

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

WINDA KIDD, III,

Plaintiff,

v.

METROPOLITAN GROUP PROPERTY  
AND CASUALTY INSURANCE  
COMPANY,

Defendant.

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Case No. 17-12459

Honorable John Corbett O'Meara

**ORDER DENYING  
PLAINTIFF'S AUGUST 2, 2017 MOTION TO REMAND**

This matter came before the court on the August 2, 2017 motion to remand by plaintiff Winda Kidd, III. Defendant Metropolitan Group Property and Casualty Insurance Company ("Metropolitan") filed a response August 15, 2017; and Plaintiff filed a reply brief August 28, 2017. Oral argument was heard October 12, 2017.

**BACKGROUND FACTS**

Plaintiff Winda Kidd, III, was driving his mother's vehicle when an accident occurred June 11, 2016. He did not have his own no-fault policy in place at the time of the accident. Kidd has filed this action seeking benefits based on his status as an occupant of the vehicle which was owned by his mother and insured through her

policy with defendant Metropolitan. Plaintiff and his mother are both citizens of Michigan. Defendant Metropolitan is incorporated in, and has its principal place of business in, Rhode Island. The amount in controversy exceeds \$75,000. Defendant filed notice of removal July 28, 2017. Plaintiff filed a motion to remand August 2, 2017, claiming that the “direct action” provision of 28 U.S.C. § 1332(c)(1) precludes removal based on diversity of citizenship.

### **LAW AND ANALYSIS**

The relevant statute provides the following:

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any *direct action against the insurer of a policy or contract of liability insurance*, whether incorporated or unincorporated, *to which action the insured is not joined as a party-defendant*, such insurer shall be deemed a citizen of—

(A) every state and foreign state of which the insured is a citizen.

28 U.S.C. § 1332(c)(1)(emphasis added).

“Direct actions” are actions against a tortfeasor’s insurance company to which the tortfeasor is not joined. Ljuljdjuraj v. State Farm Mut. Auto. Ins. Co., 774 F.3d 908, 910 (6<sup>th</sup> Cir. 2014). Thus, they are based in liability of the insured to the plaintiff in a tort case. The instant action, however, is one for first-party, no-fault benefits, not a tort action based on liability. Therefore, this is not a direct action. Accordingly, the

direct action exception to § 1332(c)(1) is inapplicable; and it does not operate to defeat diversity jurisdiction. See id.

**ORDER**

It is hereby **ORDERED** that plaintiff Kidd's August 2, 2017 motion for remand is **DENIED**.

s/John Corbett O'Meara  
United States District Judge

Date: October 17, 2017

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, October 17, 2017, using the ECF system.

s/William Barkholz  
Case Manager