

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

TOBY J. WESLEY,

CIVIL ACTION
NO. 07-9787

VERSUS

BALBOA LIFE AND CASUALTY

SECTION M

ORDER

Before the Court is Plaintiff's motion to vacate and remand, which is opposed by the Defendant, and which came for hearing on July 9, 2008, on the briefs. After consideration of the motion, the briefs, and the applicable law, the Court denies both motions.

On September 11, 2007, Plaintiff Toby Wesley filed suit in state court, and on December 17, 2007, Defendant, Newport Insurance Company (Newport) timely removed the action to this Court. On the Civil Cover Sheet attached to the Notice of Removal, counsel for Newport listed Kevin Tucker and John Conry as counsel. Wesley did not file a Motion to Remand.

On February 13, 2008, Newport filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12 (b) (1) and 12(b)(6) on the grounds that Wesley lacked standing to bring any claims against Newport for insurance benefits because Wesley

was neither the named insured nor a third party beneficiary of the lender-placed flood insurance policy at issue. Wesley did not file an opposition to Newport's motion, and on March 19, 2008, several weeks after the hearing date, this Court granted the unopposed motion and dismissed Wesley's claims with prejudice.

This motion to vacate was filed June 24, 2008, more than 90 days after this Court dismissed the suit.

Counsel's vague reasons for not opposing the motion are without merit. In fact, he does not oppose the facts in the original motion to dismiss, except to allege that this Court did not have jurisdiction and the case should be remanded back to state court.

Wesley brings no evidence to show that the case was improperly removed, has not met his burden of proving that the matter should be remanded to state court, and no evidence that the dismissal of this case was not warranted.

Accordingly, the Motion to Vacate and Remand is Denied.

New Orleans, Louisiana, this 10th day of July, 2008.

A handwritten signature in black ink that reads "Peter Beer". The signature is written in a cursive style with a long horizontal flourish at the end.

Peter Beer
United States District Judge