

2017 WL 6816741

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NOT FOR PUBLICATION

United States District Court, D. New Jersey.

**NORTH JERSEY BRAIN &
SPINE CENTER**, Plaintiff,

v.

**HORIZON BLUE CROSS BLUE SHIELD
OF NEW JERSEY, INC.**, et al., Defendants.

Civil Action No.: 2:17-cv-02451

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Filed 12/14/2017

Attorneys and Law Firms

David Michael Estes, Eric D. Katz, Mazie, Slater, Katz & Freeman, LLC, Roseland, NJ, for Plaintiff.

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ORDER

CLAIRE C. CECCHI, U.S.D.J.

*1 WHEREAS on April 10, 2017, Defendant Horizon Blue Cross Blue Shield of New Jersey, Inc. (“Horizon”) filed a notice of removal. (ECF No. 1); and

WHEREAS “[t]he right to remove a case from state to federal court is vested exclusively in ‘the defendant or defendants.’ Title 28, § 1446(a) of the United States Code requires ‘[a] defendant or defendants desiring to remove any civil action ... [to] file ... a notice of removal.’ Despite the ambiguity of the term ‘defendant or defendants,’ it is well established that removal generally requires unanimity among the defendants.” *Anamdi v. Kean Univ.*, No. 15-2887, 2015 WL 5138648, at *8 (D.N.J. Aug. 31, 2015) (citations omitted); and

WHEREAS in Horizon's notice of removal, Horizon states that, “on consent of all defendants, [Horizon] hereby notices removal of this civil action from the Superior Court of New Jersey, Essex County, Docket No. ESX-L-1474-17, to this Court,” (ECF No. 1 at 1), and “[p]ursuant to 28 U.S.C. § 1446(b)(2)(A), Horizon has obtained from each of the other defendants their consent to the removal of this action.” (*Id.* at 5); and

WHEREAS “[p]ursuant to 28 U.S.C. § 1446(b)(2)(A), ‘all defendants who have been properly joined and served must join in or consent to the removal of [an] action.’ Although the rule of unanimity does not require each defendant to sign the actual notice of removal, courts generally require each defendant served in the action to provide ‘some form of unambiguous written evidence of consent to the court in a timely fashion.’” *Anamdi*, 2015 WL 5138648, at *8 (citing *Michaels v. New Jersey*, 955 F. Supp. 315, 321 (D.N.J. 1996); *Estate of Lakatos v. Monmouth Cty. Dep't of Corr.*, No. 13-5701, 2014 WL 284450, at *2 (D.N.J. Jan. 24, 2014); *Burns v. City of Hoboken*, No. 10-5754, 2011 WL 2881311, at *2 (D.N.J. July 15, 2011); *Collins v. Baxter Healthcare Corp.*, 949 F. Supp. 1143, 1146 (D.N.J. 1996)); and

WHEREAS the remaining defendants in this action neither signed Horizon's notice of removal, nor submitted any written evidence to the Court with Horizon's notice of removal evincing their consent. (ECF No. 1); and

WHEREAS “§ 1446(b)(2)(A) requires that actual, contemporaneous consent be obtained from all defendants ‘properly joined, served,’ and after-the-fact pronouncements of consent are ‘of no moment.’” *Anamdi*, 2015 WL 5138648, at *8 (citing *Cacoilo v. Sherwin-Williams Co.*, 902 F. Supp. 2d 511, 524 (D.N.J. 2012)); and

WHEREAS the submissions made by the remaining defendants in this action allegedly evincing their consent, filed on June 5, 2017 and June 9, 2017, are therefore untimely. (ECF Nos. 32-1, -2, -3, -4, -5, -6, -7, 33, 34, 35, 37); and

WHEREAS although Horizon contends that: (1) the removal statute is silent on the procedure for indicating consent; (2) the majority rule is to allow one defendant to indicate the consent of the other defendants in the notice of removal; and (3) the cases on which Plaintiff relies are inapplicable or overly formalistic, the Court

finds no reason to deviate from the holdings of district courts in this Circuit, which maintain that “[i]n order for Defendant[s] ... removal to be effective, each of the then-served Defendants would have had to submit some written manifestation of their joinder in or consent to removal within thirty (30) days of the date they were served.” *Pauseiro v. Port Auth. Of NY & NJ et al.*, No. 15-3523, 2015 WL 9450519, at *4 (D.N.J. Oct. 29, 2015), *report and recommendation adopted sub nom.*, *Pauseiro v. Port Auth. of NY & NJ*, No. 15-3523, 2015 WL 9412529 (D.N.J. Dec. 21, 2015) (citing *Collins*, 949 F. Supp. at 1146); and

*2 WHEREAS although Horizon further argues that any procedural defect in removal should be deemed cured, the Court does not find that an exception to the rule of unanimity applies. See *Baldy v. First Niagara Pavilion, C.C.R.L., LLC*, 149 F. Supp. 3d 551, 557 n.3 (W.D. Pa. 2015) (“The unanimity rule may be disregarded where: (1) a non-joining defendant is an unknown or nominal party; or (2) where a defendant has been fraudulently joined.

Another exception is when a non-resident defendant has not been served at the time the removing defendants filed their petition.”).

Accordingly, IT IS on this 13 day of December, 2017, in the interests of justice and for good cause shown:

ORDERED that Plaintiff’s motion to remand (ECF No. 11) is **GRANTED**; it is further

ORDERED that this case be **REMANDED** to the Superior Court of New Jersey; and it is further

ORDERED that the Clerk of Court shall close the file.

SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2017 WL 6816741