IN THE DISTRICT COURT OF COMANCHE COUNTY
STATE OF OKLAHOMA

NEIL and LACY WEST,	)	
	)	
Plaintiffs,	)	
	)	Case No. CJ-2025-135
v.	)	
	)	JUDGE SHEPERD
STATE FARM FIRE AND CASUALTY COMPANY and NANCY HOLCOMB INS. AGENCY, INC.,	)	
	)	
Defendants.	)	

DEFENDANT NANCY HOLCOMB INSURANCE AGENCY, INC.'S REPLY IN SUPPORT OF MOTION TO DISMISS PETITION

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When Judge Palk remanded this case, he found only that, applying the "***heavy burden of proving fraudulent joinder***" State Farm had "not met its burden to demonstrate Plaintiffs' inability to establish a cause of action for negligent procurement." *Willard v. State Farm*, CIV-25-337-SLP, 2025 WL 2419274, at *2, 3 (W.D. Okla. Aug. 21, 2025). The Holcomb Agency does not have to satisfy that high standard to prevail on a Motion to Dismiss.[1] *Barlow v. State Farm*, CIV-25-44-R, 2025 WL 1139489, at *1 (W.D. Okla. Apr. 17, 2025) (fraudulent joinder standard "'is more exacting than that for dismissing a claim under Fed.R.Civ.P. 12(b)(6)'" (citation omitted)), Ex. 1. Rather, it must show, as it has done, that Plaintiffs' Petition fails to set forth either a cognizable legal theory of liability or facts to support any cognizable legal theory. *Lockhart v. Loosen*, 1997 OK 103, ¶ 4, 943 P.2d 1074, 1078. Further, since the Holcomb Agency filed its Motion, three federal district court judges in at least 10 separate opinions, considering allegations identical to Plaintiffs' in this case and accepting them as true, agreed with the legal arguments asserted by the Holcomb Agency here, and found State Farm did meet its "heavy burden" to show the agents were fraudulently joined. *Id.*[2] These opinions apply with force to the Holcomb Agency's Motion.

1. Plaintiffs received the Policy they allege they requested, and no act by the Holcomb Agency caused the purported damages. To prevail on their negligent procurement claim, Plaintiffs must plead facts to show their Policy was "not procured as promised." *Swickey v. Silvey Cos.*, 1999

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[1] The cases cited on pages 18-20 of Plaintiffs' Response involved motions to remand based on fraudulent joinder and were thus reviewed under the more "exacting" standard.

[2] Order, *Stafford v. State Farm*, CIV-25-0008-HE (W.D. Okla. May 27, 2025), ECF #25 ("*Stafford* Order"), Ex. 2; Order, *Cline v. State Farm*, CIV-25-367-HE (W.D. Okla. Aug. 21, 2025), ECF #18; Order, *White v. State Farm*, CIV-25-561-HE (W.D. Okla. Aug. 21, 2025), ECF #19; *Cisneros v. State Farm*, CIV-25-42-R, 2025 WL 1151685, at *4 (W.D. Okla. Apr. 18, 2025); *Newell v. State Farm*, 5:25-cv-562-R, 2025 WL 2649661 (W.D. Okla. Sept. 15, 2025); *Weichbrodt v. State Farm*, CIV-25-360-R, 2025 WL 1848819 (W.D. Okla. July 2, 2025); *Gamble v. State Farm*, CIV-25-396-R, 2025 WL 1848818, at *1 (W.D. Okla. July 2, 2025); Order, *Stone v. State Farm*, CIV-25-7-D (W.D. Okla. Aug. 20, 2025), ECF #25 ("*Stone* Order"), Ex. 3; *Porter v. State Farm*, CIV-25-187-R, 2025 WL 1151682 (W.D. Okla. Apr. 18, 2025). Judge Heaton recently denied remand in a case brought by Plaintiffs' counsel against an Allstate agent using a petition substantially similar to the one here, even though the allegations were against a different insurer. Order, *Casillas v. Allstate*, CIV-25-0752 (W.D. Okla. Sept. 18, 2025), ECF #22.

OK CIV APP 48, ¶ 8, 979 P.2d 266, 268. They allege they requested a replacement cost policy that covers "wind and hail damage." Resp. at 6. Critically, Plaintiffs do not then explain how the Policy procured was different. The Holcomb Agency demonstrated in its Motion Plaintiffs' Policy is an RCV Policy that covers hail. Mot. at 6-8.[3] Plaintiffs do not dispute that in their Response. In fact, they admit in their Petition the Policy covers hail (Pet., ¶ 31) and admit State Farm estimated more than $6,000 to replace "gutters, window screens, [and] outdoor fencing" damaged in the storm, as well as repair interior water damage, which proves the Policy covers wind/hail (*id.* at ¶ 40(d)-(e), (g)). When faced with the same allegations, Judges Russell and Heaton recently found agents were fraudulently joined because the insureds received the exact policy requested: "an all-risk replacement cost policy that provides coverage for any accidental direct physical loss, including wind and hail damage." *Barlow*, 2025 WL 1139486 at *3, Ex. 1; *Stafford* Order at 4, Ex. 2.

Admitting the Policy covers hail, Plaintiffs complain "***State Farm***[] [applies an] overly-narrowed and undefined definition of hail 'damage'" and "***State Farm*** has a "pattern and practice of [] attributing hail damage to wear and tear." Resp. at 5 n.5, 8 (emphasis added). Those complaints speak to State Farm's application of the policy language in the claims administration process, which if established, may be a basis for a claim against State Farm but "is something different from proving that the agent failed to deliver the policy promised." *Marino v. State Farm*, CIV-22-0885-HE, 2023 WL 11915691, at *3 (W.D. Okla. Aug. 7, 2023). Plaintiffs' citation to deposition testimony of adjusters in other litigation, which they allege "evidences" State Farm's "Scheme" to underpay hail claims, proves the point. *See* Resp. at 7-9. The Holcomb Agency "procured replacement cost insurance. Plaintiffs' alleged damages arose, not because of the type of insurance procured, but because State Farm refused to replace Plaintiffs' roof." *Rain Drop*

[3] The Holcomb Agency likewise showed that Plaintiffs had more than sufficient coverage to replace their roof if it were totaled (Mot. at 9-10), and Plaintiffs do not dispute that either.

Foundation v. State Farm, 24-1101-D, 2025 WL 582562, at *4 (W.D. Okla. Feb. 21, 2025).[4] As stated in *Goebel*, *Marino*, *Steinkamp*, *Rain Drop*, *Cisneros*, *Porter*, and *Barlow*, Plaintiffs' alleged damages flowed from State Farm's claim decision and not "from the breach of the agent's duty of care." *Castens v. Conseco Life Ins.*, 11-CV-628-TCK-FHM, 2012 WL 610001, at *2 (N.D. Okla. Feb. 24, 2012); *Rain Drop*, 2025 WL 582562 at *4; *Steinkamp v. State Farm*, CIV-22-47-PRW, 2023 WL 11920886, at *2 (W.D. Okla. Sept. 29, 2023); *Marino*, 2023 WL 11915691 at *4; *Goebel v. State Farm*, CIV-22-882-HE, 2023 WL 11883977, at *3 (W.D. Okla. Aug. 7, 2023); *Cisneros*, 2025 WL 1151685 at *3; *Porter*, 2025 WL 1151682 at *3; *Barlow*, 2025 WL 1139486 at *3. State Farm showed causation is absent. Plaintiffs have no answer. Talk of "pre-existing damage" is a diversion. Resp. at 12-13. Nowhere do Plaintiffs allege they requested a policy that covered "pre-existing damage" and the Holcomb Agency failed to procure such a policy. They allege they requested a policy that covered hail and wind damage, and that is what they received.

2. Plaintiffs have not shown the Holcomb Agency owed them an underwriting duty or that they have been injured by its violation of it. Plaintiffs' claims against the Holcomb Agency are premised on the notion Ms. Holcomb, who is an insurance agent and not a home inspector, had a duty to inspect Plaintiffs' roof and verify its condition. The Holcomb Agency showed in its Motion the law imposes no such duty on agents. *Stafford* Order at 7, Ex. 2 ("Oklahoma cases do not support the idea that an agent is required to personally inspect."). And the Policy makes plain State Farm has no obligation to "make inspections and surveys of the insured location at any time," provide insureds with "reports on conditions," or "recommend changes." Policy at 32, Ex. 3 to Mot. Plaintiffs make no attempt to refute this authority. Further,

[4] "[P]urchasing a policy 'does not mean that an insured is guaranteed that its claims will always be paid in full." *Rain Drop*, 2025 WL 582562 at *5. "To argue otherwise is to suggest that having a replacement cost policy entitles Plaintiff[s] to a full replacement of the roof upon submission of virtually any claim." *Id.*

to the extent an inspection was required, and Ms. Holcomb tasked with performing it, any such duty would be a contractual duty ***owed to State Farm***, not Plaintiffs. *Goebel*, 2023 WL 11883977 at *3. None of this is relevant to this case. State Farm found roof replacement was not necessary because hail did not damage the roof's shingles. Even if Holcomb had a duty to inspect, and even if she told Plaintiffs the roof was in good condition in 2021 when they purchased their Policy, Plaintiffs fail to show the alleged misrepresentation caused the alleged injury two years later.

3. Plaintiffs have not shown the Holcomb Agency had a duty to speak to establish their constructive fraud claim. The Holcomb Agency demonstrated in its Motion that Plaintiffs' fraud claim is based on allegations the Agent made implied representations about inspections or condition of their house by the mere act of selling their Policy. Mot. at 12-13. Plaintiffs do not dispute that, confirming in their Motion their allegation is that "by virtue of marketing, procuring, selling, and binding State Farm replacement cost insurance coverage—that the property met State Farm's underwriting rules, qualified for full replacement cost coverage at 100% of its value, and was free from any defect(s) that would negate that coverage." Resp. at 8. The Holcomb Agency further showed Plaintiffs failed to plead the agent made affirmative representations regarding State Farm's alleged claim-handling scheme, pleading only that it did not tell them about the scheme. Mot. at 12-13. Plaintiffs do not dispute that either, reiterating that the Holcomb Agency "omitted material facts about the scheme" and "withheld material information pertaining to how State Farm handles claims of property damage, hidden definitions and standards, and facts regarding State Farm's scheme." Resp. at 17. Allegations of "'inherent' or 'implied representations" are insufficient to state a claim for constructive fraud. *Barlow*, 2025 WL 1139489 at *3 n.5; *Pratt v. Safeco Ins. Co. of Am.*, No. CIV-20-93-D, 2020 WL 4735350, at *2 (W.D. Okla. Aug. 14, 2020).

4. As the Holcomb Agency showed in its Motion, the Petition establishes the alleged misrepresentations were indisputably true (Mot. at 16):

- Plaintiffs' house did satisfy underwriting and qualified for replacement cost coverage as evidenced by State Farm's issuance of the Policy. *Stafford* Order at 7, Ex. 2.
- Plaintiffs' Policy covers wind and hail damage. Policy, § II, p.12, Ex. 3 to Mot.; *Rain Drop Found.*, 2025 WL 582562 at *5 (no possible claim against agent based on same alleged misrepresentations policy was RCV policy providing coverage for weather-related damage because representations were true).
- Plaintiffs admit that in evaluating their claim, State Farm found hail damage and estimated for it; Plaintiffs just claimed more damage.

5. The Court should not consider documents and testimony *outside* of Plaintiffs' Petition. Plaintiffs cite to testimony and exhibits from other cases in an attempt to prove State Farm has a scheme to deny hail claims and the Holcomb Agency knows about it, none of which involve or mention the Holcomb Agency. The Court should reject Plaintiffs' attempt to revise their Petition via their Response. *Snow v. Bd. of County Comm'rs*, No. CIV-14-911-HE, 2014 WL 7335319, at *7 (W.D. Okla. Dec. 19, 2014). The so-called "evidence" is entirely irrelevant, as the presence or absence of a "Scheme" by State Farm as to claim handling is material to the claims against the Holcomb Agency only if it had a duty to advise Plaintiffs about claim handling, a claim handling scheme existed, the Holcomb Agency knew about it and believed it material to these Plaintiffs, and then failed to disclose it, which the Holcomb Agency has shown is wrong.[5]

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[5] The spuriousness of the theory is reflected in the documents Plaintiffs attach to their Response to try to prove it. Plaintiffs cite to inadmissible hearsay emails between different agents and insureds regarding their particular claims (Exs. 7 & 8), testimony by claim specialists who were not involved in the handling of Plaintiffs' claim about their handling of claims for other insureds and practice of simply requiring approval to total a roof (Exs. 5 & 6); Senate testimony by a State Farm insured in North Carolina regarding his hurricane claim (Ex. 3), statements from a self-described insurance company "watchdog" about alleged bad acts by the insurance industry at large and referring to a State Farm settlement relating to claims arising from Hurricane Katrina 20 years ago (Ex. 4); and an unsigned, unauthenticated statement from a "licensed insurance adjuster" who has "inspected property damage and prepared estimates on behalf of over 17 insurance carriers, including Allstate and State Farm," about his experience handling claims for ***Allstate*** following Hurricane Helene (Ex. 2). One exhibit proves Plaintiffs' entire premise—that an agent is obligated to inspect the property to inform the insured of the condition of the house and that, based upon those obligations, the act of binding the policy constitutes a representation as to the condition of the house—is wrong (Ex. 8).

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 3rd day of October, 2025, the undersigned caused a true and correct copy of the above and foregoing to be mailed to:

Reggie N. Whitten
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2025 WL 1139489
Only the Westlaw citation is currently available.
United States District Court, W.D. Oklahoma.

Heidi BARLOW and Doug Barlow, Plaintiffs,
v.
STATE FARM FIRE AND CASUALTY COMPANY, et al., Defendants.

Case No. CIV-25-44-R
|
Signed April 17, 2025

Attorneys and Law Firms

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Michael W. Brewer, William W. Whitehurst, Hiltgen & Brewer, Oklahoma City, OK, for Defendants Brent Hagar, Hagar State Farm Agency LLC.

ORDER

DAVID L. RUSSELL, UNITED STATES DISTRICT JUDGE

***1** Plaintiffs have filed a Motion to Remand [Doc. No. 12] seeking to remand this case to the District Court of Oklahoma County. The motion is fully briefed [Doc. Nos. 21, 24, 30] and at issue. [1]

PROCEDURAL BACKGROUND

Plaintiffs initiated this action in state court against State Farm, Brent Hagar, and the Hagar State Farm Agency, LLC. Plaintiffs assert claims for breach of contract, bad faith and constructive fraud/negligent misrepresentation against State Farm based on its alleged wrongful denial of their insurance claim. Plaintiffs also assert claims against the Hagar State Farm Agency and Mr. Hagar (the agent that that sold them the insurance policy) for negligent procurement of insurance and constructive fraud/negligent misrepresentation.

State Farm removed the case contending that Mr. Hagar and the Agency were fraudulently joined, and their non-diverse citizenship may therefore be disregarded for purposes of establishing diversity jurisdiction. [2] Plaintiffs seek to remand the action, arguing that State Farm has not met its burden of showing that either defendant was fraudulently joined.

STANDARD

The standard for establishing that a defendant has been fraudulently joined is a difficult one: "the removing party must demonstrate either: (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court." *Dutcher v. Matheson*, 733 F.3d 980, 988 (10th Cir. 2013) (quoting *Cuevas v. BAC Home Loans Servicing, LP*, 648 F.3d 242, 249 (5th Cir. 2011)). This standard "is more exacting than that for dismissing a claim under Fed.R.Civ.P. 12(b)(6)" and requires all factual disputes and all ambiguities in the controlling law to be resolved in the plaintiff's favor. *Montano v. Allstate Indem.*, 211 F.3d 1278 (10th Cir. 2000) (unpublished); [3] *see also Dutcher*, 733 F.3d at 988. "[R]emand is required if any one of the claims against the non-diverse defendant ... is possibly viable." *Montano*, 211 F.3d at *2.

Although the fraudulent joinder standard presents a "high hurdle," *Dutcher*, 733 F.3d at 989, it is not an insurmountable one. Where a defendant's "non-liability is ... established as both a matter of fact and law," the defendant's joinder is fraudulent and remand is appropriately refused. *Dodd v. Fawcett Publications, Inc.*, 329 F.2d 82, 85 (10th Cir. 1964). Further, "it is well settled that upon allegations of fraudulent joinder designed to prevent removal, federal courts may look beyond the pleadings to determine if the joinder, although fair on its face, is a sham or fraudulent device to prevent removal." *Smoot v. Chicago, R.I. & P. R. Co.*, 378 F.2d 879, 882 (10th Cir. 1967). But courts must be careful not to "pre-try, as a matter of course, doubtful issues of fact to determine removability; the issue must be capable of summary determination and be proven with complete certainty." *Id.* at 882.

EXHIBIT
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DISCUSSION

*2 The claims against Mr. Hagar and the Hager Agency[4] are premised on an alleged scheme by State Farm and its captive insurance agents to underpay and deny hail damage claims. *See* Pet. [Doc. No. 1-2] ¶¶ 1-4. The scheme purportedly works as follows: the agent sells an insurance policy to the customer and in doing so "expressly and/or impliedly represents" that the property meets State Farm's underwriting guidelines, the replacement cost value the agent calculated is accurate, and the policy covers wind and hail damage. *Id.* at ¶ 4. State Farm issues the policy, the insured suffers a loss from wind or hail, and State Farm then denies the claim based on an undisclosed and narrow definition of hail damage and a variety of bad faith claims handling tactics. *Id.*

Plaintiffs allege they were subjected to the scheme in this case. They contacted the Hagar Defendants and "specifically requested full coverage on the roof considering the amount and severity of severe storm weather that Oklahoma receives." Pet. ¶¶ 25. The Hagar Defendants "confirmed that Plaintiffs were receiving a full replacement cost policy" and told them this was the best coverage they could get with State Farm. *Id.* The Hagar Defendants then independently calculated the policy's coverage, purportedly insuring it at 100% of its replacement cost value, using State Farm's valuation software. *Id.* In doing so, the Hagar Defendants never inspected the property, never told Plaintiffs the property had pre-existing damage or other conditions that would exclude it from or make it ineligible for replacement cost coverage, never told Plaintiffs that the value and coverage limits did not represent 100% insurance to value, and never disclosed that State Farm utilized narrow definitions of hail damage. Approximately three years after purchasing the policy, Plaintiffs submitted a claim to State Farm for hail damage. State Farm partially denied the claim and attributed the damage on the roof to "granule loss, weathering, age, deterioration, manufacturer defect, and installation error." *Id.* ¶ 40.

As explained below, based on these allegations and the other material in the record, State Farm has met its burden of showing with complete certainty that Plaintiffs do not have a potentially viable claim for negligent procurement of insurance or negligent misrepresentation/constructive fraud against the Hagar Defendants.

A. Negligent Procurement of Insurance

Oklahoma law recognizes that an insurance agent has a "duty to act in good faith and use reasonable care, skill and diligence in the procurement of insurance." *Swickey v. Silvey Co.*, 979 P.2d 266, 269 (Okla. Civ. App. 1999). "This duty rests, in part, on specialized knowledge about the terms and conditions of insurance policies generally." *Rotan v. Farmers Ins. Grp. of Companies, Inc.*, 83 P.3d 894, 895 (Okla. Civ. App. 2004) (internal quotations marks and brackets omitted). An insurance agent can therefore be liable to the insured in negligence "if, by the agent's fault, insurance is not procured as promised and the insured suffers a loss." *Swickey*, 979 P.2d at 269.

However, Oklahoma courts are in agreement that "the scope of the agent's duty to use reasonable care, skill, or diligence in the procurement of insurance" is limited to needs disclosed by the insured. *Rotan*, 83 P.3d at 895. Agents "do not have a duty to advise an insured with respect to his insurance needs" and "a general request for adequate protection and the like does not change this duty." *Id.* (internal quotation marks and brackets omitted). Thus, "[t]o discharge their duty to act in good faith and use reasonable care, skill, and diligence in the procurement of insurance, including use of their specialized knowledge about the terms and conditions of insurance policies, insurance agents need only offer coverage mandated by law and coverage for needs that are disclosed by the insureds, and this duty is not expanded by general requests for 'full coverage' or 'adequate protection.' " *Id. See also Cosper v. Farmers Ins. Co.*, 309 P.3d 147, 149 (Okla. Civ. App. 2013) (holding that plaintiff had not stated a negligence claim where agent calculated a replacement cost value that exceeded the coverage needed because the agent "did not fail to procure insurance" and "Plaintiffs did not allege that they requested a specific coverage limit and Defendants disregarded the request and issued a policy in some other amount"); *Mueggenborg v. Ellis*, 55 P.3d 452, 454 (Okla. Civ. App. 2002) (holding that plaintiffs had not stated a negligence claim where the agent did not advise then about the availability of higher limits because plaintiffs simply requested "adequate protection" which is a "typical request by an insured" and permitting such a conversation to expand the scope of the duty "would in substance make the agent a blanket insurer for his principal").

*3 In this case, Plaintiffs allege that they requested "full coverage on the roof considering the amount and severity of severe storm weather that Oklahoma receives" and the Hagar Defendants confirmed that Plaintiffs were receiving a full replacement cost policy. According to Plaintiffs' own allegations, this is exactly what they received: an all-risk replacement cost policy that provides coverage for any accidental direct physical loss, including wind and hail damage. Pet. ¶¶ 4(c), 31-33. Further, Plaintiffs alleged request for "full coverage" on the roof given the likelihood of severe weather is the type of general, typical request that Oklahoma courts have indicated does not expand the scope of the agent's duty to procure the requested insurance. [5]

This is not a situation where Plaintiffs' insurance claim was denied because the type of policy, type of coverage, or coverage limit was different than what was requested. *See, e.g., Yeary v. Safeco Ins. Co. of Am.*, No. 22-CV-0250-CVE-SH, 2022 WL 3447120 (N.D. Okla. Aug. 17, 2022) (finding that the plaintiff stated a viable claim against agent where they requested a homeowner's policy that would replace their fishing dock in the event of a loss but policy procured did not mention the dock and contained numerous exclusions that did not provide realistic coverage for the dock). Rather, Plaintiffs indisputably received the replacement cost value policy they requested. Plaintiffs cannot show that, "by the agent's fault, insurance [was] not procured as promised," *Swickey*, 979 P.2d at 269, and they therefore do not have a potentially viable claim for negligent procurement of insurance against the Hagar Defendants. *See Rain Drop Found., Inc. v. State Farm Fire & Cas. Co.*, No. 24-1101-D, 2025 WL 582562, at *4 (W.D. Okla. Feb. 21, 2025) (no viable claim against agent because "Plaintiff's alleged damages arose, not because of the type of insurance procured, but because State Farm refused to replace Plaintiff's roof"); *Steinkamp v. State Farm Fire & Cas. Co.*, No. CIV-22-00047-PRW, 2023 WL 11920886, at *2 (W.D. Okla. Sept. 29, 2023) (no viable claim against agent because "Plaintiff's claim against State Farm depends upon what damage her roof sustained, not the terms of her policy"); *Gellner v. Progressive N. Ins. Co.*, No. 21-CV-0401-CVE-JFJ, 2021 WL 5789146, at *3 (N.D. Okla. Dec. 7, 2021) (no viable claim against agent because the policy procured provided the requested collision coverage and the dispute concerns "the cause of the damage to the boat, not the lack of collision coverage in the insurance policy"); *Smith v. Allstate Vehicle & Prop. Ins. Co.*, No. CIV-14-0018-HE, 2014 WL 1382488, at *2 (W.D. Okla. Apr. 8, 2014) (no viable claim against agent where "plaintiffs acknowledge that coverage was obtained and do not allege that the amount of coverage was not what they had requested"); *Rivera v. Hartford Ins. Co. of the Midwest*, No. CIV-14-1082-HE, 2014 WL 7335320, at *2 (W.D. Okla. Dec. 19, 2014) (no viable claim against the agent because "plaintiffs do not allege in their complaint that they actually requested specific coverage which Hartford failed to provide").

B. Negligent Misrepresentation/Constructive Fraud

*4 Oklahoma defines constructive fraud as "any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, ... by misleading another to his prejudice, ..." Okla. Stat. Ann. tit. 15, § 59(1). Such a duty "may arise if a party selectively discloses facts that create a false impression." *Specialty Beverages, L.L.C. v. Pabst Brewing Co.*, 537 F.3d 1165, 1181 (10th Cir. 2008) (applying Oklahoma law). Put another way, "[c]onstructive fraud is the concealment of material facts which one is bound under the circumstances to disclose." *Bankers Tr. Co. v. Brown*, 107 P.3d 609, 613 (Okla. Civ. App. 2005).

Here, Plaintiffs identify several misrepresentations in support of their constructive fraud claim, but all fail for one reason or another. First, Plaintiffs assert that by calculating the replacement cost value, the Hagar Defendants "inherently conveyed" that the coverage limit was accurate and represented 100% insurance to value. Pet. ¶ 25. But Plaintiffs admit that they were not underinsured, and they do no contend that they were overinsured. Thus, "any issue as to coverage amounts did not lead to any of the damages that plaintiffs assert via their claim for damage to the roof." *Goebel v. State Farm Fire & Cas. Co.*, No. CIV-22-0882-HE, 2023 WL 11883977, at *4 (W.D. Okla. Aug. 7, 2023).

Plaintiffs also assert the Hagar Defendants misrepresented that the property met all underwriting requirements, all property inspections occurred, and the property was eligible for full replacement cost coverage. Plaintiffs further assert the Hagar Defendants never disclosed that the property had a defect, pre-existing damage, or other condition that would limit coverage. Notably, Plaintiffs do not identify any express statements by the Hagar Defendants regarding its underwriting duties or the property's condition but instead suggest that these representations were implied by the act of calculating the RCV, binding coverage, or procuring the policy.

Accepting for the sake of argument that an agent impliedly makes such representations to the insured when it takes these actions, these representations do not have a causal connection to the damage alleged here. State Farm issued Plaintiffs a replacement cost policy, so the property *did* meet the underwriting guidelines and *was* eligible for replacement cost coverage. *See Steinkamp*, 2023 WL 11920886, at *4

("This cannot be a misrepresentation because there is no indication that Plaintiff's property did not meet State Farm's underwriting requirements."). Further, there is no indication that the coverage values are wrong or that the property had some pre-existing condition that negated or limited coverage for the roof. The policy provides coverage for hail damage, but the parties disagree about the extent of the hail damage and whether some of the damage was caused by hail or another peril. Thus, any "implied" representations by the agent about the property's condition or its eligibility for a replacement cost value policy were either true or not the cause of Plaintiffs' losses. *See Rain Drop Found., Inc. v. State Farm Fire & Cas. Co.*, No. 24-1101-D, 2025 WL 582562, at *5 (W.D. Okla. Feb. 21, 2025) ("[T]he Court is unable to make out a causal nexus between [the agent's] actions at the procurement stage and Plaintiff's alleged prejudice at the coverage determination stage.").

Last, Plaintiffs contend the Hagar Defendants failed to disclose State Farm's bad faith claims handling tactics or its narrow internal definition of hail damage. "Although an agent may be held accountable for failing to answer an insured's coverage questions accurately, he or she generally is not obligated to explain the policy terms to the insured." *Smith*, 2014 WL 1382488, at *3. Other than an alleged assurance that they would receive a replacement cost policy that afforded them the best coverage they could get with State Farm, Plaintiffs do not identify any affirmative statements by the Hagar Defendants concerning State Farm's claims handling or policy interpretation. Under these circumstances, Plaintiffs cannot establish that the Hagar Defendants breached a duty of full disclosure. *See id.*

CONCLUSION

***5** State Farm has met its burden of establishing that Plaintiffs are unable to establish a cause of action against the Hagar Defendants. The Court concludes that Brent Hagar and the Hagar State Farm Agency, LLC are fraudulently joined defendants, and their citizenship must be disregarded for purposes of determining subject matter jurisdiction. Plaintiffs' Motion to Remand [Doc. No. 12] is therefore DENIED. The claims against these defendants are dismissed without prejudice.

IT IS SO ORDERED this 17[th] day of April, 2025.

All Citations

Slip Copy, 2025 WL 1139489

Footnotes

1 The Cout has also reviewed Plaintiffs' Notice of Supplemental Authority [Doc. No. 31].

2 State Farm also contends that the citizenship of Mr. Hagar and the Agency may disregarded because neither was "properly joined and served" at the time of removal. *See* 28 U.S.C. § 1441(b)(2). The Court need not address this issue because it is has determined that these Defendants were fraudulently joined and should be dismissed.

3 Unpublished decisions are cited for their persuasive value. *See* Fed. R. App. P. 32.1.

4 Plaintiffs' Petition refers to the Hagar Agency and Mr. Hagar collectively and does not differentiate between their conduct.

5 This Court has recently remanded other cases involving negligent procurement and constructive fraud claims against State Farm insurance agents. The Court finds it unnecessary, at this time, to revisit any of the legal conclusions reached in those cases because the allegations presented in this action are different. Plaintiffs in this case do not plead that the insurance agent made affirmative statements about the scope of coverage, the condition of the property, or the agent's underwriting duties. Instead, they primarily rely on "inherent" or "implied" representations that insurance agents purportedly make every time they market, bind, and sell

a policy. *See, e.g.* Pls.' Br. at 1 ("In every instance of the Scheme, State Farm's captive agents inherently represent to the insured—by virtue of the act of marketing, selling, and binding State Farm replacement cost insurance coverage—that the property at issue meets State Farm's underwriting guidelines, qualifies for the coverage stated in the policy, and is free from any defect that would negate that coverage.").

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

AMBER STAFFORD,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	NO. CIV-25-0008-HE
	)	
STATE FARM FIRE AND CASUALTY COMPANY and MIKE MUECKE INSURANCE AGENCY, INC.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff Amber Stafford (Stafford) has moved to remand this case to state court. It was previously removed by defendant State Farm Fire and Casualty Company (State Farm) from the District Court of Oklahoma County, State of Oklahoma.

According to the state court petition, Stafford purchased a homeowner's policy from State Farm providing replacement cost coverage. The policy was purchased through State Farm's alleged "captive agent," defendant Mike Muecke Insurance Agency, Inc. (MMIA). Subsequently, Stafford's property sustained wind and hail damage during a storm. She timely filed a claim in accordance with the policy. State Farm prepared an estimate of $9,695.27 for repair or replacement of the damage. After applying the policy deductible, State Farm issued payments totaling $5,421.81. According to Stafford, the payments were drastically below the amount required to cover the total roof replacement that her property

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needed,[1] and State Farm manipulated its loss findings to avoid paying her all the amounts due under the policy pursuant to a "systematic and pervasive" scheme.

Thereafter, Stafford filed this case in state court. She asserted claims for breach of contract, breach of the duty of good faith and fair dealing, and constructive fraud and negligent misrepresentation against State Farm. In addition, she asserted claims against MMIA for negligent procurement of insurance and constructive fraud and negligent misrepresentation.

State Farm removed the case on the basis of diversity jurisdiction under 28 U.S.C. § 1332. While acknowledging Stafford and MMIA's citizenship is not diverse, State Farm contended MMIA's citizenship was immaterial to the diversity of citizenship determination because MMIA was fraudulently joined as a defendant.

Stafford's motion argues MMIA was properly joined as a defendant and that diversity is therefore lacking as a basis for jurisdiction. State Farm has responded, continuing to assert MMIA was fraudulently joined as a defendant, and Stafford has replied. Both parties have also submitted notices of supplemental authority in support of their respective positions. Upon review, the court concludes that State Farm has met the heavy burden of proving MMIA was fraudulently joined within the meaning of the applicable removal standards. *See* Dutcher v. Matheson, 733 F.3d 980, 988 (10th Cir. 2013) ("The defendant seeking removal bears a heavy burden of proving fraudulent joinder[.]") (quotation marks and citation omitted).

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[1] *Stafford's contractor had submitted a damage estimate of $29,148.18.*

"To establish fraudulent joinder, the removing party must demonstrate either: (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court." Dutcher, 733 F.3d at 988 (quotation marks, citation and alteration omitted). State Farm relies on both prongs of this test. Because the court concludes State Farm has satisfied the second prong—inability to establish a cause of action against MMIA—the court need not address the first prong.

Under the second prong, State Farm must demonstrate "there is no possibility that [Stafford] would be able to establish a cause of action against [MMIA] in state court." Montano v. Allstate Indemnity, Case No. 99-2225, 2000 WL 525592, at *1 (10th Cir. April 14, 2000) (citation omitted); *see also* Brazell v. Waite, 525 Fed. Appx. 878, 881 (10th Cir. 2013) ("In general, the removing party must show that the plaintiff has no cause of action against the fraudulently joined defendant.") (internal quotation marks and citations omitted). The nonliability of MMIA must be "proven with complete certainty." Smoot v. Chicago, R.I. & P.R. Co., 378 F.2d 879, 882 (10th Cir. 1967).

In deciding the fraudulent joinder issue, "the court may pierce the pleadings, consider the entire record, and determine the basis of joinder by any means available." Dodd v. Fawcett Publications, Inc., 329 F.2d 82, 85 (10th Cir. 1964). The court, however, may not "pre-try, as a matter of course, doubtful issues of fact to determine removability; the issue must be capable of summary determination[.]" *Id.*

As noted above, Stafford asserts claims against MMIA for negligent procurement of insurance and constructive fraud and negligent misrepresentation. With respect to the first claim, Oklahoma law recognizes that "an insurance agent may be liable . . . in tort for failure to . . . use reasonable care, skill and diligence in the procurement of insurance . . . if, by the agent's fault, insurance is not procured as promised and the insured suffers a loss." Swickey v. Silvey Companies, 979 P.2d 266, 268-69 (Okla. Civ. App. 1999). An agent must "offer coverage mandated by law and for needs that are disclosed by the insureds[.]" Rotan v. Farmers Ins. Group of Companies, Inc., 83 P.3d 894, 895 (Okla. Civ. App. 2003). Stafford alleges she contacted MMIA to "procure full replacement cost homeowners insurance coverage from State Farm" and requested MMIA to "obtain a replacement cost policy that would provide coverage for the Insured Property in the event of a loss." Doc. #1-2, ¶ 25(a). In addition, she alleges MMIA was "aware that [she] need[ed] coverage under a policy that would fully replace the [property's] roof in the event of a loss, without exclusion of any weather-related loss." *Id.*, ¶ 25(b). But it is completely certain, from the record, that Stafford received the policy she requested—a replacement cost value policy. There are no factual allegations to show the issued policy excluded a "weather-related loss." Indeed, the policy covered wind and hail damage. State Farm's estimate provided for replacement of Stafford's property damaged by hail, specifically, "the roof's soft metals, siding, windows, outdoor fencing, and a small section of [the] gutter system." *Id.*, ¶ 40(e). However, State Farm also determined that "only the replacement of small patches of [the roof's] shingles, predominantly on a per-shingle basis" was required. *Id.* There are no factual allegations, or evidence in the record, to support a conclusion that this determination was based on any pre-existing condition or defect. The court concludes that Stafford has not shown a basis for establishing that MMIA failed to procure insurance as promised. And while Stafford asserts that the coverage she received was "illusory," she provides no factual allegations to support the assertion. The fact that a claim under a policy is denied, or paid at a level less than that sought by the insured, does not, without more, render the policy illusory. Here, the court concludes there is no possibility of recovery against MMIA for negligent procurement of insurance.

As to the remaining claims — for constructive fraud and negligent misrepresentation — the court reaches the same conclusion. Under Oklahoma law, constructive fraud results from any "breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under [it], by misleading another to [her] prejudice, or to the prejudice of any one claiming under [her]." Okla. Stat. tit. 15, § 59. Thus, Stafford must establish a duty which has been breached by MMIA, that MMIA benefited from that breach, and that Stafford was prejudiced by the breach.

The Oklahoma Supreme Court has stated that although "a party may keep absolute silence and violate no rule of equity, . . . if [the party] volunteers to speak and to convey information, which may influence the conduct of the other party, [the party] is bound to disclose the whole truth." Uptegraft v. Dome Petroleum Corp., 764 P.2d 1350, 1353-54 (Okla. 1988). In other words, "[a] duty to speak may arise from partial disclosure, the speaker being under a duty to say nothing or to tell the whole truth." *Id.* at 1353. "One conveying a false impression by the disclosure of some facts and the concealment of others is guilty of fraud even though [the party's] statement is true as far as it goes, since concealment is in effect a false representation that what is disclosed is the whole truth." *Id.*

Stafford has not alleged, and the record does not contain, any factual allegations of a partial disclosure by MMIA which gave rise to a duty to speak and convey the information Stafford asserts should have been conveyed. In her pleading and papers, Stafford asserts that MMIA failed to disclose all material information about State Farm's "bad faith claims handling tactics," its reliance on "undisclosed definitions and standards" outside the policy, and "internal and external complaints" about State Farm's handling of wind and hail claims. However, there are no factual allegations that demonstrate MMIA disclosed any information that would have required MMIA to convey the information Stafford asserts was not disclosed. The court concludes that Stafford cannot show any duty to speak on the part of MMIA. As a result, the court concludes there is no possibility of recovery against MMIA for constructive fraud.

Under Oklahoma law, a claim for negligent misrepresentation requires "[1] a material misrepresentation by defendant made in the course of its business; [2] defendant's breach of a duty . . . in making the misrepresentation; [3] and reasonable reliance by the plaintiff, to her detriment, on the actions or words of the defendant." Sullivan v. Wyndham Hotels & Resorts, Inc., Case No. 21-7003, 2021 WL 5822690, at *2 (10th Cir. 2021) (quotation marks, citation and alteration omitted) (unpublished decision cited as persuasive pursuant to 10th Cir. R. 32.1(A)). Stafford does not provide any factual allegations to show MMIA made any express statements which constitute representations by MMIA. Instead, she asserts that MMIA's actions of procuring the policy and binding coverage and of renewing the policy impliedly represented to Stafford the property met State Farm's underwriting requirements and was eligible for coverage; the replacement cost value

MMIA had calculated was accurate, commensurate with actual reconstruction costs; and represented 100% "insurance to value;" the policy coverage included coverage for loss arising from wind or hail, and no condition, pre-existing damage, deterioration, wear-and-tear, or other defect negated the property's eligibility for full coverage under the policy.

Contrary to plaintiff's suggestion, the Oklahoma cases do not support the idea that an agent is required to personally inspect a premises before binding a policy or that, merely by binding or delivering a homeowner's policy, the agent impliedly or "inherently" represents that no exclusions in the policy potentially apply or that a claim will be paid. However, even if MMIA's acts constituted the representations asserted, the court concludes that Stafford cannot show that the representations were untrue or resulted in detriment to her. State Farm issued a homeowners policy providing replacement cost coverage to Stafford. As such, her property satisfied State Farm's underwriting requirements and was eligible for replacement cost coverage. There are no factual allegations to demonstrate the replacement cost value MMIA had calculated was inaccurate, not commensurate with actual reconstruction costs, or not representative of 100% "insurance to value." Moreover, the policy issued by State Farm included coverage for loss arising from wind or hail. There are also no factual allegations that the property had any preexisting condition or other defect that negated or limited the coverage for the property, specifically the roof. In sum, the alleged implied representations by MMIA were either true or not to Stafford's detriment. The court therefore concludes that there is no possibility of recovery against MMIA for negligent misrepresentation.

For the reasons stated, the court concludes that State Farm has established MMIA was fraudulently joined as a defendant and MMIA's citizenship must be disregarded for purposes of determining the existence of diversity jurisdiction under 28 U.S.C. § 1332.

Plaintiff's Motion to Remand [Doc. #15] is therefore **DENIED**. Plaintiff's claim against defendant Mike Muecke Insurance Agency, Inc. is **DISMISSED WITHOUT PREJUDICE**. In light of this disposition, defendant Mike Muecke Insurance Agency, Inc.'s Motion to Dismiss Petition [Doc. #4] is **STRICKEN as MOOT**.[2]

IT IS SO ORDERED.

Dated this 27th day of May, 2025.

JOE HEATON
UNITED STATES DISTRICT JUDGE

[2] *The court previously stayed briefing as to MMIA's motion, pending disposition of the motion to remand [Doc. #17].*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) BRIAN D. STONE, Plaintiff, v. (1) STATE FARM FIRE AND CASUALTY COMPANY (2) ALFRED TOM CILIO, and (3) REBECCA LAFEVERS STATE FARM AGENCY, INC., Defendants.	)))))))))))))	Case No. CIV-25-7-D

ORDER

Before the Court is Plaintiff's Motion to Remand [Doc. No. 11]. In the motion and subsequent briefing, the parties dispute the joinder of two in-state Defendants, State Farm Fire and Casualty Company agents Alfred Tom Cilio ("Mr. Cilio") and Rebecca LaFevers State Farm Agency, Inc. ("LaFevers Agency") (together, "the agents").

In its notice of removal [Doc. No. 1], State Farm Fire and Casualty Company ("State Farm") alleges Plaintiff fraudulently joined the agents to defeat diversity jurisdiction. For the reasons that follow, the Court agrees with State Farm and denies Plaintiff's motion to remand; claims against the agents are dismissed without prejudice and without leave to amend.

Background

In 2023, Plaintiff purchased a State Farm homeowner's policy through State Farm's agent and Oklahoma resident Tom Cilio. Mr. Cilio later retired, and the LaFevers Agency

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inherited servicing of the policy.

On May 21, 2024, a hailstorm damaged Plaintiff's property. State Farm sent an adjuster to inspect. The adjuster and State Farm then estimated that the roof required the replacement of five shingles, three roof vents, and one rain cap. Because the cost of the repair was less than the policy's deductible, State Farm did not issue a payment on the claim.

Plaintiff then sued State Farm for breach of contract and bad faith.[1] Importantly here, Plaintiff also sued the agents on a theory of negligent procurement of an insurance contract and constructive fraud / negligent misrepresentation.

According to the complaint, Plaintiff is the victim of a "systematic and pervasive Scheme" by which State Farm's "captive agents" "expressly and/or impliedly represent" that "the property meets State Farm's underwriting requirements" and is eligible for a policy covering the property's "replacement cost value[.]" More specifically, State Farm (1) "considers its agents to be the first line of its underwriting division[;]" (2) those agents "undertake the calculation of replacement cost [coverage] for the insured[;]" and (3) the agents "represent[] that no condition, pre-existing damage, deterioration, wear-and-tear, or other defect negates the property's eligibility for full coverage under the policy." The agents repeat that representation "each time the policy renews." The "captive agents" are required to "inspect the property to determine [ ] eligibility[,]" but neither the "[a]gent[s] nor State

[1] Plaintiff also alleges one count of constructive fraud and negligent misrepresentation against State Farm.

Farm ever inspected the Insured Property or procured such an inspection from a third party."

To round out the scheme, when the property suffers a loss, State Farm's "adjusters misattribute damage to non-covered causes" such as "'wear and tear,'" "'pre-existing damage,'" or "'manufacturer defect[.]'" The claim is then denied.

Standard of Decision

To establish fraudulent joinder, the removing party "must demonstrate either: 1) actual fraud in the pleading of jurisdictional facts, or 2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court." *Dutcher v. Matheson*, 733 F.3d 980, 988 (10th Cir. 2013) (internal quotation omitted). Defendant bears the burden of establishing that federal jurisdiction exists. *See McPhail v. Deere & Co.*, 529 F.3d 947, 955 (10th Cir. 2008). Removal statutes are "strictly construed, and all doubts are to be resolved against removal." *Fajen v. Found. Reserve Ins. Co.*, 683 F.2d 331, 333 (10th Cir. 1982) (internal citation omitted).[2]

Typically, "removability can be determined by the original pleadings and normally the statement of a cause of action against the resident defendant will suffice to prevent removal." *Smoot v. Chicago, Rock Island & Pac. R.R. Co.*, 378 F.2d 879, 882 (10th Cir.

[2] To satisfy the "heavy burden on the party asserting fraudulent joinder," State Farm must show that there is no possibility that Plaintiff would be able to establish a cause of action against the agents in state court. *See Montano v. Allstate Indem.*, No. 99-2225, 2000 WL 525592, at *1 (10th Cir. Apr. 14, 2000) (unpublished) (quotations and citation omitted); *Brazell v. Waite*, 525 F. App'x 878, 881 (10th Cir. June 4, 2013) (unpublished) (citation omitted) ("[T]he removing party must show that the plaintiff has 'no cause of action' against the fraudulently joined defendant.").

1967) (internal citations omitted). But where a party specifically alleges fraudulent joinder, "the court may pierce the pleadings, ... consider the entire record, and determine the basis of joinder *by any means available*." *Dodd v. Fawcett Publications, Inc.*, 329 F.2d 82, 85 (10th Cir. 1964) (emphasis added) (citations omitted); *see also Smoot*, 378 F.2d at 881-82. The Court may not, however, "pre-try...doubtful issues of fact to determine removability; the issue must be capable of summary determination and be proven with complete certainty." *Smoot*, 378 F.2d at 882.[3]

Analysis

The Court here returns to the familiar topic of an in-state insurance agent joined in a complaint that otherwise alleges bad faith conduct by an insurer. As Plaintiff points out in his brief, federal courts in this state have addressed the topic over twenty times (Motion [Doc. No. 11, at p. 3 n.2]) and frequently remand to state court.

In response, State Farm points out that the "pervasive scheme" allegedly at issue in this case has disturbingly convenient contours for a litigant seeking to foreclose federal jurisdiction. For example, according to deposition testimony in another case where the

[3] Plaintiff here alleges two causes of action against the agents: negligent procurement and constructive fraud / negligent misrepresentation. Under Oklahoma law, an insurance agent may be liable for negligent procurement "if, by the agent's fault, insurance is not procured as promised and the insured suffers a loss." *Kutz v. State Farm Fire & Cas. Co.*, 189 P.3d 740, 744-45 (Okla. 2008). The agent is therefore required to "act in good faith and use reasonable care, skill and diligence in the procurement of insurance[.]" *Id.* (citation omitted).

The agent engages in constructive fraud and negligent misrepresentation if he or she "[1] breach[es] [a] duty which, without an actually fraudulent intent, [2] gains an advantage to the person in fault, or anyone claiming under him, by [3] misleading another to his prejudice...." Okla. Stat. tit. 15, § 59.

plaintiff is represented by identical counsel, the alleged scheme began around "2019 or [20]20[.]" Response [Doc. No. 12 at p. 20] (citing to Exh. 7, Discovery in *Hosier v. State Farm*, No. CJ-2021-1741 (Okla. Cnty. Dec. 13, 2022)). In *Moore v. State Farm*, CIV-25-1814 (W.D. Okla. Feb 11, 2025) (Doc. No. 1), however—where the plaintiff was also represented by the same counsel—the scheme began closer to 2000. Moreover, Defendant cites a series of cases where the scheme extends beyond State Farm to include Allstate's and Hanover's agents. *See e.g., Strahan v. Allstate Indemnity Co.*, No. CIV-14-1392-C, 2015 WL 730055 (W.D. Okla. Feb. 19, 2015); *Parkison v. Hanover Ins. Co.*, et al., 2023 WL 8452436 (W.D. Okla. Nov. 20, 2023). Lastly, Defendant points out that, in cases where a court has granted jurisdictional discovery, allegations against the in-state defendants turned out to be fraudulent. *Goebel v. State Farm*, No. CIV-22-0882-HE, 2023 WL 11883977 at *2-3 (W.D. Okla. Aug. 7, 2023) ("[The] petition filed by plaintiffs [wa]s replete with false statements" and there was "no good faith basis for a substantial portion of the facts alleged"); *Marino v. State Farm*, No. CIV-22-885-HE, 2023 WL 11915691 at *3 (W.D. Okla. Aug. 7, 2023) ("There are, in short, multiple allegations going to the potential liability of [the agent] for which there is zero evidence, indicating that those allegations were made without a valid, good faith basis.").

In his reply, Plaintiff contends the scheme is pervasive and based in fact. Plaintiff cites testimonial evidence in another case supporting the existence of a State Farm-wide scheme to deny hail damage claims. *See* Reply [Doc. No. 13 at p. 2] (citing the testimony of an adjuster); *see also* Sur-Reply [Doc. No. 20 at p. 2] (contesting the relevance of the cited testimony).[4]

In a previous order, the Court addressed "the cookie-cutter character of the allegations" in these cases and found them "suspicious" but "not necessarily suggestive of fraud in this particular action." *Rain Drop Found., Inc. v. State Farm Fire & Cas. Co.*, No. 24-1101-D, 2025 WL 582562, at *2 (W.D. Okla. Feb. 21, 2025) (citing *Norman v. State Farm Fire & Cas. Co.*, No. CIV-24-1132-R, 2025 WL 342871, at *4 (W.D. Okla. Jan. 30, 2025)). Considering the high bar required to find fraudulent joinder, the Court does not depart from that practice here. Although the trend to recycle nearly identical complaints is troubling, the Court does not deem the practice currently sufficient to find actual fraud.

Piercing the pleadings, however, the Court is convinced here of fraudulent joinder. Plaintiff's claims against the agents are premised on three overarching allegations: (1) State Farm and the agents failed to "inspect[] the Insured Property" or "procure[] such an inspection from a third party[;]" (2) the agents failed to "undertake [an accurate] calculation of replacement cost [coverage] for the insured[;]" and (3) Plaintiff suffered a loss because State Farm later "misattribute[d] damage to non-covered causes" such as 'wear and tear,' 'pre-existing damage,' or 'manufacturer defect[.]" As Defendant's attachments to its briefing demonstrate, all three allegations lack a basis in fact.

Concerning the first allegation—that State Farm and the agents failed to inspect the property—State Farm attached an inspection report. *See* Sur-Reply [Doc. No. 20-2]. The

[4] The Court may take judicial notice of the cited public records. *See Warnick v. Cooley*, 895 F.3d 746, 754 n.6 (10th Cir. 2018).

report demonstrates that a State Farm underwriter ordered an inspection from a third party, Myriad Risk Manager. The inspection was completed on May 25, 2023, and was performed "for the limited purpose of underwriting the risk and determining eligibility for insurance[.]" *See* Sur-Reply [Doc. No. 20-2, at p. 3]. The report found damage to the foundation of the home, but no pre-existing damage to the roof. *Id.* The report thus undercuts a primary reason Plaintiff alleges he is entitled to relief against the agents.[5]

Plaintiff's second central allegation—that the agents failed to "undertake [an accurate] calculation of replacement cost [coverage]"—is either false or irrelevant. A review of the contract demonstrates that, as is most commonly the case, Plaintiff provided information to State Farm and was involved in selecting his own coverage limits. *See* Notice of Removal [Doc. No. 1-18, at p. 1] (the policy). More importantly, accepting the complaint as true and assuming that the agents were involved in calculating coverage, it is undisputed that Plaintiff's policy provided up to $257,000 in coverage. In Plaintiff's own words, "this isn't an underinsurance case." Motion [Doc. No. 11 at p. 17].

If, as Plaintiff admits, the contested policy provided adequate coverage, it is unclear how the agent's alleged miscalculations could bring about a cause of action against them here. *See Porter v. State Farm Fire & Cas. Co.*, No. CIV-25-187-R, 2025 WL 1151682

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[5] The Court is further puzzled by portions of Plaintiff's complaint. As quoted above, Plaintiff alleges the agents failed to inspect the property. In other portions of the complaint, however, he also alleges the agents failed to disclose the existence of "[a] defect, pre-existing damage, or other conditions that would exclude [the property] from replacement cost coverage." Petition [Doc. No. 1-2, ¶ 26(d)]. If, as Plaintiff first alleged, the agents failed to inspect the property, they could not have gained awareness of any "defect" or "pre-existing damage" that they would then have to disclose.

(W.D. Okla. Apr. 18, 2025), ("Plaintiffs indisputably received the replacement cost value policy they requested."); *Rain Drop Found., Inc.*,2025 WL 582562, at *4 ("Plaintiff's alleged damages arose, not because of the type of insurance procured, but because State Farm refused to replace Plaintiff's roof"); *Steinkamp v. State Farm Fire & Cas. Co.*, No. CIV-22-00047-PRW, 2023 WL 11920886, at *2 (W.D. Okla. Sept. 29, 2023) ("Plaintiff's claim against State Farm depends upon what damage her roof sustained, not the terms of her policy"); *Gellner v. Progressive N. Ins. Co.*, No. 21-CV-0401-CVE-JFJ, 2021 WL 5789146, at *3 (N.D. Okla. Dec. 7, 2021) (the dispute concerns "the cause of the damage to the boat, not the lack of collision coverage in the insurance policy"); *Smith v. Allstate Vehicle & Prop. Ins. Co.*, No. CIV-14-0018-HE, 2014 WL 1382488, at *2 (W.D. Okla. Apr. 8, 2014) ("plaintiffs acknowledge that coverage was obtained and do not allege that the amount of coverage was not what they had requested"); *Rivera v. Hartford Ins. Co. of the Midwest*, No. CIV-14-1082-HE, 2014 WL 7335320, at *2 (W.D. Okla. Dec. 19, 2014) ("plaintiffs do not allege in their complaint that they actually requested specific coverage which Hartford failed to provide").

Plaintiff's third overarching allegation—that Plaintiff suffered a loss because of the agent's actions—is similarly false. Plaintiff alleges State Farm "misattribute[d] damage" to previously undisclosed "non-covered causes" such as "'wear and tear,' 'pre-existing damage,' or 'manufacturer defect'[.]" Although Plaintiff puts these phrases in quotation marks, the complaint does not cite which communication from State Farm Plaintiff is quoting—presumably the denial letter. The denial letter is, however, available for the Court to review. *See* [Doc. No. 12-2]. The letter acknowledges that Plaintiff suffered a "loss[,]" but then asserts the loss "d[id] not exceed [his] $2,577.00 deductible." "[N]on-covered causes" are not mentioned. Moreover, considering the previously described underwriting inspection did not find any pre-existing roof damage, it strains credulity to assert that State Farm's decision was based on secret and undisclosed "preexisting damage" not mentioned in the denial letter.

Lastly, the complaint alleges the agents, including the LaFevers Agency, made the same fraudulent representations described above each time the policy renewed. Mr. Cilio, however, retired shortly before the alleged loss in this case, and the LaFevers Agency was not involved in any of the policy's relevant renewals. *See* Notice of Removal [Doc. No. 1, at p. 5] (citing Renewal Declaration [Doc. No. 1-17 at p. 5] (showing Mr. Cilio was the renewal agent prior to May 21, 2024)). More importantly, the policy automatically renewed. *See* Renewal Declaration [Doc. No. 1-17 at p. 4] ("If the POLICY PERIOD is shown as 12 MONTHS, this policy will be renewed automatically subject to the premiums, rules, and forms in effect for each succeeding policy period."). It is therefore clear that allegations based on representations made during the policy's renewal have no basis in fact.

Conclusion

In arriving at these findings, the Court is aware of the exacting standard required to prove fraudulent joinder. As stated previously, the Court may not "pre-try…doubtful issues of fact to determine removability" and claims "must be capable of summary determination and be proven with complete certainty." *Smoot*, 378 F.2d at 882. The Court may, however, "pierce the pleadings, … consider the entire record, and determine the basis of joinder *by* *any means available*." *Dodd*, 329 F.2d at 85 (emphasis added) (citations omitted). Having done so, the Court is certain that Defendants have established fraudulent joinder.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Remand [Doc. No. 11] is **DENIED**. Claims against Alfred Tom Cilio and Rebecca LaFevers State Farm Agency, Inc., are **DISMISSED** without prejudice but without leave to amend.[6]

IT IS SO ORDERED this 20th day of August, 2025.

TIMOTHY D. DeGIUSTI
Chief United States District Judge

[6] "Where a plaintiff does not move for permission to amend the complaint, the district court commits no error by not granting such leave." *Burnett v. Mortg. Elec. Regis. Sys., Inc.*, 706 F.3d 1231, 1238 n.4 (10th Cir. 2013).