

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 GREGORY J. STARK, a Canadian citizen  
10 and Washington resident,

11 Plaintiff,

12 v.

13 MARKEL AMERICAN INSURANCE  
14 COMPANY, a Virginia corporation; and  
15 DMA &  
16 ASSOCIATES, INC., a Washington  
corporation,

17 Defendants.

Case No. C17-1498 RSM

ORDER GRANTING PLAINTIFF'S  
MOTION FOR REMAND

18 **I. INTRODUCTION**

19 This matter comes before the Court on Plaintiff Gregory Stark's Motion for Remand,  
20 Dkt. #7. Plaintiff moves the Court for an order remanding this action to King County Superior  
21 Court and for an award of fees and costs under 28 U.S.C. § 1447(c). *Id.* Defendant Degginger  
22 McIntosh & Associates ("DMA") joins in requesting remand. Dkts. #9 and #17. Defendant  
23 Markel American Insurance Company opposes remand and fees. Dkt. #14. The Court has  
24 determined that oral argument is unnecessary. For the reasons below, the Court agrees with  
25 Mr. Stark, GRANTS his Motion, REMANDS this case to King County Superior Court, and  
26 awards fees.  
27  
28

ORDER GRANTING PLAINTIFF'S MOTION FOR REMAND - 1

## II. BACKGROUND

1  
2 In 2015, Mr. Stark purchased a 1960 66-foot long Chris Craft vessel. *See* Dkt. #1-2 at  
3 3, ¶9. He renamed the boat the GRACE. *Id.* at 4, ¶11. Mr. Stark contacted DMA, his previous  
4 insurance broker, and sought to increase the amount of insurance. He later informed DMA that  
5 he had found a boathouse to moor the GRACE. *Id.* at 4–5, ¶¶12–16. DMA then sent Mr. Stark  
6 an application for an insurance quote from Defendant insurance company Markel and Mr. Stark  
7 completed the form. *Id.* at 6, ¶¶23–24. Mr. Stark alleges that, late in the underwriting process,  
8 Markel made a change to the policy eliminating coverage for the GRACE if it was afloat on the  
9 water, and that this was not clearly communicated to Mr. Stark.  
10

11 On May 21, 2017, approximately six months after the Policy was finalized, an  
12 accidental fire broke out at the boathouse, completely destroying the GRACE. *Id.* at 11, ¶54.  
13 Markel later sent Mr. Stark a reservation of rights letter, reserving the right to deny coverage on  
14 the basis that GRACE was afloat on the water.  
15

16 On September 5, 2017, Mr. Stark initiated a state court action in King County Superior  
17 Court against the instant Defendants for reformation of the Markel Policy on the basis that  
18 Markel had operated under a mistake of fact regarding the GRACE’s seaworthiness when it  
19 issued the Markel Policy. *See id.* Mr. Stark also asserted a claim against Markel for violation  
20 of the Washington Consumer Protection Act for its misleading and deceptive conduct in the  
21 underwriting and issuance of the Markel Policy. *Id.* Finally, he asserted claims against DMA  
22 for breaching its professional and fiduciary duties by failing to procure the insurance  
23 appropriate to cover the GRACE. *Id.*  
24

25 Two days after Mr. Stark filed suit in state court, Markel filed an action in this court,  
26 seeking declaratory judgment that there is no coverage under the Markel Policy and that the  
27  
28

1 policy should not be equitably reformed. *See* Case No. 2:17-cv-1345-RSM. On October 5,  
2 2017, Markel also removed Mr. Stark’s state court action to this Court in the instant matter.  
3 Dkt. #1. Mr. Stark filed the instant Motion to Remand on October 12, 2017. Dkt. #7.

### 4 **III. DISCUSSION**

#### 5 **A. Legal Standard**

6  
7 When a case is filed in state court, removal is typically proper if the complaint raises a  
8 federal question or where there is diversity of citizenship between the parties and the amount in  
9 controversy exceeds \$75,000. 28 U.S.C. §§ 1331, 1332(a). Typically it is presumed ““that a  
10 cause lies outside [the] limited jurisdiction [of the federal courts] and the burden of establishing  
11 the contrary rests upon the party asserting jurisdiction.”” *Hunter v. Philip Morris USA*, 582  
12 F.3d 1039, 1042 (9th Cir. 2009). Courts “strictly construe the removal statute against removal  
13 jurisdiction.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “The ‘strong  
14 presumption’ against removal jurisdiction means that the defendant always has the burden of  
15 establishing that removal is proper.” *Id.* (quoting *St. Paul Mercury Indem. Co. v. Red Cab Co.*,  
16 303 U.S. 283, 288-290, 58 S. Ct. 586, 82 L. Ed. 845 (1938)). An order remanding the case may  
17 require payment of just costs and any actual expenses, including attorney fees, incurred as a  
18 result of the removal. 28 U.S.C. § 1447(c). “Absent unusual circumstances, courts may award  
19 attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable  
20 basis for seeking removal.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005).  
21  
22  
23

#### 24 **B. Analysis**

##### 25 **1. Remand**

26 In this case, Defendant Markel presents two bases for removal: (1) that this Court has  
27 admiralty and maritime jurisdiction over Mr. Stark’s reformation claim against Markel because  
28

1 the Markel Policy is a marine insurance policy; and (2) that the Court will have diversity  
2 jurisdiction once Markel files a motion to sever Mr. Stark’s claims against DMA, a non-diverse  
3 party. Dkt. #1 at 2–3.

4         The statutory grant of admiralty jurisdiction provides: “The district courts shall have  
5 original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or  
6 maritime jurisdiction, saving to suitors in all cases all other remedies to which they are  
7 otherwise entitled...” 28 U.S.C. § 1333. Mr. Stark argues that courts interpreting 28 U.S.C. §  
8 1333’s “saving to suitors clause” have held that policyholders have “the freedom to choose a  
9 state court forum to litigate claims involving marine insurance contracts.” Dkt. #7 at 5 (citing  
10 *Coronel v. AK Victory*, 1 F. Supp. 3d 1175, 1185–86 (W.D. Wash. 2014) (“[M]aritime suitors  
11 have had the option of bringing maritime claims... in federal court under admiralty jurisdiction,  
12 in state court, or in federal court under an independent ground of jurisdiction such as diversity  
13 of citizenship.”)). Mr. Stark argues that because of the state court’s concurrent jurisdiction,  
14 “state court savings-clause cases are not removable to federal court unless there is an  
15 independent basis for federal jurisdiction.” *Id.* at 5–6 (citing *Morris v. Princess Cruises, Inc.*,  
16 236 F.3d 1061, 1069 (9th Cir. 2001) (“[S]aving clause claims brought in state court are not  
17 removable under 28 U.S.C. § 1441 absent some other jurisdictional basis, such as diversity or  
18 federal question jurisdiction.”); *Coronel*, 1 F. Supp. 3d at 1169; Admiralty Jurisdiction and  
19 Marine Insurance: 16 Couch on Ins. § 229:11). Mr. Stark argues that the facts of this case  
20 mirror *Coronel*. *Id.* at 7. Mr. Stark argues that Markel’s diversity jurisdiction theory should  
21 be rejected because Markel cannot establish that joinder of DMA was “fraudulent.” *Id.* at 8  
22 (citing *Hunter*, 582 F.3d 1039 at 1043). Joinder is fraudulent only when “the plaintiff fails to  
23 state a cause of action against a resident defendant, and the failure is obvious according to the  
24  
25  
26  
27  
28

1 settled rules of the state.” *Morris*, 236 F.3d at 1067 (internal quotation marks omitted). Mr.  
2 Stark argues why he has adequately stated a cause of action against DMA. Dkt. #7 at 9.

3 In Response, Markel argues that the Court should rule on consolidating this matter with  
4 Case No. 2:17-cv-1345-RSM before ruling on the instant Motion. Dkt. #14 at 5–6. Markel  
5 argues that this court has admiralty jurisdiction over this matter, citing cases, but fails to  
6 establish that this court has *exclusive* jurisdiction or address Mr. Stark’s arguments and case  
7 law for concurrent jurisdiction and remand where a plaintiff has first-filed in state court. *La*  
8 *Reunion Francaise SA v. Barnes*, 247 F.3d 1022, 1024 (9th Cir. 2001), cited by Markel, is  
9 easily distinguishable for purposes of this Motion in that there was no first-filed action in state  
10 court in that case. *La Reunion* does not discuss the saving to suitors clause, neither does  
11 Markel’s briefing. Markel next argues that diversity jurisdiction should exist here after  
12 severance of DMA as a Defendant, but Markel again fails to address Mr. Stark’s arguments on  
13 this issue. Markel argues only that Mr. Stark named DMA “in order to skirt applicable federal  
14 jurisdiction” and that the claims against these two defendants “are contradictory and cannot be  
15 made together.” Dkt. #14 at 9. Markel argues that “DMA is not a party to Stark’s controversy  
16 with [Markel] under any reasoning.” *id.* at 14.

17  
18  
19  
20 On Reply, Mr. Stark argues that he was entitled to file his lawsuit in state court in the  
21 first instance, and that Markel cites no authority to the contrary. *See* Dkt. #16 at 3. Mr. Stark  
22 argues that this is true regardless of whether his claims are equitable in nature. *Id.* (citing *Lewis*  
23 *v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 445 (2001); *Coronel*, 1 F. Supp. 3d at 1182).  
24 With regard to Markel’s attempts to have the court sever claims against DMA to create  
25 diversity, Mr. Stark argues that “there is nothing improper in joining claims against [DMA],  
26 Mr. Stark’s insurance broker, in the same case as Markel, the insurer, where the material facts  
27  
28

1 underpinning the claims against each entity include what Mr. Stark communicated to [DMA]  
2 and what [DMA] in turn communicated to Markel.” *Id.* at 5 (citing Dkt. #7 at 8–9). Mr. Stark  
3 presents arguments for why his claim against DMA is not unripe or otherwise inconsistent with  
4 his reformation claim against Markel. *Id.* at 5–6.

5 DMA also files a Reply. DMA argues that Markel’s request to consolidate the two  
6 parallel actions is premature, and that “DMA views the state court as the proper forum for this  
7 action.” Dkt. #17.

8  
9 The Court agrees with Mr. Stark’s arguments regarding concurrent jurisdiction. Markel  
10 has failed to meet its burden to demonstrate that removal was appropriate given the state  
11 court’s concurrent jurisdiction under 28 U.S.C. § 1333’s saving to suitors clause. Markel has  
12 also failed to convince the Court that DMA was included in this case fraudulently, that Mr.  
13 Stark does not have a cause of action against DMA, or that the claims against these two  
14 Defendants are not related. That Mr. Stark’s claims against DMA and Markel may be  
15 contradictory is an issue for the state court to unravel and does not in itself satisfy the test for  
16 severance. If this case were remanded, there would be no need to consolidate with the other  
17 federal action, or wait for motions to be heard in that action. In the Court’s view, this Motion is  
18 the obvious first issue to be resolved between the parties. DMA appears to agree with Mr.  
19 Stark and the Court on all counts. Given all of the above, and the strong presumption against  
20 removal jurisdiction, the Court will grant the Motion for Remand.

## 21 **2. Attorney Fees**

22 Mr. Stark also moves for fees under 28 U.S.C. § 1447(c). Dkt. #7 at 11. Markel argues  
23 that it has presented “multiple bases for removal, all objectively reasonable.” Dkt. #14 at 15.  
24 The Court disagrees. Markel has unreasonably failed to respond to Mr. Stark’s arguments for  
25  
26  
27  
28

1 concurrent jurisdiction based on well-established Ninth Circuit law, and presented arguments  
2 for severance without addressing the appropriate standard. The Court finds it unreasonable that  
3 Markel has focused so intently on the issue of judicial efficiency given the dispositive law cited  
4 by Mr. Stark. Given all of this, the Court shall award fees.

#### 5 IV. CONCLUSION

6 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,  
7 and the remainder of the record, the Court hereby finds and ORDERS that:  
8

- 9 1. Plaintiff Stark's Motion to Remand (Dkt. #7) is GRANTED.
- 10 2. Plaintiff is entitled to fees and costs under 28 U.S.C. § 1447(c). **No later than ten (10)**  
11 **days from the date of this Order**, Plaintiff may file a Supplemental Motion for  
12 Attorneys' Fees, noted pursuant to LCR 7(d), and limited to six (6) pages and supported  
13 by documentary evidence reflecting the amount of fees and costs sought. Plaintiffs may  
14 file a Response addressing only the reasonableness of the fees and costs requested, and  
15 limited to six (6) pages. No Reply is permitted.
- 16 3. This case is hereby REMANDED to the Superior Court of Washington State in and for  
17 the County of King.
- 18 4. This matter is now CLOSED.
- 19  
20  
21

22 DATED this 7<sup>th</sup> day of November 2017.

23  
24 

25 RICARDO S. MARTINEZ  
26 CHIEF UNITED STATES DISTRICT JUDGE  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28