Women for Justice

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Does Inclusion Of Workers' Compensation Claims Prevent Removal Of Third-Party Tort Claims In Cases When Removal Is Premised Upon Diversity Jurisdiction?

I. Introduction

"A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States." 28 U.S.C. § 1445(c). This statute "'reflects a strong congressional policy that where the state court has been utilized by one of the parties in the state compensation machinery, the case should remain in the state court for its ultimate disposition.'" Jones v. Roadway Exp., Inc., 931 F.2d 1086, 1091 (5th Cir. 1991) (quoting Kay v. Home Indemnity Co., 337 F.2d 898, 902 (5th Cir. 1964)).[1]

Section 1445(c) unambiguously and affirmatively prohibits removal of claims arising under the Alabama Workers' Compensation Act. "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377(1994) (internal citations omitted). The Eleventh Circuit interprets § 1445(c) as depriving federal courts of subject matter jurisdiction over workers' compensation claims. Watson v. General Elec., Inc., 2012 WL 5931884, *4 (N.D. Ala. 2012).

Plaintiffs have long sought to join third-party tort claims with workers' compensation claims, arguing that doing so makes the entire case non-removable pursuant to § 1445(c). Defendants have long sought to sever workers' compensation claims from third-party tort claims, arguing that doing so renders remand appropriate only for the workers' compensation claims pursuant to § 1445(c). The great majority of courts in Alabama favor the Plaintiffs' approach to this question of severance, but some courts in Alabama nevertheless hold the other way. The analysis for all courts centers on three questions: (1) may workers' compensation claims and third- party tort claims be properly joined; (2) is Rule 21, Fed. R. Civ. P., an appropriate method by which workers' compensation claims may be severed; and (3) does 28 U.S.C. § 1441(c) authorize severance when claims are removed to federal court on the basis of diversity jurisdiction?

II. Analysis

A. Whether Claims For Workers' Compensation May Be Properly Joined With Tort Claims Against Third-Parties

As district courts in Alabama have made clear, defendants should not confuse "removability of the claim against [a plaintiff's employer for worker's compensation benefits] with the fraudulent joinder of that claim." Watson v. General Elec., Inc., 2012 WL 5931884, *5 (N.D. Ala. 2012). "[I] n an action with a workers' compensation claim and other tort claims seeking several liability for damages in a work-related incident, joinder [is] proper because the claims involve (1) several liability, and (2) common questions of fact." Id. (citing Wingard v. Guillot Textilmaschinen GMBH, No. 2:08–cv–342–WKW, 2008 WL 4368884, at *3 (M.D. Ala. Sept. 23, 2008) (citing Fed. R. Civ. P. 20(a); Williams v. CNH America, LLC, 542 F.Supp.2d 1261, 1265 (M.D.Ala.2008); Brooks v. Paulk & Cope, Inc., 176 F.Supp.2d 1270, 1276 (M.D. Ala 2001)); see also Rule 20(a)(2)(A), Fed. R. Civ. P. Simply because a claim for workers' compensation benefits against an employer is not removable "does not mean that there is no joint, several, or alternative liability; nor does it mean that the worker's compensation claim has no real connection to the claims against [a third-party tortfeasor]." Watson, 2012 WL 593184 at *5 (citing Williams, 542 F.Supp.2d at 1265 (alteration supplied)).

Alabama district courts have found that workers' compensation claims against one defendant are properly joined with tort claims against another under Rule 20, Ala. R. Civ. P.:

> **It appears to this court that the Rule 20 requirements are met in this case. The Plaintiffs have sought several liability against two defendants for damages sustained as a result of the same alleged work-related incident. Although the claim against one defendant is for workers' compensation and the claims against the others are tort claims, the claims seem to at**

least involve common questions of fact. In addition, the Rule 20 standard does not require that there be a basis for joint liability, but allows joinder also on the basis of only "several" liability. The permissive joinder standard has been held to be satisfied in a case in which a[n] employee joined a claim against a union for discrimination and a claim against an employer for wrongful discharge. *See Rumbaugh v. Winifrede R.R. Co.*, 331 F.2d 530 (4th Cir.), *cert. denied,* 379 U.S. 929, 85 S.Ct. 322, 13 L.Ed.2d 341(1964).

Brooks v. Paulk & Cope, Inc., 176 F. Supp. 2d at 1276 (emphasis added).

Moreover, the Alabama Workers' Compensation Act specifically provides for the joinder of workers' compensation claims with third party tort claims arising out of the same transaction:

> If the injury or death for which compensation is payable under Articles 3 or 4 of this chapter was caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, ... the employee ... may proceed against the employer to recover compensation under this chapter ... and **at the same time**, may bring an action against the other party to recover damages for the injury or death, and the amount of the damages shall be ascertained and determined without regard to this chapter.

Section 25–5–11(a) Ala. Code 1975 (emphasis added); see Williams v. CNH Am., LLC, 542 F. Supp. 2d 1261, 1265 (M.D. Ala. 2008) (also quoting § 25-5-11-(a)).

The remedies that a plaintiff seeks in tort are different from those sought in their workers' compensation claims; however, that fact should not matter for purposes of evaluating proper joinder:

> The Defendants have emphasized that the remedies sought in a workers' compensation claim and a tort claim are different, and that only tort claims, not workers' compensation claims, are tried before a jury. **The court finds no authority, however, for the proposition that the nature of the relief sought, or the method by which relief is awarded, undermines the applicability of Rule 20 if the plaintiff is seeking joint, several, or alternative liability for claims with common questions of law or fact.** There are case management procedures, for example, procedures applied in cases in which both money damages and equitable relief are sought, which could apply in this case. *See Priest,* 953 F.Supp. at 364. In addition, the mere fact that the workers' compensation claim is not removable to federal court does not alter the fact that several liability is sought against defendants for claims involving common questions of fact.
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> …
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> Furthermore, and perhaps of more significance, there appears to at least be a question under Alabama law as to whether the joinder of a workers' compensation claim and tort claim against a third party is proper permissive joinder. **While the Alabama Court of Civil Appeals noted that the "usual procedure" is to sever such claims, the court has been cited to no authority, and is aware of none, which states that a state circuit court must sever such claims. In absence of such authority, the Plaintiffs' actions in joining those claims can hardly be viewed as egregious**. *See also Crowe,* 113 F.3d at 1538 (questions of substantive law must be resolved in favor of the plaintiffs).

Brooks v. Paulk & Cope, Inc., 176 F. Supp. 2d at 1276–77; see also, Tapscott v. MS Dealer Service Corp., 77 F.3d 1353, 1360 (11th Cir. 1996) ("We do not hold that mere misjoinder is fraudulent joinder, but we do agree ... that Appellants' attempt to join these parties is so egregious as to constitute fraudulent joinder.").

Note, however, that there should be an actionable claim for workers' compensation against the employer. If a plaintiff has clear knowledge regarding an admission of liability for workers' compensation benefits and knowledge that there are no additional issues regarding benefits due, such knowledge has been deemed sufficient by some Alabama courts to find that the employer is fraudulently joined. Callen v. Daimler Trucks North America, LLC, 2016 WL 3566736 (M.D. Ala. 2016). In Callen, the district court concluded that the Plaintiff's employer had been fraudulently joined because workers' compensation benefit payments had begun at the time the Complaint was filed. 2016 WL 3566736, * 3. Additionally, the removing defendant provided evidence that "benefits were paid, no additional benefits are due, and no issues have been presented regarding the benefits due." Id. As a result, the Court concluded that there was no possibility that state law would impose liability on the non-diverse defendant employer Callen Enterprises, and thus it was fraudulently joined. Ibid.

Thus, so long as a plaintiff has sought several liability against multiple defendants for damages sustained as a result of the same alleged work-related incident, and so long as there is a dispute as to liability for the workers' compensation benefits or a dispute regarding the benefits due, joinder pursuant to Rule 20, Ala. R. Civ. P. is proper and therefore not fraudulent.

B. Whether Severance Under Rule 21 Is Warranted

Defendants also request severance of claims for workers' compensation benefits based on Rule 21, Fed. R. Civ. P. "However, Rule 21 severance is generally considered proper only when claims have been misjoined under Federal Rule of Civil Procedure 20." Steel v. Viscofan USA, Inc., 2017 WL 253960, *4 (M.D. Ala. Jan. 19, 2017) (Borden, M.J.) (citing Alhassid v. Bank of Am., N.A., 60 F. Supp. 3d 1302, 1326 (S.D. Fla. 2014)). See also Branham v. YBE Oxford, LLC, 2013 WL 120648, *1 (N.D. Ala. 2013) (Hopkins, J.) ("Severance under Rule 21 is directly related to permissive joinder of parties under Rule 20.")

"[I]n certain limited circumstances, Rule 21 severance may also be justified by 'considerations of judicial economy, case management, prejudice to parties, and fundamental fairness' – even when Rule 20 allows joinder." Steel, 2017 WL 253960 at *4 (citing Barber v. Am.'s Wholesale Lender, 289 F.R.D. 364, 368 (M.D. Fla. 2013)). Defendants often argue that judicial economy is served by severance given the differences between workers' compensation claims and tort claims: (a) the time it takes to resolve the claims; (b) who the fact finders are; (c) what the burden of proof is; (d) the availability of the defense of contributory negligence; and (e) the methods of determining damages. See Formosa v. Lowe's Home Centers, Inc., 806 F. Supp. 2d 1181 (N.D. Ala. 2011).

While the claims are different in these respects, most Alabama courts have held severing them from one another does not advance the goal of judicial economy, primarily because severance would mean that properly joined claims with common questions of law and fact must be tried piecemeal in two different courts. See, e.g., Steel, 2017 WL 253960 at *4 ("the court is not convinced that the severance of Steel's workers' compensation and non-workers' compensation claims would increase

efficiency."); Wingard v. Guillot Textil-maschinen GMBH, 2008 WL 4368884, at *4 (M.D. Ala. 2008) ("severing the workers' compensation claim [from other tort claims arising from the same on-the-job injury]…would not promote judicial economy"); Watson v. General Elec., Inc., 2012 WL 5931884, *8 (N.D. Ala. 2012) ("[Remanding the entire case] furthers judicial economy by preserving the possibility that all claims will be tried together in one court, rather than piecemeal in both federal and state court."); Priest v. Sealift Services International, Inc., 953 F.Supp. 363, 364 (N.D. Ala. 1997) ("This court understands that some Alabama trial judges under similar procedural circumstances, instead of severing a workers' compensation count from a tort count, try to a jury the tort count against alleged non-employer tortfeasors while reserving to themselves the separate workers' compensation claim based on the same evidence, thus saving two trials."); Brooks, 176 F.Supp.2d at 1277 (remanding both workers' compensation and tort claims).

The only case that is contrary to these authorities on the issue of the relationship between severance and judicial economy is Formosa, 806 F. Supp. 2d at 1190.[2] However, the rationale in Formosa is merely dicta because the basis of the district court's retention of jurisdiction over the tort claims in that case was waiver. The court in Formosa made clear:

> Formosa waived her right to move to remand these [tort] claims by not moving to remand within thirty days of removal. Because subject matter jurisdiction otherwise exists over these [tort] claims based on diversity jurisdiction, the court may retain jurisdiction [over them], even if they were improperly removed to this court.... **The court does not now address the question of whether remand of the entire case would have been warranted if Formosa had [timely] filed her Motion to Remand[.]**

Formosa, 806 F.Supp.2d at 1192-93 (emphasis added). Thus, Formosa's dicta on the issue of severance is of limited persuasive value. The weight of authority concludes that severance of workers' compensation claims from third-party tort claims does not advance judicial economy to such an extent that Rule 21 severance is warranted.

C. Whether Severance Is Prohibited Under § 1441(c) When Remaining Claims Are Before The Court Pursuant To Diversity Jurisdiction

Plaintiffs who desire remand should argue that severance and remand of non-removable workers' compensation claims is appropriate only when the district court's jurisdiction over the remaining claims is based on a *federal question*, not when the court's jurisdiction over the remaining claims is based on *diversity*:

> (c) Joinder of Federal law claims and State law claims.
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> (1) If a civil action includes—
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> (A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and
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> (B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute, the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).
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> **(2) Upon removal of an action described in paragraph (1)**, the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

28 U.S.C.A. § 1441(c) (emphasis added). "[Section 1441] expressly authorizes a district court to exercise jurisdiction over a claim removed pursuant to § 1331 and remand 'otherwise non- removable claims or causes of action.' There is no such authority in claims removed pursuant to § 1332." Bryant v. Wausau Underwriters Ins. Co., 2008 WL 1808325, at *2 (M.D. Ala. Apr. 21, 2008).

The overwhelming majority of opinions from Alabama's district courts refuse to sever workers' compensation claims when the remaining claims are before the court on *diversity* jurisdiction. Instead, they deny severance and remand the entire case. See Jernigan v. The City of Eufaula, 123 F. Supp. 3d 1322, 1328-31 (M.D. Ala. 2015) (Albritton, J.); Phillips v. R.R. Dawson Bridge Co., LLC, 2014 WL 3970176, *2-4 (N.D. Ala. 2014) (Coogler, J.); Watson v. General Elec., Inc., 2012 WL 5931884, *4 (N.D. Ala. 2012) (Smith, J.); Williams v. CNH Am., LLC, 542 F. Supp. 2d 1261, 1265 (M.D. Ala. 2008) (Fuller, J.); Landrum v. Delta Int'l Mach. Corp, 2008 WL 2326324, at *5 (M.D. Ala. June 3, 2008) (Watkins, J.); Wingard v. Guillot Textil-maschinen GMBH, 2008 WL 4368884, at *4 (M.D. Ala. Sept. 23, 2008) (Watkins, J.); Bryant v. Wausau Underwriters, Ins. Co., 2008 WL 1808325 (M.D. Ala. Apr. 21, 2008) (Fuller, J.); Brooks v. Paulk & Cope, Inc., 176 F.Supp.2d 1270, 1274-77 (M.D. Ala 2001) (Albritton, J.); Priest v. Sealift Services International, Inc., 953 F.Supp. 363, 364 (N.D. Ala. 1997) (Acker, J.).[3]

While courts have severed workers' compensation claims and retained jurisdiction over remaining claims, they do so under authority of 28 U.S.C. § 1441(c)(2) that authorizes severance when the remaining claims are before the court on *federal question jurisdiction*. Landrum v. Georgia-Pac. Consumer Prod. LP, 2016 WL 7192207, at *6 (S.D. Ala. Oct. 25, 2016), (recognizing that "[w]hile complete remand may be possible where subject-matter jurisdiction is based on diversity, Congress has specifically prescribed severance as the method of dealing with cases where the Court has jurisdiction on the removable claims as federal questions.") report and recommendation adopted sub nom. Landrum v. Georgia-Pac. Consumer Prods. LP, 2016 WL 7191856 (S.D. Ala. Dec. 12, 2016); Baker v. Quantegy Unlimited Inv. Terminus, LLC, 2011 WL1433603, *1 (M.D. Ala. Apr. 14, 2011); Wilson v. Dominion Mgmt., LLC, 2010 WL 1542501, at *1 (S.D. Ala. Mar. 29, 2010), report and recommendation adopted, 2010 WL 1542471 (S.D. Ala. Apr. 19, 2010); Nelson v. Dolgencorp, Inc., 2005 WL 1588688, at *3 (S.D. Ala. June 30, 2005); Wall v. Kimberly-Clark, 2000 WL 1367995, *1 (S.D. Ala. 2000).[4]

There are only three Alabama cases holding that severance of workers' compensation claims from other removable claims is appropriate in *diversity* cases. Lamar v. Home Depot, 907 F.Supp. 2d 1311, 1314 (S.D. Ala. 2012); Long v. Raymond Corp.,[5] 2004 WL 5749325, at *1 (N.D. Ala. Nov. 24, 2004); Formosa v. Lowe's Home Centers, Inc., 806 F. Supp. 2d 1181 (N.D. Ala. 2011).[6] In support of an argument for severance even in cases before the court on diversity jurisdiction, defendants usually rely on the Lamar court's interpretation

of Reed v. Heil Co., 206 F.3d 1055 (11th Cir. 2000) and dicta in Formosa.[7] Thus, the question for courts that have not yet considered this issue is whether the reasoning in Lamar or the reasoning in the overwhelming majority of other cases that have addressed it is more persuasive.

The difference in reasoning primarily boils down to how the district courts interpret the Eleventh Circuit's decision in Reed v. Heil Co.. In Reed, the plaintiff was injured in a work-related accident and was later terminated from his employment. The plaintiff then brought claims in state court alleging that his termination constituted a breach of contract and violated both an Alabama statute prohibiting retaliation for filing workers' compensation claims and the Americans with Disabilities Act ("ADA"). 206 F.3d at 1056. After determining that the plaintiff's retaliation claim arose under the Alabama Workers' Compensation Act, the Eleventh Circuit determined that 28 U.S.C. § 1445(c) barred the removal of that claim. Id. The Eleventh Circuit then remanded the retaliation claim, and proceeded to address the merits of the ADA claim. The Eleventh Circuit asserted that the ADA claim was "properly before the district court," but offered no separate explanation as to why it was not remanding that claim as well. Id.

The Court in Lamar construed Reed as holding that the ADA claim was properly removed under § 1441(a). As a result, Lamar interprets Reed as *requiring* severance of only workers' compensation claims:

> The inclusion of a non-removable worker's compensation claim in the same lawsuit did not render removal of the action improper under either that statute or Section 1445(c). Instead, the presence of the worker's compensation claim triggered Section 1445(c) as to only that claim and required remand of only that claim. Thus, "the limits on federal jurisdiction imposed by 28 U.S.C. § 1445(c)" served only to require that the worker's compensation claim "must be remanded to state court." *Id.* at 1056, 1061.

Lamar, 907 F.Supp. 2d at 1314. The Court in Lamar further held that § 1441(c) (which permits severance only in federal question cases) was not implicated in Reed:

> "Where both federal and state causes of actions are asserted as a result of a single wrong based on a common event or transaction, no separate and independent federal claim exists under section 1441(c)." *In re: City of Mobile*, 75 F.3d 605, 608 (11th Cir.1996). Section 1441(c) was not in play in *Reed*, because both his worker's compensation retaliation claim and his ADA claim were based on a single event—his termination.

Lamar, 907 F.Supp. 2d at 1314. Because Lamar construed Reed as evidence that the Eleventh Circuit had already resolved the issue of partial versus total remand and that it had done so on grounds that applied to removals based on federal question or diversity (i.e., § 1441(a)), the Court in Lamar felt bound by precedent to sever the workers' compensation claims and to retain jurisdiction over the plaintiff's tort claims. Id. at 1316.

Many other courts in Alabama disagree with this interpretation of Reed. See, e.g., Bryant v. Wausau Underwriters, 2008 WL 1808325, *2 (M.D. Ala. 2008) ("*Reed* cannot be interpreted as authority for severing and remanding worker's compensation claims in cases that are removed under § 1332 (diversity) because *Reed* involved a case removed under § 1331 (federal question).").[8] Magistrate Judge Gray Borden in the Middle District of Alabama recently explained why denying severance and remanding the entire case is the better approach in diversity cases, and why the holding in Reed supports that conclusion:

> Although § 1445(c) compels the remand of only Steel's workers' compensation claim, the court finds no basis for severing the remaining claims and retaining jurisdiction over them. Here again, *Reed* is instructive. The Eleventh Circuit in *Reed* authorized the district court to sever and to remand a retaliatory discharge claim arising under Alabama workers' compensation law while retaining a claim under the Americans with Disabilities Act ("ADA"). *Reed*, 206 F.3d at 1063. **But there is a fundamental distinction in this context between federal question claims, such as Reed's ADA claim, and Steel's claims based in diversity jurisdiction. Congress has required severance and partial remand in one specific instance: where a federal question claim is joined in the same action with "a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute."** 28 U.S.C. § 1441(c)(1); see also 28 U.S.C. § 1441(c)(2) ("Upon removal ... the district court shall sever from the action all [nonremovable] claims ... and shall remand the severed claims....").

The retaliatory discharge and ADA claims in *Reed* fit this profile; Steel's claims do not. Therefore, § 1441(c) does not allow for the severance and partial remand of Steel's claims. *See, e.g., Phillips v. R.R. Dawson Bridge Co., LLC*, 2014 WL 3970176 at *3 (N.D. Ala. Aug. 12, 2014) (holding that § 1441(c) does not require severance of diversity claims); *Bryant v. Wausau Underwriters Ins. Co.*, 2008 WL 1808325, at *2 (M.D. Ala. Apr. 21, 2008) ("Indeed, § 1441(c) expressly authorizes a district court to exercise jurisdiction over a claim removed pursuant to § 1331 and remand 'otherwise non-removable claims or causes of action.' There is no such authority in claims removed pursuant to § 1332.... Accordingly, this Court holds that removal of this cause of action is prohibited by § 1445(c).").

The court acknowledges that at least one district court sitting within the Eleventh Circuit has reached the conclusion that *Reed* "applies equally in the diversity context." *Lamar v. Home Depot*, 907 F. Supp. 2d 1311, 1315 (S.D. Ala. 2012). As noted in *Lamar*: "Some courts have determined that the retention of a federal claim despite remand of the worker's compensation claim under Section 1445(c) can be justified under Section 1441(c), and the Court agrees." *Id.* at 1314. This court likewise agrees with the uncontroversial proposition that § 1441(c) allows for severance and partial remand. But it does so only for claims "arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title)." 28 U.S.C. § 1441(c)(1)(A). **Ultimately, this court will not read out of § 1441(c) the distinction between claims rooted in federal question and diversity jurisdiction, or join in *Lamar's* holding that *Reed* compels such a result. *See id*. at 1314–17. Rather, this court finds that "Reed cannot be interpreted as authority for severing and remanding worker's compensation claims in cases that are removed under § 1332 (diversity) because *Reed* involved a case removed under § 1331 (federal question)."** *Bryant*, 2008 WL 1808325 at *2 (citing Williams v. CNH Am., LLC, 542 F. Supp. 2d 1261, 1266 (M.D. Ala. 2008), which

holds that Reed is controlling authority only where federal question claims are joined with a workers' compensation claim). **Only this result "corresponds with the heightened federalism concerns underlying removal jurisdiction based on diversity citizenship," *Phillips*, 2014 WL 3970176 at *4, and only this result jibes with this court's interpretation of *Reed* in the context of §§ 1441(c) and 1445(c).** Steel v. Viscofan USA, Inc., 2017 WL 253960, at *3 (M.D. Ala. Jan. 19, 2017) (emphasis added).

The Eleventh Circuit has not yet resolved the issue of whether Reed compels severance of workers' compensation claims regardless of whether the court's jurisdiction is based on federal question or diversity, or whether Reed merely complies with the dictate of § 1441(c) that expressly authorizes the severance of workers' compensation claims only from federal question claims.

III. Conclusion

Plaintiffs have strong arguments, supported by the weight of authority, that third-party tort claims are properly joined with claims for workers' compensation, that Rule 21 severance is unwarranted, and that § 1441(c) prohibits severance in cases removed to federal district court on the basis of diversity jurisdiction. Thus, assuming Plaintiffs prefer remand so that they may remain in the forum in which they chose to file suit, they should argue that § 1445(c) compels remand of the entire case so long as: (a) plaintiff has asserted both tort claims and workers' compensation claims that arise from the same workplace accident; (b) there is a dispute as to liability or an issue regarding benefits due with respect to the workers' compensation claims; and (c) the case was removed on the basis of diversity jurisdiction.

1 See Bonner v. City of Prichard, Ala., 661 F.2d 1206 (11th Cir. 1981) (en banc) (adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981).

2 The Court in Lamar v. Home Depot, 907 F. Supp. 2d 1311, 1314 (S.D. Ala. 2012) refused to consider the "judicial economy" argument for or against severance, concluding that Reed v. Heil Co., 2016 F.3d 1055 (11th Cir. 2000) prohibits such an analysis. The next section explores the varying interpretations of Reed, whether or not it requires severance, and, if so, under what circumstances.

3 Notably, all but one of these cases were decided after Reed v. Heil Co., 206 F.3d 1055 (11th Cir. 2000).

4 See also Williams v. The Geo Group, Inc., 2016 WL 4435685, *2-3 (N.D. Fla. 2016); Shaw v. Ring Power Corp., 917 F.Supp.2d 1221, 1223-24 (N.D. Fla. 2013).

5 In Long, the Court found that the defendants had met their burden with respect to the amount in controversy and severed the plaintiff's workers' compensation claims *sua sponte*. 2004 WL 5749325 at *4. There was no consideration in that case with respect to whether § 1441(c) permitted severance of the workers' compensation claim when the remaining claims were based on diversity as opposed to federal question jurisdiction.

6 Even Formosa acknowledges that "several district courts in Alabama have chosen to remand the entire case rather than sever and remand the nonremovable worker's compensation claim, **particularly where the only basis for federal jurisdiction was diversity jurisdiction**, as here." 805 F.Supp. 2d at 1189 (emphasis added).

7 One other case from the Southern District reaffirms the holding in Lamar, but it remands the entire case because the remaining claims did not separately meet jurisdictional requirements. Musgrove v. Kellogg Brown & Root, LLC, 2013 WL 1827583, at *2 (S.D. Ala. Apr. 29, 2013) (Steele, J.). Musgrove and Lamar were decided by the same district judge.

8 The Lamar Court responded to this argument as follows: "The question, however, is not whether the founts of original jurisdiction are the same but whether the removal vehicle is the same. As noted above, *Reed's* analysis is grounded in the removal vehicle of Section 1441(a), not in the jurisdictional fount of Section 1331. Because Section 1441(a) applies to removals based on Section 1332 just as surely as it applies to removals based on Section 1331, Reed applies equally in the diversity context." 907 F.Supp.2d at 1315.