

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KATHY A. LUND

Plaintiff,

and

EMPLOYERS INSURANCE COMPANY OF WAUSAU,

Involuntary Plaintiff,

v.

UNIVERSAL FURNITURE INDUSTRIES, INC.
and UNIVERSAL FURNITURE LIMITED,

Defendants.

MEMORANDUM AND ORDER

07-C-237-S

Plaintiff Kathy Lund commenced this products liability action in the circuit court for Trempealeau County, Wisconsin alleging that she was injured on her job by a glue spreader manufactured by defendants. Plaintiff Lund named her employer's workers compensation insurer, Employers Insurance Company of Wausau, as an involuntary plaintiff to resolve any subrogation interest it might have in the proceeds. Defendants removed the matter to this Court on the basis of diversity of citizenship, 28 U.S.C. § 1332. Plaintiff Lund now seeks to realign Employers Insurance as a defendant and, since plaintiff and Employers Insurance are both Wisconsin citizens, to remand the matter to state Court for lack of complete diversity.

The issue before the Court is whether the present alignment comports with the real interests of the parties:

Where Jurisdiction is based on diversity of citizenship, the court may ascertain whether the alignment of the parties as plaintiff and defendant conforms with their true interests in the litigation.... In conducting its inquiry, the court may look beyond the pleadings and consider the nature of the dispute in order to assess the parties' real interests.

American Motorists Ins. Co. v. Trane Co., 657 F.2d 146, 149 (7th Cir. 1981). Review of the circumstances confirms that the present alignment of the parties is in accordance with their "true interests in the litigation."

Plaintiff Lund does not assert any claim for affirmative relief against Employers Insurance Company of Wausau in the complaint. Employers Insurance Company of Wausau is a party solely to recover benefits it paid on Lund's behalf. Wisconsin's statutory worker's compensation scheme clearly provides that whatever differences there may be between worker and insurer, their interests are precisely aligned when it comes to prosecuting claims against potential tortfeasors who caused the employee's injury:

. . .The employer or compensation insurer who shall have paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death . . .Each shall have an equal voice in the prosecution of said claim, and any disputes arising shall be passed upon by the court before whom the case is pending . . .

Wis. Stats. § 102.29.

It is irrelevant that plaintiff Lund and her workers compensation carrier may have a coverage dispute in a different forum. The issue for jurisdictional purposes is whether plaintiffs' interests are aligned in the present action. Employers' only interest in the present action is maximizing its subrogation recovery. Plaintiffs Lund and Employers Insurance both stand to gain the most in this action from the largest possible verdict against these defendants. Like plaintiff Lund, plaintiff Employers Insurance has every incentive to advocate for full recovery against defendants to maximize its potential subrogation recovery. The current alignment of the parties is proper and complete diversity of citizenship exists between plaintiffs and defendants. Accordingly, plaintiff's motion to remand must be denied.

ORDER

IT IS ORDERED that plaintiff's motion to remand is DENIED.

Entered this 11th day of June, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge