

35.

D/S

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

STEPHEN S. GRAY, Chapter 11)
Trustee of TEXFI)
INDUSTRIES, INC.)

Plaintiff,)

v.)

1:03CV421

WILLIAM L. REMLEY, RICHARD L.)
KRAMER, JOEL J. KARP,)
ANDREW J. PARISE, JR.,)
MICHAEL D. SCHENKER, JOHN)
D. MAZZUTO, RICHARD)
HOFFMAN, CLARENDON)
HOLDINGS, LLC, and MENTMORE)
HOLDINGS CORPORATION,)
Defendants.)



RECONSIDERATION OF UNITED STATES MAGISTRATE JUDGE

In the lawsuit pending before this court, Plaintiff Stephen S. Gray, the Chapter 11 Trustee for Texfi Industries, Inc., has sued two corporate entities and seven individuals who are all former officers and/or directors of Texfi. The Complaint alleges state law claims for constructive fraud, breach of fiduciary duty, self-dealing, constructive trust, and unjust enrichment, all arising from Defendants' alleged mismanagement and eventual bankrupting of Texfi.¹ See Am. Compl. ¶¶ 37-58. Plaintiff initially filed his Complaint in Forsyth County Superior Court, and Defendants

¹ Plaintiff filed an initial Complaint on March 17, 2003, and an Amended Complaint on May 1, 2003. Unless otherwise indicated, the term "Complaint" here is intended to refer to both the original Complaint and the Amended Complaint.

removed the case to this court based solely on diversity jurisdiction. See 28 U.S.C. §§ 1332, 1441(b). After removing to this court, Defendants William Remley, Richard Kramer, Andrew Parise, Jr., Michael Schenker, John Mazzuto, Richard Hoffman, Clarendon Holdings, LLC, and Mentmore Holdings Corporation filed a motion to dismiss for lack of personal jurisdiction or to transfer venue to the Southern District of New York where Texfi's bankruptcy proceedings are pending. FED. R. CIV. P. 12(b)(2), 28 U.S.C. § 1404(a). Plaintiff then requested that the court permit jurisdictional discovery before ruling on Defendants' motions, and both Plaintiff's and Defendants' motions were referred to the undersigned for a Recommendation.

In an earlier Recommendation filed September 22, 2003, I concluded sua sponte that removal to this court had been improper because complete diversity between the parties was lacking, and I recommended remand. The Recommendation was duly filed in accordance with 28 U.S.C. § 636(b) and served on the parties. Within the time limitations set forth in Rule 72(b) of the Federal Rules of Civil Procedure, Defendants objected to the Recommendation and, under the procedure adopted in this district, the objection has been referred to the undersigned for reconsideration. In their objection, Defendants contend that I erred in finding that complete diversity between the parties does not exist and that removal was therefore improper. Specifically, Defendants contend that the evidence does not support my earlier finding that Texfi's principal place of business as of the time of filing and removal was in New York. For the following reasons, I conclude that even if Texfi's

principal place of business was not in New York as of filing and removal, complete diversity between the parties is still lacking. Thus, removal was improper and the case must be remanded. Furthermore, Defendants' motion to amend its removal notice (docket no. 30-1) to allege a new basis for federal jurisdiction should be denied.

DISCUSSION

I first reiterate the rules governing removal based on diversity jurisdiction under 28 U.S.C. § 1332. To satisfy the requirements of federal diversity jurisdiction under § 1332, the amount in controversy must exceed \$75,000, exclusive of interest and costs, and the action must be between “citizens of different States,” which means that complete diversity exists only if no plaintiff and no defendant are citizens of the same State. *Wisconsin Dep’t of Corr. v. Schacht*, 524 U.S. 381, 388 (1998). Consequently, a defendant cannot remove a case that contains some claims against “diverse” defendants as long as there is one claim brought against a “nondiverse” defendant.² *Id.* The presence of the nondiverse party automatically destroys original jurisdiction. Thus, no party need assert the defect, no party can waive the defect or consent to jurisdiction, and no court can ignore the defect. *Id.* at 389. Rather, a court, noticing the defect, must raise the matter on its own. *Id.*

For purposes of diversity jurisdiction, a person is a citizen of the state of his

² In addition, a defendant may not remove an action from state court based on diversity jurisdiction if the defendant is a citizen of the state in which the action was brought. 28 U.S.C. § 1441(b).

domicile, which is the place where he has his true fixed home and principal establishment, and to which, whenever he is absent, he intends to return.³ *Acridge v. Evangelical Lutheran Good Samaritan Soc.*, 334 F.3d 444, 448 (5th Cir. 2003).

For purposes of diversity jurisdiction, a corporation is deemed to be a citizen of both the state where it was incorporated and the state where it maintains its principal place of business. 28 U.S.C. § 1332(c)(1). A multi-state corporation therefore must be treated as a citizen both of its state of incorporation and of the state of its principal place of business. By common sense and law, however, a corporation can have only one principal place of business for the purpose of establishing its state of citizenship. *J.A. Olson Co. v. City of Winona*, 818 F.2d 401, 406 (5th Cir. 1987). This circuit's court of appeals has approved of two methods to ascertain a corporation's principal place of business. "One approach makes the 'home office,' or place where the corporation's officers direct, control, and coordinate its activities, determinative. The other looks to the place where the bulk of corporate activity takes place." *Mullins v. Beatrice Pocahontas Co.*, 489 F.2d 260, 262 (4th Cir. 1974). These tests have been termed the "nerve center test" and the "place of operations test," respectively, and this circuit's court of appeals has made clear that it "endorse[s] neither [test] to the exclusion of the other." *Peterson v. Cooley*, 142

³ Furthermore, in order to be a citizen of a State within the meaning of the diversity statute, a natural person must both be a citizen of the United States and be domiciled within the State. *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989).

F.3d 181, 184 (4th Cir. 1998); see also *Commissioner of Internal Revenue v. Soliman*, 506 U.S. 168, 191 n.14 (1993) (Stevens, J., dissenting) (recognizing that “some courts regard[] the home office as the principal place of business and others regard[] it as the place where the principal operations of the corporation are conducted”).

Finally, consistent with general principles for determining federal jurisdiction, diversity of citizenship must exist when the action is commenced. *Newman-Green, Inc.*, 490 U.S. at 830. Moreover, in removal cases diversity of citizenship must exist both at the time of filing in state court and at the time of removal. *Rowland v. Patterson*, 882 F.2d 97, 99 (4th Cir. 1989) (en banc). Here, the suit was commenced on March 17, 2003, and it was removed to this court on May 15, 2003. Thus, the citizenship of each of the parties as of these two dates is determinative.

The Citizenship of All Defendants As of the Time of Filing and Removal

The Complaint names seven individual defendants, all of whom are former officers and/or directors of Texfi, and two corporate defendants. In the earlier Recommendation, I noted the citizenship of each of the following defendants as of filing and removal: Defendants Mazzuto, Parise, Jr., and Schenker were citizens of New York; Defendant Remley was a citizen of Maryland; Defendants Kramer and Hoffman were citizens of Connecticut, and Defendant Karp was a citizen of Florida.⁴

⁴ Plaintiff’s Complaint alleges that Defendant Parise, Jr., is a citizen of North Carolina, but Parise, Jr., asserts that he has always been a citizen of New York, and Plaintiff has not contested this assertion. See Complaint ¶¶ 6; Br. Supp. Mot. Dismiss or Transfer Venue, at 1, by Def. Parise, Jr. The Complaint also alleges that Defendant

See Ex. B to Defs.' Br. Supp. Mot. Dismiss or Transfer Venue, Remley Decl. ¶ 3, Kramer Decl. ¶ 3, Schenker Decl. ¶ 3, Mazzuto Decl. ¶ 3, and Hoffman Decl. ¶ 2; Parise, Jr., Aff. Supp. Notice of Removal ¶ 3. Furthermore, I found that the corporate Defendants Clarendon and Mentmore were both incorporated in Delaware and had their principal places of business in New York. Thus, Defendants in this case at all relevant times were citizens of New York, Maryland, Connecticut, Delaware, and Florida.

The Citizenship of Texfi Industries As of the Time of Filing and Removal

Texfi Industries, Inc. ("Texfi") is a Delaware corporation that was engaged in the business of manufacturing and marketing woven, dyed, and finished synthetic fabrics before filing a voluntary bankruptcy petition for reorganization relief under Chapter 11 in the United States Bankruptcy Court for the Southern District of New York on February 15, 2000. Before filing for bankruptcy, Texfi had maintained manufacturing plants and production facilities in North Carolina, Georgia, and South Carolina. As of Texfi's bankruptcy filing in February 2000, Texfi had three fully operational manufacturing facilities, located in (1) Rocky Mount, North Carolina, (2) Haw River, North Carolina, and (3) Jefferson, Georgia. See Ambrosini Aff. ¶ 4, *In re Texfi Indus., Inc.*, No. 00B10603 (Bankr. S.D.N.Y. 2000). It appears that these facilities were no longer operating as of December 2001. In the earlier

Kramer is a citizen of New York, but Kramer asserts that he was a citizen of Connecticut when the suit was commenced and removed, and Plaintiff has not contested this assertion.

Recommendation, I found that even if Texfi had at one time maintained its principal place of business in North Carolina, as of the time of filing and removal, under either the “nerve center” or “place of operations” test, its principal place of business was no longer in North Carolina.⁵ I noted that as of December 15, 2000, Texfi agents stated in Texfi’s New York bankruptcy proceedings that Texfi’s principal place of business was in New York.⁶ See “Voluntary Petition” form, *In re Texfi Indus., Inc.*, No. 00B10603 (Bankr. S.D.N.Y. 2000). In the bankruptcy filings, Texfi agents listed New York as Texfi’s principal place of business with a street address of 1430 Broadway, 13th Floor, New York, NY 10018, and further asserted that Texfi’s

⁵ Plaintiff Stephen Gray, the trustee in bankruptcy for Texfi, is a resident of New York. For diversity purposes, however, the citizenship of the bankrupt (Texfi in this case) is determinative. *Bush v. Elliot*, 202 U.S. 477, 484 (1906); 13B CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE & PROCEDURE § 3606 (2d ed. 1984).

⁶ In the bankruptcy petition form, Robert Ambrosini, the then Chief Financial Officer and Executive Vice President of Texfi, declared under penalty of perjury that venue was proper in Bankruptcy Court for the Southern District of New York because Texfi “has been domiciled or has had a residence, principal place of business or principal assets in [the Southern District of New York] for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.” The venue rules for Chapter 11 state that a prospective debtor may select the venue for its reorganization in any jurisdiction where the debtor maintains a domicile, residence, principal place of business, or where its principal assets are located for at least 180 days before the filing of the bankruptcy petition. See 28 U.S.C. § 1408. For the purpose of determining a debtor’s principal place of business for bankruptcy proceedings, courts have stated that the place where the debtor “makes its major business decisions constitutes the principal place of business of a debtor, notwithstanding the physical location of its assets or production facilities.” *In re Pavilion Place Assocs.*, 88 B.R. 32, 35 (Bankr. S.D.N.Y. 1988) (quoting *In re Landmark Capital Co.*, 19 B.R. 342, 347 (Bankr. S.D.N.Y. 1982)); see also *In re Bell Tower Assocs. Ltd.*, 86 B.R. 795 (Bankr. S.D.N.Y. 1988).

corporate and sales records were in New York. Based on these representations, I concluded that as of the time of filing and removal, Texfi was no longer operating its principal place of business in North Carolina.

I further concluded that as of the time of filing and removal, (1) Texfi was still maintaining a principal place of business and that (2) Texfi's principal place of business was in New York.⁷ I concluded as such in part based on the fact that Texfi had filed for "reorganization" under Chapter 11, rather than for "liquidation" under Chapter 7. See *Ambrosini Aff.* Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York, in *In re Texfi Indus., Inc.*, No. 00B10603 (Bankr. S.D.N.Y. 2000). Furthermore, I found that Defendants' own statements in the record supported a conclusion that as of filing and removal Texfi was still maintaining a business in New York. For instance, Defendants Clarendon and Mentmore asserted in a brief to this court filed on June 16, 2003, in support of their motion to dismiss for lack of personal jurisdiction, that "the *current* corporate headquarters of Texfi Industries is in New York"; that although Texfi had maintained some of its manufacturing plants and production facilities in North Carolina, Texfi's operations "were run from its corporate headquarters in New York"; and that the individual defendants had all worked in the New York headquarters. See Br. Supp.

⁷ As noted in the earlier Recommendation, this circuit's court of appeals has left open the possibility that a corporation may no longer have a principal place of business for diversity purposes where a corporation is no longer active. See *Athena Automotive, Inc. v. DiGregorio*, 166 F.3d 288, 291-92 (4th Cir. 1999).

Defs.' Mot. Dismiss or Transfer by Defendants Remley, Kramer, Schenker, Mazzuto, and Hoffman, at 3; Br. Supp. Mot. Dismiss or Transfer Venue by Defendant Parise, Jr., at 1. I concluded that since some of the defendants were citizens of New York and since Texfi was a citizen of New York, complete diversity was lacking, and the case should be remanded.

In their objection to my Recommendation, Defendants take issue with my finding that Texfi had a principal place of business as of filing and removal and that Texfi's principal place of business was in New York. Defendants contend that Texfi ceased all ongoing business operations as of December 2001, that Texfi was conducting no corporate activity as of filing and removal, and that the only activity by Texfi after December 2001 was in winding down its business affairs, which Defendants contend was conducted from North Carolina. Thus, Defendants argue that Texfi was inactive as of filing and removal and therefore its only state of citizenship was Delaware, its place of incorporation. Defendants argue alternatively that, to the extent that Texfi had a principal place of business as of filing and removal, Texfi's principal place of business was in North Carolina. To support their argument that as of filing and removal Texfi was inactive, Defendants have submitted evidence showing that Texfi filed a "wind-down" motion on October 29, 2001, in New York bankruptcy court, and that on or around November 7, 2001, the bankruptcy court granted the wind-down motion. See "Application of the Chapter 11 Trustee for an Order . . . Approving the Chapter 11 Trustee's Amended Listing

Agreement with the Stump Corporation, As Sales Agent,” Introd. at ¶ 4, located in Declaration of David J. Eiseman in Support of Objections to the Recommendation of United States Magistrate Judge, dated September 19, 2003, at Ex. 6. Texfi’s bankruptcy filings further state that after Texfi filed its Chapter 11 petition, “the Debtor explored various restructuring alternatives and eventually decided to discontinue its operations and to liquidate all of its assets.” See *id.* at ¶ 3.

Defendants’ arguments are persuasive, but even if the court determines that Texfi was inactive as of filing and removal, there is another, previously overlooked, basis for finding that complete diversity is lacking. According to the removal notice, Texfi, Defendant Mentmore, and Defendant Clarendon were all incorporated in Delaware. Thus, regardless of whether Texfi had a principal place of business as of filing and removal, complete diversity is still lacking, and the case must be remanded. 28 U.S.C. § 1332.

Defendants concede that, according to the removal notice, Texfi, Defendant Mentmore, and Defendant Clarendon were all incorporated in Delaware. Defendants, nevertheless, ask the court to address the issue of personal jurisdiction as to Clarendon and Mentmore before reaching the issue of subject matter jurisdiction. Defendants would like the court to take this approach so that, assuming the court agrees with Defendants that Texfi no longer had a principal place of business as of filing and removal, Defendants Clarendon and Mentmore may be dismissed as defendants and complete diversity will then exist between the parties.

Defendants cite the United States Supreme Court's recent decision in *Ruhrgas, AG v. Marathon Oil Co.* for the proposition that a court may inquire into personal jurisdiction before reaching the subject matter jurisdiction issue. 526 U.S. 574, 588 (1999). It is true that, under *Ruhrgas*, a court does not abuse its discretion if it first considers a personal jurisdiction challenge when a subject matter jurisdiction challenge in a case is difficult. As the *Ruhrgas* Court stated:

Where . . . a district court has before it a straightforward personal jurisdiction issue presenting no complex question of state law, and the alleged defect in subject-matter jurisdiction raises a difficult and novel question, the court does not abuse its discretion by turning directly to personal jurisdiction.

Id. In contrast to *Ruhrgas*, however, in this case the subject matter jurisdiction question is neither difficult nor novel, as complete diversity between the parties is clearly lacking. This case simply does not present the same challenges to subject matter jurisdiction as those raised in *Ruhrgas*, and there is no justification for deciding the issue of personal jurisdiction before addressing the issue of subject matter jurisdiction. In sum, I conclude that diversity of citizenship is lacking in this case because Texfi, Defendant Mentmore, and Defendant Clarendon were all incorporated in Delaware.⁸ Because complete diversity between the parties is

⁸ Defendants have now asserted, in a brief filed October 22, 2003, that "subsequent to the filing of the Moving Defendants' Objections . . . we were alerted to the fact that defendant Clarendon is incorporated in New York and not, as alleged in the initial Notice of Removal, in Delaware," and Defendants ask the court to allow them to amend their removal notice to correct this deficiency. See Mem. Supp. Def.'s Mot. Amend Notice of Removal, at 12. An amendment to the removal notice to change Clarendon's state of incorporation should be denied since, regardless of the citizenship

clearly lacking, this case must be remanded to state court.

Defendants' Motion to Amend the Removal Notice to Assert Jurisdiction Under 28 U.S.C. § 1452, the Bankruptcy Removal Statute

Defendants have now filed a motion to amend their removal notice to allege that removal jurisdiction is proper under the 28 U.S.C. § 1452, known as the bankruptcy removal statute.⁹ For the following reasons, I recommend that Plaintiff's motion to amend be denied.

Under the federal removal statute, to remove an action from state court to federal court the defendant must file a notice of removal within thirty days of receipt of a copy of the claim for relief, and the notice must set forth the grounds for removal. 28 U.S.C. § 1446(a)-(b). In slight tension with the removal statute's thirty-day limit is 28 U.S.C. § 1653, which allows amendments to pleadings *at any time* to correct defective allegations of jurisdiction. 28 U.S.C. § 1653 ("Defective allegations

of Clarendon, complete diversity is still lacking since Mentmore was also incorporated in Delaware.

⁹ Pursuant to 28 U.S.C. § 1452(a), a party may remove a case that is related to a bankruptcy case to the federal district court in the district in which the underlying state cause of action is pending if that court has jurisdiction under 28 U.S.C. § 1334. Section 1334(b) confers jurisdiction on the district court over cases "arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334. This circuit's court of appeals follows the Third Circuit's broad test for "related to" jurisdiction as set forth in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3rd Cir. 1984), *overruled on other grounds by Things Remembered, Inc. v. Petrarca*, 516 U.S. 124 (1995). Under the broad *Pacor* test, "[t]he usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Pacor*, 743 F.2d at 994; *see also Blanton v. IMN Fin. Corp.*, 260 B.R. 257, 262 (Bankr. M.D.N.C. 2001); *In re Rainbow Sec. Inc.* 173 B.R. 508, 511 (Bankr. M.D.N.C. 1994).

of jurisdiction may be amended, upon terms, in the trial or appellate courts.”). Courts have dealt with the tension between the thirty-day limit imposed by § 1446 and the permission to amend at any time under § 1653 by holding that where the original removal was timely, amendments that merely perfect a technically defective jurisdictional allegation will be allowed after the thirty-day removal period. Technically defective jurisdictional allegations include, for instance, a removal notice that was timely filed and which asserted diversity jurisdiction, but which inadvertently left out the citizenship of one of the parties. *See, e.g., Wright v. Combined Ins. Co. of Am.*, 959 F. Supp. 356, 359 (N.D. Miss. 1997). On the other hand, substantive and material amendments, i.e., to add a basis for federal jurisdiction not alleged in the original removal notice, are not allowed beyond the thirty-day period.¹⁰ *See, e.g., Briarpatch Ltd. v. Pate*, 81 F. Supp. 2d 509, 517 (S.D.N.Y. 2000) (in a case originally removed based on diversity jurisdiction, where failure to assert federal question jurisdiction was a substantive defect which defendant could not cure by amendment

¹⁰ As one court has observed, taking a liberal view of § 1653:

would permit not only amendments, but supplements to jurisdictional allegations in the petition after expiration of the 30-day removal period. Such a reading of § 1653 would substantially eviscerate 28 U.S.C. § 1446(b). Section 1446(b) is a statute of repose, requiring prompt resolution of the right of removal so that the trial of the lawsuit is not unduly delayed. Thus, any application of § 1653 to § 1446(b) should be a strict one. . . . The 30-day period of repose loses much of its efficacy if § 1653 is permitted to override § 1446(b).

Richmond, Fredericksburg & Potomac R.R. v. Intermodal Servs., Inc., 508 F. Supp. 804, 807 (E.D. Va. 1981); *see also Iceland Seafood Corp. v. National Consumer Coop. Bank*, No. 4:03CV98, 2003 WL 22287925 (E.D. Va. Oct. 3, 2003).

after expiration of the thirty-day time limit); *Lowes v. Cal Dive Int'l, Inc.*, No. 97-407, 1997 WL 178825 (E.D. La. Apr. 7, 1997) (in a case originally removed based on federal question jurisdiction, where the failure to assert diversity jurisdiction was a substantive defect that the defendants could not cure by amendment after expiration of the thirty-day time limit); *Energy Catering Servs., Inc. v. Burrow*, 911 F. Supp. 221 (E.D. La. 1995) (in a case originally removed based on diversity jurisdiction, where the failure to assert admiralty jurisdiction was a substantive defect that the defendant could not cure by amendment after expiration of the thirty-day time limit); see *also* 14C CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3733 (3d ed. 1998) (“Completely new grounds for removal jurisdiction may not be added”).

Here, Defendants filed their motion to amend the removal notice to assert bankruptcy removal jurisdiction well after the expiration of the thirty-day period for removal. Defendants’ failure to assert federal jurisdiction based on the bankruptcy removal statute in the original removal notice was a material and substantive defect that cannot be cured by amendment now.¹¹ Therefore, this court should deny

¹¹ Defendants’ motion to amend the removal notice to assert this additional basis for jurisdiction was apparently prompted entirely by my observation in the earlier Recommendation that Defendants had not asserted removal jurisdiction under 28 U.S.C. § 1452. Defendants perhaps misconstrued my earlier statement as a hint that they might be successful if they attempted now to proceed under § 1452. Unfortunately, the thirty-day limit under § 1446(b) and the court’s mandate to construe the removal statutes strictly against removal leads to the conclusion that Defendants are too late in asserting this alternative theory of federal jurisdiction.

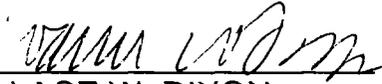
Defendants' motion to amend the removal notice to allege the bankruptcy removal statute as a new grounds for federal jurisdiction.

Here, clearly Defendants would have the court give them the benefit of the doubt as to whether removal was proper. Throughout this case, however, I have been mindful that the federal courts are required to strictly construe the removal statutes against removal, particularly when removal is based on diversity grounds. See *Thompson v. Gillen*, 491 F. Supp. 24, 26 (E.D. Va. 1980). Courts apply the statutory limits to removal strictly for several policy reasons. First, removal jurisdiction raises a significant federalism concern because the removal of civil cases to federal court infringes on state sovereignty. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Mulcahey v. Columbia Organic Chem. Co.*, 29 F.3d 148, 151 (4th Cir. 1994). Second, because state courts are typically courts of general jurisdiction, whereas federal courts are courts of limited jurisdiction, federal courts should be strictly limited to cases in which original jurisdiction was conferred upon them and not use removal to expand their jurisdiction further. *Bellone v. Roxbury Homes, Inc.*, 748 F. Supp. 434, 436 (W.D. Va. 1990). Finally, because a court without jurisdiction cannot render a valid judgment, it would be judicially inefficient to allow a case to proceed to conclusion, only to result in a pronouncement of no value. *Barnhill v. Insurance Co. of N. Am.*, 130 F.R.D. 46, 50-51 (D.S.C. 1990). For these policy reasons, federal courts are constrained to effectuate Congress' clear intent to restrict removal and to resolve all doubts about the propriety of removal in

favor of retained state court jurisdiction. *Creekmore v. Food Lion Inc.*, 797 F. Supp. 505, 508 (E.D. Va. 1992). With these principles in mind, and because complete diversity between the parties is clearly lacking in this case, the court should therefore remand the case to state court.

CONCLUSION

Based on the foregoing, **IT IS THEREFORE RECOMMENDED** that the case be **REMANDED** to state court. Furthermore, it is recommended that Defendants' motion to amend the Removal Notice should be **DENIED**.



WALLACE W. DIXON
United States Magistrate Judge

Durham, NC
December 3, 2003.