaintiff does not file a complaint before the one-year anniversary of his writ of summons. Defendants thus are unfairly between the classic "rock and a hard place."

Defendants respectfully request that the Court reconsider its ruling and compel Plaintiff to file a complaint to avoid prejudice to Defendants' rights to remove to a federal forum.

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[4] Defendants respectfully disagree with the analysis set forth in these opinions, but recognize that a court may find their reasoning persuasive.

D. Spanier's Criminal Proceeding May Take Years To Resolve

The Court held that "due to the requirements of the Speedy Trial Act, the burden of waiting to dispense with the civil claims is lessened." (Order at 5.) The Court further noted that "[i]t is anticipated that Plaintiff's criminal trial will be held sometime this year." (*Id.* at 4.) However, recent events in Plaintiff's criminal case make it clear that his criminal case will not be resolved anytime in the near future.

Although Plaintiff and the other criminal defendants were arraigned on July 30, 2013, the docket of the criminal case shows that, after more than seven months, it is yet to move past the resolution of pre-trial motions. (*See* Docket, *Commonwealth v. Spanier*, No. MJ-12303-CR-0000419-2012 (C.P. Dauphin) (attached as Ex. C).) As recently as January 17, 2014, the court invited additional pre-trial briefing. (*See id.*) These briefs were filed on February 28, 2014, and are pending before the court. (*See id.*) Appeals are easily within the range of possibility. Therefore, these recent events demonstrate that Plaintiff's criminal case will not be resolved promptly, notwithstanding what is expected to be a lengthy appeals process.

As the Court did not consider events that took place in Plaintiff's criminal case after the January 7, 2014 hearing in this matter, Defendants respectfully request that the Court reconsider its ruling that the prejudice to them of delaying

the civil case will be lessened because of the potentially prompt resolution of Plaintiff's criminal case.

CONCLUSION

For these reasons, Defendants respectfully request that the Court grant reconsideration, and order Plaintiff to file a Complaint within 20 days.

Dated: March 17, 2014

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EXHIBIT A

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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

GRAHAM B. SPANIER,
Plaintiff,

v.

LOUIS J. FREEH and FREEH SPORKIN, & SULLIVAN, LLP,
Defendants.

No. 2013-2707

2014 FEB 25 PM 1:15

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OPINION AND ORDER

Presently before the Court is a Motion to Stay Civil Proceedings filed by Graham B. Spanier (hereinafter "Plaintiff"). Argument was held on Plaintiff's Motion on January 7, 2014 and each party submitted filings in support of their position. Upon review of the documents and argument submitted by each party, Plaintiff's Motion to Stay Civil Proceedings is hereby **GRANTED.**

Background

On July 11, 2013, Plaintiff filed a Praecipe for a Writ of Summons to initiate a defamation action against Louis J. Freeh, Freeh Sporkin & Sullivan, LLP (hereinafter "Defendants") and Pepper Hamilton, LLP (as successor by merger to Freeh Sporkin & Sullivan, LLP.) A writ was issued on the same day and reissued by request of Plaintiff on August 2, 2013. An amended writ was issued on September 12, 2013, dropping Pepper Hamilton, LLP from the instant action.

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Defendants filed a Praecipe to File Complaint on September 30, 2013, and a Rule was issued the same day. On October 18, 2013, Plaintiff filed a Motion to Stay Civil Proceedings, requesting a stay in the above-captioned action until the ongoing criminal action against him in Dauphin County is resolved. Argument was held on Plaintiff's Motion on January 7, 2014 and each party submitted filings in support of their position.

Discussion

Stays in civil actions pending the resolution of ongoing criminal actions are governed by a six-factor balancing test. The factors a court must weigh are as follows: 1) extent of overlap between the cases; 2) status of the case; 3) interest in proceeding expeditiously weighed against prejudice caused by delay; 4) private interests of and burden on the defendant; 5) interests of the Court; and 6) public interest. *See In Re: Adelphia Communications Securities Litigation*, 2003 WL 22358819 (E.D. Pa. 2003); *Anderson v. Scott*, 2011 WL 10795429 (C.P. Lawrence 2011). This test "[safeguards] an individual's Fifth Amendment privilege against any unnecessary privilege that befalls the other party as a result." *Anderson* at *1. Accordingly, if possible, a Court should "accommodate a party's Fifth Amendment interests" if it can do so without placing the opposing party at a disadvantage. *Id.* The Court will address each factor in turn.

I. **Extent of Overlap**

The first factor this Court must consider is the extent to which the issues in the criminal and civil cases overlap. Plaintiff has been charged in Dauphin County with endangering the welfare of children, perjury, obstruction of justice, criminal conspiracy, and failure to report sexual assault. The document authored and released by Defendants on which Plaintiff partially bases his claim (hereinafter "the Freeh Report") concluded Plaintiff and several other university employees were complicit in concealing the activities of Gerald Sandusky from the Board of

Trustees, the University community, and authorities. The Freeh Report further concluded that Plaintiff and other university employees, by their nonfeasance, failed to protect against a child sexual predator and permitted him to operate unchecked for more than a decade after learning of the incident which occurred in the Lasch Building in 2001. These are, in essence, the same allegations supporting the charges filed against Plaintiff in Dauphin County—that Plaintiff intentionally concealed Sandusky's child abuse.

Defendants cite a decision by the Honorable Thomas G. Gavin, specially presiding over *McQueary v. Pennsylvania State University* (Centre County Docket Number 2012-1804), in which Judge Gavin denied the Pennsylvania State University's motion for stay pending the resolution of the criminal charges pending against Plaintiff, Timothy M. Curley, and Gary C. Schultz. However, the instant case is distinguishable. In *McQueary*, the speech which is the alleged basis of the defamation count (i.e., a statement by Plaintiff in support of Curley and Schultz) is not related to the criminal charges filed against Plaintiff, Curley, or Schultz. Conversely, the allegedly defamatory statements in the Freeh Report are very similar to the basis of the charges filed against Plaintiff, and the outcome of the criminal case may affect the case *sub judice*.

The Court finds this factor weighs in favor of granting Plaintiff's Motion.

II. <u>Status of Criminal Case</u>

The second factor this Court must consider in determining whether to grant a stay is the status of the criminal case, including whether the Plaintiff has been indicted. "A court is most likely to grant a stay of civil proceedings where an indictment has been returned." *Anderson*, 2011 WL 10795429 at *2, citing *State Farm Mutual Auto Insurance Co. v. Bechham-Easely*, 2002 WL 31111766 (E.D. Pa. 2002).

The Dauphin County District Attorney has formally charged Plaintiff with endangering the welfare of children, perjury, obstruction of justice, criminal conspiracy, and failure to report sexual assault. Curley and Schultz have also been formally charged. There is a substantial risk, therefore, that any or all of these individuals could invoke their Fifth Amendment rights during the civil action and refuse to participate in the discovery process. This would then subject Plaintiff to the negative inferences that a jury is permitted to draw from the assertion of a witness's right against self-incrimination.

It is anticipated that Plaintiff's criminal trial will be held sometime this year. Should the civil case proceed prior to the resolution of the criminal trial and should Plaintiff decline to assert his Fifth Amendment rights, any testimony he offered could be used against him in his criminal trial. Further, any evidence offered in the civil case would also be relevant to the criminal case, including anything stated in Plaintiff's complaint, which requires a sworn verification. Thus, Plaintiff may be at risk of exposing himself to criminal liability by proceeding. Conversely, should Plaintiff choose to refrain from testifying, from including certain allegations in his complaint, or from presenting certain evidence in his pursuit of the civil case, an underdeveloped and incomplete record may result. *See Anderson*, 2011 WL 10795429.

The Court finds this factor weighs in favor of granting Plaintiff's Motion.

III. Non-Moving Party's Interest in Proceeding Expeditiously Weighed Against Prejudice Caused by Delay

In this case, Plaintiff has requested a stay in the civil case he initiated. Therefore, the analysis of the factor that would normally balance the plaintiff's interest as the non-moving party in proceeding expeditiously against the prejudice caused by a delay is slightly different, as this Court must balance Defendants' interest in proceeding expeditiously in this case against the prejudice caused to Defendants by any delay.

Defendants argue granting the stay would prejudice them as they will not have access to Plaintiff's complaint to form a basis for Plaintiff's defamation action, witnesses may forget pertinent facts if the Court does not proceed expeditiously, and allowing the allegations against them to remain unanswered is severely damaging to their reputation. The Court acknowledges there is generally a policy in Pennsylvania to permit defendants in defamation cases to make an investigation of claims made against them while the evidence is still fresh in the mind of witnesses. *Evans v. Philadelphia Newspapers*, 601 A.2d 330, 333 (Pa.Super. 1991). In this particular matter, however, it is not likely that prospective witnesses will forget important details. The events giving rise to the instant litigation were highly publicized and it is quite unlikely those involved will forget details to such a degree that would warrant the denial of a stay.

Further, resolution of the criminal action may eliminate the necessity of litigating certain issues in the civil case due to the close relation of the nature of the allegations in each case and could potentially encourage settlement or withdrawal of some or all of the claims, outcomes that could be beneficial to Defendants.

Finally, due to the requirements of the Speedy Trial Act, the burden of waiting to dispense with the civil claim on Defendants is lessened.

The Court finds this factor does not weigh significantly in favor of denying a stay.

IV. Private Interests of and Burden on Moving Party

As with the preceding factor, the Court's analysis must necessarily differ, as Plaintiff is the moving party. The Court must balance the private interests of Plaintiff in having the stay granted against the burden on him should the Court deny the stay.

As discussed above, should this Court deny Plaintiff's request for a stay, Plaintiff will bear the burden of having to litigate his defamation claim and defend himself in the Dauphin

County criminal action. In addition to incurring additional expenses in litigating the two actions concurrently, Plaintiff may have to choose between testifying and waiving his Fifth Amendment right against self-incrimination or invoking his Fifth Amendment rights and not testifying in his civil suit, which could place him at a disadvantage in one or both proceedings. *See Cotter v. State Civil Serv. Comm'n*, 297 A.2d 176 (Pa.Cmwlth. 1972) (holding continuance should have been granted where criminal charges were pending against appellant, as "to do otherwise forced the appellant to choose unnecessarily to refrain from testifying in his own defense, and this resulted in an undeveloped and incomplete record.") Further, even the simple act of filing a complaint, which must contain a verification sworn under penalty of law, could potentially place Plaintiff at a disadvantage in his criminal proceedings by exposing him to criminal liability. Conversely, should Plaintiff choose to exclude certain statements from his complaint, he may potentially be placed at a disadvantage in the civil suit.

In addition, both Curley and Schultz have also been formally charged in Dauphin County with the same crimes as Plaintiff. As discussed above, there is a likely possibility that they will assert their Fifth Amendment rights should Plaintiff or Defendants attempt to depose them or subpoena them to testify at trial. Again, this would result in an incomplete and underdeveloped record.

The Court finds this factor weighs in favor of granting Plaintiff's Motion.

V. Interests of Court

The Court has an interest in expeditiously resolving the cases that come before it. However, the Court also has a strong interest in judicial efficiency. Due to the significant overlap between the case *sub judice* and the criminal case in Dauphin County, resolution of the criminal action may encourage settlement, or may eliminate the necessity of litigating certain

issues in the civil case, which would promote judicial economy.

VI. Public Interest

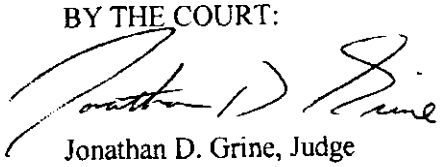
The Court finds that granting Plaintiff's Motion will neither benefit nor hurt the public interest. Although a civil litigant has an interest in the prompt disposition of his or her private claims, the public has a greater interest in the enforcement of the law in criminal cases. *Kaiser v. Stewart*, 1997 WL 66186 (E.D.Pa. 1997).

For the reasons discussed above, Plaintiff's Motion for Stay is **GRANTED**. Accordingly, the following is entered:

ORDER

AND NOW, this 25th day of February, 2014, after hearing and review of the documents submitted by both parties, the Motion for Stay filed by Plaintiff is hereby **GRANTED.**

BY THE COURT:



Jonathan D. Grine, Judge

EXHIBIT B

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Only the Westlaw citation is currently available.

United States District Court,
E.D. Pennsylvania.
CORINTHIAN MARBLE & GRANITE, INC.,
Plaintiff,
v.
T.D. BANK, N.A., Defendant.

Civil Action No. 12–cv–3744.
Jan. 24, 2013.

Francis Malofiy, Philadelphia, PA, for Plaintiff.

Erin Michelle Carter, Alexander D. Bono, Duane Morris LLP, Philadelphia, PA, for Defendant.

MEMORANDUM

DuBOIS, District Judge.

I. INTRODUCTION

*1 Corinthian Marble & Granite, Inc. filed a lawsuit against TD Bank, N.A. and Melissa C. Boyd in the Pennsylvania Court of Common Pleas. After the state court dismissed all claims against Boyd, the only non-diverse defendant, TD Bank removed to this Court. Corinthian now moves to remand the case back to state court because the removal occurred one year after the case commenced, in violation of 28 U.S.C. § 1446. For the reasons set forth below, the Court grants the motion.

II. BACKGROUND

A. *Factual Background*

Corinthian claims that five individuals—labeled in the Second Amended Complaint as the "Perpetrators"—"plotted a coup" to take over Corinthian. (Resp. Ex. A, Second Am. Compl., at ¶¶ 4.) Specifically, it asserts that they closed Corinthian's account at TD Bank, reopened a new bank account in Corinthian's name, and raided the company's assets. (*Id.* at ¶¶ 8, 34–37.)

Corinthian sued TD Bank and its employee, Melissa Boyd, on numerous grounds for permitting these transactions. Currently, all that remains for adjudication is a breach of contract claim against TD Bank.

B. *Procedural History*

On March 28, 2011, the original plaintiff in this case, Anastasios Papadopoulos, filed a Praecipe to Issue Writ of Summons in the Pennsylvania Court of Common Pleas. (Notice of Removal, Ex. C.) [FN1] The Praecipe named as defendants TD Bank, Boyd, and "additional defendants." (*Id.*) Additionally, the caption stated that the plaintiff was "Anastasios Papadopoulos & on behalf of Corinthian Marble & Granite, Inc. (Shareholder Derivative Suit)." (*Id.*)

FN1. Exhibit C to the Notice of Removal contains the entire state court record.

Little occurred in the case for three months, at which point the state court directed Papadopoulos to file a complaint. (Resp.Ex. N.) Papadopoulos did so, and after defendants filed Preliminary Objections, he filed an Amended Complaint. (Resp. Ex. O, June 7, 2012 Civil Docket Report, at 8–9). TD Bank and Boyd responded by filing Preliminary Objections once again. (*Id.* at 10.)

The state court sustained the objections, reasoning that Papadopoulos failed to meet the requirements of Pa. R. Civ. P. 1506, which requires plaintiffs who bring a derivative action to set forth in their complaint "the efforts made to secure enforcement by the corporation ... or the reason for not making such efforts...." (Resp. Ex. M, at 1, 3.) The state court dismissed the Amended Complaint, but gave Papadopoulos leave to file a second amended complaint. (*Id.* at 1.) That court also noted that if the allegations in the Amended Complaint were true—that Papadopoulos is the sole

stockholder of Corinthian and may also be its sole director—Papadopoulos would have authority to either elect directors to commence an action in Corinthian's name, or commence such an action himself under his own authority as director. (*Id.* at 4.)

In response, Papadopoulos neither filed a new action in Corinthian's name nor maintained his derivative suit. Rather, on January 26, 2012, a Second Amended Complaint was filed, this time, with Corinthian itself as the plaintiff. (Resp.Ex.A.) In this version of the complaint, only TD Bank and Boyd were named as defendants, and they once again filed Preliminary Objections. (*Id .;* Resp. Ex. B.)

***2** The state court sustained in part and overruled in part their objections. (Resp. Ex. B, at 1.) All claims against Boyd were dismissed, and the state court dismissed her as a defendant. (*Id.* at 1–2.) All claims against TD Bank were dismissed except for the breach of contract claim in Count I of the Second Amended Complaint. (*Id.* at 1.)

With Boyd dismissed, there was complete diversity of citizenship. As a result, TD Bank removed to this Court on July 3, 2012—over a year after Papadopoulos filed his Praecipe to Issue Writ of Summons but less than six months after the Second Amended Complaint with Corinthian as the plaintiff was filed.

Corinthian now moves to remand the case back to state court on the ground that the removal occurred one year after the case commenced, in violation of 28 U.S.C. § 1446.

III. LEGAL STANDARD

In a motion to remand, "the removal statute should be strictly construed and all doubts should be resolved in favor of remand." *Abels v. State Farm Fire & Cas. Co.,* 770 F.2d 26, 29 (3d Cir.1985). "The party seeking removal has the burden of showing that federal subject-matter jurisdiction exists, that filing of the notice of removal was timely, and that removal is proper." *Mountain Ridge State Bank v. Investor Funding Corp.,* 763 F.Supp. 1282, 1288 (D.N.J.1991) (superseded by statute on other grounds). A case may be remanded to state court on the ground of a defect in the removal procedure. 28 U.S.C. § 1447(c). Failure to file a notice of removal within the limitations periods of § 1446 is cause for remand. *Capone v. Harris Corp.,* 694 F.Supp. 111, 112 (E.D.Pa.1988); *Namey v. Malcolm,* 534 F.Supp.2d 494 (M.D.Pa.2008).

The parties refer to the new version of § 1446, which the President signed into law on December 7, 2011. *See Advanced Surgery Ctr. v. Conn. Gen. Life Ins. Co.,* No. 12–2715, 2012 WL 3598815, at *3 n. 2 (D.N.J. July 21, 2012). However, the new version of the statute only apples to cases which were commenced after January 6, 2012. *See id.;* Pub.L. No. 112–63, § 205, 125 Stat. 758, § 205. Because the Court concludes below that this case was commenced on March 28, 2011, the Court will apply the prior version of § 1446, which reads:

> The 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.
>
> If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

*3 28 U.S.C. § 1446(b) (amended December 7, 2011).

Applying the older version of the statute does not affect the Court's decision. The only relevant change is that the new version provides that the one-year limitation on removing cases does not apply if the "the plaintiff has acted in bad faith." 28 U.S.C. § 1446(c)(1) (current version). This exception to the one-year limitations period was added because some courts had "viewed the 1–year time limit as 'jurisdictional' and therefore an absolute limit on the district court's jurisdiction [while other courts had] viewed the period as 'procedural' and therefore subject to equitable tolling." H.R. REP. NO. 112–10, at 15; *see also Sanchez v. Am. Motorists Ins. Co.*, No. 12–cv–31, 2012 WL 2122194, at *1 (S.D.Tex. June 11, 2012) ("This one-year repose provision has since been amended to include statutorily a version of the [equitable] exception.").

The Third Circuit has previously ruled that the one-year limit is procedural, not jurisdictional. *Ariel Land Owners, Inc. v. Dring*, 351 F.3d 611, 616 (3d Cir.2003). Therefore, the Court will consider equitable exceptions to the limitations period even though the older version of the statute does not itself contain the "bad faith" exception that is present in the current version.

IV. DISCUSSION

Section 1446(b) provides the procedures for removing cases to federal court: If a case is initially removable, a defendant has thirty days to remove after receiving the initial pleading.[FN2] If a case is not initially removable, the defendant has thirty days to remove from the time it may first be ascertained that the case is one which is or has become removable. However, in no event can such a removal occur more than one year after the commencement of the action.

FN2. From now on, the Court refers to the version of § 1446 in effect for cases which commenced before January 6, 2012, as discussed above.

Corinthian asserts that TD Bank's removal was untimely because it occurred outside the one-year limitations period. TD Bank counters that it removed within the one-year time period and that even if it removed outside the one-year limit, the Court should apply an equitable exception to the limitations period. The Court addresses the arguments in turn.

A. *Whether TD Bank Removed Within the One–Year Limit*

Pursuant to § 1446(b), a case that was not initially removable cannot be removed "more than 1 year after commencement of the action." Corinthian asserts that TD Bank's removal was untimely because the case commenced when Papadopoulos filed the Praecipe to Issue Writ of Summons, over a year before TD Bank removed to federal court. TD Bank does not dispute that under ordinary circumstances, such a praecipe commences a lawsuit. Rather, TD Bank argues that the filing of the Second Amended Complaint—which occurred less than six months before the case was removed—commenced a new lawsuit because it was the first time that Corinthian (as opposed to Papadopoulos) asserted a claim against TD Bank. Specifically, TD Bank argues that the Second Amended Complaint (a) violated the Pennsylvania Rules of Civil Procedure (b) states that Papadopoulos does not have authority to sue as Corinthian, and (c) alleges itself that Corinthian is instituting an action in its own name. The Court rejects these arguments and concludes that the filing of the Second Amended Complaint did not commence a new action for the purposes of § 1446(b).

(a) *Violations of the Pennsylvania Rules of Civil Procedure*

*4 TD Bank asserts that "instead of instituting a new action or seeking leave to add a new party plaintiff as required by Pennsylvania's Rules of Civil Procedure, Papadopoulos caused the filing of the Second Amended Complaint that unilaterally

added a new party plaintiff (Corinthian) and unilaterally converted his 'shareholder derivative' action into a new direct action by a corporation (Corinthian)...." (Resp. at 8.) TD Bank argues that, even though the state court permitted these changes in the Second Amended Complaint, because the proper procedures were not followed, the action was commenced by the filing of the Second Amended Complaint. The Court rejects that argument.

It is irrelevant whether the proper or improper procedural route was taken to substitute a new plaintiff. Adding new parties does not restart the one-year time period. *See In re Pikeville Sch. Bus Collision Cases,* Nos. 11–158 and 11–159, 2011 WL 6752564, at *5 (E.D.Ky.2011) (collecting cases). Thus, if the changes were proper, the one-year period did not begin to run from the filing of the Second Amended Complaint. If the changes were improper, then the Second Amended Complaint did not effectively change the plaintiff. Under that circumstance, the date of the filing of the Praecipe to Issue Writ of Summons would still be the benchmark. Thus, the change in plaintiffs is not a basis for starting the one-year time period from the filing of the Second Amended Complaint.

It is also irrelevant whether or not the proper procedures were followed to convert the case from a derivative suit to an action brought directly by Corinthian. Some courts have concluded that the thirty-day time limit for removing cases is reset or "revived" if "the plaintiff files an amended complaint that so changes the nature of his action as to constitute substantially a new suit begun that day." *See Johnson v. Heublein Inc.,* 227 F.3d 236, 241–43 (5th Cir.2000) (internal quotations omitted); *Wilson v. Intercollegiate (Big Ten) Conference A. A.,* 668 F.2d 962, 965 (7th Cir.1982) (internal quotations omitted). However, even if the Court were to conclude that the one-year limitation can also be "revived," the application of the rule is not warranted in this case. In *Johnson,* the Fifth Circuit held that an amended complaint revived the thirty-day period in part because "the allegations contained in the amended complaint bear no resemblance whatsoever to the allegations of the original complaint." 227 F.3d at 242 (internal alterations omitted). On the other hand, in this case, the allegations in the Second Amended Complaint are essentially identical to the allegations made in the First Amended Complaint. Accordingly, the Second Amended Complaint did not fundamentally change the nature of the action so as to constitute "substantially a new suit begun that day."

Thus, just as it is irrelevant whether the proper procedures were followed to substitute a new plaintiff, whether the case was properly converted from a derivative suit to a direct suit is similarly irrelevant. If the nature of the action were changed properly, the one-year time period would not be "revived" because the change would not be so fundamental as to constitute "substantially a new suit begun that day." If the change were improper, the Second Amended Complaint would not effectively modify the nature of the suit. In either case, the action commenced on the date of the filing of the Praecipe to Issue Writ of Summons. Thus, the change in the nature of the suit is not a basis for starting the one-year time period from the filing of the Second Amended Complaint.

(b) *Papadopoulos's Authority to Sue in Corinthian's Name*

***5** Second, TD Bank argues that although Papadopoulos "caused a Second Amended Complaint to be filed" in Corinthian's name, he does not have authority to sue as Corinthian. (Resp. at 6, 12.) TD Bank points to the Second Amended Complaint which states, "Anastasios Papadopoulos and Corinthian Marble will be filling a Declaratory Action to determine the shareholders, directors, and officers of Corinthian Marble and to squelch going forth. In addition, Plaintiff Corinthian Marble will be filing a Motion to Stay the current action until resolution of the Declaratory Action." (Resp. Ex. A, Second Am. Compl., at ¶ 12 n. 2.) TD Bank asserts that this is relevant because it shows that

"Papadopoulos knew that he improperly was trying to change the named plaintiff from himself to Corinthian and change the nature of the action from a shareholder derivative claim to a direct claim." (Resp. at 12.)

The Court already ruled above that the alleged procedural improprieties in the Second Amended Complaint are irrelevant in determining when the action commenced. Whether Papadopoulos and Corinthian knew that the Second Amended Complaint was defective is equally irrelevant. Thus, Papadopoulos's alleged lack of authority to sue in Corinthian's name is not grounds for treating the Second Amended Complaint as commencing a new action.

(c) *Allegation in Second Amended Complaint*

Finally, TD Bank claims that the language of the Second Amended Complaint itself supports the position that the filing of that complaint instituted a new action. The Second Amended Complaint states, "Now comes Anastasios Papadopoulos ("Papadopoulos") with the authority to require Corinthian to institute action in its own name as it does herein as Plaintiff." (Resp. Ex. A, Second Am. Compl., at ¶ 3.) The Court rejects this as grounds for treating the Second Amended Complaint as starting a new action.

The one-year period under § 1446(b) begins to run from the "commencement of the action," not from when a party states it is commencing an action. Accordingly, the Court will look to when Pennsylvania law treats an action as having been commenced, not to when the Second Amended Complaint asserts the action commenced.[FN3] In Pennsylvania, "[a]n action may be commenced by filing with the prothonetary (1) a praecipe for a writ of summons, or (2) a complaint." Pa. R. Civ. P. 1007. Therefore, the Praecipe to Issue Writ of Summons filed on March 28, 2011 commenced the action. *See Namey v. Malcolm,* 534 F.Supp.2d 494, 497 (M.D.Pa.2008) (ruling that filing a Writ of Summons commenced the action).

FN3. Even if the Court were to consider what the Second Amended Complaint itself asserts, it contains language that contradicts the sentence that TD Bank highlights. The caption in the Second Amended Complaint states, "Action Commenced by Writ of Summons on March 19, 2011," though the Court notes that the Praecipe to Issue Writ of Summons was actually filed on March 28, not March 19. (*See* Resp. Ex. A, Second Am. Compl., at 1–2.) Further, it maintains the same civil action number, and it is titled a "Second Amended Complaint" rather than an initial complaint. (*Id.*)

Thus, the Court concludes that the filing of the Second Amended Complaint did not commence a new action.

(d) *Conclusion*

The Court concludes that for purposes of § 1446(b), the action commenced on March 28, 2011 upon the filing of the Praecipe to Issue Writ of Summons. TD Bank removed the case to federal court on July 3, 2012, outside the one-year time period. The Court will therefore turn to whether an equitable exception applies that would excuse the otherwise untimely removal.

B. *Whether an Equitable Exception Applies*

***6** TD Bank argues that even if the removal occurred outside of the one-year time period, an equitable exception applies to excuse its untimeliness. "While § 1446(b) does not explicitly detail any exception to the one year limitation, the Third Circuit has held that the one year limit on removal is a procedural bar, not a jurisdictional one." *Various Plaintiffs v. Various Defendants (Oil Field Cases),* 673 F.Supp.2d 358, 364 (E.D.Pa.2009) (citing *Ariel Land Owners, Inc. v. Dring,* 351 F.3d 611, 616 (3d Cir.2003)). "The practical effect of this holding is to open the door to an examination of equitable considerations in deciding whether to allow exceptions to the one year limitation on removal." *Oil Field Cases,* 673

F.Supp.2d at 364.

TD Bank argues that an equitable exception should apply because (a) Papadopoulos and Corinthian "did not vigorously pursue this action" and (b) Boyd was fraudulently joined to defeat diversity. (*See* Resp. at 13.)

(a) *Vigorous Pursuit of the Action*

TD Bank argues that an equitable exception to § 1446(b) applies because "Papadopoulos and Corinthian have not vigorously pursued this action." (*Id.*) It points to the state court order three months after the filing of the Praecipe to Issue Writ of Summons which directed Papadopoulos to file a complaint. (*Id.; see also* Resp. Ex. N.) TD Bank further argues that, in contrast to Papadopoulos and Corinthian's procrastination, "TD Bank has actively opposed the procedural and substantive defects in Papadopoulos' six Complaints over the past three years, and was repeatedly successful at dismissing Papadopoulos' claims." (Resp. at 13.) The Court rejects this argument.

TD Bank relies on *Namey v. Malcolm* for its assertion that such a delay warrants an equitable exception. 534 F.Supp.2d 494 (M.D.Pa.2008). In *Namey,* the court stated that in the cases permitting an equitable exception to the one-year period under § 1446(b), "the courts found intentional conduct on the part of the plaintiffs to circumvent removal." *Id.* at 498. The court concluded that no similar conduct had occurred in that case, and that moreover, the defendants had not used all the procedural devices available to them such as "request[ing] the court to order Plaintiffs to file their complaint by a certain date...." *Id.*

The same is true in this case. There is no evidence that Papadopoulos or Corinthian caused delays for the purpose of forcing removal outside of the one-year time limit. Additionally, like the defendants in *Namey,* TD Bank could have filed a praecipe requesting the court to order the plaintiff to file a complaint pursuant to Pa. R. Civ. P. 1037(a).

Thus, the Court concludes that the delay in state court is insufficient to warrant an equitable exception.

(b) *Fraudulent Joinder*

TD Bank additionally argues that an equitable exception should apply because Boyd was fraudulently joined. The Court rejects this argument as well.

*7 The leading case on fraudulent joinder in the context of § 1446 is *Tedford v. Warner–Lambert Co.,* 327 F.3d 423 (5th Cir.2003). In *Tedford,* plaintiff Jaretta Tedford filed a lawsuit against numerous defendants including Dr. Stan Johsnon, who spoiled diversity. *Id.* at 424. Hours after learning that the defendants intended to remove on fraudulent joinder grounds, Tedford—knowing that the removal would be successful if Johnson were the sole non-diverse defendant—added a second non-diverse defendant, Dr. Robert DeLuca. *Id.* at 425, 427. Defendants removed, but the district court rejected their fraudulent joinder argument and remanded the case back to state court. *Id.* at 425. Then, prior to the expiration of the one-year period, "Tedford signed and post-dated a Notice of Nonsuit of Dr. DeLuca ... but did not file the document with the court or notify [defendants] until after the one-year anniversary of the filing of the complaint." *Id.* at 427–28. Defendants removed again, ten days after the expiration of the one-year limit. *Id.* at 425. The court permitted the removal because Tedford "attempted to manipulate the statutory rules for determining federal removal jurisdiction." *Id.* at 428–29.

The *Tedford*-typeof forum manipulation did not occur in this case. In *Tedford,* the plaintiff specifically manipulated the one-year limitation by adding a non-diverse defendant only moments before removal and keeping that defendant in the case until only moments after the one-year period expired. In this case, Boyd was in the case from the beginning of the lawsuit, and she was dismissed three months after the expiration of the one-year

period pursuant to the state court's order. There is no evidence that Papadopoulos or Corinthian manipulated the one-year time period by naming Boyd as a defendant. *See Selman v. Pfizer, Inc.*, No. 11–cv–1400, 2011 WL 6655354, at *5 (D.Or. Dec.16, 2011) (declining to apply an equitable exception on fraudulent joinder grounds because "there [was] no objective evidence of collusion between Plaintiffs and the Resident Defendants, there [was] no backdating of papers or other obfuscation of the dismissal of nondiverse parties, and there [was] no evidence of any other purposefully dilatory and manipulative tactics."). Thus, the Court concludes that the alleged fraudulent joinder, even if true, does not provide grounds for an equitable exception to the one-year time period.

Moreover, even if Boyd were, in fact, fraudulently joined, TD Bank would face a different hurtle: the thirty-day limitations period under § 1446(b). Due to the fraudulent joinder, the case would have been removable before Boyd was dismissed by the state court. Accordingly, TD would have had thirty days to remove from the point at which it could reasonably conclude that the case was removable. *Santos v. Norfolk S. Ry. Co.*, No. 08–4521, 2008 WL 4694558, at *4 (E.D. Pa. Oct 22, 2008); *Kimmet v. Mannesmann Dematic Rapistan Sys. Corp.*, No. 00–1247, 2000 WL 822513, at *3. (E.D.Pa. June 26, 2000). Thus, even if Boyd were fraudulently joined, TD Bank's removal would still be untimely under the thirty-day limitations period.

(c) *Conclusion*

***8** Bearing in mind that "[t]he removal statute should be strictly construed and all doubts should be resolved in favor of remand," the Court concludes that no equitable exception applies. *See Abels v. State Farm Fire & Cas. Co.*, 770 F.2d 26, 29 (3d Cir.1985). Thus, TD Bank untimely removed one year after the action commenced.

V. CONCLUSION

For the reasons stated above, Plaintiff's Motion to Remand is granted. TD Bank had previously filed a Motion to Dismiss. By agreement of the parties, Corinthian was not required to file a response to that motion until after the Court ruled on the Motion to Remand. (Stipulation, Document No. 13, filed August 21, 2012.) Because the case is remanded, the Court does not rule on the motion to dismiss.

An appropriate order follows.

ORDER

AND NOW, this 23rd day of January, 2013, upon consideration of Plaintiff's Motion to Remand (Document No. 8, filed August 2, 2012), Defendant TD Bank, N.A [.]'s Opposition to Corinthian Marble & Granite, Inc.'s Motion to Remand (Document No. 12, filed August 17, 2012), Plaintiff's Reply Memorandum of Law in Further Support of Plaintiff's Motion to Remand (Document No. 14, filed August 24, 2012), and Defendant TD Bank, N.A[.]'s Motion to Dismiss (Document No. 6, filed July 7, 2012), for the reasons set forth in the Memorandum dated January 23, 2013, **IT IS ORDERED** that Plaintiff's Motion to Remand is **GRANTED,** and this case is **REMANDED** to the Court of Common Pleas of Philadelphia County. Because the case is remanded, the Court does not rule on Defendant TD Bank, N.A [.]'s Motion to Dismiss.

IT IS FURTHER ORDERED that the Clerk of Court shall **MARK** this case **CLOSED.**

E.D.Pa.,2013.
Corinthian Marble & Granite, Inc. v. T.D. Bank, N.A.
Not Reported in F.Supp.2d, 2013 WL 272757 (E.D.Pa.)

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Not Reported in F.Supp.2d, 2006 WL 266100 (M.D.Pa.)
(Cite as: 2006 WL 266100 (M.D.Pa.))

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Only the Westlaw citation is currently available.

United States District Court,
M.D. Pennsylvania.
Alex GLADKIKH, et ux., Plaintiffs
v.
LYLE INDUSTRIES, INC., Defendant

No. Civ.A. 3CV052402.
Feb. 1, 2006.

Peter M. Patton, Galfand, Berger, Lurie & March, Philadelphia, PA, for Plaintiffs.

Thomas J. Kelley, Thomas J. Kelley & Associates, Moosic, PA, for Defendant.

MEMORANDUM AND ORDER

BLEWITT, Magistrate J.

I. Background.

***1** On November 18, 2005, this action was removed to federal court by Defendant Lyle Industries, Inc., pursuant to 28 U.S.C. § 1446(a). Presently before the Court is the Plaintiffs' motion to remand the matter to the Court of Common Pleas of Lackawanna County. (Doc. 5).[FN1] Therein, the Plaintiffs seek to remand the matter, arguing that the "Defendant filed its Notice of Removal on or about November 18, 2005, more than four months after being served with Plaintiffs' writ of summons." (Doc. 5, pp. 1-2). Plaintiffs argue that Defendant's Notice of Removal was filed more than thirty days after its receipt of the writ of summons in this matter and, therefore, Defendant has waived its right to remove the above action to federal court. Plaintiffs state that Defendant received notice of their claim on July 28, 2005, when it was served with the writ of summons and civil cover sheet. Indeed, Defendant admits that it was served with the Praecipe, writ of summons and civil cover sheet by Plaintiffs on July 25, 2005. (Doc. 5, ¶ 2. & Doc. 7, ¶ 2.). Thus, certainly, Defendant did file its notice of removal almost four (4) months after being served with Plaintiffs' writ of summons, *i.e.* July 28, 2005 to November 18, 2005.

FN1. The parties consented to proceed before the undersigned pursuant to 28 U.S.C. § 636(c). (Doc. 12).

Defendant argues that it filed its notice of removal within thirty (30) days of receiving Plaintiffs' complaint and, thus, contends that removal was timely. Indeed, Plaintiffs' complaint was filed October 26, 2005 in the Court of Common Pleas of Lackawanna County. Therefore, Defendant did file its notice of removal within thirty (30) days of the fling of Plaintiffs' complaint.

II. Discussion.

The question is which event triggered the running of the thirty (30)-day period for purpose of removal, the writ of summons or the complaint.

"The 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." 28 U.S.C. § 1446(b). "It is well established that this thirty day period is mandatory and cannot be extended by the Court." *Maglio v. F.W. Woolworth Co.*, 542 F.Supp. 39, 40 (E.D.Pa.1982) (Citations omitted).

It is the Plaintiffs' position that on July 25, 2005, the writ of summons and civil cover sheet were served on the Defendant. (Doc. 5, Exhibit "B"). Therefore, according to Plaintiffs, the Defendant had thirty (30) days from July 25, 2005 to remove the action. However, the action was not removed until November 18, 2005.

Defendant states that the initial pleading for

removal purposes is the complaint and not the writ of summons. Defendant cites to *Sikirica v. Nationwide Ins. Co.,* 416 F.3d 214 (3d Cir.2005), wherein both parties acknowledge that the court held that a writ of summons alone could not trigger the thirty (30)-day removal period. Plaintiffs attempt to distinguish *Sikirica* from the present case and argue that *Sikiricia,* in which the Defendant was informed of federal jurisdiction by a combination of the writ and an unfiled demand letter, is inapplicable to our case, since in our case, Plaintiffs' writ of summons alone identified the basis for diversity jurisdiction and their civil cover sheet indicated that the case was for negligence and product liability. Plaintiffs contend that in the present case, the writ of summons which shows diversity of the parties, and the civil cover sheet, which indicated that they were alleging product liability and negligence, are within the requirements of § 1446. Thus, Plaintiffs argue that their writ and civil cover sheet should be construed as the initial pleading setting forth their claim for relief.

***2** Defendant is correct that the Plaintiffs' civil cover sheet stated "NGL/PROD." (Doc. 6, Ex. A). We agree with Defendant that the civil cover sheet did not adequately specify the basis of Plaintiffs' claim. We also find Defendant to be correct that, in light of *Sikirica,* its notice of removal, filed within thirty (30) days of the filing of Plaintiffs' complaint, was timely.

The removal statute is very clear, in that it states that "the thirty day period is to commence from 'the receipt by the defendant, through service or otherwise,' of a pleading from which it may first be ascertained that the case is removable." *Maglio,* 542 F.Supp. at 41 *quoting* 28 U.S.C. § 1446(b); *Foster v. Mutual Fire, Marine & Inland Insurance Company,* 986 F.2d 48, 53 (3d Cir.1993).

Notwithstanding the fact that Plaintiffs' writ of summons did contain the addresses of the parties, indicating that Plaintiffs resided in Hazleton, Pennsylvania, and that Defendant's principal place of business was in Michigan, and notwithstanding their civil cover sheet which indicated "NGL/PROD" (Doc. 6, Ex. A), we find that these were not pleadings from which it could first be ascertained that the case was removable. On the contrary, there is clearly adequate notice of federal jurisdiction provided by the Plaintiffs' Complaint. We are constrained to follow *Sikirica,* and we find Plaintiffs' attempt to distinguish it from our case to be unavailing.

In *Sikirica v. Nationwide Ins. Co.,* 416 F.3d at 222, the Court specifically stated that "a summons may not serve an an initial pleading under *Murphy Bros."* The Court also looked to the general specifics of a writ of summons in Pennsylvania, and found that it was insufficient to notify the Defendant what the action was about and the relief sought. In our case, while Plaintiffs claim that the civil cover sheet was sufficient to notify Defendants what their action was about, we find that, with its abbreviated code, it was not. Further, the writ itself contained no further information about the nature of the action or the relief sought. Thus, we find that the Plaintiffs' writ and civil cover sheet did not fully give notice of the grounds for federal diversity jurisdiction. They do not constitute the initial pleading.

As the *Sikirica* Court, *supra* at 224, concluded:

The "initial pleading" here was the complaint, not the summons, but the complaint provided notice of the grounds for federal diversity jurisdiction, so the second paragraph of Section 1446(b) does not apply; Sikirica's reliance on "other papers" is unfounded. Nationwide did not receive notice of federal diversity jurisdiction before the complaint was filed on July 8, 2002. The action was timely removed on July 22, 2002, less than 30 days later; the District Court's denial of the motion to remand was not in error.

See also K.S. v. School Dist. of Phila., 2005 WL 3150253 *2, n. 11 (E.D.Pa.)

We find that the thirty-day removal period commenced upon the filing of Plaintiffs' Complaint on October 26, 2005. The Defendant timely filed its notice for removal on November 18, 2005, pursuant to 28 U.S.C. § 1446(b). Therefore, we will deny Plaintiffs' Motion to Remand. (Doc. 5).

***3** An appropriate Order follows.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED THAT the Plaintiffs' Motion to Remand (Doc. 5) this case to the Court of Common Pleas of Lackawanna County is DENIED.[FN2]

FN2. Since Defendant already filed its Answer to the Complaint, we shall set up a scheduling conference.

M.D.Pa.,2006.
Gladkikh v. Lyle Industries, Inc.
Not Reported in F.Supp.2d, 2006 WL 266100 (M.D.Pa.)

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Not Reported in F.Supp.2d, 2012 WL 3890249 (M.D.Pa.)
(Cite as: 2012 WL 3890249 (M.D.Pa.))

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Only the Westlaw citation is currently available.

United States District Court,
M.D. Pennsylvania.
Allison KOWALSKI, Individually and as Administrator of the Estate of Mark Kowalski, Deceased, Plaintiff
v.
PBM LOGISTICS, LLC, Patrick L. Webb, Patti Pyatt, Xtra Lease, Republic National Industries of Texas, LP, and Tenco Transportation, LLC, Defendants.

Civil Action No. 4:CV–12–1158.
Aug. 6, 2012.

Daniel W. Munley, Munley, Munley & Cartwright, P.C., Scranton, PA, for Plaintiff.

John C. Bobber, Mintzer, Sarowtiz, Zeris, Ledva & Meyers, LLP, Christina M. Rideout, Stephen M. Capriotti, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Stacy L. Greenberg, Robert D. Billet , Billet & Associates LLC, Philadelphia, PA, for Defendants.

REPORT AND RECOMMENDATION

THOMAS M. BLEWITT, United States Magistrate Judge.

I. Background.

*1 This case arises from a motor vehicle accident which occurred on January 21, 2011, in South Centre Township, Pennsylvania, in which Decedent Mark Kowalski died from severe injuries suffered as a result of the accident. (Doc. 2, p. 1–2). Decedent Mark Kowalski was the driver of a tractor-trailer involved in the accident with Defendant Patrick Webb, also the driver of a tractor-trailer. (*Id.*). Plaintiff Allison Kowalski is the widow of Decedent Mark Kowalski.

Initially, on February 18, 2011, Plaintiff filed a Praecipe for a Writ of Summons in the Lackawanna County Court of Common Pleas ("CCP") against Defendants PBM Logistics, LLC ("PBM") and Patrick L. Webb ("Webb"). (Doc. 2–1, CCP Docket Number 11–CV–1194). On April 28, 2011, Plaintiff filed a Praecipe for a Writ of Summons in the CCP against Defendants XTRA Lease ("XTRA") and Patti Pyatt ("Pyatt"). (Doc. 2–2, CCP Docket Number 11–CV–2670). Additionally, on May 24,2011, Plaintiff filed a Praecipe for a Writ of Summons in the CCP against Defendant Republic National Industries of Texas, LP ("Republic"). (Doc.2–3, CCP Docket Number 11–CV–3250). Lastly, Plaintiff filed a Praecipe for a Writ of Summons in the CCP against Defendant TENCO Transportation, LLC ("TENCO") on June 17, 2011. (Doc. 2–4, CCP Docket Number 11–CV–3714). All Praecipe for a Writ of Summons Plaintiff filed against the stated Defendants related to the January 21, 2011 motor vehicle.

On March 20, 2012, Plaintiff filed a Complaint in the Court of Common Pleas of Lackawanna County, Pennsylvania, under the CCP Docket Number 12–CV–1787. (Docs. 1–2 & 7–1. Ex. C, p. 3). Plaintiff filed her Complaint against all six Defendants listed above. Plaintiff asserts twenty-one (21) counts against Defendants, including a survival action, wrongful death action, and negligence. (Doc. 1–2).

On June 18, 2012, this case was removed to the United States District Court for the Middle District of Pennsylvania by Defendants PBM, Webb, and Pyatt, based on diversity jurisdiction, pursuant to 28 U.S.C. § 1332(a)(1) and 28 U.S.C. § 1441(a). (Doc.1).

Presently before the Court is Plaintiff's Motion to Remand this case back to the CCP of Lackawanna County. Specifically, on June 25, 2012, Plaintiff filed with this Court a Motion to Remand and a Brief in Support of her Motion. (**Doc. 2** & Doc. 3).[FN1] Plaintiff attached exhibits of her Motion to Remand, namely copies of the

Praecipes for a Writ of Summons she filed in the CCP against Defendants. (Docs. 2–1 to 2–5). Defendants PBM, Webb, and Pyatt then filed a Response in Opposition to Plaintiff's Motion on July 3, 2012. (Doc. 4).

> FN1. Pursuant to the United States District Court for the Middle District of Pennsylvania, Local Rule 7.6, Defendants XTRA and TENCO are deemed to not oppose Plaintiff's Motion to Remand. Local Rule 7.6 provides:
>
> > Any party opposing any motion, ... shall file a brief in opposition within fourteen (14) days after service of the movant's brief, or, if a brief in support of the motion is not required under theses rules, within seven (7) days after service of the motion. Any party who fails to comply with such motion is deemed not to oppose such motion. Nothing in this rule shall be construed to limit the authority of the court to grant any motion before expiration of the prescribed period for filling a brief in opposition.

On July 6, 2012, Defendant Republic filed a Motion for Partial Dismissal of Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. 5). Subsequently, on July 11, 2012, Plaintiff filed a Motion to Stay Defendant Republic's Motion for Partial Dismissal until the Court decided her Motion to Remand. (Doc. 6). Defendant Republic concurred with Plaintiff's Doc. 6 Motion. We granted Plaintiff's unopposed Motion to Stay on July 16, 2012. (Doc. 11).

***2** Further, on July 11, 2011, Defendant Republic filed a Response in Opposition to Plaintiff's Motion to Remand (Doc. 7), and on July 13, 2012, Defendant PBM, Webb, and Pyatt filed a Memorandum of Law in Support of their Opposition to Plaintiff's Motion to Remand. (Doc. 8). On July 20, 2012, Defendant Republic filed a Brief in Support of its Response in Opposition to Plaintiff's Motion to Remand. (Doc. 14). Also, on July 20, 2012, Plaintiff filed her Reply Brief in Support of her Motion to Remand (Doc.15), and on July 25, 2012, Plaintiff filed her Reply Brief to Defendant Republic National Industries' Brief in Opposition to her Motion to Remand. (Doc.16).

Plaintiff's Motion to Remand is ripe for disposition. We have been assigned this case for pre-trial matters pursuant to 28 U.S.C. § 636(b).

II. Discussion.

The Court in *The Bachman Co. v. MacDonald,* 173 F.Supp.2d 318, 322 (E.D.Pa.2001), stated the removal standard as follows:

> In general, a party is able to remove a civil action filed in state court to federal court if the federal court would have had original jurisdiction to hear the matter. *Lumbermans Mut. Cas. Co. v. Fishman,* No. 99–0929, 1999 WL 744016, at *1 (E.D.Pa. Sept.22, 1999) (citing 28 U.S.C. § 1441(b) (1999); *Boyer v. Snap–On Tools Corp.,* 913 F.2d 108, 111 (3d Cir.1990), *cert. denied,* 498 U.S. 1085, 111 S.Ct. 959, 112 L.Ed.2d 1046 (1991)). Once the case has been removed, however, "the federal court may remand if there has been a procedural defect in removal." *Kimmel v. DeGasperi,* No. 00–143, 2000 WL 420639, at * 1 (E.D.Pa. Apr.7, 2000) (citing 28 U.S.C. § 1447(c) (West 1994)). Remand is mandatory if the court determines that it lacks federal subject matter jurisdiction. *Id.* (citing 28 U.S.C. § 1447(c) (West 1994)). "When a case is removed from state court, the removing party bears the burden of proving the existence of federal subject matter jurisdiction." *Id.* (citing *Boyer,* 913 F.2d at 111).

"Removal statutes are strictly construed by Courts and all doubts are resolved in favor of remand." *Id.* (Citations omitted).

Further, as the Court in *James v. Electronic Data Systems Corp.,* 1998 WL 404817 * 2

(E.D.Pa.), stated:

> Initially, the court must look to whether the state court claim was removable on its face. *Sfirakis v. Allstate Insurance Co.*, No. CIV. A. 91–3092, 1991 WL 147482, at *2 (E.D.Pa. July 24, 1991). Where the jurisdictional amount of damages is challenged, the amount alleged by the plaintiff in her complaint controls rather than the amount alleged in the defendant's notice of removal. *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288, 58 S.Ct. 586, 82 L.Ed. 845 (1938).

Further, the statutory provision at issue here is 28 U.S.C. § 1446 which governs the procedure for removal. Specifically, § 1446(b) and § 1446(c) provide:

> (b) Requirements; Generally.
>
> (1) The notice 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, or within 30 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.
>
> *3 (2)
>
> (A) When a civil action is solely removed under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.
>
> (B) Each Defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.
>
> (C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.
>
> (3)Except as provided in subsection (C), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, though service or otherwise of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.
>
> (c) Requirements; Removal Based on Diversity of Citizenship
>
> (1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by § 1332 more than one year after commencement of the action; unless the district court finds the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

Plaintiff argues remand of this case back to state court is required because Defendants PBM, Webb and Pyatt, hereinafter ("Defendants PBM"), violated § 1446(c)(1) by filling their Notice of Removal more than one year after commencement of the action. (Doc. 2, p. 4). Additionally, Plaintiff states that she commenced this action by filing a Praecipe for a Writ of Summons against the moving Defendants in the CCP on February 18, 2011, and not by filing her Complaint in the CCP on March 20, 2012. (Doc. 2, p. 5 & Doc. 2–1).[FN2] Also, in her Memorandum, Plaintiff argues that she did not act in bad faith in order to prevent Defendants from removing this action, and that Defendants were aware of the nature of the action and the citizenship of the various parties involved due to the Writs of Summons she filed in the CCP. (Doc. 3, p. 7). We agree with Plaintiff that Defendants were aware of the nature of the action and the citizenship of the various parties involved due to the Writs of Summons she filed in the CCP. (Doc. 2–1).

> FN2. We also note, Plaintiff filed a Writ of Summons against Defendant Pyatt on April

28, 2011, and against Defendant Republic on May 24, 2011. (Docs. 2–2 & 2–3).

Further, in her recently filed Reply Briefs (Doc. 15 & Doc. 16), Plaintiff argues:

> The mere fact that Plaintiff's complaint consolidated a number of different actions does not change the fact that Plaintiff commenced the action against these Defendants under Pennsylvania law more than more year ago, and Defendants, who knew they have a basis for removal on the face of the summons and who could have demonstrated that Plaintiff file a complaint, who actually engaged in pre-complaint discovery, sat on their rights.[FN3]
>
> FN3. Plaintiff in her Reply Briefs contends that Defendants PBM failed to file their Brief in Opposition to her Motion to Remand. (Doc. 15, p. 6). This argument is without merit, in that the Docket Sheet for this case 12–cv–01158, M.D. Pa., specifically lists Defendants PBM's Brief (Doc. 8) as "Brief in Opposition to (Doc. 2) Motion to Remand."

(Doc. 15, p. 6 & Doc. 16, p. 5).

Defendants PBM contend in their Notice of Removal (Doc. 1), Response to Plaintiff's Motion to Remand (Doc. 4), and Memorandum in Support (Doc. 8), that removal was proper because Defendants removed the case to Federal Court within thirty (30) days of being served with the Plaintiff's Complaint, pursuant to the requirements of § 1446(b)(1). (Doc. 1, p. 1). Further, Defendants PBM claim the instant action was not commenced with Plaintiff's filing of the Writs of Summons, but rather when the Plaintiff filed her Complaint with the CCP on March 20, 2012. (Doc. 8, p. 2). Moreover, Defendants PBM argue, "[t]he Writ of Summons noted in Plaintiff's motion refers to other actions initiated in Lackawanna County, Pennsylvania in 2011." (Doc. 4, p. 3). Defendants PBM state that because Plaintiff's Writs of Summons and Complaint have different docket numbers in the CCP, they were not related. (*Id.*). Also, we note that Defendants PBM did not allege that Plaintiff acted in bad faith in order to prevent Defendants from removing this action.

***4** Defendant Republic joins in Defendants PBM's Response in Opposition to Plaintiff's Motion to Remand. (Doc. 7, p. 2). Defendant Republic argues that Plaintiff commenced this action when she filed her Complaint on March 20, 2012, in the CCP and not when she filed the Writs of Summons against the Defendants. (Doc. 7, p. 3). Therefore, Defendant Republic states removal was timely when Defendants PBM filed the Notice of Removal on June 18, 2012. (Doc. 14, p. 1). Further, Defendant Republic admits to receiving the Writ of Summons Plaintiff filed against it in the CCP, however, Defendant Republic, like Defendants PBM, argues that the Writ of Summons it received was unrelated to the present action. (Doc. 7, p. 4). Like Defendants PBM, Defendant Republic also does not allege Plaintiff engaged in bad faith against Defendants in order to prevent Defendants from removing this action. Although we agree with all parties that diversity citizenship and the amount in controversy is met,[FN4] we will recommend that this case be remanded to state court because Defendants PBM's Notice of Removal was untimely, i.e. it was filed more than one year after the date of commencement of Plaintiff's action. Additionally, we find the exception in § 1446(c)(1) does not apply in this case.

> FN4. We find that the diversity jurisdictional requirements have been met in the present case. The Court in *James v. Electronic Data Systems Corp.*, 1998 WL 404817 *2 (E.D.Pa.), stated:
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> > In order to remove a case from state court to the district court, federal jurisdictional requirements must be met. *Medlin v. Boeing Vertol Co.*,, 620 F.2d 957, 960 (3d Cir.1980). It is the

> responsibility of the district court to inquire, sua sponte, into the question of subject matter jurisdiction. *Id.* The district court has removal jurisdiction where there is diversity of citizenship among the parties and the amount in controversy exceeds the sum or value of $75,000, exclusive of costs and interests. [FN5] 28 U.S.C. §§ 1332 and 1441 (1994).
>
> FN5. 28 U.S.C. § 1332(a) provides in pertinent part: "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—(1) citizens of different states...."

Initially, while Plaintiff filed her writ of summons against PMB Defendants in the CCP on February 18, 2011 (Doc. 2–1), we find that PMB Defendants' 30–day removal period under § 1446(b) began to run on June 8, 2012 when PMB Defendants were served with Plaintiff's March 20, 2012 Complaint she filed in the CCP and that PMB Defendants' June 18, 2012 Notice of Removal occurred within the statutory 30–day removal period. *See Donato–Cook v. State Farm Fire & Cas. Co.*, 2009 WL 2169168, *2 (July 20, 2009).

However, we concur with Plaintiff that her case should be remanded to the CCP since PMB Defendants' Notice of Removal was filed more than one year after she commenced her action in the CCP. *Id.* In *Donato–Cook*, 2009 WL 2169168, *2, the Court stated:

> Plaintiffs' second argument presents issues that are similar to the issues present in two other cases decided by this Court. *See Penn Patio Sunrooms, Inc. v. Ohio Cas. Ins. Co.*, No. 3:08–CV0120, 2008 WL 919543, at *1 (M.D.Pa. Mar.31, 2008) (Caputo, J.); *Namey v. Malcolm*, 534 F.Supp.2d 494 (M.D.Pa.2008) (Conaboy, J.). In Penn Patio and Namey, the District Court for the Middle District of Pennsylvania interpreted the one-year limit to be an absolute bar running from the date of commencement by a writ of summons, regardless of whether an initial pleading-that is, a complaint—was filed. Penn Patio, 2008 WL 919543 at *2–3; Namey, 534 F.Supp.2d at 497–98. In both of the prior cases, the defendants had the right under Pa. R. Civ. P. 1037(a) to file a praecipe compelling the plaintiffs to file a complaint. Penn Patio, 2008 WL 919543 at *3; Namey, 534 F.Supp.2d at 498. Such a complaint would have qualified as an initial pleading and would have either (1) triggered the thirty-day limit of paragraph one of § 1446(b), or (2) triggered the one-year limit of paragraph two of § 1446(b) by presenting a case that was not removable. However, the Penn Patio and Namey defendants did not file praecipes, and their failure to assert their rights contributed to the courts' findings that their notices of removal were untimely. Penn Patio, 2008 WL 919543 at *3; Namey, 534 F.Supp.2d at 498.

***5** In the present case, similar to the *Penn Patio* and *Namey* cases, PMB Defendants did not file a praecipe in the CCP compelling Plaintiff to file her Complaint after they were served with her Praecipe for a Writ of Summons as they could have done. Thus, as in *Penn Patio* and *Namey*, we find that PMB Defendants' Notice of Removal in our case was barred by the one-year exception stated in 28 U.S.C. § 1446(b), and we will recommend that Plaintiff's action be remanded to the Lackawanna County CCP.

Specifically, in *Namey v. Malcolm*, 534 F.Supp.2d 494, 496 (M.D.Pa.2008), the Court held removal by the Defendants was untimely because they filed the Notice of Removal more than a year after the Plaintiff had commenced the action. In *Namey*, the Plaintiffs commenced the action by filing a Praecipe for Writ of Summons in the Court of Common Pleas in Luzerne County, Pennsylvania. *Id.* The Court noted the Defendants

cited opinions and rules that govern the commencement of an action in Federal Court, and pointed out that its case commenced in state court, *i.e.* the Luzerne County Court of Common Pleas, when Plaintiffs filed a writ of summons. *Id.* at 497. Also, in the *Namey* case, as in our case, Defendants did not file a praecipe in the CCP, under Pa.R.Civ.P. 1037(a), compelling Plaintiffs to file their Complaint after Defendants were served with Plaintiffs' Praecipe for a Writ of Summons.

In *Samii v. Allstate Insurance Co.,* 2010 WL 3221924, at *1 (E.D.Pa. Aug.12, 2010), Plaintiffs filed a Praecipe for a Writ of Summons on August 14, 2006, in Court of Common Pleas of Chester County, Pennsylvania, and thereafter filed a Complaint on March 14, 2010. The Defendants, in that case, filed a Notice of Removal to federal court on May 21, 2010. *Id.* The Court ruled that removal was untimely because the Defendants removed the case over three years after the case was commenced, on August 14, 2006, the date Plaintiffs filed a Praecipe for a Writ of Summons. *Id.* Further, the Court applied Pa. R. Civ. P. 1007, which states that under Pennsylvania law an action is commenced by filing either a complaint or a praecipe for writ of summons with the Prothonotary. *Id.* Thus, the Court in *Samii* found that Defendant's removal of the case to federal court was untimely and remanded the case to state court. The *Samii* Court stated that "Defendant is not excused from the one-year deadline simply because the writ of summons did not provide a basis for removal." *Id.* As stated, in our case, we agree with Plaintiff that PBM Defendants were aware of the nature of her action and the citizenship of the various parties involved due to the Writs of Summons she filed in the CCP. (Doc. 2–1).

Therefore, we find that the present action was commenced by Plaintiff against Defendants PBM and Webb on February 18, 2011, pursuant to Pa. R. Civ. P. 1007, in the CCP of Lackawanna County when Plaintiff filed the Praecipe for Writ of Summons. (Doc. 2–1). *See Donato–Cook,* 2009 WL 2169168, *2. Further, Plaintiff's action was commenced against Defendant Pyatt on April 28, 2011 (Doc. 2–2), and against Defendant Republic on May 24, 2011, in the CCP (Doc. 2–3). Even though Plaintiff's action was commenced on different dates *via* the Praecipes for Writ of Summons, the removal of this case to federal court was still untimely because Defendants PBM, Webb and Pyatt did not remove the case until June 18, 2012, more than a year after the action was commenced against all Defendants involved. Accordingly, we agree with Plaintiff and find that the Defendants PBM violated 28 U.S.C. § 1446(c)(1) due to their Notice of Removal being filed more than one year after Plaintiff's commencement of the action.[FN5] *See Donato–Cook,* 2009 WL 2169168, *3.

> FN5. Further, even if Defendants attempted to use the latest filing date of Plaintiff's Praecipe for Writ of Summons, namely, Plaintiff filed her Praecipe for Writ of Summons against Defendant TECNO on June 17, 2011 (Doc. 2–4), Defendants PBM's Notice of Removal was still filed more than one year after, *i.e.* June 18, 2012.

***6** Moreover, we recognize Defendants' argument that the Writs of Summons Plaintiff filed against Defendants in the CCP all have different civil docket numbers on them and that the Writs had different docket numbers than the Complaint Plaintiff later filed. However, we disagree with the Defendants that because of these different docket numbers, Plaintiff's Writs involved different actions of the Plaintiff.

Plaintiff, in her Reply Briefs (Doc. 15 & Doc. 16), indicates that the Writs of Summons she filed against Defendants in the CCP with different docket numbers were consolidated when her Complaint was filed, and that the action against the Defendants was commenced when the Writs were filed. We agree with the Plaintiff. Even though the Plaintiff's Praecipes for Writ of Summons were

filed under different docket numbers in the CCP than her Complaint, the record shows that the action, as a whole, was the same in nature. All Defendants that Plaintiff filed a Praecipe for Writ of Summons against were the same Defendants named in her Complaint. Further, on the CCP of Lackawanna County docket number 12–CV–1787, *i.e.* the CCP docket number under which Plaintiff's Complaint was filed, the Court references the Praecipes for Writ of Summons that were previously filed by the Plaintiff. Lastly, the Defendants provided no evidence that the Writs of Summons previously filed by Plaintiff were from different actions other than this present one.

III. Recommendation.

Based on the foregoing discussion, it is respectfully recommend Plaintiff's Motion to Remand **(Doc. 2)** this case back to the Court of Common Pleas of Lackawanna County, Pennsylvania, be **GRANTED** since Defendants are barred from removing this case pursuant to the one-year exception of § 1446(b).

M.D.Pa.,2012.
Kowalski v. PBM Logistics, LLC
Not Reported in F.Supp.2d, 2012 WL 3890249 (M.D.Pa.)

END OF DOCUMENT

EXHIBIT C

DAUPHIN COUNTY
PENNSYLVANIA

COMMONWEALTH V. GRAHAM BASIL SPANIER

CP-22-CR-3615-2013

Common Pleas Docket Sheet Issued 11/1/12

Date	Document
2/18/14	Defendant Spanier's Post-Hearing Memorandum
2/18/14	Commonwealth's Proposed Findings of Fact and Conclusions of Law Relating to Motion to Quash Presentment and/or Dismiss Charges
2/18/14	Commonwealth's Memorandum of Law Supporting Its Findings of Fact and Conclusions of Law
2/4/14	Order of Court
1/17/14	Order of Court (1)
1/17/14	Order of Court (2)
12/17/13	Pre-Trial Proceeding Transcript
12/17/13	Exhibits of Pre-Trial Proceedings (1)
12/17/13	Exhibits of Pre-Trial Proceedings (2)
12/17/13	Exhibits of Pre-Trial Proceedings (3)
12/13/13	Decorum Order
11/27/13	Commonwealth's Response to Defendant Spanier's Motion for a Bill of Particulars
11/27/13	Memorandum in Support of Commonwealth's Answer to Defendant Spanier's Request for Bill of Particulars
11/21/13	Order for Pre-Trial Hearing
10/4/13	Defendant Spanier's Motion for Pretrial Discovery
9/27/13	Defendant Spanier's Request for Bill of Particulars to the Attorney General Pursuant to Pa Rule of Criminal Procedure 572(A)
9/19/13	Commonwealth's Notice of Joinder - Trial of Separate Informations
7/30/13	Defendant Spanier's Waiver of Appearance at Formal Arraignment

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COMMONWEALTH V. GRAHAM BASIL SPANIER

MDJ Docket Sheet Issued 11/1/12

Common Pleas Docket Sheet Isssued 11/22/12

Cc

CERTIFICATE OF SERVICE

I, Asha T. Mehrotra, hereby certify that I caused to be served on March 17, 2014, a true and correct copy of Defendants' Motion for Reconsideration and Memorandum in support thereof by first-class mail upon the following:

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