Neal v. Old Republic Ins. Co.

United States District Court for the Western District of Louisiana, Monroe Division

April 23, 2019, Decided; April 23, 2019, Filed

CIVIL ACTION NO. 3:18-CV-01380

Reporter
2019 U.S. Dist. LEXIS 98075 *

ANTHONY NEAL, Plaintiff VERSUS OLD REPUBLIC INSURANCE CO., ET AL., Defendants

Subsequent History: Adopted by, Motion denied by, Stay denied by, Motion granted by Neal v. Old Republic Ins. Co., 2019 U.S. Dist. LEXIS 97961 (W.D. La., May 8, 2019)

Counsel: [*1] For Anthony Neal, Plaintiff: Damon Daniel Kervin, LEAD ATTORNEY, Law Offices of Damon D Kervin, Rayville, LA USA; Moses Junior Williams, Law Office of Moses J Williams, Tallulah, LA USA.

For Old Republic Insurance Co, Ryder Truck Rental Inc, Cao T Minh, Defendants, Intervenor Defendants: Emma Madison Barton, LEAD ATTORNEY, Kyle P Kirsch, Wanek Kirsch Davies, New Orleans, LA USA.

For Canal Insurance Co, Wells Trucking L L C, Ernie C Lilliy also known as Ernie C Lilly, Defendants, Intervenor Defendants: Thomas Moore Hayes, IV, LEAD ATTORNEY, Hayes Harkey et al, Monroe, LA USA.

For Indemnity Insurance Co of North America, Alyco L L C, Intervenor Plaintiffs: Terry Thibodeaux, Thibodeaux Law Firm, Lake Charles, LA USA.

Judges: Joseph H.L. Perez-Montes, United States Magistrate Judge. JUDGE DOUGHTY.

Opinion by: Joseph H.L. Perez-Montes

Opinion

REPORT AND RECOMMENDATION

Before the Court is a "Motion to Dismiss or Stay Proceedings" (Doc. 17), filed by Plaintiff Anthony Neal ("Neal").[1] Defendants Old Republic Insurance Company ("ORIC") and Ryder Truck Rental, Inc. ("Ryder") oppose. (Doc. 20). Defendants Ernie C. Lilly ("Lilly"), Wells Trucking, L.L.C. ("Wells Trucking"), and Canal Insurance Company ("Canal") adopt ORIC's and Ryder's [*2] opposition. (Doc. 21).

Because there are no exceptional circumstances warranting abstention of this action, Neal's Motion to Dismiss or Stay Proceedings (Doc. 17) should be DENIED.

I. Background

Neal filed suit on June 20, 2018 in the Fifth Judicial District

[1] Also pending is an unopposed Motion for Leave to File Petition of Intervention filed by Indemnity Insurance Company of North America ("Indemnity Insurance") and ALYCO, L.L.C. ("ALYCO") (collectively referred to as "Intervenors") (Docs. 24, 26). The Intervenors seek to file an intervention to recover medical and compensation benefits paid to or on behalf of Neal. (Doc. 24). Intervenors assert they have paid to date workers' compensation indemnity benefits to or on behalf of Neal in the amount of $23,097.23 and medical benefits in the amount of $453,714.97. (Doc. 24-2). Because the Court finds that no exceptional circumstances warrant abstention, and because Intervenors' motion is unopposed, Intervenors' Motion for Leave to File Petition of Intervention (Doc. 24) should be GRANTED.

Court, Richland Parish, Louisiana.[2] (Doc. 1-1). Neal names as Defendants ORIC, Ryder, Cao T. Minh ("Cao"),[3] Canal, Wells Trucking, and Lilly (collectively referred to as "Defendants"). (Doc. 1-1).[4] Neal claims injuries related to a June 29, 2017 automobile accident ("the accident") on Interstate 20 East in Richland Parish, Louisiana. (Doc. 1-1). Neal alleges he was an employee of Love's Truck Stop ("Love's), engaged in the course and scope of his employment, while on a service call to repair a flat tire on a truck parked on the right shoulder of the interstate. (Doc. 1-1). Neal claims that while walking on the shoulder, Cao struck him. (Doc. 1-1). Neal alleges Cao was operating a truck owned by Ryder and insured by ORIC. (Doc. 1-1).

Neal further asserts that Cao, just prior to striking him, was rear-ended by Lilly, and that [*3] Lilly was also acting in the course and scope of employment with Wells Trucking. (Doc. 1-1). Lilly was operating a truck owned by Wells Trucking and insured by Canal. (Doc. 1-1). Neal claims the negligent, reckless, and careless conduct of Cao and Lilly caused harm, for which they are individually, jointly, and solidarity liable. (Doc. 1-1). Neal claims past, present, and future damages for pain and suffering, mental pain and anguish, lost wages and economic opportunity, medical expenses, permanent injuries and disability, negligent infliction of emotional distress, and loss of enjoyment of life. (Doc. 1-1).

On July 19, 2018, ORIC and Ryder filed an Exception of Vagueness and Non-Conformity with La. Code of Civ P. art. 893. (Docs. 1-8, 13-1). Cao also filed an Exception of Insufficiency of Service of Process and Exception of Vagueness for failure to conform with La. Code Civ. P. art. 893. (Docs. 1-3, 13-1). ORIC, Ryder, and Cao requested Neal be ordered to amend his suit to state with specificity whether his alleged damages exceed or are less than the $75,000 jurisdictional threshold of federal courts. (Doc. 1-3). Prior to the exceptions being heard, Neal responded with a First Supplemental [*4] and Amending Petition, filed October 12, 2018, to assert his claim for damages exceeds $75,000. (Docs. 1-9, 13-1, 17-8).

On July 31, 2018, non-party Philip Scurria, Jr. filed a motion and order for writ of seizure for satisfaction of a money judgment (the "Scurria judgment") previously obtained against Neal. (Doc. 13-1, p. 43). A writ of fieri facias ("writ of fifa") was issued on August 7, 2018, and notice was issued for seizure of whatever is realized by Neal from his suit for satisfaction of the Scurria judgment. (Doc. 13-1, pp. 51-58).

On October 23, 2018, ORIC and Ryder removed Neal's suit, asserting federal diversity jurisdiction under 28 U.S.C. § 1332, and supplemental jurisdiction under 28 U.S.C. § 1367. (Doc. 1).[5] ORIC and Ryder answered Neal's original and

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[2] Anthony Neal v. Old Republic Insurance Company, *et al* No. 46-500, Div. "A" (La. 5th J.D.C.).

[3] The pleadings and motions in this action use "Cao" and "Minh" interchangeably. This is apparently due to the inversion of Cao's name on the police report. (Docs. 17-1, 17-6). On June 22, 2018, Cao filed a separate suit also in the Fifth Judicial District Court, captioned Thien Minh Cao v. Ernie C. Lilley, *et al.*, No. 46-503, Div. "A" (La. 5th J.D.C.) (the "Cao suit"). (Docs. 17-7, 20). Cao names as Defendants Lilly, Wells Trucking, Canal, Neal, and Neal's employer Love's Travel Stop and Country Store, Inc. ("Love's"). (Doc. 17-7). For the purposes of this decision, the Court will refer to this Defendant as "Cao."

In response to the Cao suit, and prior to removal of Neal's action, Neal filed an Answer, Reconventional Demand, and Cross-Claim. (Docs. 17-9, 17-10). Neal named Ryder, ORIC, and Cao as Defendants-in-Reconvention, and Lilly, Wells Trucking and Canal as Cross-Claim Defendants. (Docs. 17-9, 17" 10). Ryder and ORIC separately responded with exceptions of *lis pendens* and exceptions of vagueness and non-conformity with La. Code Civ. P. art. 893. (Doc. 17-9). Both exceptions were set for show cause hearings on December 10, 2018 before the Fifth Judicial District Court. (Docs. 17-9, p. 29, 85). The Fifth Judicial District Court granted the exceptions of *lis pendens* and stayed all of Neal's claims asserted in the Cao suit until resolution of his claims in this Court. (Doc. 20-1). On October 16, 2018, prior to this matter being removed, Neal moved to consolidate the Cao suit and this suit. (Doc. 17-19). Neal's motion to consolidate was also set for a show cause hearing on December 10, 2018. (Doc. 17-19). Since Neal's action was removed prior to the show cause hearing, there is no record of a ruling on Neal's motion to consolidate.

[4] Neal also names as Cao's insurer, ABC Insurance Company, and Lilly's insurer, XZY Insurance Company. (Doc. 1-1).

[5] ORIC and Ryder assert the amount-in-controversy is facially apparent from Neal's supplemental and amending petition. (Doc. 1). Neal alleges his damages exceed $75,000. (Doc. 1-9). ORIC and Ryder further assert complete diversity exists between all adverse parties. (Doc. 1).

Title 28 U.S.C. § 1332(a) provides that the district courts have original jurisdiction of all civil actions upon a showing of (1) diversity of citizenship between the parties; and (2) an amount in controversy in excess of $75,000, exclusive of interest and costs. 28 U.S.C. § 1332. "Complete diversity requires that all persons on one side of the controversy be citizens of different states than all persons on the other side." Harvey v. Grey Wolf Drilling Co., 542 F.3d 1077, 1079 (5th Cir. 2008) (citing Harrison v. Prather, 404 F.2d 267, 272 (5th Cir. 1968)) (internal citation and quotation omitted). The citizenship of an individual is his or her domicile, meaning the place where an individual resides and intends to remain. See Acridge v. Evangelical Lutheran Good Samaritan Soc., 334 F.3d 444, 448 (5th Cir. 2003). A corporation shall be deemed to be a citizen of every

supplemental and amending petitions, asserting various affirmative defenses. (Docs. 6, 7). Cao answered Neal's original and supplemental and amending petitions, asserting various affirmative defenses. (Docs. 28, 29).[6]

Neal now seeks abstention under Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976), or in the alternative a dismissal, to proceed in the "parallel state court litigation." (Doc. 17). ORIC and Ryder oppose (Doc. 20). Lilly, Wells Trucking, and Canal adopted the opposition in its entirety. [*5] (Doc. 21). Neal replies, asserting that Defendants do not dispute that the state actions are "parallel" and that four of the six Colorado River factors weigh in favor of abstention. (Doc. 22).

II. Law and Analysis

A. Colorado River Abstention Doctrine.

"Generally, 'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction.'" Colorado River, 424 U.S. at 817 (quoting McClellan v. Carland, 217 U.S. 268, 282, 30 S. Ct. 501, 54 L. Ed. 762 (1910)). Abstention under the Colorado River standard rests on principles such as federalism, comity, and conservation of judicial resources. See Black Sea Inv., Ltd. v. United Heritage Corp., 204 F.3d 647, 650 (5th Cir.2000) (citation omitted). A district court may abstain under the doctrine when: (1) parallel proceedings are pending in federal and state court! and (2) certain "exceptional circumstances" are present. See Colorado River, 424 U.S. at 813; Saucier v. Aviva Life & Annuity Co., 701 F.3d 458, 462 (5th Cir. 2012).

Federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them[,]" except under the "extraordinary and narrow exception[s]" provided under certain abstention doctrines. Colorado River, 424 U.S. at 813-17. Even so, a court may choose to abstain, awaiting the conclusion of state-court proceedings in a parallel case, based on principles of "[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive [*6] disposition of litigation." Id. (quoting Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co., 342 U.S. 180, 183, 72 S. Ct. 219, 96 L. Ed. 200, 1952 Dec. Comm'r Pat. 407 (1952)).

"Colorado River applies when suits are parallel, having the same parties and the same issues. " Stewart v. Western Heritage Ins. Co., 438 F.3d 488, 490 (5th Cir. 2006) (citing Diamond Offshore Co. v. A&B Builders, Inc., 302 F.3d 531, 540 (5th Cir. 2002)); see also African Methodist Episcopal Church v. Lucien, 756 F.3d 788, 797-98 (5th Cir. 2014). In deciding whether "exceptional circumstances" exist, the Supreme Court identified six relevant factors: (1) assumption by either court of jurisdiction over a *res*,[7] (2) relative inconvenience of the forums, (3) avoidance of piecemeal litigation, (4) the order in which jurisdiction was obtained by the concurrent forums, (5) to what extent federal law provides the rules of decision on the merits, and (6) the adequacy of the state proceedings in protecting the rights of the party invoking federal jurisdiction." Stewart, 438 F.3d at 491-92 (citing Kelly Inv., Inc. v. Continental Common Corp., 315 F.3d 494, 497 (5th Cir. 2002); Wilton v. Seven Falls Co, 515 U.S. 277, 285-86, 115 S. Ct. 2137, 132 L. Ed. 2d 214 (1995)). The factors should not be applied mechanically, but carefully balanced on a case-by-case basis, with the balance heavily weighted in favor of the exercise of federal jurisdiction. Id. (citing Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 16, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983)).

State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business. See Tewari De-Ox Systems, Inc. v. Mountain States/Rosen. L.L.C., 757 F.3d 481, 483 (5th Cir. 2014). The citizenship of a limited liability company ("L.L.C."), a limited partnership, or another unincorporated association or entity is determined by the citizenship of all its members. See Harvey, 542 F.3d at 1079-80.

Neal is a citizen of Louisiana, as he is a resident of and domiciled in Madison Parish, Louisiana. (Doc. 1). ORIC is a citizen of Pennsylvania and Illinois, as it is incorporated in the State of Pennsylvania with its principal place of business in the State of Illinois. (Docs. 1, 1-10). Ryder is a citizen of Florida, as it is incorporated in and has its principal place of business in the State of Florida. (Docs. 1, 1-2). Canal is a citizen of South Carolina, as it is incorporated in and has its principal place of business in the State of South Carolina. (Docs. 1, 1-12). Wells Trucking is a Mississippi limited liability company. (Docs. 1, 1-13). Wells Trucking's sole member is domiciled in Mississippi. (Docs. 1, 1-13, 12). Thus, Wells Trucking is a citizen of Mississippi. Lilly is a citizen of Mississippi, as he is a resident and domiciliary in Hinds County, Mississippi. (Doc. 1). Cao is a citizen of Texas, as he is a resident and domiciliary of Tarrant County, Texas. (Docs. 1, 28). The Court finds it has diversity jurisdiction, because there is complete diversity among the adverse parties and the jurisdictional threshold has been met.

[6] The Court denied a Motion to Dismiss for Insufficiency of Service (Doc. 8), filed by Cao, and allowed Neal a 60-day extension to properly effect service. (Doc. 19).

[7] A *res* is "[a]n object, interest, or status, as opposed to a person." Black's Law Dictionary (10th ed. 2014).

B. The Cao suit and this action are "parallel" proceedings.

Neal asserts there are three actions resulting from the accident: (1) the Cao suit; (2) Neal's state suit; and (3) this action. (Doc. 17-1, p. 7). In fact, however, there are only two actions resulting from the accident. There is currently one action pending [*7] in state court, the Cao suit. Neal's suit was removed from state court and is the instant action pending before this Court. (Doc. 1).[8]

The initial question is whether the Cao suit and the instant action are "parallel" proceedings pending in state court and federal court. Generally, suits are "parallel" when the actions involve the same parties and the same issues. See Stewart, 438 F.3d at 491. However, "'there need not be applied in every instance a mincing insistence on precise identity' of the parties and issues." See Brown v. Pac. Life Ins. Co., 462 F.3d 384, 395 n. 7 (5th Cir. 2006) (quoting Republic Bank Dallas Nat. Ass'n v. McIntosh, 828 F.2d 1120, 1121 (5th Cir. 1987)). "[S]uits may be found to be parallel 'while not absolutely symmetrical' but consisting of 'substantially the same parties litigating substantially the same issues.'" Extreme Energy Servs., LLC v. Gator Energy Operating, LLC, 2011 U.S. Dist. LEXIS 75170, 2011 WL 2747710, at *3 (W.D. La. June 24, 2011) (quoting Kenner Acquisitions, LLC v. BellSouth Telecommunications, Inc., 2007 U.S. Dist. LEXIS 13317, 2007 WL 625833, at *2 (E.D. La. Feb. 26, 2007)).

The Cao suit and Neal suit are substantially similar, so as to be "parallel." The claims arise from the same operative facts, damages, and liability originating from the same accident. The parties are the same except for an additional defendant in the Cao suit: Love's.[9] Additionally, before removal of this action, Neal responded to the Cao suit with an Answer, Reconventional Demand, and Cross-Claim asserting the same allegations and damages against the same parties as this action. (Docs. 17-9, 17-10). Thus, [*8] the Court finds the Cao suit and this action parallel for the purposes of Colorado River.

C. Abstention is not warranted under the six factors for determining "exceptional circumstances."

Having determined that the federal and state actions are parallel, the Court turns to whether "exceptional circumstances" warrant abstention. Stewart, 438 F.3d at 491-92.

1. Jurisdiction over a *res*

Both parties agree neither suit adjudicates a *res*. (Docs. 17-1, 20). Rather, Neal asserts both plaintiffs assert claims against an insurance policy of $750,000 provided by Canal on behalf of Lilly and Wells Trucking. (Doc. 17-1).[10] Neal asserts a right to sue has accrued under Louisiana's Direct Action Statute, La. R.S. 22:1269 (formerly La. R.S. 22:655). (Doc. 22). However, no determination has been made or judgment entered as to liability of the Defendants, or as to the rights of Neal to the policy(ies) of insurance. This factor weighs in favor of exercising federal jurisdiction when no court has assumed jurisdiction over a disputed *res*. Saucier, 701 F.3d at 463 (citing Stewart, 438 F.3d at 492). Thus, this factor weighs against abstention.

2. Relative inconvenience of the forums

Neal argues the second factor weighs in favor of abstention due to the inconvenience to the parties. (Doc. 17-1). Neal [*9] resides in Tallulah, Louisiana, which he asserts is closer to the Fifth Judicial District Courthouse in Rayville than the federal courthouse in Monroe. (Doc. 17-1). Neal further asserts his treating doctors (located in Mississippi), witnesses, and attorneys are all closer to Rayville. (Doc. 17-1). Neal argues six law firms are involved in the state and federal cases, and it would be more convenient to coordinate discovery, attend court appearances, and participate in a single trial. (Doc. 17-1). Defendants assert the state and federal courthouses are in adjoining parishes (Richland and Ouachita), which weighs against abstention. (Doc. 20).

The proper question under the relative inconvenience factor is "whether the inconvenience of the federal forum is so great that abstention is warranted." Kelly Inv., 315 F.3d at 498 (internal quotations omitted). "When courts are in the same

[8] When a civil action is removed, the state court shall proceed no further unless and until the case is remanded. 28 U.S.C. § 1446(g). The state court is divested of jurisdiction upon compliance of the requirements of the removal statute. See Groves v. Farthing, 2015 U.S. Dist. LEXIS 74999, 2015 WL 3646724, at *3 n. 32 (E.D. La. Jun. 10, 2015) (citing Murray v. Ford Motor Co., 770 F.2d 461, 463 (5th Cir. 1985)).

[9] In his memorandum, Neal asserts that after striking Cao's truck, Lilly hit a van driven by Jennifer Huskey ("Huskey"). (Doc. 17-1). Huskey was not named as a party in either suit.

[10] There is no indication any funds have been deposited into the registry of the court, in which a court would assume jurisdiction over the res. See e.g., Saucier, 701 F.3d at 463; see also Gilchrist Const. Co. L.L.C. v. Davis, 2010 U.S. Dist. LEXIS 95861, 2010 WL 3456977, at *8 (W.D. La. Aug. 27, 2010).

geographic location, the inconvenience factor weighs *against* abstention." Saucier, 701 F.3d at 463 (quoting Stewart, 438 F.3d at 492) (emphasis in original); see also Aptim Corporation v. McCall 888 F.3d 129, 136 n. 5 (5th Cir. 2018) (citing Lucien, 756 F.3d at 800) (distinguishing its finding that a half-hour distance weighed in favor of abstention when the presence of property involved was closer to the courthouse).

The Cao suit is pending in the Fifth Judicial District [*10] Court in Rayville, Richland Parish, Louisiana. The federal courthouse in which this action is pending is less than 30 miles from that courthouse. The suits are pending in courthouses in adjoining parishes in the same geographic location, one not any more convenient than the other. The Court finds that this factor counsels against abstention.

3. Avoidance of piecemeal litigation

Neal contends the third factor weighs "very heavily" in favor of abstention. (Doc. 17-1). Neal argues proceeding with the actions in two separate forums will result in duplicative discovery, depositions, and trials. (Doc. 17-1). Neal asserts this will result in a risk of inconsistent discovery, evidentiary rulings, and jury verdicts regarding the fault of all parties. (Doc. 17-1). Neal further contends the risk of limited funds will be exacerbated by separate trials at different times, and will double the costs for the parties involved. (Doc. 17-1). Neal seeks "dismissal of this action, and consolidation of the actions in state court." (Doc. 17-1).

Defendants assert this factor weighs against abstention, arguing that the goal of Colorado River is not to avoid duplicative litigation, but piecemeal litigation. (Doc. [*11] 20). Defendants argue Neal's assertion that there is a risk of inconsistent judgments is obviated through the doctrine of *res judicata*. (Doc. 20).

The Fifth Circuit has noted that the real concern at the "heart" of the third factor is the "avoidance of piecemeal litigation, and the concomitant danger of inconsistent rulings with respect to a piece of property." Black Sea, 204 F.3d at 650-51. The Fifth Circuit finds no such danger when no court has assumed jurisdiction over a dispute *res*. Id. The Fifth Circuit has further explained that *res judicata* will ensure proper order when litigation is duplicative, stating:

> The court's conclusion fails to realize that *anytime* duplicative litigation exists, the possibility of inconsistent judgments also exists. In both Evanston and Murphy, the court recognized that the problem of inconsistent judgments can be obviated through a plea of *res judicata* should one court render judgment before the other. Evanston, 844 F.2d at 1192; Murphy, 168 F.3d at 738. Therefore, the district court incorrectly relied upon the possibility of inconsistent judgments as its main reason for abstaining. Neither court has accepted jurisdiction over a *res*; with the same parties before both the federal and state court, and the same issues of stabilization [*12] and foreclosure pending, the litigation is merely duplicative. Unlike Colorado River, **499* there is no risk that irreconcilable rulings may result.

Kelly, 315 F.3d at 498-99 (emphasis in original). The Court agrees duplicative litigation is likely by proceeding in this action. However, "'[t]he prevention of duplicative litigation is not a factor to be considered in an abstention determination.'" Saucier, 701 F.3d at 464 (quoting Evanston Ins. Co. v. Jimco, 844 F.2d 1185, 1192 (5th Cir. 1988)). Accordingly, the Court finds the third factor weighs against abstention.

4. The order in which jurisdiction was obtained

Neal argues the fourth factor weighs in favor of abstention. (Doc. 17-1). Neal filed this action in the Fifth Judicial District Court on June 20, 2018. (Doc. M). The Cao suit was filed on June 22, 2018. (Doc. 17-7). This action was removed on October 23, 2018. (Doc. 1). Neal asserts the Cao suit has progressed in the state court. (Docs. 17-1, 17-16, 17-17). However, Defendants show that on December 10, 2018, the state court granted Ryder's and ORIC's Exceptions of *Lis Pendens*. (Docs. 20, 20-1). The Fifth Judicial District Court stayed all of Neal's claims asserted in the Cao suit until resolution of Neal's claims pending in this Court. (Doc. 20-1).

The fourth factor of the Colorado River [*13] analysis "'should not be measured exclusively by which complaint was filed first, but rather in terms of how much progress has been made in the two actions.'" Evanston, 844 F.2d at 1190 (quoting Moses H. Cone, 460 U.S. at 21); Stewart, 438 F.3d at 492. This factor "should be applied in a pragmatic, flexible manner with a view to the realities of the case at hand." Moses H. Cone, 460 U.S. at 21. When the state and federal suits are proceeding at approximately the same pace, this factor weighs against abstention. Black Sea, 204 F.3d at 651 (citing Murphy v. Uncle Ben's, Inc., 168 F.3d 734, 738 (5th Cir. 1999)).

Here, both actions were filed days apart and appear to have proceeded at relatively the same pace. Neal asserts the Cao suit is further along in discovery. However, Neal's claims were stayed in the Cao suit, and no further progress has been made relative to Neal's claims in the Cao suit. (Doc. 20-1). The Court finds the fourth factor militates against abstention.

5. The extent to which federal law provides the rules for deciding the merits of this case

Neal asserts there are no allegations of federal law in the Cao suit or this action. (Doc. 17-1). Neal argues liability, causation, and damages under both actions will be decided under Louisiana law. (Doc. 17-1). Neal asserts the only potential federal law that may arise is the extent to which the Federal Motor Carrier Safety Regulations ("FMCRs") apply to Wells Trucking, a federal motor carrier. (Doc. 17-1). However, Neal asserts the FMCRSs do not confer an independent right of action, and violations of the FMCSRs do not confer "federal question" subject matter jurisdiction. (Doc. [*14] 17-1).

Defendants, however, argue that the factor is neutral when there are no federal issues, and the factor weighs against abstention when federal issues exist. (Doc. 20). Defendants contend that at least two motor carriers are governed by the FMCRs and could raise federal issues. (Doc. 20).

The Court's subject matter jurisdiction is based on diversity of citizenship under § 1332. "Louisiana law provides the rules of decision on the merits." King v. Martin, 2013 U.S. Dist. LEXIS 40691, 2013 WL 1193678, at *6 (W.D. La. Mar. 22, 2013) (citing Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938); Holt v. State Farm Fire & Cas. Co., 627 F.3d 188, 191 (5th Cir. 2010)). No federal issues have been raised in the Cao suit or this action. (Docs. 1-1, 17-7). Under Fifth Circuit jurisprudence, however, "[t]he absence of a federal law issue does not counsel in favor of abstention." Black Sea, 204 F.3d at 651 (citing Evanston, 844 F.2d at 1192). In Evanston, the Fifth Circuit explained the significance of the presence or absence of state law:

> The absence of a federal-law issue does not counsel in favor of abstention, for as the Court stated in Moses Cone, "our task . . . is not to find some substantial reason for the *exercise* of federal jurisdiction." The presence of a federal law issue "must always be a major consideration weighing against surrender [of jurisdiction]," but the presence of state law issues weighs in favor of surrender only in rare circumstances. [*15]

Evanston, 844 F.2d at 1193 (emphasis in original, citations omitted).

Here, the Court finds the presence of state law issues in both actions does not weigh in favor of abstention, as the Court has an "unflagging obligation" to exercise its diversity jurisdiction. Colorado River, 424 U.S. at 813-17; Black Sea, 204 F.3d at 651 (citing Evanston, 844 F.2d at 1192). Otherwise, no "rare circumstance" prohibits the exercise of this Court's diversity jurisdiction.

6. The adequacy of the state court in protecting the rights of the defendants

Neal claims the sixth factor weighs in favor of abstention. (Doc. 17-1). Neal argues that Ryder will have no greater benefit in federal court, and that there is no evidence Ryder, a foreign defendant, "will experience any prejudice in state court, where it is already a defendant." (Doc. 17-1).

Defendants assert Neal's arguments have no legal foundation as to lack of prejudice to Ryder as an out-of-state litigant, and that Ryder's local facilities make it a local company. (Doc. 20). Rather, Defendants assert the underlying purpose of § 1332 diversity jurisdiction is to protect out-of-state citizens from the possibility of prejudices from local courts and local juries. (Doc. 20).

The sixth factor "can only be a neutral factor or one that weighs against, not for, abstention." Evanston, 844 F.2d at 1193 [*16] . "A party who could find adequate protection in state court is not thereby deprived of its right to the federal forum, and may still pursue the action there since there is no ban on parallel proceedings." Id. The Court finds the sixth factor is neutral, and does not weigh in favor of abstention.

III. Conclusion

Because this case does not present exceptional circumstances warranting abstention or dismissal under Colorado River,

IT IS RECOMMENDED that Neal's Motion to Dismiss or Stay Proceedings (Doc. 17) be DENIED.

IT IS FURTHER RECOMMENDED that Intervenors' Motion for Leave to file Petition of Intervention (Doc. 24) be GRANTED.

Under the provisions of 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b), parties aggrieved by this Report and Recommendation have fourteen (14) calendar days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. No other briefs (such as supplemental objections, reply briefs, etc.) may be filed. Providing a courtesy copy of the objection to the undersigned is neither required nor encouraged. Timely objections will be considered by the District [*17] Judge before a final ruling.

Failure to file written objections to the proposed findings, conclusions, and recommendations contained in this Report and Recommendation within fourteen (14) days from the date of its service, or within the time frame authorized by Fed. R. Civ. P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Judge, except upon grounds of plain error.

THUS DONE AND SIGNED in chambers in Alexandria, Louisiana, this 23rd day of April, 2019.

/s/ Joseph H.L. Perez-Montes

Joseph H.L. Perez-Montes

United States Magistrate Judge
