

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Paul Butcher

v.

Civil No. 11-cv-306-PB

American Economy Insurance
Company, et al.

O R D E R

On August 26, 2011, a preliminary pretrial conference was held in this case. Peter M. Solomon, Esquire, appeared for plaintiff and Donald L. Smith, Esquire, appeared for defendant. As discussed with both counsel, the court declines to approve the Proposed Discovery Plan (doc. no. 5) as it is moot. Plaintiff and defendant intend to join the workers' compensation carrier for plaintiff's employer, whom they both agree is an indispensable party. Plaintiff and defendant agree that this party shall be joined on or before October 28, 2011. Once that party is added to this lawsuit, the parties will file a renewed proposed discovery plan. Assuming that the to-be-joined party concurs, that discovery plan will likely include a request to place the case on an expedited discovery track. The parties shall file a discovery plan on or before November 18, 2011.

Counsel agreed that once the additional party is included in the lawsuit, the likelihood of a global settlement will be enhanced.

The court notes that the docket incorrectly reflects two named defendants in this case. In a removal case, the original entry of named parties on this court's docket must mirror the named parties in the state court pleading. The state court petition names only one defendant: American Economy Insurance Company Underwriting for Safeco Insurance Company of America ("American"). The clerk's office is directed to correct the docket to mirror the named parties in the state court petition.

As it stands, there does not appear to be complete diversity here. According to the state court petition, plaintiff is a New Hampshire resident and American's principal place of business is located in Keene, New Hampshire. According to the Notice of Removal, plaintiff named the wrong defendant in its state court pleading and the correct defendant, Safeco Insurance Company of America, is a corporate citizen of a state other than New Hampshire. That may be, but as the parties must well appreciate, the court's consideration of this case is necessarily limited to the case plaintiff filed, including the defendant he named, not the case defendant thinks plaintiff should have filed. On or before September 26, 2011, the parties

shall each show cause why the court should not recommend that the district judge remand the case for lack of complete diversity.

A handwritten signature in black ink, appearing to be 'L. B. McCafferty', is written over a horizontal line. The signature is stylized and cursive.

Landya B. McCafferty
United States Magistrate Judge

August 30, 2011

cc: Andrew D. Dunn, Esq.
Peter M. Solomon, Esq.