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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

FRANK and BETTINA GAMBRELL,)	
)	
Plaintiffs,)	4:12-cv-00661 JWS
)	
vs.)	ORDER AND OPINION
)	
IDS PROPERTY CASUALTY)	[Re: Motion at docket 18]
INSURANCE CO., et al.,)	
)	
Defendants.)	
)	

I. MOTION PRESENTED

At docket 18, plaintiffs Frank and Bettina Gambrell (“Gambrells”) seek an award of attorneys’ fees “pursuant to A.R.S. 12-341.01 and /or 28 U.S.C. 1447(c).” Defendant IDS Property Casualty Insurance Co. (“IDS”) responds at docket 20. Gambrells’ reply is at docket 21. Oral argument was not requested, and oral argument would not be of assistance to the court.

II. DISCUSSION

The parties are familiar with the factual and procedural background. Readers who are unfamiliar with the relevant background should read the order at docket 14, which remanded the case to state court.

1 In support of their motion, Gambrells rely primarily on A.R.S. 12-341.01 which
2 authorizes a court to award reasonable attorneys' fees to a prevailing party in a contract
3 dispute governed by Arizona law. This court has already explained in an order at
4 docket 30, Case No. 2:12-cv-1227, why it declines to exercise its discretion to award
5 fees to the Gambrells pursuant to that statute. The reasoning in that order is
6 incorporated here. Based thereon, to the extent it relies on A.R.S. 12-341.01, the
7 Gambrells' request for fees at docket 18 will be denied.

8
9 The court now turns to Gambrells' assertion that fees may be awarded pursuant
10 to 28 U.S.C. § 1447(c). That statute provides that a district court *may* award "just costs
11 and any actual expenses, including attorney fees, incurred as a result of the removal."
12 Like A.R.S. 12-341.01, the federal statute authorizes, but does not require, an award of
13 fees. In their opening memorandum at docket 19, Gambrells did not cite any authority
14 for the proposition that an award would be proper under section 1447(c); rather, they
15 merely asserted it would. In response, IDS asserts that an award may not be made
16 because they had an objectively reasonable basis for initiating the removal citing
17 *Gardner v. UICI*.¹ It is IDS' position that because they could legitimately contend that in
18 *Walter v. Simmons*² an Arizona Appellate court had indicated that an employee adjuster
19 owed no duty to an insured, the decision to remove was objectively reasonable. In their
20 reply, Gambrells not only argue the removal was unreasonable, but advance a different
21 legal standard. Gambrells contend that the removal was "wrong as a matter of law" with
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26 ¹508 F.3d 559, 561 (9th Cir. 2007).

27 ²818 P.2d 214 (Ariz. Ct. App. 1991).

1 respect to the fraudulent joinder issue. Gambrells rely on *Balcorta v. Twentieth*
2 *Century-Fox Film Corp*³.

3 Under the “wrong as a matter of law” standard, Gambrells’ argument is not
4 persuasive, because as this court explained in an earlier order, it is not settled as a
5 matter of Arizona law that an employee adjuster owes a duty of good faith and fair
6 dealing to an insured. It follows that IDS could not have been wrong as a matter of law
7 to base the removal on the proposition that there is no such duty.
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9 The matter thus turns on whether there was an objectively reasonable basis to
10 assert that Harrish was fraudulently joined because she owed no duty to the Gambrells.
11 Gambrells contend that it could not have been objectively reasonable to remove on that
12 basis, because IDS was aware that earlier district court decisions had remanded cases
13 because Arizona law is not clear on this point. This argument has some merit, but does
14 not carry the day, as explained below.
15

16 In earlier motion practice IDS argued that the decision by the Arizona Court of
17 Appeals in the *Walter* case had established that an employee adjuster owed no good
18 faith duty to the insured. In reviewing the motion papers and the relevant case law, this
19 court concluded that whether *Walter* was properly cited as establishing that proposition
20 was a close question, but ultimately determined that what the *Walter* court had said was
21 *dicta*, which did not establish Arizona law. In answering what is again a close question,
22 this court now holds that it was objectively reasonable for IDS to rely on *Walter*, even
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27 ³208 F.3d 1102, 1106 n.6 (9th Cir. 2000).

1 though in this court's final analysis that reliance was incorrect. It follows that there is no
2 basis for an award of fees under section 1447(c).

3 **III. CONCLUSION**

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5 For the reasons above, this court declines to exercise its discretion to award fees
6 to Gambrells. The motion at docket 18 is **DENIED**.

7 DATED this 10th day of May 2013.

8
9 */s/* JOHN W. SEDWICK
10 UNITED STATES DISTRICT JUDGE
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