

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

FARMERS ALLIANCE MUTUAL
INSURANCE COMPANY and
FARMERS CROP INSURANCE
ALLIANCE, INC.,

Plaintiffs,

v.

GREG K. BURGER, NAU HOLDING
COMPANY, LLC, individually and d/b/a
iDEAL ADVANCED SOLUTIONS;
NAU COUNTRY INSURANCE COMPANY;
LIGHTYEAR NAU ACQUISITION, INC.;
THE LIGHTYEAR FUND, L.P., and
LIGHTYEAR CAPITAL LLC,

Defendants.

ORDER AND OPINION

07-C-0138-C

This civil suit for declaratory, injunctive and monetary relief is before the court on two motions filed by plaintiffs: for leave to amend their complaint to drop their only federal claim and for remand to the Circuit Court for Eau Claire County, Wisconsin. Plaintiffs filed their suit in Eau Claire on August 5, 2005; they amended the complaint twice. In the amendment of March 2, 2007, they added the federal claim to their twenty-count complaint

against defendants for breach of contract, conspiracy, etc., arising out of defendant Greg Burger's decision to leave his positions with the plaintiff companies for employment with defendant Lightyear NAU Acquisition, Inc. Immediately after the amendment, to which defendants agreed, defendants removed the case to this court.

The case has a complex history of extended discovery and discovery disputes. Defendants rely on the complexity and what they characterize as plaintiffs' desultory prosecution to urge this court to deny both of plaintiffs' motions, keep the case here and set it for a prompt trial. Not surprisingly, plaintiffs say that the delays in prosecution can be attributed to defendants' refusal to comply with discovery requests and court orders. They argue that the case should be returned to the court that has devoted substantial time to handling it in the nineteen months it was pending there.

It has been well settled since 1988, when the United States Supreme Court decided Carnegie-Mellon University v. Cohill, 484 U.S. 343, that a federal district court has the discretion to remand a case to state court after the plaintiff has amended its complaint to eliminate any federal claim. Defendants have asserted no ground on which to deny plaintiffs the right to choose which claims they wish to assert and litigate. Plaintiffs' motion to amend will be granted, leaving the only question whether this court should or should not exercise its discretion in favor of remand. The relevant considerations are judicial economy, convenience, fairness and comity. Id. at 350.

Defendants' reasons for denying remand fall within the "fairness" category. They contend that it would be unfair to let plaintiffs manipulate the system as they have allegedly done. According to defendants, the case was scheduled for trial when plaintiffs amended their complaint for the second time, allowing the defendants to remove it. Although defendants characterize plaintiffs' amendment as intended solely to avoid the trial date, they say nothing about the fact that they agreed to the amendment, which they did not have to do, and were the ones that removed the case, making an immediate trial impossible. Granted, the trial would probably have to have been rescheduled to allow discovery on the newly added claim. I suspect, however, that defendants could have had an earlier trial date had they resisted the proposed amendment.

The parties have exchanged volleys of accusations about discovery recalcitrance. No doubt there is ample blame to go around. It would not be a good use of anyone's time to attempt to determine which side has been the greater violator. What would be the point of doing so? I cannot imagine litigation conduct so reprehensible that it would persuade me to keep in this court a case that raises twenty state law claims on which discovery has not been completed, and no federal claim. (Defendants concede that no basis for diversity jurisdiction exists.)

United Mine Workers v. Gibbs, 383 U.S. 715 (1966), allows federal courts to retain certain state law claims for decision after dismissing the federal claims from the case but only

in unusual circumstances. Ordinarily, “if the federal claims are dismissed before trial . . . the state claims should be dismissed as well.” Id. at 726. One of the factors favoring relinquishment of jurisdiction is present “when state issues substantially predominate.” Id.

Although it is true that the case has placed heavy burdens on an already busy circuit court in Eau Claire, it has now been assigned to a reserve judge, the Honorable Thomas Barland. Counsel should count themselves fortunate to have an opportunity to try a case before a judge of his trial skills and intellect. If anyone can sort out this contentious case and do it in a firm but graceful manner, it is he.

Defendants ask that if the court grants plaintiffs’ motion to amend, it do so on condition that the federal claim is dismissed with prejudice. This motion will be denied. Defendants have shown no reason why the court should condition the grant of a motion to amend on dismissal with prejudice and I am aware of none.

Finally, defendants have asked for an award of attorney fees and costs for the expenses they have incurred in the removal and remand. The request will be denied. Defendants took their chances on removal, knowing that if plaintiffs were to respond by amending the complaint to delete the federal claim the chances of this court’s retaining the case would be infinitesimal.

ORDER

IT IS ORDERED that the motions to file a third amended complaint, deleting their federal claim, and to remand filed by plaintiffs Farmers Alliance Mutual Insurance Company and Farmers Crop Insurance Alliance, Inc. are GRANTED. Further, IT IS ORDERED that the requests for dismissal of the federal claim with prejudice and for an award of attorney fees filed by defendants Greg K. Burger, NAU Holding Company, LLC, individually and d/b/a iDeal Advanced Solutions, NAU Country Insurance Company, Lightyear NAU Acquisition, Inc., The Lightyear Fund, L.P. and Lightyear Capital LLC are DENIED.

Entered this 12th day of June, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge