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Not So Fast: Federal Court Blocks Insurers' Bid to Remove to Federal Court

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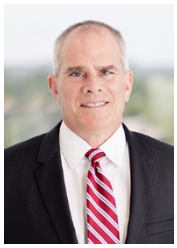


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Florida insureds generally prefer to have their insurance coverage disputes decided in Florida state courts, where they are more familiar and where the judges and juries tend to be from the same local area as the insureds. Insurers often prefer federal courts for the same reasons, but federal courts are courts of limited jurisdiction. To obtain federal adjudication, a case must present either a federal question or satisfy diversity jurisdiction. A case must meet two circumstances to satisfy diversity jurisdiction: The amount at issue in the case must surpass $75,000, and there must be complete diversity between the parties, see 28 U.S.C. Section 1332(a). Complete diversity means that the plaintiffs must be citizens of states (or countries) that differ from the states (or countries) in which the defendants are citizens. For example, a citizen from Georgia could sue a citizen of Florida in diversity, but a citizen of Florida could not sue another citizen of Florida in diversity.

Like all rules, parties have tried to bend (or raise) the walls of complete diversity. One way is naming a nondiverse party as a defendant to defeat complete diversity and keep the case out of federal court. To block this maneuver, federal courts developed the doctrine of fraudulent joinder, see *Triggs v. John Crump Toyota*, 154 F.3d 1284, 1287 (11th Cir. 1998). If an insurer trying to remove a case to federal court meets the requirements of the doctrine, the court may ignore the fraudulently joined party when considering complete diversity. Yet courts are wary that parties wrongfully allege that a party's joinder is fraudulent. As a result, the federal courts have crafted a high burden for establishing fraudulent joinder.

A recent case, *Carapella v. State Farm Florida Insurance*, explains how this doctrine plays out in the insurance context. 2019 WL 494584 (M.D. Fla Feb. 8, 2019). The plaintiff there, a Florida citizen, drugged her two sons and placed them in a running car inside a closed garage. Carbon monoxide seriously injured one son; the other died. The plaintiff's son's estate, her other son, and the boys' father then sued the plaintiff for a litany of torts, including wrongful death and bodily injury.

In response, the plaintiff filed claims with her auto insurer, State Farm Auto (an Illinois citizen) and her homeowner's insurer, State Farm Florida (a Florida citizen), both of whom accepted the tender of her defense under a reservation of rights. Eventually, the plaintiff came to disagree with the insurers' handling

of her defense. She then sued the insurers in Florida state court, alleging that the insurers acted in bad faith and breached their fiduciary duty to settle on her behalf.

The insurers tried to remove the case to federal court based on diversity jurisdiction. Recognizing there was not complete diversity, the insurers argued that the court should ignore State Farm Florida for diversity purposes since the plaintiff fraudulently joined the Florida insurer. Among other arguments, the insurers claimed that a diverse insurer—State Farm Fire (an Illinois citizen)—had in fact issued the homeowner's policy and that, consequentially, State Farm Florida had nothing to do with the case. So, on the insurers' view of the case, there was complete diversity: A Florida plaintiff versus two Illinois defendants.

But the district court was unconvinced. In an order granting the plaintiff's motion to remand the case back to state court, the federal court explained that fraudulent joinder occurs in three instances: "when there is no possibility that the plaintiff can prove a cause of action against the resident (non-diverse) defendant; when there is outright fraud in the plaintiff's pleading of jurisdictional facts; or where a diverse defendant is joined with a nondiverse defendant as to whom there is no joint, several or alternative liability and where the claim against the diverse defendant has no real connection to the claim against the nondiverse defendant." Focusing first on the insurers' argument that the plaintiff could state no claim against State Farm Florida, the court held that the plaintiff's evidence established at least the possibility that the plaintiff could recover against State Farm Florida in the litigation. First, the plaintiff produced documents from the underlying litigation referring to State Farm Florida, including an attorney's letter discussing "SF Florida's" position on underlying settlement offers. Second, the evidence included a copy of a complaint in which State Farm Florida sought declaratory relief over its duty to defend the plaintiff in an underlying case. Third, the plaintiff produced a copy of the homeowner's policy, which included: an address associated with State Farm Florida's principal place of business, and the signatures of State Farm Florida's secretary and other directors. And fourth, the evidence included a joint stipulation and agreement between State Farm Florida and the underlying plaintiffs stating, among other things, that "State Farm Florida Insurance Company issued a policy of homeowner's insurance, policy number 59-GB-903 1-5." Faced with this evidence, the court ruled that there was a possibility that the plaintiff could state a claim against State Farm Florida. Thus, remand was appropriate.

This case presents several lessons for policyholders. First, insureds should be aware of diversity issues when deciding which court to bring policy disputes in. Indeed, if there is complete diversity, consider filing in federal court if your insurer has a practice of removal, as this will speed up the case and hasten your recovery. Second, if an insurer tries to assert fraudulent joinder to jump the fence to federal court, be aware of evidence that can support the validity of your named defendants, including your policy, letters from the insurer, and any stipulations made in the underlying case.

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