

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

JOHN DONOHOE,

Plaintiff,

v.

CIVIL ACTION NO. 2:10-cv-00467

AIR PRODUCTS AND CHEMICALS, INC., et al.,

Defendants.

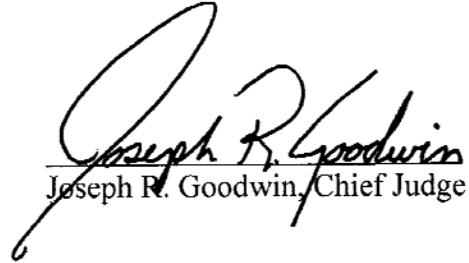
MEMORANDUM OPINION AND ORDER

Pending before the court is the plaintiff's Motion to Remand Case to Circuit Court of Kanawha County [Docket 12]. The Motion is **GRANTED**.

The Complaint presents no federal question, and the parties are not completely diverse. The court therefore lacks jurisdiction over this dispute. When a case has been removed on the basis of diversity jurisdiction, the removing party bears the burden of proving that federal jurisdiction has been properly invoked. *McCoy v. Erie Ins. Co.*, 147 F. Supp. 2d 481, 486 (S.D. W. Va. 2001). Although the defendants allege that defendant Joe Wright was fraudulently joined to defeat diversity, genuine issues of material fact remain regarding what role that Wright may have played in the plaintiff's purported termination. The defendant has therefore failed to carry its burden of establishing federal diversity, and the case must be remanded.

This case is hereby **REMANDED** to the Circuit Court of Kanawha County, West Virginia.
The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any
unrepresented party.

ENTER: May 20, 2010


Joseph R. Goodwin, Chief Judge