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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ATLANTIC NATIONAL TRUST, LLC,
a Florida limited liability
company,

O R D E R
Civ. No. 09-6054-TC
(Related case CV 09-6049-TC)

Plaintiff,

vs.

MT. HAWLEY INSURANCE COMPANY, a
Delaware corporation, CRUMP
INSURANCE SERVICES, INC., a
Texas corporation, CHAMBERLAIN
INSURANCE AGENCY LLC, an Oregon
limited liability company,
LEBANON HARDBOARD LLC, an
Oregon limited liability
company, and TRITALENT FUNDING
GROUP, LLC, an Oregon limited
liability company,

Defendants.

AIKEN, Judge:

Magistrate Judge Coffin filed his Findings and Recommendation on May 21, 2009. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a de novo determination of that portion of the Magistrate's report. 28 U.S.C. § 636(b)(1)(B); McDonnell Douglas Corp. v. Commodore

1 Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert.
2 denied, 455 U.S. 920 (1982).

3 Defendant Mt. Hawley Insurance Company has timely filed
4 objections. I have, therefore, given the file of this case a de
5 novo review. First, I agree that there were no "findings of fact"
6 made as to the following issues (I also note that no party
7 contends otherwise): (1) the amount of the alleged damages caused
8 by the fire; and (2) defendant Tritalent's alleged mortgage
9 holder status in the property at bar. See Findings and
10 Recommendation, p. 2. Next, there can be no dispute that 28
11 U.S.C. § 1448 protects a later served defendant, when within the
12 30-day period, that defendant opts to exercise its right to
13 choose the state court forum. When there are multiple
14 defendants, as here, all defendants must either join in the
15 motion to remove to federal court, or take no action against the
16 motion. Pursuant to § 1448, a nonserved defendant (like Lebanon
17 Hardboard or Tritalent Funding Group here) may force a remand to
18 state court if either or both defendants choose the state forum
19 over the federal forum by making a timely motion to remand after
20 such defendant has been served with the complaint. That is
21 exactly the situation at bar. Therefore, remand to state court
22 is appropriate because after having been served with the
23 complaint, defendants have timely exercised their right to choose
24 the state court forum. Finally, defendant Mt. Hawley's request
25 for oral argument is denied as unnecessary.

26 In conclusion, I ADOPT the Magistrate's Findings and
27 Recommendation (doc. 27) that defendants Lebanon Hardboard's and
28 Tritalent Funding Group's motion to remand (doc. 8) and

1 plaintiff's motion to remand (doc. 16) are granted. This case is
2 remanded to state court.

3 IT IS SO ORDERED.

4 Dated this 29 day of July 2009.

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9 Ann Aiken
United States District Judge