

## Collins & Lacy wins motion to dismiss crossclaim, Opinion published in *South Carolina Lawyers Weekly*



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### Practice Areas:

- Insurance Coverage
- Retail / Hospitality / Entertainment Law

On April 17, 2012, in *Barber v. American Family Home Insurance Co.*, the United States District Court for the District of South Carolina, inter alia, granted the cross-defendant's motion to dismiss crossclaims.

The subject of the amended complaint and counterclaim was the insureds' right to insurance proceeds, while the subject of the crossclaim was an alleged domestic dispute. The court found that the crossclaim did not arise out of the same transaction or occurrence as the amended complaint and counterclaim, and thus, did not comply with Fed. R. Civ. P. 13(g), or Fed. R. Civ. P. 14(a)(3). The court also found that 28 U.S.C. § 1367(b) prohibited the exercise of supplemental jurisdiction over the crossclaim as the cross-claimant and cross-defendant were both citizens of South Carolina. The April 17, 2012 Order was identified as an important opinion by *South Carolina Lawyers Weekly*. Here is the article as published on April 18, 2012.

**Civil Practice – Federal Jurisdiction – Diversity – Interpleader  
– Insurance Proceeds – Non-Diverse Counterclaim Defendant –  
Crossclaim — Domestic Dispute**

By S.C. Lawyers Weekly staff

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*Barber v. American Family Home Insurance Co.* (Lawyers Weekly No. 002-075-12, 9 pp.) (Joseph F. Anderson Jr., J.) 3:11-cv-02328; D.S.C.

**Holding:** Plaintiff Nancy Barber filed a breach of contract action against the defendant-insurer after the insurer made a check for insurance proceeds payable to both Nancy Barber and Kelly Barber. The insurer removed on the basis of diversity jurisdiction and filed a counterclaim against Nancy and Kelly Barber, both of whom are S.C. residents. Under *United Capitol Insurance Co. v. Kapiloff*, 155 F.3d 488 (1998), adding a non-diverse party as a counterclaim defendant does not destroy complete diversity for purposes of federal jurisdiction. Plaintiff's motion to remand to state court is denied. Plaintiff's crossclaims against Kelly Barber are dismissed.

Plaintiff's crossclaims against Kelly Barber arise out of an alleged domestic dispute. For the most part, evidence related to the crossclaims is entirely different than evidence regarding the insurance contract. The logical relationship between the complaint, the counterclaim, and the crossclaims is not sufficiently meaningful to satisfy Fed. R. Civ. P. 13(g) (crossclaims) or 14(a)(3) (third-party claims).

Because the torts alleged in the crossclaims do not involve the same transaction or occurrence as the complaint and counterclaim, the crossclaims do not fall within the scope of Rules 13(g) and 14(a)(3). As such, the assault, battery, intentional infliction of emotional distress, negligence per se, and gross negligence claims should be dismissed.

Furthermore, Kelly Barber has been made a party pursuant to Rule 13, via either Rule 19 (compulsory joinder) or Rule 20 (permissive joinder). Because the Barbers are both S.C. citizens, this court's exercise of supplemental jurisdiction over Nancy Barber's crossclaims against Kelly Barber would be inconsistent with the jurisdictional requirements of 28 U.S.C. § 1332. Such supplemental jurisdiction is expressly prohibited by 28 U.S.C. § 1367(b); thus, this court is constrained to dismiss all of the causes of action asserted in the crossclaim against Kelly Barber.

### **About Logan Wells**

Logan Wells is an associate practicing in the areas of premises liability, retail / hospitality / entertainment and insurance coverage. She received her undergraduate degree in history and political science from Furman University and earned her juris doctor from the University of South Carolina School of Law. During her undergraduate career, she worked for a law firm in Spartanburg as a legal assistant. While in law school, she worked as a summer associate for Collins & Lacy, before joining the firm as an attorney in the fall of 2009.

### **About Collins & Lacy, P.C.**

In 2012, Collins & Lacy, P.C., celebrates 28 years of providing legal services to South Carolina. With offices in Charleston, Columbia, Greenville and Myrtle Beach, South Carolina, the firm's primary focus is defense litigation, representing local, regional and national clients in the areas of:

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- employment law
- hospitality/retail & entertainment law
- insurance/bad faith
- products liability
- professional liability
- public policy
- commercial transportation
- workers' compensation

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