

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

MYRON C. PENN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	2:07cv805-MHT
	)	(WO)
DONNIE W. PIERCE,	)	
	)	
Defendant and	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
ENCOMPASS INSURANCE,	)	
	)	
Third-Party Defendant.	)	

OPINION AND ORDER

The court being of the opinion that the third-party complaint, which is the asserted basis for invoking the court's diversity-of-citizenship removal jurisdiction, 28 U.S.C. §§ 1332, 1441, cannot be the basis for removal, see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 3d § 3723, at 611 ("It is the citizenship of the original parties that is determinative. Thus, diversity of citizenship only

between a third-party plaintiff and a third-party defendant will not confer jurisdiction over a suit that is not otherwise removal."); J. Moore, Moore's Federal Practice 3d § 107.11[1][b][iv], at 107-35 ("The better view, consistent with the principle that removal jurisdiction is to be strictly construed, is that third-party claims are not removable, because only a party defending against claims asserted by a plaintiff ought to be able to remove."), it is ORDERED as follows:

(1) The motion to remand (Doc. No. 8) is granted.

(2) This case is remanded to the Circuit Court of Bullock County, Alabama.

It is further ORDERED that the motion to dismiss (Doc. No. 10) is left for disposition by the state court after remand.

The clerk of the court is DIRECTED to take appropriate steps to effect the remand.

DONE, this the 25th day of September, 2008.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE