

Blog Entry: The House Has Passed H.R.725: The Innocent Party Protection Act

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On March 9, 2017, at 7:19 p.m., by a vote of 224 to 194, with eleven members not voting, the House of Representatives passed The Innocent Party Protection Act. All 227 “ayes” were Republicans, and of the nays (or “noes,” as the House refers to them), 184 were Democrats and 10 were Republicans. The bill was speedily approved by the House; it was introduced January 30, 2017.

The full text of the bill passed by the House can be found at <https://goo.gl/MWIWUY>. Its purpose is to codify the common law of fraudulent joinder in actions removed to federal court.

The typical fraudulent joinder scenario arises in this context: plaintiff sues several defendants in state court for an amount exceeding the federal diversity jurisdictional minimum (\$75,000 excluding interest and costs). The primary defendant - the main target of the lawsuit - resides in a state *different* from plaintiff; he is, in other words, a “citizen” of a different state, and the parties’ citizenship is therefore “diverse.” If those were the only parties to the lawsuit, defendant could, if desired, remove the case to federal court.

But they’re not the only parties. Instead, plaintiff added another defendant to the lawsuit, and that defendant resides in the *same* state as plaintiff, meaning there’s no diversity of citizenship between them, and no “complete diversity” between plaintiff and defendants.

Defendants believe that plaintiff added the second defendant to the lawsuit for no legitimate reason, but solely to thwart defendants’ attempt to remove the lawsuit to federal court. So what do they do? They remove the case to federal court notwithstanding the lack of complete diversity and contend to the federal court that the second defendant was fraudulently joined in the lawsuit for the sole purpose of defeating federal diversity jurisdiction.

Plaintiff would prefer to stay in state court, so she responds by moving the federal court to remand the case to state court, claiming lack of subject matter jurisdiction and denying fraudulent joinder. Defendants oppose that motion and argue that plaintiff added the second defendant to the lawsuit for no reason other than to defeat diversity jurisdiction. The federal court then considers the parties’ submissions and renders a decision, presumably in line with governing judicial precedents.

H.R.725 seeks to crystallize fraudulent joinder law in a federal statute. Here is its operative text, which, if passed into law, would become 28 U.S.C. § 1447(f):

The joinder of a defendant ... is fraudulent if the court finds that-

(A) there is actual fraud in the pleading of jurisdictional facts with respect to that defendant;

(B) based on the complaint and the materials submitted under paragraph (3), it is not plausible to conclude that applicable State law would impose liability on that defendant;

(C) State or Federal law clearly bars all claims in the complaint against that defendant; or

(D) objective evidence clearly demonstrates that there is no good faith intention to prosecute the action against that defendant or to seek a joint judgment including that defendant.

The proposed legislation also provides that when considering whether a defendant has been fraudulently joined, the federal court “may permit the pleadings to be amended, and shall consider the pleadings, affidavits, and other evidence submitted by the parties.” And if the court determines that the non-diverse defendants were fraudulently joined, it must dismiss without prejudice plaintiff’s claims against them and deny the remand motion.

The bill now goes to the Senate.