

majority opinion). Rather, *Oforji* illustrates the type of problem faced by plaintiffs A.F.M.J. and L.J.M., whose biological father was a United States citizen; their rights to remain in the United States are different from their mother's, but she might be unwilling to assert their rights for fear of being separated from them if she cannot also stay in the United States.

The fourth case on which defendants rely, *Johns v. Dept of Justice*, 624 F.2d 522 (5th Cir.1980), actually runs contrary to their position. In *Johns*, a husband and wife brought an infant girl from Mexico into the United States without a visa or other proper documentation. *Id.* at 523. Approximately five years later, the girl's biological mother sought her return to Mexico, claiming that the child had been kidnapped. *Id.* The couple contended that the biological mother had willingly given up the child and that they had taken the girl with the biological mother's consent. *Id.* The Fifth Circuit concluded that, in connection with deportation proceedings, neither the spouses nor the biological mother could represent the young girl's interests, and it remanded with instructions to appoint a guardian ad litem for the child and to direct the INS to conduct all further proceedings with the guardian ad litem serving as the child's representative. *Id.* at 523-24. The holding of *Johns* does not support defendants' argument that A.F.M.J., L.J.M., and M.R.J. have failed to state a claim for counsel at government expense because their mother is in removal proceedings with them. To the extent their mother's interests are not aligned with their interests, which is conceivable given that two of them might have a claim to United States citizenship, *Johns* indicates that someone other than the mother should be appointed to represent the children. Defendants' assertion that, simply because A.F.M.J., L.J.M., and M.R.J. are in removal proceedings with their mother,

their right-to-counsel claims are not cognizable lacks merit.

Conclusion

For the foregoing reasons, defendants' partial motion to dismiss, docket no. 229, is GRANTED in part, DEFERRED in part, and DENIED in part. Plaintiffs' claims against USCIS Director León Rodríguez are DISMISSED. Plaintiff J.E.V.G.'s right-to-counsel claim is DISMISSED as moot. Defendants' motion is DEFERRED with respect to plaintiff M.A.M.'s right-to-counsel claim, and the parties are DIRECTED to file, by May 6, 2016, a Joint Status Report concerning the status of M.A.M.'s removal proceedings. Defendants' partial motion to dismiss is otherwise DENIED. Defendants shall file their answer to the Third Amended Complaint by May 16, 2016. *See* Fed. R. Civ. P. 12(a)(4) (upon the denial of a Rule 12 motion, the Court may set a time for a responsive pleading to be filed).

IT IS SO ORDERED.



Clarence HOPKINS and Candace Hopkins, Plaintiffs,

v.

**FIFE RV AND AUTO CENTER,
et al., Defendants.**

No. 16-5357.

United States District Court,
W.D. Washington.

Signed Aug. 22, 2016.

Background: Buyer of travel trailer brought action in state court against seller,

manufacturer, and others involved in the sale, alleging eight state law claims, and two claims based on the Magnuson–Moss Warranty Act (MMWA). Following removal, buyer moved to remand.

Holding: The District Court, Ronald B. Leighton, J., held that removal was proper in lawsuit asserting distinct breaches of express and implied warranty claims under MMWA.

Motion denied.

1. Federal Courts ⇄2350

The existence of federal question jurisdiction is typically determined by the well-pleaded complaint rule; under the well-pleaded complaint rule, federal question jurisdiction is proper if a federal question appears on the face of a plaintiff's complaint. 28 U.S.C.A. § 1331.

2. Removal of Cases ⇄11, 19(5)

Removal was proper in lawsuit asserting distinct breaches of express and implied warranty claims under Magnuson–Moss Warranty Act (MMWA), even if majority of claims were based on state law, since federal court had original jurisdiction over claims brought under MMWA. Magnuson–Moss Warranty–Federal Trade Commission Improvement Act, § 110(d), 15 U.S.C.A. § 2310(d); 28 U.S.C.A. §§ 1331, 1441(a).

The attorney representing the plaintiff is Eugene N. Bolin, Jr. of Edmonds, WA.

The attorneys representing Defendants Fife RV & Auto Center, Inc., Kevin and Jane Doe Karl, and Developers Surety and

Indemnity Company are James W. Aiken and Kurt J. Strovink, of Seattle, WA.

The attorneys representing Defendant Dutchmen Manufacturing (Keystone RV Company) are Joseph P. Corr and Jacob M. Downs of Seattle, WA.

The attorneys representing Defendant American Bankers Insurance Company of Florida are Joseph P. Corr and Jacob M. Downs of Seattle, Washington and Walter D. Willson of Ridgeland, MS.

The attorney representing Defendant Solarity Credit Union is Carter L. Field of Yakima, WA.

ORDER ON PLAINTIFFS' MOTION TO REMAND

RONALD B. LEIGHTON, District
Judge.

THIS MATTER is before the Court on Plaintiff Hopkins' Motion to Remand [Dkt. # 19] this case to Pierce County Superior Court.

In March of 2015, the Hopkins purchased a 2014 travel trailer from Fife RV and Auto Center, complete with a one-year limited warranty. In addition, the Hopkins purchased a six-year service contract. After taking possession of the trailer, the Hopkins claim the trailer contained numerous manufacturing defects—paint scratches, water leaks, and electrical problems, among others. The Hopkins returned the trailer to Fife RV to repair these defects under the warranty agreement, but they were not satisfied with the repairs.

The Hopkins brought suit in Pierce County Superior Court against Fife RV, Dutchmen Manufacturing Inc.¹, and a number of other defendants involved in the sale of the travel trailer. They asserted

1. Keystone RV Company and its insurance company, American Bankers Insurance Company of Florida, claim that Dutchmen Manu-

facturing, Inc. was erroneously sued as the manufacturer of the travel trailer in this case. They assert they are the proper defendants.

eight state law claims, and two federal claims based on the Magnuson–Moss Warranty Act (MMWA).

Keystone RV Company timely removed this action based on the Court’s 28 U.S.C. § 1331 federal question subject matter jurisdiction over the Hopkins MMWA claims.

The Hopkins seek remand claiming their suit is predicated “primarily on state law”, and that the MMWA claim does not “pre-empt” the state law claims.

DISCUSSION

A. Federal Question Jurisdiction

[1] Civil actions may be removed from state court to federal court if original jurisdiction exists in the federal court at the time the complaint is filed. 28 U.S.C. § 1441(a). Federal question jurisdiction is proper when civil actions arise under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331. The existence of federal question jurisdiction is typically determined by the “well-pleaded complaint” rule. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429, 96 L.Ed.2d 318 (1987). Under the “well-pleaded complaint” rule, federal question jurisdiction is proper if a federal question appears on the face of a plaintiff’s complaint. *Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 10–11, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983).

[2] The Hopkins admit that two of the ten claims are predicated on federal law. (See Dkt. # 19 p. 3). Specifically, they assert distinct breaches of express and implied warranty claims under MMWA, 15 U.S.C. § 2310(d). Nevertheless, the Hopkins claim that the removal was improper because it is “based primarily on state

law,” and because the MMWA does not “preempt” their state law claims.

Both of these arguments are fundamentally flawed. The propriety of removal does not turn on whether an asserted federal claim “pre-empts” state law claims. And it does not weigh whether the claim is “based primarily on state law.” These phrases bear no meaning in law or logic as they pertain to federal removal proceedings. There is simply no basis for remanding this properly removed case.

Although MMWA may be filed in state court (15 U.S.C. § 2310(d)(1)(A)), nothing in the statute purports to prohibit removal of such a claim. Congress expressly authorized removal of federal claims 28 U.S.C. § 1441(a). Fife RV removed based on the federal claims alleged in the Hopkins’ complaint. This Court has original jurisdiction over the claims brought under the MMWA, and the removal was proper.

Hopkins’ Motion to Remand is DENIED.

IT IS SO ORDERED.



**Dr. Thomas C. WELTON and Mary
E. Welton, Plaintiffs,**

v.

**AMCO INSURANCE COMPANY,
Defendant.**

Case No. 14-cv-4066-DDC-KGG

United States District Court,
D. Kansas.

Signed March 31, 2016

Background: Insured, homeowners, brought action against homeowners policy