

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

EDWARD T HOLDEN

CIVIL ACTION NO. 24-cv-221

VERSUS

JUDGE S. MAURICE HICKS, JR.

UNION PACIFIC RAILROAD CO ET AL

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

Edward T. Holden (“Plaintiff”) filed this civil action in state court against Union Pacific Railroad Co. and three individuals. Plaintiff alleged that each of the individuals was an employee of the railroad and an operator/engineer of the train at the time of a derailment near Plaintiff’s home. Plaintiff alleged that the derailment caused him personal injuries and property damage.

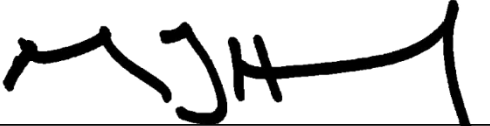
Union Pacific removed the case based on an assertion of diversity jurisdiction. The railroad acknowledged that Plaintiff and the three individual defendants are Louisiana citizens, which would destroy diversity, but it asserted that the citizenship of the individuals should be ignored pursuant to the improper joinder doctrine, which is outlined in Smallwood v. Illinois Central RR Co., 385 F.3d 568 (5th Cir. 2004). The railroad submitted declarations to the effect that none of the individuals were a member of the train crew at the time of the derailment.

The court issued an order (Doc. 7) that noted the improper joinder plea and instructed Plaintiff that he must file a motion to remand by March 15, 2024 if he contests the assertion that the individuals were improperly joined. The order stated that if Plaintiff

did not timely file a motion to remand and challenge the improper joinder plea, the court would consider Plaintiff to concede the point, the individuals would be dismissed without prejudice, and the claims against Union Pacific would proceed toward a scheduling order.

The March 15 deadline has passed, and Plaintiff has not filed a motion to remand or other challenge to the improper joinder plea. Given the declarations that none of the individuals were a member of the train crew at the time of the derailment and the lack of any challenge via motion to remand, all claims against **Horace Martin, Walter Arnold, and Thomas Robinson, Jr.** are **dismissed without prejudice**. International Energy Ventures Mgmt., L.L.C. v. United Energy Grp., Ltd., 818 F.3d 193, 210 (5th Cir. 2016) (dismissal without prejudice is appropriate when a defendant is improperly joined). Union Pacific has filed an answer, so the court will promptly set a scheduling conference.

THUS DONE AND SIGNED in Shreveport, Louisiana, this 25th of March, 2024.



Mark L. Hornsby
U.S. Magistrate Judge