

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

WEST TENNESSEE BONE & JOINT)
CLINIC, P.C.)
)
Plaintiff,)
)
VS.)
)
THE PAUL REVERE LIFE INSURANCE)
COMPANY, THE PROVIDENT LIFE)
AND ACCIDENT INSURANCE)
COMPANY, AND UNUM PROVIDENT)
CORPORATION)
)
Defendants.)

No. 01-1312

ORDER DENYING PLAINTIFF’S MOTION TO REMAND

Plaintiff’s filed this action originally in the Chancery Court of Madison County, Tennessee, on September 25, 2001. Plaintiff’s original complaint alleges that it was the beneficiary of two disability insurance policies issued by The Paul Revere Insurance Company (Paul Revere) on September 28, 1989. Policy number 0102408594 insured Plaintiff for \$22,000 per month for twenty-four months in the event of the total disability of Dr. Robert J. Hornsby. Policy number 0102408595 insured Plaintiff in the event of total disability of Dr. Hornsby for \$6,680.00 per month until Plaintiff obtained an aggregate benefit of \$400,800.00.

Plaintiff alleges that sometime before September of 1998, Dr. Hornsby became

disabled. See Complaint, ¶ 10. Plaintiff alleges that it pursued a claim with Paul Revere under policy number 0102408594. See id. ¶ 11. Plaintiff states that Paul Revere accepted this claim and began payments of \$22,000 per month. See id. ¶ 12. Sometime after these payments began, Plaintiff alleges that either Paul Revere and The Provident Life and Accident Insurance Company (Provident) merged or Provident purchased Paul Revere. See id. ¶ 13. Plaintiff alleges that in September of 1998, Defendant's contracted with Genex Services, Inc.¹ (Genex) to conduct a disability examination of Dr. Hornsby. See id. ¶ 14. This evaluation was sent to Ms. Sara Peterson at the Genex offices in Chattanooga, Tennessee on September 21, 1998. See Aff. of Sandy Hubbard, at Exhibit 2, 3. Plaintiff asserts that in October of 1999, Paul Revere and/or Provident terminated payments to Plaintiff. See Complaint, ¶ 21.

On October 23, 2001, Defendants jointly removed Plaintiff's action to this court alleging jurisdiction under 28 U.S.C. § 1331 and, in the alternative, 28 U.S.C. § 1332. Plaintiff moved to remand the case to the Chancery Court of Madison County on November 21, 2001. Plaintiff alleges that it has not invoked federal law and that the Employee Retirement Income Security Act (ERISA) does not apply to the policies at issue. Further, Plaintiff argues that diversity jurisdiction cannot attach to this case since Provident is a defendant and maintains its corporate office in Chattanooga, Tennessee. Defendants have responded to the motion alleging that Provident was fraudulently joined and that no other

¹ Genex is a wholly owned subsidiary of Unum Provident Corporation, the parent corporation of Paul Revere and Provident. See Aff. of Christopher A. Parrott, ¶ 3.

defendant would defeat diversity jurisdiction.

Twenty-eight U.S.C. § 1332 gives a federal district courts original jurisdiction in cases where the sum in controversy exceeds \$75,000 and when the suit is between citizens of different states. See 28 U.S.C. § 1332. To prevent plaintiffs desiring to stay in state courts from frivolously joining a non diverse party, the United States Supreme Court created a fraudulent joinder exception to 28 U.S.C. § 1332. See Wecker v. Nat'l Enameling and Stamping Co., 204 U.S. 176, 185-86 (1907). When a plaintiff joins a defendant for the sole purpose of defeating federal diversity jurisdiction, the fraudulent joinder exception requires the court to look beyond the fraudulently joined same-state defendant and—if there are no other non diverse defendants—assert jurisdiction. See Coyne v. American Tobacco Co., 183 F.3d 488, 493 (6th Cir. 1999).

To prove fraudulent joinder, the removing party must present sufficient evidence that a plaintiff could not have established a cause of action against the non-diverse defendants under state law. See Coyne, 183 F.3d at 493 (citing Alexander v. Electronic Data Sys. Corp., 13 F.3d 940, 949 (6th Cir.1994)). When making this determination, “[t]he district court must resolve ‘all disputed questions of fact and ambiguities in the controlling . . . state law in favor of the non-removing party.’” Coyne, 183 F.3d at 493 (quoting Alexander, 13 F.3d at 949). If there is any doubt concerning removal or even a colorable basis for recovery against a non-diverse party, the court must remand the cause to the state court. See Coyne, 183 F.3d at 493; Jerome-Duncan, Inc. v. Auto-By-Tel, L.L.C., 176 F.3d 904, 907 (6th Cir.

1999).

It is apparent that the main issue before the court is whether Plaintiff can maintain a cause of action against the only non-diverse defendant, Provident. To this end, Plaintiff argues that Provident merged with or purchased Paul Revere and that the two companies, working in concert, revoked disability payments to Plaintiff. Defendant responds by arguing that Provident and Paul Revere are sibling corporations owned by the same holding company—Unum Provident. See Aff. of Susan Roth.

Defendants submit evidence that Provident became a wholly owned subsidiary of Provident Companies, Inc. in March 1996. See id. ¶ 2. Provident Companies was formed in 1995 and is a holding company for numerous corporations. See id. ¶ 3. On April 29, 1996, Paul Revere and Patriot Acquisition Corporation—another wholly owned subsidiary of Provident Companies, Inc.—merged. See id. ¶ 4. Paul Revere was the surviving corporation, but it became an indirect wholly owned subsidiary of Provident Companies, Inc. See id. On June 30, 1999, UNUM Corporation merged into Provident Companies, Inc. and the remaining corporation assumed the name Unum Provident Corporation. See id. ¶ 5. Unum Provident never assumed liability for any insurance policies issued by any of its subsidiary corporations. See id. ¶ 6. Provident has not assumed liability for Plaintiff's insurance policies issued by Paul Revere. See id. ¶ 10.

The causes of action that Plaintiff states in its complaint are breach of the two insurance contracts, negligence in the administration of Plaintiff's two policies, and

deceptive and unfair business practices pursuant to Tennessee Code Annotated § 47-18-104 et. seq. Since Provident has not taken on the liabilities or contracts of Paul Revere, Provident cannot be liable for any breach of an insurance contract that is between Paul Revere and Plaintiff. Similarly, Provident cannot be responsible for negligently administering Plaintiff's insurance policies since Provident had no duty to either deny, approve, or administer Plaintiff's insurance claim.

Provident's liability under Tennessee Code Annotated § 47-18-101 et. seq. is also absent. Since Provident had no duty to administer Plaintiff's insurance policy and took no part in the withdrawal of disability payments, Provident's inaction is not an "unfair or deceptive act or practice declared to be unlawful" under Tennessee Code Annotated § 47-18-101 et. seq.

The court concludes that Defendants have proven that Plaintiff could not establish a cause of action against Provident. Consequently, since no other defendants are non-diverse and the amount in controversy exceeds \$75,000, the court finds that it has diversity jurisdiction under 28 U.S.C. § 1332 and Wecker v. Nat'l Enameling and Stamping Co., 204 U.S. 176 (1907). Accordingly, Plaintiff's motion to remand is DENIED.

IT IS SO ORDERED.

JAMES D. TODD
UNITED STATES DISTRICT JUDGE

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