

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

WACHOVIA BANK, N.A.

PLAINTIFF

VS.

CIVIL ACTION NO.

1:09CV222-HSO-JMR

**STEPHEN R. COLSON; COLSON & WALLER,
PLLC; SJS DEVELOPMENT, LLC; HOPKINS
HOMES, LLC; TCG TELCOM, INC.;
PRESTIGE SPORTS MANAGEMENT, INC.;
ADVANCED TITLE AND ESCROW, LLC;
PRESTIGE INSURANCE AGENCY, INC.;
FIDELITY NATIONAL FINANCIAL, INC.;
LAWYERS TITLE INSURANCE
CORPORATION; FIDELITY NATIONAL
TITLE GROUP, INC.; JOHN DOES 1-50 AND
CORPORATIONS A-Z**

DEFENDANTS

**ADVANCED TITLE & ESCROW, LLC'S MEMORANDUM BRIEF IN SUPPORT
OF ITS RESPONSE TO SHOW CAUSE ORDER OF MAY 19, 2009 (DOC. 69)**

COMES NOW Advanced Title & Escrow, LLC ("Advanced Title"), by and through counsel of record, and submits this memorandum brief in support of its Response to Show Cause Order of May 19, 2009 (Doc. 69), filed simultaneously herewith, as follows:

UNDISPUTED FACTS

1. On or about February 13, 2009, Wachovia Bank, N.A. ("Wachovia") filed a complaint for interpleader in the Harrison County Chancery Court against various defendants.
2. Defendant Prestige Title, Inc. ("Prestige") later filed a notice of removal to federal court based on diversity jurisdiction, 28 U.S.C. § 1332, and other named defendants joined in

that motion. (Docs. 1, 12-18).

3. After the present action had been removed to federal court, Sandion d/b/a Coldwell Banker United, Realtors (“Sandion”) moved successfully to intervene in this action as a defendant. (Docs. 43-1, 69). Defendant Sandion, like Plaintiff Wachovia, is a North Carolina citizen. (Doc. 69 at p. 5).

4. On May 19, 2009, this Court entered an Order requiring the parties to show cause why this action should not be remanded to state court, in light of the intervention of Sandion, a non-diverse defendant. (Doc. 69 at pp. 5, 7). This Court noted that, because this case involved Rule 22 interpleader as opposed to statutory interpleader, complete diversity is required. (Doc. 69 at p.4).

LEGAL ARGUMENT

At least some federal courts have held that it is permissible to convert a statutory interpleader action into a Rule 22 action. See Indem. Ins. Co. v. Romagnoli, 2002 WL 922170, *2 (S.D. N.Y. 2002). There does not appear to be any reason that the converse could not also be true – i.e. that a court can convert a Rule 22 action, such as the present case, into a statutory interpleader action.

The Federal Interpleader Statute is set forth at 28 U.S.C. § 1335. That statute provides, in relevant part:

(a) The district courts shall have original jurisdiction over any civil action of interpleader . . . filed by any person, firm, or corporation, association or society having in his or its custody or possession money . . . of the value of \$500 or more . . ., if (1) Two or more adverse claimants, of diverse citizenship as defined in subsection (a) or (d) of section 1332 of this title, are claiming or may claim to be entitled to such money . . . and if (2) the plaintiff has deposited such money . . . into the registry of the court

28 U.S.C. § 1335(a). Federal courts have construed this statute to require only “minimal diversity, that is, diversity of citizenship between two claimants, without regard to the circumstance that other rival claimants may be co-citizens[.]” Travelers Indem. Co. v. Greyhound Lines, Inc., 377 F.2d 325, 326 (5th Cir. 1967). See also State Farm Fire & Casualty Co. v. Tashire, 386 U.S. 523, 530-531, 87 S.Ct. 1199, 1203, 18 L.Ed.2d 270 (1967) (explaining that complete diversity is not constitutionally required and upholding interpleader under § 1335 based on minimal diversity, *i.e.* diversity between two or more adverse parties).

As mentioned previously, this case was removed to federal court from state court. Neither the Supreme Court nor the Fifth Circuit appears to have addressed the interplay between the Federal Interpleader Statute and the federal removal statute, 28 U.S.C. § 1441. Non-binding courts have addressed this issue, however, but have “divided on the question of whether removal is permitted under Section 1441 where the basis for original jurisdiction is statutory interpleader.” Fed. Ins. Co. v. Tyco-Inter’l Ltd., 422 F.Supp.2d 357, 393 (S.D. N.Y. 2006). “The division focuses around the issue of whether an action can be removed under Section 1441 where there is only minimal (and not complete) diversity between the parties.” Id. at 393-94.

At least one district court in the Fifth Circuit, the United States District Court for the Eastern District of Louisiana, has held that removal is not permitted under Section 1441 where the basis for original jurisdiction is statutory interpleader. See Juneau v. Dumas, 2007 WL 609162 (E.D. La. 2007); Mandalay Oil & Gas, L.L.C. v. Energy Develop. Corp., 1998 WL 859531 (E.D. La. 1998). Nevertheless, the courts that have addressed the issue “do not appear to have adopted a clear majority rule[.]” Fed. Ins. Co., 422 F.Supp.2d at 395 (emphasis added).

To the extent it is permissible to do so, Advanced Title respectfully requests that this Court convert the present Rule 22 interpleader action into a statutory interpleader action. See,

e.g., Romagnoli, 2002 WL 922170 at *2 (noting that courts could convert a statutory interpleader action to a Rule 22 action). It would appear that Wachovia might not be adverse to such a conversion (although counsel for Advanced Title has not spoken to counsel for Wachovia about this), since its attorney responded to this Court's Show Cause Order of May 19, 2009, as follows: ". . . Wachovia Bank, N.A. is an innocent stakeholder and, therefore, will not present briefs either in opposition to or in favor of remand as it desires only a jurisdictionally sufficient order of discharge once all parties are present." (Doc. 70).

Assuming arguendo that this Court is able and willing to convert the present lawsuit into a statutory interpleader action, this Court should follow those courts that have found that removal is permitted under Section 1441 where the basis for original jurisdiction is statutory interpleader, and conclude that remand is unnecessary here, because the two requirements of subsection (a) of § 1335, the Federal Interpleader Statute, are satisfied. First, minimal diversity existed at the time of removal of this case (and continues to exist). Claimant Lawyers Title Insurance Corporation is a Nebraska corporation with its principal place of business located in Nebraska, and claimant Prestige Title, Inc. is a Mississippi corporation with its principal place of business located in Mississippi. (See Doc. 1). Second, Wachovia previously deposited the funds at issue into the registry of a court (the Harrison County Chancery Court), pursuant to Court Order. See Copy of Harrison County Chancellor's Order of February 13, 2009, Granting Wachovia the Authority to Pay Funds into Registry of the Court, attached to Advanced Title's Response to Show Cause Order of May 19, 2009 (Doc. 69), filed simultaneously herewith, as **Exhibit "A"**). Those funds presumably were or will be transferred to the registry of this Court, assuming the case remains in federal court.

Advanced Title respectfully requests that this Court retain jurisdiction over this action, and for such other relief as the Court deems appropriate.

Respectfully Submitted,

ADVANCED TITLE & ESCROW, LLC

By Its Attorneys,

/s/ Allen E. Graham

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing document with the Clerk of Court using the ECF system, which will send an electronic notification of such filing to all counsel of record.

This, the 3rd Day of June, 2009.

/s/ Allen E. Graham

Allen E. Graham