

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOAN HANGARTER, individually and on
behalf of all others similarly situated,

No. C 05-04558 WHA

Plaintiff,

v.

**ORDER (1) GRANTING MOTION
FOR REMAND, (2) GRANTING
REQUEST FOR JUDICIAL
NOTICE and (3) DENYING
MOTION FOR STAY**

THE PAUL REVERE LIFE INSURANCE
CO., UNUMPROVIDENT CORP., JOHN
GARAMENDI, California Insurance
Commissioner, and DOES 1-50,

Defendants.

_____ /

INTRODUCTION

In this action alleging improper claims practices by insurers, plaintiff Joan Hangarter has moved to remand the case to state court. Defendants The Paul Revere Life Insurance Co. and the UnumProvident Corp. oppose the motion. Defendant John Garamendi, California’s insurance commissioner, did not join in the removal and has not taken a position on remand, service not having been effected on him before the hearing. The district court does not have diversity jurisdiction for two reasons: (1) Commissioner Garamendi is a “primary defendant” and a state official against whom relief is likely to be barred and (2) there is no complete diversity between the parties. The corporate defendants advance no other basis for federal jurisdiction. The motion to remand therefore is **GRANTED**.

1 The decision over whether to remand the instant case turns largely on whether or not the
2 Commissioner is a “primary defendant.” If so, all agree that the case was not properly removed.

3 The corporate defendants view the Commissioner as a bit player in this lawsuit because
4 they stand to pay out millions of dollars although plaintiff seeks no damages from the
5 Commissioner. He therefore is not a “primary defendant,” the insurers claim. Alternatively,
6 one can look at the Commissioner as a primary defendant because significant relief is sought
7 against him. He also may be seen as a primary defendant because, as to the eighth cause of
8 action, he is the only defendant who could possibly provide the relief plaintiff seeks.
9 Furthermore, the Commissioner might be considered “primary” simply because he does not fall
10 within ostensibly “secondary” categories of defendants, such as third-party defendants and
11 relatively poor defendants from whom relief is sought only in the alternative to damages paid by
12 a rich corporate defendant.

13 The corporate defendants here claim that the Commissioner is not a primary defendant
14 because the “only” forms of relief sought from him are “clarifications,” “acknowledgments”
15 and reformation of policies. This argument ignores plaintiff’s prayer that the court order the
16 Commissioner to revoke or rescind policies. It minimizes, without explanation, the relief
17 sought from the Commissioner. Corporate defendants also claim the Commissioner is not a
18 primary defendant because he is not the “original cause of any supposed harm” and because
19 there is no request that he pay damages (Opp. 8). The Commissioner is, however, arguably a
20 but-for cause of the supposed harm to California consumers because his office approved the
21 allegedly illusory policies and allowed them to continue being sold in California. Furthermore,
22 injunctive relief is not necessarily inferior to damages. The fact that only injunctive relief is
23 sought against the Commissioner is not dispositive of whether or not he is a “primary
24 defendant.”

25 Corporate defendants seek to burnish their argument by invoking the Senate Judiciary
26 Committee report on the Class Action Fairness Act. *See* S. Rep. 109-14 at 42–43 (2005). That
27 report is of dubious value as an interpretive aid. It was issued ten days *after* the president
28 signed the bill into law. There is thus no reason to think it played any role in legislators’

1 interpretation of the bill, their decisions about whether to support it or the president's
2 conclusion that he should sign it.

3 The report states that the purpose of the "state-action exemption" was to "prevent states,
4 state officials, or other governmental entities from dodging legitimate claims by removing class
5 actions to federal court and then arguing that the federal courts are constitutionally prohibited
6 from granting the requested relief." *Id.* at 42. The statute itself did not limit application of the
7 state-action exception to cases in which a state entity removed the action. The exception
8 applies whether or not the state actor joined in removal. The fact that the Commissioner did not
9 join in the removal here therefore does not influence the analysis of whether he is a primary
10 defendant.

11 The committee next stated said "[f]ederal courts should proceed cautiously before
12 declining federal jurisdiction under the . . . 'state action' case exception." *Ibid.* This
13 admonition is well-taken by this Court but it provides little guidance on statutory construction.

14 The committee later warned that "this provision should not become a subterfuge for
15 avoiding federal jurisdiction" and, in particular, "plaintiffs should not be permitted to name
16 state entities as defendants as a mechanism to avoid federal jurisdiction over class actions that
17 largely target non-governmental defendants." *Ibid.* This suggests that a state defendant could
18 not trigger this exception if it were a collateral or secondary target of the lawsuit. In this case,
19 the Commissioner is not a *secondary* target with regard to any of plaintiff's causes of action.
20 He is not a target *at all* with regard to the first seven causes of action. He is, however, the *only*
21 target of the eighth cause of action and, therefore, a "primary defendant" as to that claim.

22 The committee defined "primary defendants" are those "that would be expected to incur
23 most of the loss if liability is found," and the term "should include any person who has
24 substantial exposure to significant portions of the proposed class in the action . . ." *Id.* at 43.
25 Although the Commissioner will incur no damages liability, he would bear the burden of any
26 mandamus or quasi-mandamus relief. Finally, the Commissioner meets the last criteria because
27 he has "substantial" mandamus exposure to the entire class, not just "significant portions" of it.
28

1 In summary, the Commissioner is a primary defendant because the relief sought from
2 him is substantial in its own light, because he is the only defendant potentially liable on the
3 eighth cause of action and because he would be liable to the entire class. The state-action
4 exception therefore applies. There is no diversity jurisdiction under 18 U.S.C. 1332(d)(2).

5 Even if the Court treated this as close call, the removal and diversity-jurisdiction statutes
6 must be strictly construed in favor of remand. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S.
7 101, 108–09 (1941) (remand statute); *Thomson v. Gaskill*, 315 U.S. 442, 446 (1942) (diversity-
8 jurisdiction). This settled law was not altered by the Senate Judiciary Committee’s post-
9 enactment statement that the burden of proof on remand issues should be with the party seeking
10 to avoid federal jurisdiction. *See* S. Rep. No. 109-14 at 44. This part of the legislative history
11 stands by itself, untethered to any statutory provision. Such naked expressions of intent have no
12 legal effect. *Pierce v. Underwood*, 487 U.S. 552, 566–68 (1988). The report represents nothing
13 more than the view of thirteen members of the Senate Judiciary Committee.

14 As Judge Frank Easterbrook noted, that group of senators did not have the power to
15 change the long-established remand rule simply by making “a forceful declaration in a report.”
16 *See Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 448 (7th Cir. 2005). Absent a
17 judicial reversal, the only way to change such a rule is by bicameral congressional approval plus
18 either the president’s approval or a veto-overriding vote of both houses. *Brill* is the only Court
19 of Appeals decision on this issue and this Court finds it persuasive. In addition, the fact that the
20 report was issued after the bill had become law further undercuts its ability to persuade the
21 Court that the rule of strict remand construction has been weakened.

22 This Court does not have jurisdiction over the case under any other provision of Section
23 1332 because there is no complete diversity of citizenship. Complete diversity of citizenship
24 exists only if *each* plaintiff would have the right to sue *each* defendant separately under Section
25 1332. *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 829 (1986). Plaintiff would not
26 have the right to sue the Commissioner under Section 1332. She has no such right because a
27 citizen of a state, such as herself, may only sue under the diversity statute if the defendant is a
28 citizen of a different state, or a citizen or subject of a foreign nation. *See* Section

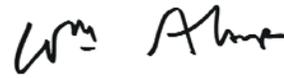
1 1332(a)(1)–(3). The Commissioner is not a “citizen” because the alter egos of states are never
2 considered citizens under Section 1332. *See State Highway Comm’n v. Utah Constr. Co.*, 278
3 U.S. 194, 199–200 (1929). No district court therefore would have diversity jurisdiction to hear
4 a case brought by plaintiff against the Commissioner.

5 **CONCLUSION**

6 For the reasons stated above, the district court does not have jurisdiction to hear the
7 instant case. The motion to remand therefore is **GRANTED**. In light of the foregoing, the
8 motion to stay is **DENIED AS MOOT**.

9 **IT IS SO ORDERED.**

10
11 Dated: January 26, 2006



12 WILLIAM ALSUP
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28