

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10593

Non-Argument Calendar

EXCLUSIVE GROUP HOLDINGS, INC.,

Plaintiff-Appellant,

versus

NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURGH,
PENNSYLVANIA,
BBCG CLAIMS SERVICES,
AIG CLAIMS, INC.,
AMERICAN INTERNATIONAL GROUP, INC.,
J.S. HELD, LLC, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:22-cv-00474-JES-NPM

Before ROSENBAUM, JILL PRYOR, and GRANT, Circuit Judges.

PER CURIAM:

Appellant Exclusive Group Holdings, Inc., filed a lawsuit in state court against National Union Fire Insurance Company of Pittsburgh (“NUFIC”). NUFIC removed the lawsuit to federal court, but it was later remanded to state court. After remand, Exclusive Group filed a motion seeking attorney’s fees. The district court denied the motion. On appeal, Exclusive Group challenges the order denying its motion for fees. Because the district court did not abuse its discretion in denying the request for fees, we affirm.

I.

This case arises from an insurance dispute. Exclusive Group, a wholesaler of international telecommunications, purchased long-distance minutes from telecommunications suppliers and then re-sold them to its customers. Because customers would use the long-distance minutes before paying Exclusive Group, it purchased trade credit insurance policies from NUFIC, which required NUFIC to indemnify Exclusive Group if a customer failed to pay. When several customers failed to pay their bills, Exclusive Group

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submitted claims to NUFIC, seeking close to \$5,000,000. NUFIC denied the claims.

Exclusive Group filed suit in Florida state court against NUFIC for breach of contract. It also named as defendants several “Doe Corporations” and sought a declaration that these companies had tortiously interfered with its ability to obtain payment under the insurance policy. It alleged that NUFIC and the Doe Corporations engaged in a pattern of activity to delay the processing of Exclusive Group’s claims and ultimately to deny them. According to the complaint, the Doe Corporations were “believed to be related insurance or insurance service companies” who assisted in processing Exclusive Group’s claims. Doc. 1-1 at 4.¹ The complaint noted that American International Group, Inc. (“AIG”) and several related entities—AIG Specialty Insurance Company; AIG Property Casualty U.S., Inc.; AIG Property Casualty, Inc.; AIG Claims, Inc.; AIG Global Claims Services, Inc.; and AIG PC Global Services, Inc.—were involved in processing the claims. But the initial complaint did not name AIG or any of these related entities as defendants. Instead, Exclusive Group alleged that it could not ascertain the “identity and location of” the Doe Corporations “despite the exercise of due diligence.” *Id.*

The complaint included allegations about the citizenship of Exclusive Group and NUFIC. It alleged that Exclusive Group was incorporated and had its principal place of business in Florida, and

¹ “Doc.” numbers refer to the district court’s docket entries.

that NUFIC was incorporated in Pennsylvania and had its principal place of business in New York. The complaint also included allegations about the citizenship of AIG and its related entities, even though none was named as a defendant. According to the complaint, none of those entities was a citizen of Florida.

NUFIC removed the action to federal court based on diversity jurisdiction. *See* 28 U.S.C. § 1332(a). It asserted that there was complete diversity of citizenship because Exclusive Group was a citizen of Florida and NUFIC was a citizen of Pennsylvania and New York. NUFIC pointed out that for purposes of diversity jurisdiction, the citizenship of the Doe Corporations would be disregarded. *See id.* § 1441(b)(1) But even considering the fictitious defendants, NUFIC argued, complete diversity still existed because “upon information and belief, no entity matching Plaintiff’s description of the . . . Doe defendants . . . is a citizen of the state of Florida.” Doc. 1 at 4 n.1. NUFIC also asserted that the amount-in-controversy requirement was satisfied because Exclusive Group sought more than \$75,000 in damages. After removing the case, NUFIC filed an answer.

In federal court, Exclusive Group filed an amended complaint, which dropped the Doe Corporations as defendants. It added as defendants two entities mentioned in the original complaint—AIG and AIG Claims. Exclusive Group also added another defendant, BBCG Claims Services, which allegedly had been hired to investigate Exclusive Group’s insurance claims. It brought tortious interference and negligence claims against AIG, AIG Claims,

and BBCG. Because none of the new defendants was a citizen of Florida, adding them as defendants did not destroy diversity jurisdiction. Exclusive Group later filed a second amended complaint, adding claims against AIG, AIG Claims, and BBCG for aiding and abetting tortious interference.

Through discovery, Exclusive Group learned that J.S. Held, LLC, was an adjuster that had investigated its insurance claims on NUFIC's behalf. Exclusive Group sought leave to file a third amended complaint to add J.S. Held as a defendant and to bring claims against it for tortious interference, negligence, and aiding and abetting tortious interference. In the proposed third amended complaint, Exclusive Group alleged that J.S. Held was a Delaware corporation with its principal place of business in New York.

The magistrate judge quickly identified a problem with the proposed third amended complaint. Because J.S. Held was a limited liability company, it was not a citizen of the states where it was incorporated and had its principal place of business. Instead, its citizenship "was determined based on the citizenship of its members." Doc. 91 at 1 (internal quotation marks omitted). But the proposed amended complaint "never mention[ed] JS Held's members, much less their citizenship." *Id.* at 2. If Exclusive Group wished to proceed with J.S. Held as a party, the magistrate judge directed, it would need to file a new pleading that included allegations about the citizenship of J.S. Held's members. And if any of the members was a limited liability corporation or partnership, Exclusive Group would need to "allege the citizenship of each of those members or

partners” and “continue[] through however many layers of members or partners there may be.” *Id.* at 2 n.1.

Exclusive Group then filed another motion to file a third amended complaint seeking to add J.S. Held as a defendant, and this time it included allegations about the citizenship of J.S. Held’s members. Exclusive Group alleged that J.S. Held had two members, each of which was a limited liability company. Those limited liability companies, in turn, had members that were limited liability companies. And one or more of those limited liability companies had a member who was an individual and a citizen of Florida. As a result, Exclusive Group alleged that J.S. Held was a citizen of Florida. Because adding J.S. Held as a party would destroy complete diversity, Exclusive Group asked the district court to remand the case to Florida state court.

The district court allowed Exclusive Group to amend its complaint and add J.S. Held as a defendant. Because adding J.S. Held destroyed complete diversity, the district court remanded the case to state court.

After the case was remanded, Exclusive Group filed a motion in the district court seeking to recover attorney’s fees it incurred while litigating in federal court. It made this request under 28 U.S.C. § 1447(c), which permits a district court to award attorney’s fees when a case is remanded. Exclusive Group argued that an award was appropriate because “NUFIC removed the case to federal court in bad faith.” Doc. 111 at 5. According to Exclusive Group, NUFIC knew about J.S. Held’s role in adjusting the claims

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but had tried to “conceal” its involvement. *Id.* at 11. Given J.S. Held’s role as adjuster and the allegations against the Doe Corporations in the original complaint, Exclusive Group asserted that “NUFIC should have never removed the case in the first instance.” *Id.* at 4–5. It argued that a fee award was appropriate to “discourage the type of waste and expense caused by NUFIC’s removal petition.” *Id.* at 11.

The district court denied the motion. Although § 1447(c) authorized a district court to award fees after remanding a case, the court explained that “[a]bsent unusual circumstances,” fees should be awarded “only where the removing party lacked an objectively reasonable basis for seeking removal.” Doc. 115 at 2 (internal quotation marks omitted). The court concluded that NUFIC had an objectively reasonable basis for removal. Although J.S. Held later was added as a party and its addition destroyed diversity jurisdiction, the court explained that “[i]t was not until the Magistrate Judge questioned counsel about J.S. Held’s citizenship” that the parties conducted a further inquiry and learned that J.S. Held was a citizen of Florida. *Id.* at 3.

This is Exclusive Group’s appeal.

II.

We review for abuse of discretion a district court order declining to award attorney’s fees after remanding a case to state court. *See MSP Recovery Claims, Series LLC v. Hanover Ins. Co.*, 995 F.3d 1289, 1296 (11th Cir. 2021). “Discretion means the district court has a range of choice, and that its decision will not be

disturbed as long as it stays within that range and is not influenced by any mistake of law.” *Betty K Agencies, LTD v. M/V Monada*, 432 F.3d 1333, 1337 (11th Cir. 2005) (internal quotation marks omitted).

III.

When a case is remanded to state court, a statute permits a district court to award attorney’s fees. *See* 28 U.S.C. § 1447(c) (“An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.”). Under this statute, a district court may, but is not required to, award attorney’s fees. *See Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 134 (2005).

On its face, § 1447(c) provides “little guidance on when such fees are warranted.” *Id.* But this “does not mean that no legal standard governs” a district court’s exercise of its discretion. *Id.* at 139. After all, “[d]iscretion is not whim.” *Id.* Looking to “the large objectives” of the removal statute, the Supreme Court has announced that “[t]he appropriate test for awarding fees under § 1447(c) should recognize the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress’ basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied.” *Id.* at 139–40.

After discussing these concerns, the Court announced that “[a]bsent unusual circumstances,” a district court “may award attorney’s fees under § 1447(c) only where the removing party lacked

an objectively reasonable basis for seeking removal.” *Id.* at 141. “Conversely, when an objectively reasonable basis [for removal] exists, fees should be denied.” *Id.* In addition, the Supreme Court recognized that “district courts retain[ed] discretion to consider whether unusual circumstances warrant a departure from the rule in a given case.” *Id.* The Court gave a few examples of when unusual circumstances would be present: when the plaintiff “delay[ed] in seeking remand” or “fail[ed] to disclose facts necessary to determine jurisdiction.” *Id.* Even when a district court considers unusual circumstances, “its reasons for departing from the general rule should be faithful to the purposes of awarding fees under § 1447(c).” *Id.* (internal quotation marks omitted).

Here, we cannot say that the district court abused its discretion when it denied Exclusive Group’s motion for fees. As an initial matter, we agree with the district court that, at the time of removal, NUFIC had an objectively reasonable basis for seeking removal. At that point, there was complete diversity because the parties to the action were Exclusive Group, which was a citizen of Florida, and NUFIC, which was a citizen of Pennsylvania and New York. *See* 28 U.S.C. § 1441(b) (explaining that in determining whether a civil action is removable based on diversity jurisdiction, “the citizenship of defendants sued under fictitious names shall be disregarded”).

Exclusive Group nevertheless argues that unusual circumstances warranted an award of fees because, given the allegations against the Doe Corporations in the original complaint as well as

NUFIC's knowledge about J.S. Held's role in reviewing Exclusive Group's claims, at the time of removal NUFIC would have known that J.S. Held would be added as a party. But even if NUFIC knew from the allegations against the Doe Corporations in the original complaint that Exclusive Group intended to name J.S. Held as a defendant, there is nothing in the record suggesting that at that point in time NUFIC knew or should have known that J.S. Held was a citizen of Florida. Indeed, to uncover this information, Exclusive Group would have had to know that one of J.S. Held's members was a limited liability corporation with a member that was itself a limited liability corporation with a member who was a Florida citizen. Given the absence of any evidence that NUFIC knew or should have known that adding J.S. Held would destroy diversity jurisdiction, we cannot say that the district court abused its discretion in refusing to award fees.²

² Exclusive Group nevertheless argues that we should vacate the district court's order denying fees because it failed to "analyze whether this case creates unusual circumstances where fees are warranted." Appellant's Br. 16 (internal quotation marks omitted). It is true that to allow for meaningful appellate review a district court must adequately explain the basis for a decision not to exercise its discretion. See *In re Trinity Indus., Inc.*, 876 F.2d 1485, 1496 (11th Cir. 1989) (remanding case for district court to explain the basis for its denial of a party's request for attorney's fees). But the district court adequately explained its decision here. Exclusive Group argued to the district court that unusual circumstances were present because at the time of removal, NUFIC was aware of and concealed J.S. Held's role in adjusting Exclusive Group's insurance claims. The district court considered and rejected this argument when it pointed to the absence of evidence showing that NUFIC knew at the time of removal that J.S. Held was a citizen of Florida.

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IV.

For the reasons set forth above, we affirm the district court.³

AFFIRMED.

³ NUFIC moved for sanctions pursuant to Federal Rule of Appellate Procedure 38, alleging that Exclusive Group’s appeal is frivolous. “Rule 38 sanctions are appropriately imposed against appellants who raise clearly frivolous claims in the face of established law and clear facts.” *Parker v. Am. Traffic Sols., Inc.*, 835 F.3d 1363, 1371 (11th Cir. 2016) (internal quotation marks omitted). We cannot say that Exclusive Group’s appeal was so utterly devoid of merit as to be frivolous. Accordingly, we DENY this motion.