

John Doe Removals to Federal Court – Not so Fast!

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In a recent decision of *Brown v. Doe*, 2018 WL 316714, the U.S. District Court for the District of South Carolina remanded a John Doe action to the state court. Briefly, Plaintiff, who was driving her employer's vehicle, was rear-ended while stopped in traffic. The accident occurred in North Carolina, and the unknown driver fled the scene. No one could identify the driver or even the license plate of the at-fault vehicle. Plaintiff, a South Carolina resident, brought this "John Doe" action in South Carolina state court. Pursuant to South Carolina's uninsured motorist coverage (UM) statute, the UM carrier for Plaintiff's employer appeared on behalf of Doe and removed the action to district court. Plaintiff's personal UM carrier also appeared and consented to the removal.

In response to the district court's standard order concerning removal, Plaintiff alleged Doe was most likely a citizen of South Carolina, because the ramp on which the accident took place is used by South Carolina drivers to return to South Carolina. Plaintiff also argued that the timing of the accident coincides with the time drivers generally return home from work in South Carolina.

Both UM carriers asserted they were the real parties in interest and thus entitled to remove the action based on diversity. The district court answered two questions in its decision to remand: (1) whether complete diversity existed between the Plaintiff and the John Doe defendant and (2) whether the UM carriers could remove the action on behalf of the John Doe defendant.

Answering the first question, the district court noted 28 U.S.C. § 1441(b)(1) normally requires the court, in removal circumstances, to disregard the citizenship of defendants sued under fictitious names. However, under *Sligh v. Doe*, 596 F.2d 1169, 1171 (4th Cir. 1979), district courts may consider facts supporting an inference regarding a John Doe's citizenship. The district court affirmed parties must offer "some affirmative evidence ... sufficient to support a finding" of citizenship. The district court elaborated, "even when no evidence is offered, the circumstances" may make the citizenship of the John Doe Defendant "more probable than not".

Despite Plaintiff's evidence the on-ramp was used by South Carolina drivers, and the accident occurred during rush hour, the court was not persuaded. Rather, the court found the circumstances of the accident occurring in North Carolina made it more probable than not John Doe was a North Carolina resident. "The fact that some South Carolina residents commute to North Carolina for work does not provide the court with 'sufficient support' to determine John Doe's citizenship."

The district court then considered the second question; whether the UM carriers could remove the case to federal court. Citing S.C. Code Ann. §38-77-160, the UM carriers argued they had the right to appear on behalf of John Doe, and thus the right to remove the action to federal court. Recognizing § 38-77-160 provides UM carriers "the right to appear and defend in the name of the" John Doe defendant, the district court held that right did not extend to removing the action. Citing two other unpublished district court cases, the district court held removal must be interpreted under federal law, not state law. Reviewing applicable federal case law, the district court found the UM carriers were not defendants within the meaning of the removal statute. As a result, even assuming they are real parties in interest, UM carriers cannot remove an action on behalf of John Doe defendants despite their right to appear and defend on behalf of such defendants.

This decision, coupled with the myriad of other South Carolina district court decisions cited, demonstrates that, without a substantial change in South Carolina's UM laws as to who is a party in a John Doe claim, the district courts of South Carolina are closed to removal by UM carriers.

Bruce Wallace practices with Nexsen Pruet's business and consumer litigation group in Charleston. He represents a variety of banking and financial institutions in real estate litigation, commercial litigation, and mortgage foreclosures. He also represents insurers and corporate clients in bad faith and coverage issues, professional liability, business litigation (including disputes involving partnerships, limited liability companies, and closely held companies), and probate litigation matters (including trusts and estates).