

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

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MARGARITE AUSTIN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 03-2710 M1/A
	)	
LIFE INSURANCE COMPANY OF	)	
GEORGIA, et al.,	)	
	)	
Defendants.	)	

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**ORDER GRANTING PLAINTIFFS' MOTION TO REMAND**

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This case is before the Court on Plaintiffs' Motion to Remand, filed October 21, 2003. Defendant responded in opposition on November 3, 2003. The Court GRANTS Plaintiffs' motion and REMANDS this case to the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis.

This case concerns allegations that Defendant Life Insurance Company of Georgia sold life insurance policies to Plaintiffs on materially different terms than other customers on the basis of their race, i.e. African American. Plaintiffs allege that Defendant's discriminatory conduct is prohibited by the laws of Tennessee applicable to insurance. Plaintiffs also assert claims of theft by taking, theft by deception, bad faith, and breach of contract under the laws of Tennessee.

Plaintiffs initially filed their Complaint in this case on

July 3, 2003 in state court. Defendant filed a Notice of Removal based on both diversity of citizenship of the parties and federal question jurisdiction on September 19, 2003. In the present motion to remand, Plaintiffs maintain that they have raised only state law claims in the Complaint. Defendant argues in response that Plaintiffs have artfully pleaded their claims to avoid federal question jurisdiction and, since their claim is actually one for discrimination under 42 U.S.C. § 1981, jurisdiction in federal court is proper. Defendant also notes that Plaintiffs have not challenged the existence of diversity jurisdiction.

"[S]tatutes conferring removal jurisdiction are construed strictly because removal jurisdiction encroaches on a state court's jurisdiction." Brierly v. Alusuisse Flexible Packaging, Inc., 184 F.3d 527, 534 (6th Cir. 1999). See Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941). Doubts about removal "should be resolved in favor of remand to the state courts." Brierly, 184 F.3d at 534.

Pursuant to § 1441, a defendant may remove a claim to federal court if it arises under federal law. The question of whether a claim arises under federal law is "determined by reference to the 'well-pleaded complaint.'" Merrell Dow Pharm., Inc. v. Thompson, 478 U.S. 804, 808 (1986). "The well-pleaded complaint rule generally provides that the plaintiff is the master of his complaint, and the fact that the wrong asserted

could be addressed under either state or federal law does not ordinarily diminish the plaintiff's right to choose a state law cause of action." Loftis v. UPS, 342 F.3d 509, 515 (6th Cir. 2003) quoting Alexander v. Elec. Data Sys. Corp., 13 F.3d 940, 943 (6th Cir. 1994); see also The Fair v. Kohler Dye & Specialty Co., 228 U.S. 22, 25 (1922) ("[T]he party who brings a suit is master to decide what law he will rely upon."). "Generally, a state law claim cannot be 'recharacterized' as a federal claim for the purpose of removal." Loftis, 342 F.3d at 515.

Plaintiffs specifically decline to press any federal law cause of action in this case. The Complaint states, "No federal claims are asserted in this action, which arises exclusively under Tennessee law." (Compl. ¶ 26.) Moreover, Plaintiffs' also indicated in their motion to remand that their claims are based entirely on state law. (Brief in Supp. of Pla.'s Mot. to Remand at 1-2, 4-5 ("Plaintiffs' Complaint expressly disavows any federal cause of action."; "Each specific allegation and count throughout Plaintiffs' Complaint goes on to plead claims exclusively and expressly under Tennessee law."; "[Section 1981] provides no part of Plaintiffs' Complaint or claims."; "[F]ederal law is expressly disavowed as a basis for any claim or remedy.").)

Defendant argues in response that no Tennessee law provides a remedy for racial discrimination in the making of insurance

contracts and, therefore, Plaintiffs actually assert a claim under 42 U.S.C. § 1981, despite the disclaimer in paragraph 26 of the Complaint that "[n]o federal claims are asserted in this action". Along the same lines, Defendant also argues that Plaintiffs have engaged in "artful pleading" to avoid federal question jurisdiction based on the same theory that because no Tennessee law provides relief for the type of racial discrimination alleged in this case Plaintiffs must establish a violation of federal law in order to recover for their alleged injuries.

Defendant finds support for its arguments in several decisions issued by the district court in the Eastern District of Louisiana denying motions to remand in similar actions against the Life Insurance Company of Georgia. (Def.'s Resp. and Mem. in Opp. to Mot. to Remand at Exhs. A & B.) In these cases, the court concluded that the plaintiffs had actually pled a federal claim because no state law cause of action existed to remedy the alleged racial discrimination. In re: Indus. Life Ins. Litig., No. 01-566, MDL No. 1371, Order and Reasons at 4 (E.D. La. June 15, 2001) ("The Court further finds that plaintiffs' claims for race discrimination must arise under federal law because there is no cause of action for race discrimination under Mississippi law."); In re: Indus. Life Ins. Litig., No. 01-567, MDL No. 1371, Order and Reasons at 4-5 (E.D. La. June 15, 2001); In re: Indus.

Life Ins. Litig., No. 01-1388, MDL No. 1371, Order at 4 (E.D. La. Sept. 17, 2001).

On the other hand, Plaintiffs have directed the Court to a number of federal court decisions also involving the Life Insurance Company of Georgia in which the cases were remanded to state court because the federal court lacked jurisdiction. (Pla.'s Mot. to Remand at Exhs. A-I.) Included among these cases is an order of remand filed in this district, in which Judge Gibbons concluded that the fact that the plaintiffs might have sued under 42 U.S.C. § 1981 is not an appropriate basis for determining that their asserted claims do not arise solely under state law. Morris v. Life Ins. Co. of Georgia, No. 00-2811, Order Granting Plaintiffs' Motion to Remand at 4 (W.D. Tenn. Nov. 30, 2000).

Plaintiffs are represented by competent attorneys in the case before this Court. By choosing to eschew claims based on federal law in order to avoid removal to federal court, Plaintiffs have limited themselves by judicial admission to state law causes of action, whether viable or not. The remedy for Plaintiffs' alleged failure to state a claim for discrimination under Tennessee law is not for the Court to create a federal cause of action that has specifically been disclaimed in the Complaint. Rather, Defendant should file a motion to dismiss in state court for failure to state a claim upon which relief can be

granted. Plaintiffs' Complaint does not raise a question of federal law, therefore, the Court lacks federal question jurisdiction over this case.

Although Plaintiffs did not challenge the existence of diversity jurisdiction under 28 U.S.C. § 1332 in their motion to remand, and it appears that complete diversity of citizenship does exist among the parties, the Court is always obligated to assess *sua sponte* whether it has jurisdiction to hear a particular case. Therefore, the Court has also considered the issue of diversity jurisdiction and finds that it lacks jurisdiction over this case because the amount in controversy does not exceed \$75,000 according to the Complaint.

Plaintiffs' Complaint specifically states that each Plaintiff requests damages "not to exceed Seventy-Four Thousand Dollars (\$74,000)." (Compl. ¶ 74(2).) This demand is repeated after each of the four counts in the Complaint, leading Defendant to conclude in its Notice of Removal that each Plaintiff requested as much as \$296,000. However, the last paragraph of the Complaint setting forth all of the relief Plaintiffs request in this case clearly limits the total request for damages to a maximum of \$74,000 per Plaintiff. (Id.) As noted above, Plaintiffs are represented by competent attorneys. They have chosen to forego damages in excess of \$74,000 per Plaintiff in order to maintain their chosen forum and the Court will not

rewrite the *ad damnum* clause to create diversity jurisdiction.

Moreover, the Court can not aggregate the Plaintiffs' claims to create diversity jurisdiction. Where multiple plaintiffs bring a complaint for damages together, a court generally can not aggregate the demand for damages of each plaintiff in order to satisfy the amount in controversy requirement. Sellers v. O'Connell, 701 F.2d 575, 579 (6th Cir. 1983). Aggregation is permissible where "two or more plaintiffs unite to enforce a single title or right in which they have a common and undivided interest." Id. (quoting Snyder v. Harris, 394 U.S. 332, 335 (1969)). However, Plaintiffs' claims arise from their individual insurance contracts with Defendant and not from any integrated claim in which they have a common and undivided interest. Therefore, their claims may not be aggregated to meet the amount in controversy requirement.<sup>1</sup> Given that Plaintiffs do not request an amount of damages sufficient to meet the amount in controversy requirement of 28 U.S.C. § 1332, the Court can not exercise diversity jurisdiction over this case.

This Court has neither federal question jurisdiction nor diversity jurisdiction over this case. Accordingly, the Court

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<sup>1</sup> Morris v. Life Ins. Co. of Georgia, No. 00-2811, Order Granting Plaintiffs' Motion to Remand at 9 (W.D. Tenn. Nov. 30, 2000) (finding that amount in controversy requirement had not been met because the plaintiffs each requested no more than \$75,000 and their claims could not be aggregated because they concerned individual insurance contracts).

GRANTS Plaintiffs' motion and REMANDS this case to the Circuit Court of Shelby County Tennessee for the Thirtieth Judicial District at Memphis.

So ORDERED this \_\_\_\_ day of December, 2003.

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JON P. McCALLA  
UNITED STATES DISTRICT JUDGE