



The Court is of the view that plaintiff's motion is premature. Under 28 U.S.C. § 1447(e), should plaintiff succeed in amending the complaint by identifying the now fictitious defendants, if any of them are citizens of Ohio, this Court would then be required to remand. *See Curry v. U.S. Bulk Transport, Inc.*, 462 F.3d 536, 541 (6th Cir. 2006), citing *Casas Office Machines, Inc. v. Mita Copystar America, Inc.*, 42 F.3d 668, 674 (1st Cir. 1994) for the proposition that although § 1447(e) "relates expressly to joinder, the legislative history to the Judicial Improvements and Access to Justice Act of 1988 indicates that [it] applies also to the identification of fictitious defendants after removal." (citing H.R.Rep. No. 889, 100th Cong., 2d sess. 72-73 (1988), *reprinted in* 1988 U.S.C.C.A.N. 5982, 6033 ("Th[e] provision also helps to identify the consequences that may follow removal of a case with unidentified fictitious defendants.")). However, these defendants have not yet been identified and may never be. Therefore, it would be premature to remand where, as here, diverse citizenship existed at the time of removal and still exists to date.

Accordingly, plaintiff's motion to remand (Doc. No. 5) is **DENIED** without prejudice to renewal should plaintiff seek to amend by identifying the now fictitious defendants and thereby destroy diversity.<sup>1</sup>

**IT IS SO ORDERED.**

Dated: June 7, 2011

  
\_\_\_\_\_  
**HONORABLE SARA LIOI**  
**UNITED STATES DISTRICT JUDGE**

---

<sup>1</sup> It is not a foregone conclusion that a later-filed motion to amend will be granted. The Court will have to consider any such motion in light of both 28 U.S.C. § 1447(e) and Fed.R.Civ.P. 19. In addition, should an amended complaint be permitted, the Court has the duty, with or without a motion to remand, to *sua sponte* address the question of subject matter jurisdiction. *Curry, supra*, 462 F.3d at 539-41; Fed.R.Civ.P. 12(h)(3).