



## **COAKY Issues Mandamus Writ Lifting Stay of Discovery In Bad Faith Action So Defendant Could Pursue Evidence Justifying Time-Limited Removal To Federal Court**

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In *ProNational Insurance Co. v. Caudill*, 2013-CA-639-OA (6/24/13), the Kentucky Court of Appeals issued a writ of mandamus compelling a trial court to lift a stay of discovery in an insurance bad faith claim so the defendant could seek evidence justifying removal to federal court before the right to remove expired. The defendant insurance carrier had originally removed the case to federal court based on diversity of citizenship, but the federal court remanded the matter because there was not sufficient evidence of record to establish that the amount in controversy met the \$75,000 threshold for diversity jurisdiction.

On remand, the trial court then entered a stay of discovery at the plaintiff's request pending resolution of the underlying civil action (coincidentally the case of *Shy v. Walker*, the subject of my July 30 blog post), which was then on appeal to the Court of Appeals. The Court of Appeals in *ProNational v. Caudill* noted that bifurcation of bad faith claims from the underlying tort action is proper procedure, and that issuance of a stay of discovery in such cases is within the discretion of the trial court. However, the defendant had asked the trial court to lift the stay for the limited purpose of conducting discovery into the amount in controversy so it could meet the criteria for removal back to federal court. The "irreparable harm" requirement for seeking a writ was based on the assertion that the defendant's statutory right to remove the case to federal court would be lost if the defendant could not conduct discovery into the amount at issue.

Under these circumstances, the Court of Appeals found that the trial court had abused its discretion in declining to lift the stay for the limited purpose of discovery into the amount in controversy, and that the defendant would be irreparably harmed if it could not avail itself of the right to remove the case to federal court.

This decision is probably of limited applicability outside of Kentucky due to the perhaps unique combination of Kentucky's adoption of third-party bad faith liability (Kentucky is one of a relatively small minority of jurisdictions recognizing such liability) and Kentucky Civil Rule 8.01(2) (which prohibits a pleading from stating the amount of damages being claimed).

The order in *ProNational v. Caudill* is final but was not designated for publication in the South Western Reporter. Citation of unpublished decisions is governed by CR 76.28(4)(c).