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

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WILLIAM (BILLY) PARKER,

Plaintiff,

v.

NEW HAMPSHIRE INSURANCE COMPANY, AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY, SAPPI CLOQUET LLC, SAPPI LIMITED, ABC INSURANCE COMPANY, CATERPILLAR, INC., d/b/a Prentice, DEF INSURANCE COMPANY, BLOUNT, INC., BAUGHMAN TRUCKING & EXCAVATING, LLC, BAUGHMAN TRANSIT, LLC and ACUITY,

Defendants.

OPINION AND ORDER

11-cv-229-slc

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On January 20, 2011, plaintiff William (Billy) Parker filed this action in the Circuit Court for Chippewa County, Wisconsin, asserting strict liability and negligence claims against defendants Sappi Cloquet, LLC, Sappi Limited, Caterpillar, Inc., Blount, Inc. and their insurers for injuries Parker sustained while using a loader to unload pulp at a paper mill operated by one or more of the Sappi defendants.

Defendants removed the case to this court and answered. Plaintiff amended his complaint to add Baughman Transit LLC (his claimed employer), Baughman Trucking & Excavating LLC (the claimed owner of the truck involved in the accident) and Acuity (Baughman Transit's insurer) as defendants. Plaintiff seeks relief in the form of damages from Baughman Trucking based on its alleged failure to properly maintain the semi-trailer and loader and a declaration of rights against Acuity and Baughman Transit.

Shortly after filing his amended complaint, plaintiff moved to remand this case to state court on the ground that the new defendants are citizens of Wisconsin whose presence in this

case destroys complete diversity. Dkt. 14. In response, the out-of-state defendants contend that the new defendants are, or at least *might* be, joined fraudulently solely for the purpose of defeating diversity jurisdiction. Defendants ask the court to stay any ruling on remand and instead allow the parties to take "limited jurisdictional discovery" to confirm whether Baughman Trucking in fact owned the allegedly faulty equipment.

Also under advisal are plaintiff's motion for entry of default as to defendants Blount and Caterpillar based on their failure to file an answer to the initial complaint within the time prescribed by Fed. R. Civ. P. 81(c), dkt. 11, and plaintiff's related motion to strike these defendants' answer to the amended complaint on the ground that they were in default when they filed it. Dkt. 29.

For the reasons set forth below, I am denying plaintiff's motions to find Blount and Caterpillar in default, I am not striking their answer to the amended complaint and I am granting plaintiff's motion to remand this case to state court, without allowing discovery.

Solely for the purpose of deciding these motions, I draw the following facts from the record:

## FACTS

Plaintiff William Parker is a resident of Wisconsin.

Defendant Sappi Cloquet LLC is a foreign limited liability company with a principal office in Delaware and a principal place of business in Cloquet, Minnesota. Defendant Sappi Cloquet is a subsidiary of S.D. Warren Company, which does business as Sappi Fine Paper North America (Sappi). S.D. Warren Company is an indirectly and wholly owned subsidiary

of defendant Sappi Limited, a foreign corporation with its principal office and place of business located in Johannesburg, Republic of South Africa.

Defendant Caterpillar, Inc. is a foreign corporation with its principal place of business in Peoria, Illinois.

Defendant Blount, Inc. is a foreign corporation with its principal place of business in Portland, Oregon.

On January 20, 2011, Parker filed this action in the Circuit Court for Chippewa County, Wisconsin. According to the complaint, in September 2009, Parker was employed by Baughman Transit. On September 14, 2009, while working for Baughman Transit, Parker delivered a load of logs to the Sappi defendants at a mill located in Cloquet, Minnesota. Parker was operating a semi-trailer onto which was mounted a 1997 Prentice F90 Loader that was designed, manufactured and mounted by defendant Blount, Inc., d/b/a Prentice. After the logs were unloaded, Parker took the operator's seat of the loader in order to position the boom for transport. Just as plaintiff started to retract the boom, a number of the bolts by which the loader was fastened to the semi-trailer gave way, causing the loader to fall off the trailer. Parker sustained severe injuries, including traumatic amputation of his left leg near the hip. Acuity, an insurance company, paid worker's compensation benefits to Parker on behalf of his employer, Baughman Transit, in accordance with Minnesota law.

On January 20, 2011, Parker filed a lawsuit in the Circuit Court for Chippewa County, Wisconsin, asserting strict liability and negligence claims against the Sappi defendants, Blount, Inc. and its alleged successor, Caterpillar, Inc. Dkt. 1.

On March 29, 2011, defendants jointly removed the case to this federal court on the basis of diversity jurisdiction, alleging that the amount in controversy exceeded $75,000 and that "[p]laintiff is a citizen of Wisconsin and . . . defendants are not Wisconsin citizens." Dkt. 1, at ¶1.

On April 5, 2011, Sappi Cloquet LLC filed its answer. In its affirmative defenses, Sappi alleged that plaintiffs' injuries were caused in whole or in part by the negligence of others, "including but not limited to Plaintiff's and his employer's negligent operation of the Prentice Loader, the negligent state of repair of the Prentice Loader, and the defective design and manufacture of the Prentice Loader." Dkt. 8, ¶1.

On April 12, 2011, Defendants Blount, Inc. and Caterpillar, Inc. d.b.a. Prentice, filed their answer. Like Sappi, these defendants alleged that plaintiff's injuries and damages "were caused or contributed to by the negligence of other individuals or parties that are not Defendants in this case." Dkt. 9, ¶19. Blount and Caterpillar asserted a cross-claim against defendants ABC Insurance Company, Sappi Cloquet, LLC and Sappi Limited. *Id*., at 5.

On April 18, 2011, plaintiff filed an amended complaint in which he added defendants Baughman Trucking & Excavating, LLC and Baughman Transit, LLC. Dkt. 10 at ¶¶ 13-14. Both defendants are Wisconsin limited liability companies with a principal place of business located in Holcombe, Wisconsin.[1] Plaintiff also named as defendants Acuity, the workers' compensation insurer for Baughman Transit, and New Hampshire Insurance Company and

[1]Contrary to plaintiff's apparent belief, the citizenship of a limited liability company is not determined by its principal place of business or where it was formed, but by the citizenship of each of its members. *Cosgrove v. Bartolotta*, 150 F.3d 729, 731 (7th Cir.1998). None of the parties in this case has made any specific allegations about the citizenship of the members of either Baughman Trucking or Baughman Transit, although it appears that Ritch Baughman, a Wisconsin citizen, is a member of each. In any case, none of the defendants disputes that joining either Baughman entity would destroy diversity jurisdiction.

American Guarantee and Liability Insurance Company, liability carriers for the Sappi defendants. Dkt. 10 at ¶¶4, 15. Plaintiff alleged that Baughman Trucking had purchased the semi trailer and attached 1997 F90 Prentice Loader in June 2005 and supplied it to Baughman Transit for use by its employees, including plaintiff. Plaintiff asserted a cause of action for negligence against Baughman Trucking, alleging that it had been negligent in the manner in which it had maintained the trailer and loader. *Id*. at ¶¶ 43-44. The amended complaint also asserted a new cause of action for declaratory relief against Baughman Transit and Acuity. Specifically, plaintiff sought a judgment "declaring the rights and other legal relations between himself and Acuity and Baughman Transit and a judgment declaring that those rights are governed by the laws of the State of Minnesota." *Id*., at ¶51.

On April 18, 2011, plaintiff filed a motion for default under Fed. R. Civ. P. 55(a) against defendants Blount and Caterpillar, on the ground that they had failed to answer the complaint within the time specified by Fed. R. Civ. P. 81(c)(2)(C). A week later, on April 25, 2011, plaintiff filed a motion to remand the case to state court on two grounds: 1) his addition of the Baughman entities and Acuity as defendants, all of whom are citizens of Wisconsin, had destroyed diversity jurisdiction; and 2) the notice of removal was deficient because it did not sufficiently allege a basis for diversity jurisdiction. In the alternative, plaintiff asked the court to deem the allegations of the complaint admitted against Blount and Caterpillar, again on the ground that their answer had been untimely. Finally, on May 6, 2011, plaintiff filed a motion to strike Blount and Caterpillar's answer to the amended complaint, reiterating his contention that these parties had defaulted their right to defend against the allegations in this case when they failed to file their initial answer on time.

OPINION

**I. Motion for Default and Motion to Strike**

Plaintiff asks the court to strike the answers filed by defendants Blount and Caterpillar and deem the allegations of the complaint admitted as to these parties because of their failure to file their initial answer within the time prescribed by Fed. R. Civ. P. 81(c)(2)(C). Under that rule, the defendants were required to file and serve their answer to the initial complaint within seven days of the filing of the notice of removal, namely by April 5, 2011. Although the Sappi defendants filed their answer on that date, Blount and Caterpillar did not file their answer until a week later, April 12, 2011. Although plaintiff acknowledges that late filings of this sort may be permitted under Fed. R. Civ. P. 6(b)(1)(B)(court may extend time for doing of an act "if the party failed to act because of excusable neglect"), he argues that Blount and Caterpillar cannot show excusable neglect; in fact, plaintiff points out, they have never even filed a motion for an extension of time.

Plaintiff is right about some things: Blount and Caterpillar's answer *was* late and they have not formally sought an extension under Rule 6(b). Indeed, Blount and Caterpillar seem more committed to showing how plaintiff waived his right to object by filing an amended complaint than to cleaning up their own mess. That said, defendants do address Rule 6(b) in their response to the motion to remand and ask the court to permit their untimely answer in the event waiver is not found. This is enough to put the issue before the court. Dkt. 27, at 8-9.

It is unnecessary to address defendants' waiver arguments because I find that their failure timely to answer is excusable. The term "excusable neglect" as used in Rule 6(b) is a flexible concept that encompasses late filings caused by inadvertence, mistake or carelessness. *Pioneer Investment Services Co. v. Brunswick Associates, Ltd.*, 507 U.S. 380, 389 (1993). In deciding

whether a particular neglect is "excusable," the court must consider all the relevant circumstances surrounding the omission, including the length and reason for the delay, its potential impact on judicial proceedings, whether the movant acted in good faith and the danger of prejudice to other parties. *Id*. at 395. Here, the delay was only seven days, it had no impact on the judicial proceedings and it did not prejudice any other parties. Indeed, given that plaintiff filed an amended complaint, the original answer almost instantly assumed irrelevance. Although defendants' excuse—that counsel relied upon the 45-day summons issued by plaintiff as setting the deadline for answering—is a virtual admission of attorney negligence, there is no hard and fast rule in the Seventh Circuit that such lapses can never be deemed excusable neglect. *Robb v. Norfolk & Western Railway Co.*, 122 F.3d 354, 361 (7th Cir. 1997); *see also Mommaerts v. Hartford Life and Accident Ins. Co.*, 472 F.3d 967, 968 (7th Cir. 2007). Taking all the relevant circumstances into account, including Blount and Caterpillar's commitment to defending this case as demonstrated by their subsequent timely filings, I find excusable neglect exists to permit the filing of the late answer. It follows that plaintiff's motions for entry of default and to strike the answer to the amended complaint will be denied.

**II. Propriety of Removal**

Under 28 U.S.C. § 1441(a), any civil action filed in state court over which a federal court would have original jurisdiction may be removed to federal district court. The party seeking removal has the burden of establishing jurisdiction, with any doubt resolved in favor of the plaintiff's choice of forum in state court. *Doe v. Allied-Signal, Inc.*, 985 F.2d 908, 911 (7th Cir. 1993).

Plaintiff argues that defendants' notice of removal was deficient because it failed to show that the requirements for diversity jurisdiction under 28 U.S.C. § 1332 have been met. More specifically, plaintiff contends that defendants' allegation regarding citizenship, namely, that the defendants "are not Wisconsin citizens," is too cursory to carry their burden of showing that plaintiff and defendants are not citizens of the same state. *See* 28 U.S.C. § 1332(c)(1) ("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"). According to plaintiff, defendants should have supported their allegations with an affidavit or some other sort of proof.

As the proponent of federal jurisdiction, it is defendants' burden to show that the parties are citizens of different states. *Smart v. Local 702 International Brother of Electrical Workers*, 562 F.3d 798, 802-03 (7th Cir. 2009). Under 28 U.S.C. § 1653, however, defective jurisdictional allegations may be cured. *Shaw v. Dow Brands, Inc.,* 994 F.2d 364, 369 (7th Cir. 1993). According to the removing defendants' answers, none of them is incorporated or has a principal place of business in Wisconsin. Plaintiff does not contest these allegations: his objection is procedural, not substantive. Because the jurisdictional allegations in defendants' answers are sufficient to cure the deficiencies in their removal petition, remand is not required.

**III. Post-Removal Joinder of Non-Diverse Parties**

The lynchpin question in this set of motions is whether plaintiff should be allowed to add non-diverse defendants whose joinder would destroy federal jurisdiction, thereby requiring this court to remand the case to state court. According to 28 U.S.C. § 1447(e), the answer to that question lies firmly within the district court's discretion:

> If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

In deciding whether to allow post-removal joinder of a nondiverse party, the court considers four factors: (1) the plaintiff's motive for seeking joinder, particularly whether the purpose is to defeat federal jurisdiction; (2) the timeliness of the request to amend; (3) whether the plaintiff will be significantly injured if joinder is not allowed; and (4) any other relevant equitable considerations. *Schur v. L.A. Weight Loss Centers, Inc.*, 577 F.3d 752, 759 (7th Cir. 2009).

In opposing the motion to remand, defendants rely on the fraudulent joinder doctrine, which permits a district court considering removal to disregard for jurisdictional purposes the citizenship of nondiverse defendants against whom plaintiff has asserted a claim "that simply has no chance of success." *Poulos v. Naas Foods, Inc.*, 858 F.2d 69, 73 (7th Cir. 1992) (noting that "fraudulent" is a term of art that does not necessarily require proof of falsity). Although the fraudulent joinder doctrine does not apply directly when, as here, a case has been properly removed, it is a "tool in the district judge's belt for scrutinizing the plaintiff's motive for joining a nondiverse party." *Schur*, 577 F.3d at 764.

A defendant claiming fraudulent joinder bears a heavy burden: the defendant must show that, "after resolving all issues of fact *and law* in favor of the plaintiff, the plaintiff cannot establish a cause of action against the in-state defendant." *Poulos*, 959 F.2d at 73 (emphasis in original). Put another way, the out-of-state defendant must show that there is no reasonable possibility that a state court would rule against the non-diverse defendant. *Id*. *See also Georgeson v. Sauk County Dept. of Human Services*, 2010 WL 744249, *3 (W.D. Wis. 2010).

Here, plaintiff seeks to join three in-state defendants: Baughman Trucking, Baughman Transit and Acuity, Baughman Transit's insurer.

**A. Baughman Transit and Acuity**

I begin with Baughman Transit and its worker's compensation carrier, Acuity. In his brief in support of remand, plaintiff asserts that these parties are properly named as defendants because

> Acuity, as the worker's compensation insurer for Baughman Transit, paid worker's compensation benefits under the laws of the State of Minnesota and has agreed to process and pay worker's compensation benefits to Billy Parker under the laws of the State of Minnesota. It is being joined because it has a direct interest in these proceedings under Rule 20 and as subsequently alleged, plaintiff, Billy Parker, seeks an order declaring that the laws of the State of Minnesota govern the rights and obligations of Baughman Transit.

Pltf.'s Mem. in Support, dkt. 16 at 5. Thus, plaintiff is not asserting any claims directly against either Baughman Transit or Acuity, but has named them as parties who have at least a partial subrogation interest in this lawsuit. As the Sappi defendants point out, however, where a defendant insurer's interests are not adverse to the plaintiff's, the insurer is properly realigned as a plaintiff. *Estate of Pickard ex rel. Pickard v. Wisconsin Central Ltd.*, 300 F. Supp. 2d 776, 778 (W.D. Wis. 2002). Here, Baughman Transit and Acuity's interests are aligned with plaintiff's, insofar as they may be entitled to a share in plaintiff's recovery. As the Supreme Court has held, "if [the subrogee] has paid only part of the loss, both the insured and the insurer . . . have substantive rights *against the tortfeasor* which qualify them as real parties in interest." *United States v. Aetna Casualty & Surety Co.*, 338 U.S. 366, 380 (1949) (emphasis added). Accordingly,

although Baughman Transit and Acuity are real parties in interest, they are properly realigned as plaintiffs. Therefore, their presence in this lawsuit does not destroy diversity.[2]

**B. Baughman Trucking**

In his amended complaint, plaintiff asserts a claim for negligence against Baughman Trucking. To state a claim for negligence in Wisconsin, a plaintiff must plead facts that, if true, would establish four elements: (1) the existence of a duty of care on the part of the defendant; (2) a breach of that duty of care; (3) a causal connection between the defendant's breach and the plaintiff's injury; and (4) actual loss or damage resulting from the breach. *Hoida, Inc. v. M & I Midstate Bank*, 2006 WI 69, ¶ 23, 291 Wis. 2d 283, 717 N.W. 2d 17. With respect to the existence of a duty of care, Wisconsin follows the view that "everyone owes to the world at large the duty of refraining from those acts that may unreasonably threaten the safety of others." *Behrendt v. Gulf Underwriters Insurance Co.*, 2009 WI 71, ¶ 14, 318 Wis.2d 622, 633, 768 N.W.2d 568, 573 (quoting *Palsgraf v. Long Island Railroad Co.*, 248 N.Y. 339, 350, 162 N.E. 99, 103 (N.Y.1928) (Andrews, J., dissenting)).

The Wisconsin Supreme Court has explained that

> What is within the duty of ordinary care depends on the circumstances under which the claimed duty arises. For example, what is comprised within ordinary care may depend on the relationship between the parties or on whether the alleged tortfeasor assumed a special role in regard to the injured party.

[2]Plaintiff insists that Baughman Transit and Acuity are properly joined as defendants because plaintiff is seeking a declaration that Minnesota law "governs the instant matter." I fail to understand how this changes the analysis, given plaintiff's admission that such a declaration would only affect Baughman Transit and Acuity's subrogation interests. As already noted, those interests are not adverse to plaintiff's.

*Hoida*, 2006 WI 69, ¶ 32, 291 Wis. 2d at 307, 717 N.W.2d at 29. A person breaches his/her duty of care by failing to exercise the care a reasonable person would use in similar circumstances. *Behrendt*, 2009 WI 71, ¶ 43, 318 Wis.2d 622, 768 N.W.2d 568.

In his amended complaint, plaintiff alleges that Baughman Trucking purchased the semi-trailer with attached loader and supplied it to Baughman Transit for use by its employees, including plaintiff. Amended Complaint, dkt. 10, ¶43. He alleges that while he was operating the loader, the bolts attaching it to the semi-trailer gave way, causing him severe injuries. Plaintiff further alleges that Baughman Trucking was negligent in the manner in which it maintained the semi trailer and loader, and that this negligence was a cause or substantial factor in producing plaintiff's injuries. *Id*. at ¶¶44-45.

None of the out-of-state defendants contends that these allegations, if true, fail to state a claim for negligence against Baughman Trucking under Wisconsin law. Instead, defendants contend that it is "premature" to decide the motion for remand until they learn more about Baughman Trucking's role in this case and its relationship to plaintiff's claimed employer, Baughman Transit. On the basis of Baughman Trucking and Baughman Transit's common registered agent and principal office address, defendants suspect that Baughman Trucking might be an "alter ego" or "common enterprise" of Baughman Transit; in that case, the argument goes, diversity still would exist because the Baughman Trucking and Baughman Transit *both* would be plaintiff's employer, from whom plaintiff cannot recover because he elected to receive worker's compensation benefits. *See* Blount and Caterpillar's Br. in Opp., dkt. 27, at 4; Sappi Br. in Opp., dkt. 39, at 14-16.

Blount and Caterpillar have asked this court to wait until Baughman Trucking answered plaintiff's amended complaint, asserting that"[i]f Baughman Trucking claims it is an 'employer' for purposes of this litigation then it is also a nominal party [whose citizenship should be disregarded for diversity purposes]." *Id*. Sappi goes farther, asking this court to allow the parties to take limited discovery to determine not only who is plaintiff's employer but also which Baughman entity owned the equipment at issue. Dkt. 39, at 1-5. On this latter point, Sappi asserts that limited informal investigation has revealed "conflicting evidence" as to whether Baughman Trucking or Baughman Transit owned or operated the truck. *Id*. at 3-4.

On May 25, 2011, Baughman Trucking filed its answer, in which it makes no claim therein that it was plaintiff's employer, instead admitting that Baughman Transit employed plaintiff, and further admitting that it did substantial business with Baughman Transit, but denying that it owned the Prentice Loader or semi trailer, "as they had been previously sold to Baughman Transit, LLC." *See* dkt. 45 at ¶¶ 5-7. From this, it appears that Blount and Caterpillar's condition for opposing Baughman Trucking's joinder as a defendant has been addressed.[3]

Whether Baughman Trucking's answer is enough to mollify Sappi on the common enterprise/alter ego question is unclear. What is clear, however, is that the Sappi defendants still want limited discovery on the ownership question. *See* Sappi's Supplement to Br. in Opp. to Remand, dkt. 57, at 2 (renewing request for limited discovery "to confirm the simple question of who owned the equipment at issue.").

[3] Blount and Caterpillar have not indicated that they were joining Sappi's brief, but they would get the same result if they had.

Although I understand why Sappi wants to take "limited jurisdictional discovery," I am denying the request. In the fraudulent joinder context, the court's inquiry is extremely narrow; some courts have observed that the test imposes a heavier burden on the defendant than a Rule 12(b)(6) challenge. *Hartley v. CSX Transportation, Inc.*, 187 F.3d 422, 424 (4th Cir. 1999); *Rutherford v. Merck & Co., Inc.*, 428 F. Supp. 2d 842, 847 (S.D. Ill. 2006). *See generally Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 464 n.13 (1980)("Jurisdiction should be as self-regulating as breathing; . . . litigation over whether the case is in the right court is essentially a waste of time and resources," citation omitted).

Even so, courts occasionally do find it appropriate to "pierce the pleadings," as Sappi urges, but this is "a strictly circumscribed inquiry limited to uncontroverted summary evidence which establishes unmistakably that a diversity-defeating defendant cannot possibly be liable to a plaintiff under applicable state law." *Rutherford*, 428 F. Supp. 2d at 848 (citing cases). As the court cautioned in *Smallwood v. Illinois Central Railroad Co.*, 385 F. 3d 568, 574 (5th Cir. 2004), "[a]ttempting to proceed beyond this summary process carries a heavy risk of moving the court beyond jurisdiction and into a resolution of the merits, as distinguished from an analysis of the court's diversity jurisdiction by a simple and quick exposure of the chances of the claim against the in-state defendant alleged to be improperly joined."

It is apparent from the parties' competing submissions that Sappi's proposed jurisdictional inquiry would be tortuous and contentious. Sappi characterizes the issue as a simple fact question of who owned the trailer and loader, but it is unclear how Sappi could establish this adequately, that is, indisputably. As plaintiff points out, the trailer's title certificate lists Baughman Trucking as the owner. Gola Aff., dkt. 49, Exhs. E and F. This is

enough under Wisconsin law to establish Baughman Trucking presumptively as the owner of the trailer, and therefore liable for its operation. *See* Wis. Stat. § 342.15(3); *Knutson v. Mueller*, 68 Wis. 2d 199, 207, 228 N.W. 2d 342, 347 (1975). Whether the presumption is overcome will require an examination of the conduct and intent of the parties, *Bacheller v. Employers Mut. Liability Ins. Co.*, 93 Wis. 2d 564, 573C, 290 N.W. 2d 872, 874 (1980), an examination that poses a substantial risk of overlapping with the merits of plaintiff's negligence and strict liability claims.

Which segues to the observation that plaintiff's claim against Baughman Trucking does not necessarily hinge on who owned the equipment: even if it were to turn out that Baughman Trucking did not own the trailer or boom, plaintiff might be able to prove that it was responsible for the condition and/or maintenance of this equipment, and therefore had a duty to assure that everything was in proper working order for users like plaintiff.

In short, the facts important to Sappi's joinder challenge are intertwined with other substantive legal and factual issues that the parties will need to explore and analyze in this negligence lawsuit. "Quick, simple and unambiguously dispositive" are not words that accurately describe Sappi's attempt to prove fraudulent joinder, which means the requested preliminary discovery is inappropriate.[4]

On the existing record, I cannot find that plaintiff has no reasonable possibility of succeeding on his negligence claim against Baughman Trucking. It follows then that plaintiff did not join Baughman Trucking solely to defeat diversity jurisdiction. Considering the

[4] Although it appears that the Sappi defendants have abandoned their request for discovery of facts that could show that Baughman Trucking and Baughman Transit are both plaintiff's employer under either an "alter ego" or "joint enterprise" theory, I would deny this request for largely the same reasons.

remaining factors for determining whether to permit post-removal joinder of a non-diverse party, I am persuaded that joinder is proper. Plaintiff amended his complaint early in the proceedings, before any deadline for doing so had passed. Although the out-of-state defendants obviously would prefer to proceed in federal court, permitting plaintiff to add Baughman Trucking as a defendant and remanding this case to state court will promote judicial economy insofar as all potentially liable parties and all related causes of action may be resolved in a single proceeding, rather than in two separate lawsuits in two different forums. Further, the state court is equally if not more competent to decide the claims and issues in this lawsuit, nearly all of which involve Wisconsin tort law. For all these reasons, plaintiff's motion for remand will be granted.

ORDER

IT IS ORDERED that:

1. Plaintiff's motion for entry of default as to Blount, Inc. and Caterpillar, Inc., Dkt. 11, is DENIED.

2. Plaintiff's motion to strike the answer to the amended complaint and crossclaim filed by defendants Blount, Inc. and Caterpillar, Inc. Dkt. 29 is DENIED.

3. Plaintiff's motion for remand, Dkt. 14, is GRANTED. This case is REMANDED to the Circuit Court for Chippewa County, Wisconsin for lack of subject matter jurisdiction. The clerk of court is directed to transmit the file to the Circuit Court for Chippewa County.

Entered this 3rd day of August, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge