

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

DORA VANDEGRAFT, *Individually*)
and as Special Administrator of the)
Estate of Andrew Vandegraft,)
Deceased,)

Plaintiff,)

v.)

ILLINOIS CENTRAL RAILROAD)
COMPANY, PNEUMO ABEX)
CORPORATION, PNEUMO ABEX)
LLC, OWENS-ILLINOIS, INC.,)
HONEYWELL INTERNATIONAL,)
INC., METROPOLITAN LIFE)
INSURANCE COMPANY,)
SPRINKMANN SONS)
CORPORATION OF ILLINOIS,)
SPRINKMANN SONS)
CORPORATION, AND RAPID-)
AMERICAN CORPORATION,)

Defendants.)

No. 08-cv-1112

ORDER

Before the Court is Plaintiff's motion to remand, which includes a request for attorney's fees and costs (Doc. 8). Judge Cudmore recommended that Plaintiff's motion to remand be granted. (Doc. 19) Judge Cudmore found that Defendant Illinois Central Railroad Company's removal to federal court was untimely and that no exceptional circumstances exist that would excuse the untimely removal. As Judge Cudmore noted, the thirty day time limit for a defendant's notice of removal, pursuant to 28 U.S.C. § 1446(b), is to be strictly applied. (Doc. 19 at p. 4-6)

Therefore, a remand to state court is proper here, as Illinois Central failed to meet the deadline for filing a notice of removal. Judge Cudmore also recommended, however, that Plaintiff's request for attorney's fees and costs be denied. It appears that Illinois Central filed its notice of removal in good faith, believing it to be timely. (Doc. 19 at p. 8) As a result, an award of attorney's fees and costs to Plaintiff is not warranted.

The parties were notified that any failure to object to Judge Cudmore's recommendations within ten working days after service of the August 11, 2008 Report and Recommendation (R&R) would constitute a waiver of any objections. See 28 U.S.C. § 636(b)(1); see also Video Views Inc. v. Studio 21 Ltd., 797 F.2d 538 (7th Cir. 1986). Objections to the R&R were due on August 28, 2008, and none were made.

Therefore, the Court ADOPTS the Report and Recommendation of the Magistrate Judge (Doc. 19) in full. Accordingly, Plaintiff's motion to remand is GRANTED, and Plaintiff's request for attorney's fees and costs is DENIED. This case is hereby remanded to the Circuit Court of the Eleventh Judicial Circuit in McLean County, where it was originally filed.

CASE TERMINATED.

ENTERED this 8th day of October, 2008.

s/ Joe B. McDade
JOE BILLY MCDADE
United States District Judge