

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

EAGLE WATER, LLC

CIVIL ACTION NO. 17-cv-0250

VERSUS

JUDGE FOOTE

ARCH INSURANCE CO., ET AL

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER


Eagle Water, LLC filed this action in state court against Arch Insurance Company, Gene Ash, and Nida Ash. The petition alleged that Eagle performed services to prevent sewer water backup in a neighborhood, but waste water nonetheless backed up into the home of Gene and Nida Ash. Eagle had a commercial liability insurance policy with Arch and put Arch on notice of a potential claim. Arch has allegedly denied the claim based on one or more exclusions in the policy. Eagle prays for a judgment declaring that the policy covered all claims related to the Ashes' claim.

Arch removed the case based on an assertion of diversity jurisdiction. Arch alleges that it is a citizen of Missouri and New Jersey, and Eagle is alleged (on information and belief) to have a single member who is an individual domiciled in Louisiana. There is not complete diversity on the face of the petition, however, because both Gene and Nida Ash are also alleged to be Louisiana citizens. Arch contends that it is not aware of any claims that Eagle may possibly have against the Ashes, so that their citizenship should be ignored pursuant to the improper joinder doctrine that is outlined in Smallwood v. Illinois Central RR

Co., 385 F.3d 568 (5th Cir. 2004). Eagle has not challenged the improper joinder plea, but the court is obligated to determine subject matter jurisdiction, including whether a party is improperly joined, on its own initiative. Gasch v. Hartford Acc & Indem. Co. 491 F.3rd 278, 281 (5th Cir. 2007).

If Eagle contests the assertion that the Ashes were improperly joined, it must file a motion to remand, supported by a memorandum, by **March 17, 2017** and explain why there is a reasonable basis to predict that state law would allow Eagle to recover against the Ashes. If Eagle timely files a motion to remand, it will be noticed for briefing so that Arch can respond and attempt to meet its burden on the improper joinder issue. If Eagle does not timely file a motion to remand and challenge the improper joinder plea, the court will consider Eagle to concede the point, the Ashes will be dismissed, and the case will proceed toward a Scheduling Order.

THUS DONE AND SIGNED in Shreveport, Louisiana, this 10th day of February, 2017.



Mark L. Hornsby
U.S. Magistrate Judge