SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Sixth Circuit clarifies that § 1332(c)(1) does not preclude federal jurisdiction over PIP cases.

By Drew Broaddus

As the Supreme Court has repeatedly noted, "[f]ederal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute…." *Kokkonen v Guardian Life Ins Co of America,* 511 US 375, 377 (1994). "It is to be presumed that a cause lies outside this limited jurisdiction … and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Id.* This generally means that, in order to be in federal court, a case either needs to present a "federal question," 28 USC § 1331, or there must be "diversity jurisdiction," meaning the parties are citizens of different States and more than $75,000 must be in controversy, 28 USC § 1332.

Lawsuits for personal injury protection ("PIP") benefits generally do not present "federal questions" because they are usually governed solely by Michigan's No-Fault Act.[1] However, some Michigan no-fault carriers are considered "citizens" of other States and therefore, PIP suits can end up in federal court when the claimant is a Michigan resident, his or her insurer is based outside of Michigan,[2] and the amount in controversy requirement is met.

Confusion has arisen, however, due to 28 U.S.C. § 1332(c)(1), which states "in any direct action against the insurer of a policy or contract of liability insurance … to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen…." Some U.S. District Courts have found that this provision eliminates diversity jurisdiction over PIP cases. See *Mathis v The Hartford Ins Co,* 770 F Supp 2d 891, 892 (ED Mich 2010). Others have found that § 1332(c)(1) does not apply in the no-fault context and is no obstacle to federal jurisdiction in PIP cases. See *Warren v State Farm,* 2007 US Dist LEXIS 31408 (ED Mich 2007). Recently, in *Ljuljdjuraj v State Farm,* __ F3d __ (6th Cir 2014) (released December 19, 2014, for publication) the U.S. Court of Appeals for the Sixth Circuit – which encompasses Michigan – set out to clarify this issue.

[1]Exceptions arise when, for example, the no-fault claimant asserts a claim under the Medicare Secondary Payer Act. See *No-Fault Newsline,* October 7, 2014, "'Private Causes of Action' under the Medicare Secondary Payer Act…," by Drew Broaddus.

[2]Section 1332(c)(1) provides that "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." This ordinarily means that a corporation is a citizen of "at most 2 States," their State of incorporation and the State where they have their principal place of business. *Wachovia Bank v Schmidt,* 546 US 303, 317 (2006). The phrase "principal place of business" refers to the place where "the corporation's high level officers direct, control, and coordinate the corporation's activities." *Hertz Corp v Friend,* 559 US 77, 80 (2010). Courts have described that place as the corporation's "nerve center," and the "nerve center" will "typically be found at a corporation's headquarters." *Id.*

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Ljuljdjuraj – which is precedentially binding on federal courts located in Michigan – holds that federal courts have jurisdiction over PIP claims brought pursuant to Michigan's No-Fault Act, where the claimant is a Michigan resident, his or her insurer is based outside of Michigan, and the amount in controversy requirement is met.

Because a vast majority of PIP suits are initiated in state court, it will be incumbent upon insurers to determine whether cases can and should be removed to federal court. *Ljuljdjuraj* confirms that § 1332(c)(1) is not an obstacle to such removals (although other obstacles, such as the amount in controversy or the presence of non-diverse defendants, may still exist).

These issues can be problematic for removing defendants because under 28 USC § 1447(d), "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise," with certain exceptions not relevant to no-fault. The removing party cannot even move for reconsideration of such rulings. See *Hughes v General Motors Corp.,* 764 F Supp 1231, 1238 (WD Mich 1991) Therefore, in a removed case, there is no mechanism for correcting a District Judge who improperly sends the case back to state court under § 1332(c)(1). The issue was reviewable in *Ljuljdjuraj* because the plaintiff had filed the action in federal court, resulting in a dismissal rather than a remand.

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In *Ljuljdjuraj,* the plaintiff brought a suit against State Farm, an Illinois corporation, for PIP benefits in the U.S. District Court for the Eastern District of Michigan. Ljuljdjuraj was not actually State Farm's insured, but she sought benefits under a policy State Farm had issued to her friend, another Michigan resident, whose vehicle she was driving when she was injured. The District Court found a lack of diversity jurisdiction by operation of § 1332(c)(1) – State Farm being deemed a "citizen" of its insured's State of domicile – and dismissed the case.

The Sixth Circuit reversed, finding that "[t]he language of [§ 1332(c)(1)] on its face does not apply where a suit is brought under an insurance policy provision that does not provide for liability insurance, but rather where a suit is brought under a policy provision that covers the plaintiff on a basis other than liability by the insured to the plaintiff." *Ljuljdjuraj,* Slip Op at 4. "The insurance provision at issue provides benefits on the basis of plaintiff's having been a passenger in the primary insured's automobile, and not on the basis of the primary-insured's liability to the plaintiff. This is clear from both the insurance contract, and from the Michigan statutory provisions that the contract was required to comply with." *Id.*

The panel did not find it problematic that Ljuljdjuraj was seeking benefits under someone else's policy, because her claim had nothing to do with imposing *liability* upon State Farm's insured. *Ljuljdjuraj,* Slip Op at 4-5. The panel found that, by operation of the policy language and the requirements of MCL 500.3114(4), Ljuljdjuraj essentially became an insured under State Farm's policy – at least for the purposes of § 1332(c)(1) – when she was injured while occupying her friend's vehicle. For this reason, Ljuljdjuraj's suit was not a "direct action against the insurer of a policy or contract of liability insurance." *Ljuljdjuraj,* Slip Op at 4-5.

The *Ljuljdjuraj* panel further noted that this interpretation was consistent with precedents from the U.S. Courts of Appeals for the 1st, 2nd, 3rd, and 11th Circuits. *Id.* at 6. The panel acknowledged that *Ford Motor Co v Insurance Co of North America,* 669 F2d 421, 422 (6th Cir 1982) seemed to support the District Court's holding, but found Ford Motor distinguishable "because it involved the property damage provision of the Michigan no-fault act." *Ljuljdjuraj,* Slip Op at 6-7.

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We welcome your questions and comments.

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