

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Ticer v. Imperium

No. 21-10108, United States Court of Appeals for the Fifth Circuit (December 16, 2021)

SUMMARY

****Topics:**** Improper joinder (fraudulent joinder); diversity jurisdiction; insurance coverage; duty to defend; eight-corners rule; policy exclusion; summary inquiry; dismissal without prejudice.

****Holding:**** The Fifth Circuit affirmed the district court's finding that a non-diverse insurance defendant was improperly joined because the policy's unambiguous incident exclusion and prior-notice provision barred coverage, leaving no reasonable possibility of recovery in state court. The court held that the district court properly conducted a summary inquiry to review the insurance policy. However, the dismissal of the improperly joined defendant should have been without prejudice, not with prejudice, because improper joinder goes to jurisdiction, not the merits.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Patrick E. Higginbotham; Carl E. Stewart; Cory T. Wilson
JURISDICTION	Federal
DECIDED	December 16, 2021
DOCKET	21-10108
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the United States District Court for the Northern District of Texas, case No. 3:19-CV-481, denying motion to remand and dismissing claims with prejudice.
STANDARD OF REVIEW	De novo review of improper joinder determination and denial of remand; abuse of discretion review of summary inquiry.
PRECEDENTIAL VALUE	Published
PARTIES	Mark A. Ticer, doing business as Law Office of Mark A. Ticer v. Imperium Insurance Company, Ironshore Indemnity Incorporated

TOPICS

civil procedure

joinder

insurance coverage

appellate procedure

standard of review

PRACTICE AREAS

Insurance Law

Civil Procedure

QUESTIONS PRESENTED

1. Whether Imperium was improperly joined to defeat diversity jurisdiction.
2. Whether the district court abused its discretion by conducting a summary inquiry and considering the insurance policy.
3. Whether the district court erred in dismissing Ticer's claims against Imperium with prejudice.

HOLDINGS

1. Imperium was improperly joined because there is no reasonable possibility of recovery against it due to the unambiguous policy exclusion.
2. When a nondiverse party is improperly joined, dismissal must be without prejudice.

KEY QUOTATIONS

“When a district court determines that a nondiverse party has been improperly joined to defeat diversity, that party must be dismissed without prejudice.” (13)

“The district court may, in its discretion, pierce the pleadings and conduct a summary inquiry.” (8)

FACTUAL BACKGROUND

Ticer, a law firm, was sued twice by former clients (the Reed parties) over a fee dispute. The first suit was in 2014. The second suit in 2018 was for insurance coverage. Ticer sought defense and indemnity from two insurers: Ironshore (diverse) and Imperium (non-diverse). The Imperium policy contained an incident exclusion for claims arising out of the Reed Migraine Centers of Texas incident. The policy also required claims to be first made during the policy period. Ticer acknowledged the 2014 and 2018 suits were related.

PROCEDURAL HISTORY

Ticer sued Ironshore and Imperium in Texas state court for insurance coverage. Ironshore removed to federal court alleging improper joinder of Imperium. The district court denied remand after a summary inquiry, held Imperium improperly joined, and dismissed with prejudice. Ticer appealed.

DISPOSITION

other

REMAND INSTRUCTIONS

Dismiss Imperium's claims without prejudice.

CASES CITED

- Smallwood v. Ill. Cent. R. Co., 385 F.3d 568 (5th Cir. 2004)
- Davidson v. Georgia-Pacific, LLC, 819 F.3d 758 (5th Cir. 2016)
- Kling Realty Co. v. Chevron USA, Inc., 575 F.3d 510 (5th Cir. 2009)
- Hicks v. ..., 12 F.4th 515 (5th Cir. 2021)
- Eastus v. Blue Bell Creameries, L.P., 97 F.3d 100 (5th Cir. 1996)
- McDonal v. Abbott Labs, 408 F.3d 177 (5th Cir. 2005)
- Getty Oil Corp. v. Insurance Co. of N. Am., 841 F.2d 1254 (5th Cir. 1988)
- Williams v. Homeland Ins. Co. of New York, No. 20-30196, 2021 WL 5577020 (5th Cir. Nov. 30, 2021)
- Tapscott v. MS Dealer Serv. Corp., 77 F.3d 1353 (11th Cir. 1996)
- Cohen v. Office Depot, Inc., 204 F.3d 1069 (11th Cir. 2000)
- Travis v. Irby, 326 F.3d 644 (5th Cir. 2003)
- Rachel v. Georgia, 342 F.2d 336 (5th Cir. 1965)
- Grynberg Production Corp. v. British Gas, P.L.C., 817 F. Supp. 1338 (E.D. Tex. 1993)
- Delphis, L.P. v. NFLP Holdings, Ltd., No. 3:10-cv-01583-F, 2010 WL 11561744 (N.D. Tex. Nov. 5, 2010)
- Bronson v. Schulten, 104 U.S. 410 (1881)
- Gray ex rel. Rudd v. Beverly Enters.-Miss., Inc., 390 F.3d 400 (5th Cir. 2004)
- Alviar v. Lillard, 854 F.3d 286 (5th Cir. 2017)
- Kemp v. CTL Distribution, 440 F. App'x 240 (5th Cir. 2011)
- Gore Design Completions, Ltd. v. Hartford Fire Ins. Co., 538 F.3d 365 (5th Cir. 2008)
- Ewing Const. Co. v. Amerisure Ins. Co., 420 S.W.3d 30 (Tex. 2014)
- Am. Int'l Specialty Lines Ins. Co. v. Rentech Steel, LLC, 620 F.3d 558 (5th Cir. 2010)
- Lincoln Gen. Ins. Co. v. Aisha's Learning Ctr., 468 F.3d 857 (5th Cir. 2006)
- Forbau v. Aetna Life Ins. Co., 876 S.W.2d 132 (Tex. 1994)
- WBCMT 2007 C33 OFFICE 9720, L.L.C. v. NNN Realty Advisors, Inc., 844 F.3d 473 (5th Cir. 2016)
- McLane Foodservice, Inc. v. Table Rock Restaurants, L.L.C., 736 F.3d 375 (5th Cir. 2013)
- Int'l Energy Ventures, 818 F.3d 209 (5th Cir. 2016)
- United States v. Ruiz, 536 U.S. 622 (2002)
- Probasco v. Wal-Mart Stores Texas, L.L.C., 766 F. App'x 34 (5th Cir. 2019)
- Guillory v. PPG Indus., Inc., 434 F.3d 303 (5th Cir. 2005)