

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**Thomas Percy, Inc.,**

*Plaintiff,*

v.

**Case No. 3:08-cv-004  
Judge Thomas M. Rose**

**Gregory K. Gilreath,**

*Defendant/Third-Party Plaintiff, .*

v.

**Moriss & Associates, et al.,**

*Third Party Defendant,*

v.

**Unnamed Third-Party Defendants.**

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**ORDER REMANDING CASE TO STATE COURT**

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On January 16, 2008, this Court ordered “Third-Party Defendants...to show cause why the instant matter should not be remanded to state court by February 5, 2008.” Doc. 8 at 2. The reason the Court ordered Third-Party Defendant to show cause, was because the Court questioned whether it had jurisdiction to hear a case removed by a third-party defendant.

The Court understands that removal may only be performed by a defendant. “[T]he Sixth Circuit [has] concluded that a third-party defendant is *not* a defendant for purposes of removal under

28 U.S.C. § 1441.” *Goff v. Goff*, 2006 WL 319045, \*2 (E.D. Ky. 2006) (citing *First National Bank of Pulaski v. Curry*, 301 F.3d 456 (6th Cir. 2002)). As of today, neither Third-Party Defendant, nor any other party has explained to the Court why the instant case should not be remanded. Wherefore, the clerk is **ORDERED** to remand the instant case to the Miami County, Ohio Court of Common Pleas. The instant case is **ORDERED** removed from the dockets of the United States District Court for the Southern District of Ohio.

**DONE** and **ORDERED** in Dayton, Ohio, this Thursday, February 7, 2008.

s/Thomas M. Rose

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE