

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Monticello Road, LLC,)	Civil Action Number: 3:17-0730-MBS
Monticello Road C Store, LLC,)	
)	
Plaintiffs,)	
)	ORDER AND OPINION
vs.)	
)	
Auto-Owners Insurance,)	
AmGuard Insurance Company,)	
)	
<u>Defendants.</u>)	

On February 14, 2017, Plaintiffs Monticello Road, LLC and Monticello Road C Store, LLC (collectively, “Plaintiffs”) sued Defendants Auto-Owners Insurance Company and AmGuard Insurance Company¹ in the Court of Common Pleas for Richland County, South Carolina for bad faith failure to pay an insurance claim. ECF No. 1-1. On March 16, 2017, Defendant Auto-Owners Insurance Company (“Defendant”) timely removed this action to federal court citing federal question jurisdiction pursuant to 28 U.S.C. § 1331 or 42 U.S.C. § 4072. ECF Nos. 15-2, 22. Plaintiffs moved to remand on May 13, 2017. ECF No. 15.

I. LEGISLATIVE & FACTUAL BACKGROUND

A. The National Flood Insurance Program (“NFIP”)

Congress established the NFIP under the National Flood Insurance Act of 1968 to provide affordable flood insurance coverage for residential and commercial properties. 42 U.S.C. §§ 4001 *et seq.*; *see Battle v. Seibels Bruce Ins. Co.*, 288 F.3d 596, 598 (4th Cir. 2002). NFIP is federally subsidized and federally administered. The Federal Emergency Management Agency (“FEMA”) is responsible for the administration of NFIP. 42 U.S.C. § 4011. In 1983, FEMA

¹ Defendant AmGuard Insurance Company has not responded to Plaintiffs’ motion to remand; however, Defendant AmGuard filed an answer in the federal court proceedings, ECF No. 8.

created the “Write-Your-Own” program, which allows private insurance companies to issue Standard Flood Insurance Policies (“SFIPs”) under the NFIP. 44 C.F.R § 62.23 (2017). These insurance companies are referred to as “Write-Your-Own” companies (“WYO”). *Id.* at § 62.23(b).

WYOs are responsible for the “adjustment, settlement, payment and defense of all claims arising from policies of flood insurance it issues under the Program, based upon the terms and conditions of the Standard Flood Insurance Policy.” *Id.* at § 62.23(d). WYOs are fiscal agents of the United States of America. 42 U.S.C. § 4071(a)(1); 44 C.F.R. § 62.23(g). As fiscal agents, WYOs collect SFIP premiums in segregated accounts, deduct their fees and costs from those premiums, and then deposit the remainder of the premiums in the National Flood Insurance Fund in the United States Treasury. 42 U.S.C. § 4017(b)(2). FEMA sets the terms, rate structures, and premium costs of the SFIPs, and is ultimately responsible for the payment of all claims. *Id.* at § 4014. If an insurance claim is more than the WYO has received in premiums, WYOs must draw upon the letters of credit from FEMA. *Battle*, 288 F.3d at 600; *see also* 44 C.F.R. § 62.23(f). According to the arrangement entered into with FEMA, WYOs retain a standard percentage of claims paid to the insured, which is essentially a commission for the WYOs for their participation in the WYO program. *Southpointe Villas Homeowners Ass’n v. Scottis Ins. Agency Inc.*, 213 F. Supp. 2d 586, 588 (D.S.C. 2002) (citing 44 C.F.R. § 62.23(a)). FEMA disburses additional funding to cover certain costs incurred by WYO’s when defending against claims. 44 C.F.R. § 62.23(i)(6). “In short, premiums collected on policies written by WYO[s] do not belong to those companies.” *Battle*, 288 F.3d at 600 (citing *Newtown v. Capital Assurance Co.*, 245 F.3d 1306, 1311 (11th Cir. 2001)).

B. 2016 Storm and Subsequent Insurance Claim

Plaintiffs are South Carolina limited liability companies that operate a convenience store at 6000 Monticello Road, Columbia, South Carolina. ECF No. 1-1 at ¶ 1. On February 26, 2015, Defendant, issued Plaintiffs a flood insurance policy (SFIP No. 4100766692) under the NFIP. ECF No. 22-1. Plaintiffs allege that in or about 2016 their convenience store sustained flood and water damage during a severe storm. ECF No. 1-1 at ¶ 3. Plaintiffs alleged that, “the flood, the water, the wind and the overall havoc” damaged the store and its inventory. *Id.* at ¶ 7. Plaintiffs claim that Defendant breached their insurance contract by failing to provide the entire amount due on their insurance claim. *Id.* at ¶ 8. Plaintiffs request \$74,500 in damages. *Id.*

II. LEGAL STANDARDS

Removal from state court is governed by 28 U.S.C. § 1441. Under § 1441, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants” A federal court may have original jurisdiction through federal question jurisdiction, 28 U.S.C. § 1331, or diversity jurisdiction, 28 U.S.C. § 1332. “A defendant or defendants desiring to remove any civil action . . . shall file in the district court . . . a pending notice or removal” within thirty days after receipt of the initial pleading. 28 U.S.C. § 1446. Once an action has been removed, a plaintiff may file a motion to remand “on the basis of any defect other than lack of subject matter jurisdiction . . . within 30 days after the filing of the notice of removal” 28 U.S.C. § 1447.

The removing party has the burden of establishing federal jurisdiction, and the court should construe any uncertainty of federal jurisdiction in favor of remand. *Mulcahey v. Columbia Organic Chems. Co., Inc.*, 29 F.3d 148, 151 (4th Cir. 1994). Removal jurisdiction is determined on the basis of the state court complaint at the time of removal. *Woodward v. Newcourt Comm.*

Fin. Corp., 60 F. Supp. 2d 530, 531 (D.S.C. 1999). Defendant does not claim diversity jurisdiction; therefore, the court must determine whether there is federal question jurisdiction pursuant to 28 U.S.C. § 1331 or 42 U.S.C. § 4072.

A plaintiff's cause of action arises under federal law only when a "well-pleaded complaint" raises an issue of federal law. *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987). The rule provides that "whether a case is one arising under the Constitution or a law or treaty of the United States . . . must be determined from what necessarily appears in the plaintiff's statement of his own claim." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004); (citing *Taylor v. Anderson*, 234 U.S. 74, 75-76 (1914)). The district court has jurisdiction to hear a case only when a well-pleaded complaint "establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Battle*, 288 F.3d at 606-07. If the outcome of the lawsuit turns on a question of federal law, then relief necessarily depends on the resolution of a substantial question of federal law and there is federal question jurisdiction. *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 13 (1983). A defense based on federal law is not sufficient to establish federal question jurisdiction. *E.g.*, *Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 809 (1986) ("A defense that raises a federal question is inadequate to confer federal jurisdiction.").

A party who brings a suit may decide whether to rely on state or federal law, but "may not defeat removal by omitting to plead necessary federal questions in a complaint." *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998). A court may uphold removal if it concludes that a plaintiff has "artfully pleaded" claims in order to avoid federal questions. *Id.*

Additionally, if federal law completely preempts a plaintiff's state law claim, the artful pleading doctrine permits removal. *Id.*; see *Metro. Life Ins. Co.*, 481 U.S. at 65-66.

III. DISCUSSION

Plaintiffs assert that there is no federal question jurisdiction under 28 U.S.C. § 1331. Plaintiffs allege that they are relying solely on state common law. ECF No. 15-1 at 1. In *Studio Frames Ltd. v. Standard Fire Insurance. Co.*, 369 F.3d 376, 380 (4th Cir. 2004), the Fourth Circuit Court of Appeals held that a plaintiff's "right to relief on its claims for breach of contract, which hinge[d] on the court's interpretation of a [SFIP] issued pursuant to the NFIP and codified in federal regulations, necessarily depend[ed] on the resolution of a substantial question of federal law." See also *Leland v. Fed. Ins. Adm'r*, 934 F.2d 524, 529 (4th Cir. 1991) ("Federal common law controls the interpretation of insurance policies issued pursuant to the NFIP."). As the resolution of Plaintiffs' claim is based on a SFIP issued pursuant to the NFIP and codified federal regulations, their claims necessarily depend on the interpretation of a substantial question of federal law. Plaintiffs' SFIP explicitly states: "This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law." ECF No. 22 at 7. The court finds removal was proper under federal question jurisdiction.²

² Plaintiff alternatively raises 42 U.S.C. § 4072, 28 U.S.C. § 1337, and 28 U.S.C. § 1367 as bases for federal question jurisdiction; however, the court declines to address these arguments as it finds subject matter jurisdiction under § 1331.

IV. CONCLUSION

For the reasons stated above, Plaintiffs' motion for remand is **DENIED**.

s/ Margaret B. Seymour
The Honorable Margaret B. Seymour
Senior United States District Judge

July 28, 2017
Columbia, South Carolina