

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TIMOTHY B. LUDWIG and
TAMMY S. LUDWIG,

Plaintiffs,

v.

ORDER
07-CV-237

NEW YORK CENTRAL MUTUAL FIRE
INSURANCE COMPANY,

Defendant.

This case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1). On August 19, 2008, Delphi Corporation filed a motion for release of funds held in escrow. On September 8, 2008, defendant New York Central Mutual Fire Insurance Company filed a similar motion. On January 16, 2009, Magistrate Judge Scott filed a Report and Recommendation, recommending that the pending motions be denied without prejudice and that the case be remanded to New York State Supreme Court.

Delphi Corporation filed objections to the Report and Recommendation and plaintiffs filed a response thereto. Oral argument on the objections was held on March 30, 2009 at 11:00 a.m.

At oral argument, the Court gave the parties an opportunity to review and address In re Notice of Removal Filed by William Einhorn, 481 F. Supp. 2d 345 (D.N.J. 2007), a case that the parties did not cite before or after the Report and

Recommendation. Delphi argued that Einhorn is distinguishable as a case dealing with divorce, a claim belonging entirely to state court. The Court agrees with plaintiff that the present case, as an auto injury claim, just as easily can be considered a state court claim. Therefore, in addition to the analysis in the Report and Recommendation establishing that Delphi is not a defendant in this case, the Court notes that Einhorn is factually analogous and persuasive.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation with one modification. Additional briefing within 20 days is unnecessary per Delphi's assertion at oral argument that it has addressed the jurisdiction issue fully and does not need to brief it further.

Accordingly, for the reasons set forth above and in Magistrate Judge Scott's Report and Recommendation, defendant and Delphi Corporation's motions are denied without prejudice and the case is remanded to New York State Supreme Court. The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: March 31, 2009