

An insured is not a third party beneficiary of the insurer's bad faith lawyer

In ruling upon a Motion to Remand in federal court, *Hitchcock* addressed whether an insured had a cause of action against the insurer's lawyer.

A Florida law firm was a Defendant along with an out of state insurance carrier. The Plaintiff was a Florida resident. The Plaintiff argued the Florida law firm defendant destroyed diversity and the case should be remanded to state court. The Defendant insurance carrier responded by alleging that adding the Florida law firm amounted to a fraudulent joinder and there was no possibility a cause of action could be established against the Florida law firm.

The Court explored whether the insured was in privity with the law firm or an intended third party beneficiary.

Privity did not prevail because it was uncontroverted that the law firm was hired by the insurance carrier to act solely on its behalf.

The third party beneficiary argument also failed. There was no evidence that the law firm was to benefit the insured. The law firm was hired to provide advice to the carrier about proper claims handling procedures to avoid a bad faith claim. Importantly, another law firm was hired to defend the insured in the underlying tort claim.

The law firm was dismissed and remand was denied because the insurance carrier had established "there was no possibility" the Plaintiff could establish a legal malpractice case against the law firm.

TAKEAWAY Unlike *Arch Creek* discussed above, *Hitchcock* makes perfect sense. The law firm was hired directly by the carrier and the carrier appointed another lawyer to represent the insured. There was no tripartite relationship.

