

Shannon I  
12 Jan. 1998

> SHANNON CASCIANI, as Personal Representative of the Estate  
> of Michael Casciani, Plaintiff, v. LA CRUISE, INC., and  
> SPHERE DRAKE INSURANCE CO., Defendants.

> CASE NO. 96-1249-CIV-J-21-A

> UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF  
> FLORIDA, JACKSONVILLE DIVISION

> 1998 U.S. Dist. LEXIS 12933

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> 1998 U.S. Dist. LEXIS 12933, \*

> January 12, 1998, Decided

> DISPOSITION:

> [\*1] Case REMANDED to Circuit Court for the Fourth Judicial Circuit, in  
> and  
> for Duval County, Florida. All pending motions terminated as moot.

> CORE TERMS:

> federal claim, removal, settlement, join, federal district, arbitration,  
> reasonable opportunity, falling, final judgment, applicability,  
> subject matter jurisdiction, insurance policy, additionally,  
> inextricably intertwined, arbitration agreement, asserting,  
> Federal Rules Of Civil Procedure, memorandum, expandable, indemnity,  
> entirety,  
> folder, original jurisdiction, insurance contract, fair opportunity,  
> party asserting, paradigmatic, beneficiary, abstention, litigate

> COUNSEL:  
> For SHANNON CASCIANI, plaintiff: Gregory A. Anderson, Paula Norville Lamb,  
> Anderson, St. Denis & Glenn, Jacksonville, FL USA.  
>  
> For LA CRUISE, INC., defendant: James Edgar Cobb, Peek, Cobb, Edwards &  
> Ashton,  
> P.A., Jacksonville, FL USA.  
>  
> For LA CRUISE, INC., defendant: Sarah Helene Sharp, Law Office of Sarah  
> Helene  
> Sharp, Jacksonville, FL.  
>  
> For SPHERE DRAKE INS., defendant: Curtis J. Mase, Mase & Sreenan, P.A.,  
> Miami,  
> FL.  
>  
> For KATHLEEN HAWARAH, movant: Teresa J. Sopp, Law Office of Teresa J.  
> Sopp,  
> Jacksonville, FL.  
>  
> JUDGES:  
> RALPH W. NIMMONS, JR., UNITED STATES DISTRICT JUDGE.  
>  
> OPINIONBY:  
> RALPH W. NIMMONS, JR.  
>  
> OPINION:  
>  
> ORDER  
>  
> Filed herein, pursuant to this Court's July 9, 1997, Order (Dkt. 32)  
> directing the parties to file memoranda of law addressing the  
> applicability of  
> the Rooker-Feldman doctrine to this action, are Plaintiff's Supplemental  
> Memorandum, etc. (Dkt. 40), n1 Defendant Sphere Drake's Memorandum of Law,  
> etc.  
> (Dkts. 35, 44), n2 and Defendant La Cruise's Memorandum of Law, etc. (Dkt.  
> 37)

-----Footnotes-----  
> ---  
>  
> n1 As provided by this Court's Order (Dkt. 46) of January 12, 1998,  
> this  
> later, redacted version of Plaintiff's Supplemental Memorandum, etc. (Dkt.  
> 40)  
> has been deemed timely filed and presumed to supersede Plaintiffs earlier  
> Supplemental Memorandum (Dkt. 34). [\*2]  
>

>  
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>  
> n2 Appended to Dkt. 44, pursuant to this Court's Order (Dkt. 41) of  
> August  
> 18, 1997, is a corrected version of the first page of Defendant Sphere  
> Drake's  
> Memorandum (Dkt. 35).

>  
> -----End Footnotes-----  
> ...

> I. Background

>  
> On September 5, 1994, Plaintiff's Decedent Michael Casciani  
> ("Decedent") was  
> fatally electrocuted while working aboard a vessel owned by Defendant La  
> Cruise,  
> Inc. ("La Cruise"). Thereafter, Plaintiff Shannon Casciani ("Plaintiff" or  
> "Casciani"), on behalf of the Decedent's estate and his heirs, filed a  
> wrongful  
> death lawsuit against La Cruise in the Circuit Court for the Fourth  
> Judicial  
> Circuit, in and for Duval County, Florida.

>  
> Defendant Sphere Drake Insurance Company ("Sphere Drake") had  
> previously  
> issued to La Cruise a policy of insurance that was in force when Decedent  
> was  
> electrocuted aboard La Cruise's vessel. In approximately mid-June, 1996,  
> subsequent to the commencement of the state court wrongful death action,  
> an  
> insurance adjuster, allegedly acting as agent of Sphere Drake, negotiated  
> a \$  
> 500,000.00 settlement ("the Settlement") with Casciani, purportedly  
> pursuant to  
> Sphere Drake's contractual [\*3] authority to do so under the insurance  
> policy  
> issued to La Cruise. n3 Thereafter, a dispute arose between La Cruise and  
> Sphere  
> Drake relating to the amount of the settlement for which each was  
> responsible  
> and the order in which each had to pay. Sphere Drake, contending that the  
> policy  
> is one of indemnity rather than liability, maintained that La Cruise had  
> to  
> first pay off the Settlement before Sphere Drake incurred any obligation  
> under

> the policy. La Cruise maintained otherwise.

> -----Footnotes-----

> n3 Also, about this same time, Kathleen Hawarah, who claims to be the  
> mother and  
> natural guardian of another surviving heir of Plaintiff's Decedent, moved  
> to  
> intervene in the state court action to represent the interests of her  
> child as a  
> surviving heir.

> -----End Footnotes-----

> Thereafter, on September 18, 1996, Casciani filed in state court its  
> Motion  
> to Join as Party Sphere Drake Insurance, PLC. (Dkt. 16, Ex. B). n4  
> Casciani's  
> Motion to Join sought to join Sphere Drake as a defendant in the state  
> court  
> action pursuant to @ 627.4136, Fla. Stat. n5 and to enforce [\*4] the  
> Settlement  
> and/or enter a final judgment against Sphere Drake and La Cruise. On  
> September  
> 27, 1996, pursuant to a Notice n6 issued to all parties, including Sphere  
> Drake,  
> the state court heard oral argument from respective counsel on Plaintiff's  
> Motion to Join.

> -----Footnotes-----

> n4 Copies of what appears to be the entirety of the state court record  
> have  
> been filed herein and are contained in six expandable file folders.  
> Additionally, Plaintiff has filed herein a copy of the complete State  
> Court  
> docket. (Dkt. 30, Attach.) However, none of the copies of the documents  
> from the  
> state court record filed herein contain any reference to the State  
> court-assigned docket number and most do not contain any other identifying

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> feature; further these documents do not appear to be in chronological  
> order

> within or among each of the expandable folders. Thus, in most cases it is  
 > not  
 > possible for this Court to cite these documents any more specifically than  
 > by a  
 > reference to the expandable folder containing the document and the  
 > state-court  
 > date / time stamp appearing thereon. These references will appear as  
 > follows:  
 > "(Expndbl. Fldr. # , filed )." In light of this less than desirable  
 > situation, where other copies of relevant documents in State court record  
 > exist  
 > in this Court's file, such as in the form of attachments or exhibits to  
 > motions,  
 > pleadings, or other documents filed herein, the Court will make reference  
 > to  
 > State court documents by reference to the documents to which they are  
 > appended.  
 > These references will appear as follows: "(Dkt. , Ex. )" or "(Dkt.  
 > ,  
 > Attach.)" [\*5]  
 >  
 > n5 Section 627.4136 generally precludes an action against a liability  
 > insurer  
 > by persons other than the insured until a verdict or settlement is  
 > obtained  
 > against the insured. See @ 627.4136(1). Pursuant to @ 627.4136(4), once a  
 > settlement has been reached, the insurer can be joined as a party  
 > defendant for  
 > the purpose of entering final judgment and/or enforcing the settlement.  
 >  
 > n6 (Expndbl. Fldr. # 6, filed September 18, 1996 at 4:26 PM).  
 >  
 > -----End Footnotes-----  
 > ...  
 >  
 > Subsequently, on October 10, 1996, Sphere Drake, appearing specially,  
 > filed a  
 > Response (Dkt. 16, Ex. D) in opposition to Plaintiff's Motion to Join. n7  
 > In  
 > that Response, Sphere Drake argued that Casciani was not entitled to join  
 > Sphere  
 > Drake as a party-defendant (1) because of the mandatory arbitration clause  
 > contained in the insurance policy (which clause Sphere Drake argued was  
 > equally  
 > applicable to any third-party beneficiary of the policy, such as Casciani)  
 > and  
 > (2) because Florida law prohibits a direct action by Casciani against  
 > Sphere  
 > Drake both because the policy at issue was one of indemnity and because

> Casciani  
> was, at most, an incidental [\*6] beneficiary thereof. Additionally, in  
> its  
> Response Sphere Drake extensively briefed various issues relating to  
> arbitration, including the applicability of the Convention on the  
> Recognition  
> and Enforcement of Foreign Arbitral Awards, n8 9 U.S.C. @@ 201-208, to the  
> State  
> court proceedings, the State court's concurrent jurisdiction under the  
> Convention, and its power thereunder to stay the proceedings before it and  
> order  
> all the parties to the suit (including Casciani) to arbitrate pursuant to  
> the  
> terms of the insurance contract between Sphere Drake and La Cruise, n9

> -----Footnotes-----

> ---

> n7 At that time, Sphere Drake also filed with the State court a copy of  
> the  
> policy at issue. (Expndbl. Fldr. # 6, filed Oct. 10, 1996, at 3:51 PM.)

> n8 Discussed infra.

> n9 In its Memorandum (Dkt. 37), Defendant La Cruise asserts that, in  
> addition  
> to its October 31, 1996 memorandum in opposition to Casciani's motion to  
> join  
> it, Sphere Drake submitted a second memorandum of law, in letter form, to  
> the  
> state court on October 21, 1996. However, no copy of this memorandum exist  
> among  
> the state court record filed herein, nor has any copy of said document  
> been  
> otherwise provided to the Court. Further, there is no entry on the state  
> court  
> docket reflecting the receipt of this letter, as there is for other such  
> letters  
> sent by counsel to the state court. See Dkt. 30, Attach. However, there  
> does

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> exist in the state court record a letter to the state court from  
> Plaintiff's  
> counsel which states that it is in response to Sphere Drake's  
> "correspondence of  
> October 21, 1996." (Expndbl. Fldr. # 6, filed Nov. 24, 1996, at 4:15 PM).

> From  
> that letter, it can be deduced that Sphere Drakes' October 21, 1996,  
> letter  
> further addressed the applicability of @ 627.4136, Fla. Stat.

>  
> -----End Footnotes-----

> ...  
> [\*7]

>  
> On November 21, 1996, by written Order, (Dkt. 16, Ex. F), the State  
> court  
> granted Plaintiff's Motion to Join as Party Sphere Drake Insurance, PLC,  
> directed counsel for Plaintiff to submit to the Court and Defendants a  
> proposed  
> judgment consistent with that order; and gave Defendants five days after  
> receipt  
> of the proposed judgment to file any objections to the form thereof. Inter  
> alia,  
> in its Order the State court determined that the insurance policy issued  
> to La  
> Cruise was one of liability, not indemnity, and also determined that the  
> arbitration provision of that insurance policy could not be enforced  
> against  
> Casciani. (Id. at 2-3).

>  
> On November 27, 1996, Sphere Drake submitted a letter to the state  
> court  
> judge objecting to the form of the proposed Final Judgment (Dkt. 14,  
> Attach.).  
> n10 On December 5, 1996, the state court entered a final judgment against  
> Defendants La Cruise and Sphere Drake in the amount of \$ 500,000.00. (Dkt.  
> 30.,  
> Attach.) According to the Clerk's stamp thereon, this judgment was filed  
> and  
> recorded on December 6, 1996. (Id.)

>  
> -----Footnotes-----

>  
> n10 In its entirety, the letter stated:  
> Dear Judge Davis:

>  
> I am writing to you on behalf of Sphere Drake Insurance, PLC, whom we  
> represent. Sphere Drake objects to the form of the proposed Final  
> Judgment.

>  
> There is a deductible and Sphere Drake is responsible only for that  
> amount of  
> the settlement in excess of the deductible.

> Respectfully submitted,

> /s/ Curtis J. Mase

> -----End Footnotes-----

> [8]

> [3]

> *I. REMOVAL TO FEDERAL COURT*  
> *[0]*  
> Thereafter, on December 10, 1996, Sphere Drake removed this action to  
> this  
> Court, citing in its Notice of Removal (Dkt. 1) provisions of the *[New York]*  
> Convention on  
> the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"),  
> a  
> treaty adopted by and enforced through 9 U.S.C. @@ 201-207. Inter alia, @  
> 203 of  
> the Convention provides federal district courts with original jurisdiction  
> over  
> actions or proceedings falling under the Convention; additionally, @ 205  
> thereof  
> expressly provides for removal to federal district court of, inter alia,  
> state  
> court actions which relate to an arbitration agreement falling under the  
> Convention. Section 206 of the Convention empowers all courts with  
> jurisdiction  
> over actions involving arbitration agreements falling under the Convention  
> (including state courts) to enter orders directing arbitration in  
> accordance

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> with those agreements. Both the United States and the United Kingdom (the  
> apparent country of incorporation of Sphere Drake) are signatories to the  
> Convention. See Article XVI thereof. n11 *(footnote omitted)*

> -----Footnotes-----

> n11 The text of the Convention is contained in the notes following 9  
> U.S.C. @  
> 201.

> -----End Footnotes-----

> [\*9]

> [2] Title 9 U.S.C. @ 205, the provision of the Convention pursuant to which



> Sphere Drake removed this action to this court, and thus the primary  
> portion of  
> the Convention at issue herein, provides, in pertinent part, as follows:

> Where the subject matter of an action or proceeding pending in a State  
> court  
> relates to an arbitration agreement or award falling under the Convention,  
> the  
> defendant or the defendants may, at any time before the trial thereof,  
> remove  
> such action or proceeding to the district court of the United States for  
> the  
> district and division embracing the place where the action or proceeding  
> is  
> pending. The procedure for removal of causes otherwise provided by law  
> shall  
> apply. . . .

> (....)  
> Since removal of this case, the various parties have filed multiple  
> motions  
> herein. All of these motions were reviewed in the Court's July 9, 1997,  
> Order  
> (Dkt. 32), but only those motions relevant to the application of the  
> Rooker-Feldman doctrine will be discussed herein. Inter alia, these  
> motions  
> include: La Cruise's Motion for Rehearing of State Court Judgment (Dkt.  
> 11) and  
> Sphere Drake's Motion to Vacate State Court Judgment (Dkt. 14), both of  
> which  
> were filed herein on December [\*10] 16, 1996, within two weeks after the  
> date  
> on which this case was removed to this Court.

> In its Motion for Rehearing of State Court Judgment (Dkt. 11), La  
> Cruise  
> moves, pursuant to Rule 59, Federal Rules of Civil Procedure ("FRCP"), to  
> reopen  
> the state court judgment, take additional evidence and testimony, and  
> issue a  
> new judgment. Defendant La Cruise represents that it seeks this relief  
> because  
> the judgment entered by the state court does not protect it from  
> subsequent  
> liability to the minor-survivors of Plaintiff's Decedent, as Plaintiff did  
> not  
> follow the proper (state) procedures for approving such a settlement.  
> Given the  
> uncertainty injected into this case by Sphere Drake's removal, La Cruise  
> states

## **Rule 59. New Trials; Amendment of Judgments**

### **(a) Grounds.**

*use*  
A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

### **(b) Time for Motion.**

Any motion for a new trial shall be filed no later than 10 days after entry of the judgment.

### **(c) Time for Serving Affidavits.**

When a motion for new trial is based upon affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

### **(d) On Initiative of Court.**

No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

### **(e) Motion to Alter or Amend a Judgment.**

Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

*Notes*

## **Rule 60. Relief from Judgment or Order**

### **(a) Clerical Mistakes.**

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

### **(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.**

United States  
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> that, contemporaneous with this motion, it has moved the state court to  
> reopen  
> the judgment.

> [3] In its Motion to Vacate State Court Judgment (Dkt. 14), Sphere Drake  
> moves,  
> pursuant to Rule 59, Federal Rules of Civil Procedure (FRCP), to vacate  
> the  
> state court judgment (entered December 5, 1996), asserting that the same  
> is void  
> or voidable based on multiple errors of the state court. Specifically,  
> Sphere  
> Drake asserts that (1) the judgment was entered in violation of its rights  
> under <sup>[1958 New York]</sup>  
> [\*11] the Convention on the Recognition and Enforcement of Foreign  
> Arbitral  
> Awards ("Convention"), enacted in 9 U.S.C. @@ 201-207; (2) section  
> 627.4136,  
> Fla. Stat., pursuant to which Sphere Drake was joined in the state court  
> action,  
> is unconstitutional as it was applied to Sphere Drake; (3) Sphere Drake  
> was  
> denied all due process when the state court entered a judgment against it,  
> a  
> "non-party"; and (4) the state court judgment does not protect it (or La  
> Cruise)

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> from subsequent liability to the minor-survivors of Plaintiff's Decedent,  
> as the  
> state court did not follow the proper state procedures for approving the  
> settlement.

> ~~II. THE ROOKER-FELDMAN DOCTRINE~~

> [4] Finding that the relief sought herein by the parties, and particularly  
> the  
> relief sought in the above-referenced motions, potentially placed this  
> case  
> without this Court's jurisdiction, the Court, as noted above, directed the  
> parties to brief the applicability of the Rooker-Feldman doctrine to this  
> case. ←

> II. The Rooker-Feldman Doctrine Generally

> The Rooker-Feldman doctrine ("doctrine") derives from the United States  
> Supreme Court's decisions in the cases of District of Columbia Court of  
> Appeals  
> v. Feldman, 460 U.S. 462, 75 L. Ed. 2d 206, 103 [\*12] S. Ct. 1303 (1983),

Rule 59 of the Federal Rules of Civil Procedure (FRCP) is relevant  
part: use (a) grounds

> and  
> Rooker v. Fidelity Trust Co., 263 U.S. 413, 68 L. Ed. 362, 44 S. Ct. 149  
> (1923).  
> Roughly stated, the doctrine is a form of abstention that prohibits United  
> States District Courts from reviewing, reversing, or otherwise  
> invalidating the *(footnote omitted)*  
> judgments of a state court. n12 See Dale v. Moore, 121 F.3d 624, 626 (11th  
> Cir.  
> 1997). The doctrine is based on negative inferences from 28 U.S.C. @ 1257,  
> which  
> grants federal review of state court proceedings solely to the United  
> States  
> Supreme Court, and 28 U.S.C. @ 1331, which provides that federal district  
> courts  
> are courts of original jurisdiction. See Powell v. Powell, 80 F.3d 464,  
> 466 *(footnote omitted)*  
> (11th Cir. 1996). n13 Traditional notions of federalism and comity  
> relevant to  
> questions of abstention also figure in the doctrine.

*no quote*  
*no quote*

-----Footnotes-----

> n12 Whereas at one time the Rooker-Feldman doctrine was understood by  
> some  
> courts to only bar federal district court review of the decisions of a  
> state's  
> highest court, it is now understood to apply to bar review of the  
> decisions of  
> lower state courts as well. See, e.g., E.B. v. Verniero, 119 F.3d 1077,  
> 1090 (3d  
> Cir. 1997). [\*13]

> n13 One notable exception to the doctrine is, of course, habeas corpus  
> under  
> 28 U.S.C. @ 2241, a specific Congressional authorization of federal court  
> collateral review of state court judgments in criminal cases.

-----End Footnotes-----

> 67 The paradigmatic case for application of the Rooker-Feldman doctrine is  
> one  
> in which the losing party-litigant to a state court proceeding commences  
> an  
> action in federal court, usually against his state court opponent or the  
> judge  
> who presided thereover, claiming that the defeat suffered in state court  
> is

> violative of some federal right, constitutional or otherwise. See  
> generally,  
> e.g., Dale, 121 F.3d 624; Blue-Cross and Blue Shield of Maryland v.  
> Weiner, 868  
> F.2d 1550 (11th Cir. 1989). However, when the right alleged to have been  
> violated is one guaranteed by the U.S. Constitution and the challenge made  
> by  
> the federal court action is a general one—i.e., one that does not  
> challenge a  
> specific judicial act—then the doctrine does not apply. See Feldman, 460  
> U.S.  
> at 486-87; Weiner, 868 F.2d at 1554.  
>  
> The Rooker-Feldman doctrine precludes a federal district [\*14] court  
> from  
> exercising subject matter jurisdiction to hear federal claims that are  
> inextricably intertwined with a prior state court judgment. This  
> jurisdictional  
> bar thus encompasses both federal claims that were actually raised in and  
>  
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>  
> decided by the state court, see Datz v. Kilgore, 51 F.3d 252, 253-54  
> (11th Cir.  
> 1995), and those that were not but could have been raised in the state  
> court,  
> see Wood v. Orange County, 715 F.2d 1543, 1546 (11th Cir. 1983)(citing  
> Feldman,  
> 460 U.S. at 483 n. 16). Such inextricable intertwining is generally said  
> to be  
> present if the federal claim asserted in the second action succeeds only  
> to the  
> extent that the state court can be determined to have wrongly decided the  
> issues  
> before it in the first action. Datz, 51 F.3d at 253 (quoting Pennzoil Co.  
> v.  
> Texaco, Inc., 481 U.S. 1, 25, 95 L. Ed. 2d 1, 107 S. Ct. 1519  
> (1987)(Marshall,  
> J., concurring); see also Weiner, 868 F.2d at 1555-56 (holding that  
> federal  
> claim was inextricably intertwined with state court judgment because  
> factual  
> issues upon which federal claim rested had been decided by state court,  
> necessarily requiring federal district court to review those components of  
> the  
> state [\*15] court judgment in ruling upon the federal claim.)  
>  
> More specifically, the extent to which a federal claim is said to be

> "intertwined" with the state court judgment is generally determined by  
> analyzing  
> whether the party now asserting the federal claim had a "reasonable  
> opportunity"  
> to present that claim to the state court in the prior proceedings. Wood at  
> 1546-47. If no such opportunity existed, then the party now asserting the  
> claim  
> can not be said to have failed to have raised that claim and, further, the  
> particular issue raised by that claim cannot be said to be a part of the  
> state  
> court case. Id. at 1547. Preclusion of jurisdiction by Rooker-Feldman is  
> thereby  
> avoided.  
>  
> [X] Such a "reasonable opportunity" to assert a federal claim has been  
> found to  
> be lacking in instances in which the only review of the state court  
> decision is  
> discretionary, such as by writ of mandamus in Florida, see *Biddulph v.*  
> *Mortham*,  
> 89 F.3d 1491, 1495 n. 1 (11th Cir. 1996); instances in which the party  
> asserting  
> the federal claim in the subsequent, federal action was not a party to and  
> thus  
> did not have an opportunity to raise its federal claim in the prior, state  
> action, whether because he simply [\*16] did not participate in that  
> action, see  
> *Roe v. Alabama*, 43 F.3d 574, 580 (11th Cir. 1995), or because he actually  
> sought  
> and was denied leave to intervene and participate in that action, see  
> *United*  
> *States v. Napper*, 887 F.2d 1528, 1534 (11th Cir. 1989); and instances in  
> which  
> the prior, state court proceeding was conducted ex parte and without  
> providing  
> notice and an opportunity to be heard to the party now objecting, see  
> *Wood*, 715  
> F.2d at 1547-48. In contrast, where the party asserting the federal claim  
> actually presented that claim or arguments based thereon to the state  
> court, the  
> state court decision is necessarily inextricably intertwined with the  
> federal  
> claim. See *Datz*, 51 F.3d at 253-54. Further, the opportunity to raise a  
> federal  
> claim on an appeal from the state court judgment has been held to  
> constitute a "  
> reasonable opportunity" to raise that claim under the Rooker-Feldman  
> doctrine.  
> See *Weiner*, 868 F.2d at 1555 (citing *Wood*, 715 F.2d at 1548)). 37

> ~~REMOVAL WAS IMPROPER~~

> III. Discussion

> From a review of the foregoing law, the facts and procedural history of this case, and the parties' memoranda, it is apparent that to entertain the claims presented and grant [\*17] the relief requested herein would require this Court to review and modify, or perhaps entirely invalidate, the rulings made by the state court, thereby treading in the zone of appellate review from which federal district courts are forbidden by the Rooker-Feldman doctrine. n14 Such conclusion obtains from the following.

> -----Footnotes-----

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> n14 Although not the sole example of a request that this Court review the state court judgment in a manner prohibited by the doctrine, Sphere Drake's Motion to Vacate State Court Judgment (Dkt. 14), which, inter alia, expressly challenges the action of the state court as a violation of its right to due process under the U.S. Constitution, is a prime example of the type of specific federal constitutional challenge to a state court judgment that the doctrine precludes this Court from considering. See, supra, part II, pp.7-8.

> -----End Footnotes-----

> [18] As stated above, Sphere Drake had the opportunity to and did, in fact, argue to the state court its entitlement to arbitration under the Convention in its Response (Dkt. [\*18] 16, Ex. D) in opposition to Plaintiff's state court-filed Motion to Join as Party Sphere Drake Insurance, PLC. (Dkt. 16, Ex. B). Further, (although not necessary in order for the Rooker-Feldman doctrine to

> preclude  
> jurisdiction herein) the state court actually addressed the issue of  
> arbitration  
> and the applicability of the Convention when, in its November 21, 1996,  
> Order it  
> determined that the arbitration clause in the insurance contract could not  
> be  
> enforced against Casciani. Sphere Drake had the right to appeal the state  
> court  
> judgment, and its underlying order, to the Florida District Court of  
> Appeal,  
> First District. See Rule 9.030(b)(1)(A), Florida Rules of Appellate  
> Procedure  
> [hereinafter "FRAP"] ("District Courts of Appeal shall review, by appeal  
> final  
> orders of trial courts, . . .")(emphasis added). Additionally, Sphere  
> Drake  
> could have appealed the state court's November 21, 1996, order prior to  
> the  
> entry of judgment on at least two other bases, as the November 21 order  
> both  
> determined the issue of liability in favor of Plaintiff Casciani, who was  
> the  
> party seeking affirmative relief in the state court action, and also  
> determined  
> that Sphere Drake was not entitled [\*19] to arbitration. See FRAP  
> 9.030(b)(1)(B) ("District Courts of Appeal shall review, by appeal  
> non-final  
> orders of circuit courts as prescribed by rule 9.130")(emphasis added);  
> FRAP  
> 9.130(a)(3)(C)(iv),(v) ("Review of non-final orders of lower tribunals is  
> limited to [, inter alia,] those that determine . . . the issue of  
> liability in  
> favor of a party seeking affirmative relief [and] the entitlement of a  
> party to  
> arbitration.")  
>  
> The fact that Sphere Drake was not a party in name to the state court  
> action  
> at the time that Plaintiff Casciani's motion to join it was argued is of  
> no  
> relevance inasmuch as the record indisputably reflects that Sphere Drake  
> was  
> given notice and was in fact heard (both by oral argument and by written  
> submissions) on this issue and other related issues. Sphere Drake thus  
> had-and  
> fully utilized-a "reasonable opportunity" to raise its federal claims in  
> the  
> underlying state court proceedings. n15 (font note enabled)



>  
> -----Footnotes-----

> n15 Sphere Drake's primary argument against the application of the  
> doctrine  
> has been that it did not have a "full and fair opportunity" to litigate  
> its  
> federal claims in the state court. It is obvious, however, that Sphere  
> Drake has  
> conflated the "full and fair opportunity" component of res judicata with  
> the "  
> reasonable opportunity" component of Rooker-Feldman. While heavy blurring  
> of the  
> doctrines is not uncommon, see *Moccio v. New York State Office of Court  
> Administration*, 95 F.3d 195, 199 (2d Cir. 1996), it is clear that the  
> doctrines  
> are ultimately distinct and discrete, see *Narey v. Dean*, 32 F.3d 1521,  
> 1524  
> (11th Cir. 1994); see also, generally, *Garry v. Geils*, 82 F.3d 1362,  
> 1366-67 &c

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> nn.7-8 (7th Cir. 1996)(distinguishing the two doctrines).

> -----End Footnotes-----

> [\*20]

> [25] Further, upon entry of the state court's November 21, 1996, Order  
> (which  
> order, inter alia, officially made Sphere Drake a party to the state court  
> action) and subsequently upon the entry of the state court judgment on  
> December  
> 5, 1996, Sphere Drake, as noted above, had several bases of appeal as of  
> right  
> to the intermediate state appellate court. n16 Thus, if the state court  
> erred in  
> its rulings, nay if it could even be said to have thereby deprived Sphere  
> Drake  
> of fundamental fairness or violated principles implicit in the concept of  
> ordered liberty--issues upon which this Court offers no opinion and makes  
> no  
> finding--adequate opportunity existed to correct those asserted errors by  
> way of  
> appeal to the appropriate Florida District Court of Appeal. Thus, even  
> assuming

> that Sphere Drake did not have or utilize an opportunity to raise its  
> federal  
> claims before the circuit court--issues upon which this Court has  
> expressly  
> found to the contrary--the existence of several bases of appeal as of  
> right (in  
> this case, to the Florida District Court of Appeal) also provided the  
> necessary "  
> reasonable opportunity" to litigate those claims, thereby precluding  
> jurisdiction under the Rooker-Feldman [\*21] doctrine.

> -----Footnotes-----

> ...

>

> n16 It has also been argued herein, primarily by Defendant La Cruise,  
> that,  
> because the Rooker-Feldman doctrine has been stated to only bar federal  
> court  
> review of "final" state court judgments and because the state-court  
> judgment in  
> this case never became final under the Florida Rules of Civil Procedure  
> due to  
> the filing of post-judgment motions in the state court by Defendants La  
> Cruise  
> and Sphere Drake, the doctrine is not applicable to this case. What has,  
> of  
> course, been overlooked is the fact that the removal of this action has  
> divested  
> the state court of jurisdiction over this action, including the  
> jurisdiction to  
> rule on such post-judgment motions, and thereby precluded the state court  
> judgment from ever becoming final. And to the extent that analogous such  
> motions  
> have been filed in this Court under the parallel Federal Rules of Civil  
> Procedure, such motions directly implicate the core of the doctrine by  
> expressly  
> calling upon this Court to review the state court judgment entered in this  
> case.

> -----End Footnotes-----

> ...

> [\*22]

>

> IV. Conclusion

>

> [15] As the Court has concluded that the Rooker-Feldman doctrine precludes  
> subject  
> matter jurisdiction in this Court, the question then arises as to what  
> should be

> done with this case. As noted above in part II, the paradigmatic case for  
> the  
> application of the doctrine is one in which a party, unhappy with the  
> results of  
> litigation in state court, files a separate suit in federal court  
> attacking the  
> state court judgment. In such cases, upon determining that the doctrine  
> precludes federal district court jurisdiction over the second suit, the  
> normal  
> course would be to dismiss the second case. However, as this case was in  
> fact  
> removed to this Court, having now determined that subject matter  
> jurisdiction in  
> this Court is precluded, dismissal of this action would appear improper.  
> Instead, the proper course of action would appear to be to remand this  
> case to  
> the state court from whence it was removed. Such shall be done. n17

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> -----Footnotes-----

> n17 Alternatively, assuming that the Rooker-Feldman doctrine did not  
> apply to  
> bar subject matter jurisdiction herein, the Court would nonetheless still  
> remand  
> this action based on its untimely removal under 9 U.S.C. @ 205. In section  
> 205,  
> as noted supra in the text, removal to federal court of state court  
> actions that  
> relate to an arbitration agreement falling under the Convention is allowed  
> "at  
> any time before the trial thereof." As also noted supra, there was no  
> trial in  
> the state court in this action; rather all of the claims and defenses  
> presented  
> by the parties were resolved following a hearing on several motions and  
> responses thereto filed by the various parties. Following that hearing,  
> the  
> entry of an order by the state court resolving those issues, and the  
> subsequent  
> entry of a judgment based thereon, Defendant Sphere Drake removed this  
> action.  
> Thus it can be seen that although there was no trial per se in the state  
> court,  
> the state court action had nonetheless been completely resolved--i.e.,

> brought  
> to the same state where it would have been had there been a trial therein.  
> To  
> now allow removal under these circumstances pursuant to a provision  
> allowing  
> removal "at any time before trial" would exalt form over substance, and  
> effectively allow actions resolved summarily in state court to be removed  
> at a  
> point in the proceedings well past the time that Congress intended to  
> allow such  
> under @ 205. It is noteworthy that other courts have reached the same  
> conclusion  
> in similar circumstances of removal under this section. See LaFarge Coppee  
> v.  
> Venezolana de Cementos, S.A.C.A., 31 F.3d 70, 72-73 (2d Cir. 1994) (holding  
> that  
> removal of state court action to federal court pursuant to 9 U.S.C. @ 205  
> was  
> improper where, prior to removal, state court proceedings, although brief,  
> had  
> adjudicated the entirety of the claim (for an injunction in aid of  
> arbitration)  
> tendered by the plaintiff therein).<sup>50</sup>

> -----End Footnotes-----

> [ \*23 ]

> [ \* ] Upon consideration thereof, it is hereby ORDERED:

> 1. This case is REMANDED to the Circuit Court for the Fourth Judicial  
> Circuit, in and for Duval County, Florida.<sup>29</sup>

> 2. The Clerk is DIRECTED to terminate all pending motions as moot.

> DONE AND ORDERED, at Jacksonville, Florida, this 12th day of January,  
> 1998.

> RALPH W. NIMMONS, JR.

> UNITED STATES DISTRICT JUDGE

24 June 1998  
Shannon

SHANNON CASCIANI, as Personal Representative of the Estate  
of Michael Casciani, Plaintiff, v. LA CRUISE, INC., and  
SPHERE DRAKE INSURANCE CO., Defendants.

CASE NO. 96-1249-CIV-J-21-A

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF

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>  
> ORDER

> This cause comes before the Court on Plaintiff's Motion for Attorney's  
> Fees,  
> etc. (Dkt. 48) and Defendant Sphere Drake's Response (Dkt. 49) n1 in  
> opposition  
> thereto.

> -----Footnotes-----  
> ...

> n1 This document, an obvious facsimile copy which nonetheless bears an  
> original signature was received and filed by the Clerk on January 30,  
> 1998.  
> Subsequently, on February 6, 1998, the Clerk received and filed what is  
> apparently the original of this document, Dkt. 50, which also bears an  
> original  
> signature.

> -----End Footnotes-----  
> ...

> [\*2]

> I. Background n2

> -----Footnotes-----  
> ...

> n2 A more exhaustive factual background, including record citations,  
> can be  
> found in this Court's prior Orders of July 7, 1997, and January 12, 1998,  
> (Dkts.  
> 32 & 47, resp.). However, for purposes of consideration of the instant  
> motion,  
> the facts set forth in the text herein are most relevant.

> -----End Footnotes-----  
> ...

> On September 5, 1994, Plaintiff's Decedent Michael Casciani  
> ("Decedent") was  
> fatally electrocuted while working aboard a vessel owned by Defendant La  
> Cruise,  
> Inc. ("La Cruise"). Thereafter, Plaintiff Shannon Casciani ("Plaintiff" or  
> "Casciani"), on behalf of the Decedent's estate and his heirs, filed a  
> wrongful

> PAGE 686



- >
- >
- > death lawsuit against La Cruise in the Circuit Court for the Fourth
- > Judicial
- > Circuit, in and for Duval County, Florida.
- >
- > Defendant Sphere Drake Insurance Company ("Sphere Drake") had
- > previously
- > issued to La Cruise a policy of insurance that was in force when Decedent
- > was
- > electrocuted aboard La Cruise's vessel. In approximately mid-June, 1996,
- > subsequent to the commencement of the state [\*3] court wrongful death
- > action,
- > an insurance adjuster, allegedly acting as agent of Sphere Drake,
- > negotiated a \$
- > 500,000.00 settlement ("the Settlement") with Casciani, purportedly
- > pursuant to
- > Sphere Drake's contractual authority to do so under the insurance policy
- > issued
- > to La Cruise. Thereafter, a dispute arose between La Cruise and Sphere
- > Drake
- > relating to the amount of the settlement for which each was responsible
- > and the
- > order in which each had to pay. Sphere Drake, contending that the policy
- > is one
- > of indemnity rather than liability, maintained that La Cruise had to first
- > pay
- > off the Settlement before Sphere Drake incurred any obligation under the
- > policy.
- > La Cruise maintained otherwise.
- >
- > Thereafter, on September 18, 1996, Casciani filed in the state court
- > its
- > Motion to Join as Party Sphere Drake Insurance, PLC. Casciani's Motion to
- > Join
- > sought to join Sphere Drake as a defendant in the state court action
- > pursuant to
- > § 627.4136, Fla. Stat., and to enforce the Settlement and/or enter a final
- > judgment against Sphere Drake and La Cruise. On September 27, 1996,
- > pursuant to
- > a Notice issued to all parties, including Sphere Drake, the state court
- > heard
- > oral argument from respective counsel [\*4] on Plaintiff's Motion to Join.
- >
- > Subsequently, on October 10, 1996, Sphere Drake, appearing specially,
- > filed a
- > Response in opposition to Plaintiff's Motion to Join. In that Response,
- > Sphere
- > Drake argued that Casciani was not entitled to join Sphere Drake as a



> party-defendant (1) because of the mandatory arbitration clause contained  
> in  
> the insurance policy (which clause Sphere Drake argued was equally  
> applicable to  
> any third-party beneficiary of the policy, such as Casciani) and (2)  
> because  
> Florida law prohibits a direct action by Casciani against Sphere Drake  
> both  
> because the policy at issue was one of indemnity and because Casciani was,  
> at  
> most, an incidental beneficiary thereof. Additionally, in its Response  
> Sphere  
> Drake extensively briefed various issues relating to arbitration,  
> including the  
> applicability of the Convention on the Recognition and Enforcement of  
> Foreign  
> Arbitral Awards, 9 U.S.C. §§ 201-208, to the state court proceedings, the  
> state  
> court's concurrent jurisdiction under the Convention, and its power  
> thereunder  
> to stay the proceedings before it and order all the parties to the suit  
> (including Casciani) to arbitrate pursuant to the terms of the insurance  
> contract between [\*5] Sphere Drake and La Cruise.  
>  
> On November 21, 1996, by written Order, the state court granted  
> Plaintiff's  
> Motion to Join as Party Sphere Drake Insurance, PLC; directed counsel for  
> Plaintiff to submit to the Court and Defendants a proposed judgment  
> consistent  
> with that order; and gave Defendants five days after receipt of the  
> proposed  
> judgment to file any objections to the form thereof. Inter alia, in its  
> Order  
> the state court determined that the insurance policy issued to La Cruise  
> was one  
> of liability, not indemnity, and also determined that the arbitration  
> provision  
> of that insurance policy could not be enforced against Casciani. On  
> December 5,  
> 1996, the state court entered a final judgment against Defendants La  
> Cruise and  
> Sphere Drake in the amount of \$ 500,000.00; according to the Clerk's stamp  
> thereon, this judgment was filed and recorded on December 6, 1996.  
>  
> Thereafter, on December 10, 1996, Sphere Drake removed this action to  
> this  
>  
> PAGE 687  
>

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>  
> Court, citing in its Notice of Removal (Dkt. 1) provisions of the  
> Convention on  
> the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"),  
> a  
> treaty adopted by and enforced through 9 U.S.C. @@ 201-208. Inter alia, @  
> 203 of  
> the Convention [\*6] provides federal district courts with original  
> jurisdiction  
> over actions or proceedings falling under the Convention; @ 205 thereof  
> expressly provides for removal to federal district court of, inter alia,  
> state  
> court actions which relate to an arbitration agreement falling under the  
> Convention, "at any time before trial thereof" in the state court; and, @  
> 206 of  
> the Convention empowers all courts with jurisdiction over actions  
> involving  
> arbitration agreements falling under the Convention (including state  
> courts) to  
> enter orders directing arbitration in accordance with those agreements.  
> Both the  
> United States and the United Kingdom (the country of incorporation of  
> Sphere  
> Drake) are signatories to the Convention.  
>  
> Following removal of this case, the parties filed multiple motions  
> herein,  
> all of which were reviewed in the Court's July 9, 1997, Order (Dkt. 32).  
> Among  
> those motions, and relevant for purposes of the instant inquiry, are  
> Sphere  
> Drake's Motion to Stay and Compel Arbitration (Dkt. 2), filed December 10,  
> 1996,  
> and its Motion to Vacate State Court Judgment (Dkt. 14), filed on December  
> 16,  
> 1996.  
>  
> In its Motion to Stay and Compel Arbitration (Dkt. 2), Sphere Drake  
> sought an  
> order, [\*7] pursuant to the Convention, 9 U.S.C. @ 201 et seq., staying  
> this  
> action and compelling Plaintiff Casciani, as well as Defendant La Cruise,  
> to  
> arbitrate their claims and disputes against Sphere Drake pursuant to the  
> arbitration clause contained in the insurance contract between Sphere  
> Drake and  
> La Cruise. In its Motion to Vacate State Court Judgment (Dkt. 14), Sphere  
> Drake  
> moved, pursuant to Rule 59, Federal Rules of Civil Procedure (FRCP), to

> vacate  
> the state court judgment (entered December 5, 1996), asserting that the  
> same was  
> void or voidable based on multiple errors of the state court.  
> Specifically,  
> Sphere Drake asserted that (1) the judgment was entered in violation of  
> its  
> rights under the Convention on the Recognition and Enforcement of Foreign  
> Arbitral Awards ("Convention"), enacted in 9 U.S.C. @ 201-208; (2)  
> section  
> 627.4136, Fla. Stat., pursuant to which Sphere Drake was joined in the  
> state  
> court action, is unconstitutional as it was applied to Sphere Drake; (3)  
> Sphere  
> Drake was denied all due process when the state court entered a judgment  
> against  
> it, a "non-party"; and (4) the state court judgment does not protect it  
> (or La  
> Cruise) from subsequent liability to the minor-survivors [\*8] of  
> Plaintiff's  
> Decedent, as the state court did not follow the proper state procedures  
> for  
> approving the settlement.  
>  
> Finding that the relief sought potentially placed this case without  
> this  
> Court's jurisdiction, the Court directed the parties to brief the  
> applicability  
> of the Rooker-Feldman doctrine to this case. See Order of July 9, 1997,  
> Dkt. 32.  
> Following the submission of such briefs, the Court determined that the  
> Rooker-Feldman doctrine applied and thus remanded this action to the state  
> court. See Order of January 12, 1998, Dkt. 47. By her Motion for  
> Attorney's  
> Fees, etc. (Dkt. 48), Plaintiff has now reasserted the request for  
> attorney's  
> fees and costs, pursuant to @ 1447(c), made in her December 1996 Motion to  
> Remand (Dkt. 16). Defendant Sphere Drake objects thereto.  
>  
> II. Jurisdiction to Award Costs and Attorney's Fees Under @ 1447(c)  
>  
> An issue not raised by the parties, but one which merits discussion  
> given  
> this Court's continuing obligation to act only in the presence of  
> jurisdiction,  
>  
> PAGE 688  
>  
> 1998 U.S. Dist. LEXIS 12913, \*8  
>

> see, e.g., FRCP 12(h)(3), is the issue of this Court's jurisdiction to  
> award  
> costs and attorney's fees under @ 1447(c) following the entry of its Order  
> (Dkt.  
> [\*9] 47) of January 12, 1998, remanding this case to the state court from  
> whence it came.  
>  
> At least one court in the Eleventh Circuit has held that any award of  
> costs  
> pursuant to @ 1447(c) must be made in the order of remand. See United  
> Broadcasting Corporation v. Miami Tele-Communications, Inc., 140 F.R.D.  
> 12, 14  
> (S.D. Fla. 1991)(reaching such conclusion based on plain reading of @ 1447  
> language that "an order remanding the case may require payment . . .").  
> However, the majority of federal courts which have considered the issue  
> have  
> concluded that, even after being divested of jurisdiction over the merits  
> of an  
> action, a federal court retains jurisdiction to adjudicate collateral  
> matters,  
> such as issues of costs and attorney's fees under @ 1447(c). See Moore v.  
> Permanente Medical Group, Inc., 981 F.2d 443, 445 (9th Cir. 1992)(relying  
> on  
> U.S. Supreme Court decision in Cooter & Gell v. Hartmarx Corp., 496 U.S.  
> 384,  
> 110 L. Ed. 2d 359, 110 S. Ct. 2447 (1990), wherein Court concluded that a  
> district court retained jurisdiction to award Rule 11 attorney's fees  
> following  
> voluntary dismissal of a suit; concluding generally that an award of  
> attorney's  
> fees is a collateral matter [\*10] over which federal courts can properly  
> retain  
> jurisdiction); see also Stallworth v. Greater Cleveland Regional Transit  
> Authority, 105 F.3d 252, 256-57 (6th Cir. 1997)(discussing United  
> Broadcasting  
> and Moore decisions; criticizing the former's plain language reading;  
> noting  
> instead that the language of @ 1447 is enabling, not exclusive; and  
> concluding  
> that jurisdiction to award costs under @ 1447(c) exists following remand);  
> Mints  
> v. Educational Testing Service, 99 F.3d 1253, 1257-60 (3d Cir. 1996)(also  
> noting  
> non-exclusiveness of @ 1447(c) language; noting that retention of  
> jurisdiction  
> to award costs does not interfere with a state court's jurisdiction over a  
> remanded action; and concluding that jurisdiction to award costs under @  
> 1447(c)  
> exists following remand). This Court agrees with the significantly greater

> weight of authority, and thus concludes that the continuing exercise of  
> jurisdiction following remand, limited to the consideration of a costs and  
> fees  
> request under @ 1447, is proper.

> III. Merits of Plaintiff's Motion

> a. Arguments of the Parties

> Plaintiff asserts that under @ 1447(c) she is entitled to attorney's  
> fees and  
> costs expended [\*11] in connection with her motion for remand and the  
> attendant  
> motions filed with the Court. Plaintiff asserts that Defendant Sphere  
> Drake's  
> removal was without basis and for the purpose of rehearing the state  
> court's  
> decision, and was an action undertaken only after it litigated extensively  
> (and  
> lost) in the state court. Plaintiff further asserts that Sphere Drake  
> obviously  
> removed this action without apprising itself of the Rooker-Feldman  
> doctrine.  
> Thus, Plaintiff contends, the Court can properly conclude that, although a  
> finding of bad faith is no longer required to award attorney's fees under  
> @  
> 1447(c), Sphere Drake removed this action in bad faith, intending to beat  
> Plaintiff (a widow with three children) in a war of attrition. n3 In  
> conclusion,  
> Plaintiff asserts that the removal of this case has caused her to incur  
> various  
> costs and attorney's fees that she would not have incurred had Sphere  
> Drake  
> properly researched the law prior to removal, and that @ 1447(c) was  
> intended to  
> recompense such expenses incurred by the non- removing party.

> -----Footnotes-----

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> n3 This is a motive that Plaintiff has ascribed to the actions of  
> Sphere  
> Drake throughout the proceedings in this Court, but one on which this  
> Court has  
> made no express finding.

>  
> -----End Footnotes-----  
> ...  
> [\*12]  
>  
> Sphere Drake opposes the award of attorney's fees under @ 1447(c),  
> contending  
> that such an award is a punitive sanction inappropriate to this case, and  
> urges  
> the Court to follow the American Rule on attorney's fees, as stated in  
> Alyeska  
> Pipeline Co. v. Wilderness Society, 421 U.S. 240, 257-59, 44 L. Ed. 2d  
> 141, 95  
> S. Ct. 1612 (1975)(stating that in absence of (i) statutory authorization,  
> (ii)  
> a contractual provision, or (iii) demonstrated bad faith, vexatious,  
> wanton, or  
> oppressive behavior, attorney's fees are not available in federal court).  
> Additionally, Sphere Drake contends that the standard for awarding fees  
> under @  
> 1447(c) is "unusually vague" and also contests the assertion that bad  
> faith  
> motivated its removal. On this latter point, Sphere Drake asserts that it  
> removed this case to this Court before it was aware of the entry of the  
> state  
> court judgment and also asserts that the Court's determination that the  
> Rooker-Feldman doctrine applies was not made easily, concluding that the  
> fact of  
> remand alone is not a basis to award fees under @ 1447. In support  
> thereof,  
> Sphere Drake cites various cases--all decided before 1988--which stand for  
> propositions such as that [\*13] costs are not warranted where the  
> question of  
> removability is close and novel or that costs are proper only where there  
> is a  
> patent lack of subject matter jurisdiction in the removing court. Sphere  
> Drake  
> asserts that this Court's Order of remand did not determine that the  
> statutory  
> basis relied upon was improper, only that a final judgment had been  
> entered;  
> thus, Sphere Drake contends, its removal was valid. In conclusion, Sphere  
> Drake  
> urges that where a remand depends upon a district court's exercise of  
> discretion  
> pursuant to an abstention doctrine, as opposed to a mandatory remand, such  
> as in  
> cases where subject matter jurisdiction is lacking, an award of attorney's  
> fees

> under @ 1447(c) is unfairly punitive and has the effect of chilling a  
> party's  
> attempt to pursue its legal rights.  
>  
> b. Applicable Standard  
>  
> Title 28 U.S.C. @ 1447(c) provides, in pertinent part, as follows:  
>  
> A motion to remand the case on the basis of any defect other than lack of  
> subject matter jurisdiction must be made within 30 days after filing the  
> notice  
> of removal under section 1446(a). If at any time before final judgment it  
> appears that the district court lacks subject matter jurisdiction, the  
> [\*14]  
> case shall be remanded. 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.  
>  
> Prior to 1988, @ 1447(c) provided as follows:  
>  
> If at any time before final judgment it appears that the case was removed  
> improvidently and without jurisdiction, the district court shall remand  
> the  
> case, and may order the payment of just costs.  
>  
> 28 U.S.C. @ 1447(c) (1982).  
>  
>  
> PAGE 690  
> 1998 U.S. Dist. LEXIS 12913, \*14  
>  
> Federal courts agree that both before and after the 1988 amendment to @  
> 1447(c), the imposition of costs thereunder is a matter for the Court's  
> discretion. However, because the pre-1988 version of @ 1447(c) did not  
> expressly  
> provide that attorney's fees could be awarded as part of "just costs,"  
> prior to  
> that time, federal courts only awarded attorney's fees under @ 1447(c)  
> where  
> the removing party was found to have acted in bad faith, vexatiously,  
> wantonly,  
> or for oppressive reasons—that is, in keeping with the American Rule as  
> stated  
> in Alyska. See, e.g., Moore v. Permanente Medical Group, Inc., 981 F.2d  
> 443,  
> 446 (9th Cir. 1992); Penrod Drilling Corp. v. Granite State Ins. Co., 764  
> F.

> Supp. 1146, 1147 (S.D. [\*15] Tex. 1990). But federal courts agree that,  
 > following the 1988 amendments to @ 1447(c), it is now permissible to award  
 > attorney's fees thereunder without finding bad faith or other improper  
 > motive.  
 > See *Mints v. Educational Testing Service*, 99 F.3d 1253, 1260 (3d Cir.  
 > 1996);  
 > *Moore*, 981 F.2d at 446; *Gray v. New York Life Ins. Co.*, 906 F. Supp. 628,  
 > 631  
 > (N.D. Ala. 1995); *Shrader v. Legg Mason Wood Walker, Inc.*, 880 F. Supp.  
 > 366, 368  
 > (E.D. Pa. 1995); *Penrod*, 764 F. Supp. at 1147; see also *Robert A.*  
 > *Butterworth v.*  
 > *Chances Casino Cruises, Inc.*, No. 97-846-CIV-J, at \*8 (M.D. Fla. July 14,  
 > 1996)(citing *Liebig v. DeJoy*, 814 F. Supp. 1074 (M.D. Fla. 1993)).  
 > Nonetheless,  
 > despite the lowering of this standard as regards attorney's fees under @  
 > 1447(c), this Court agrees with other federal courts that the award of  
 > attorney's fees under @ 1447(c) was not intended to be routine, and is  
 > still a  
 > matter for the district court's discretion on a case-by-case basis. See,  
 > e.g.,  
 > *Miranti v. Lee*, 3 F.3d 925, 928 (5th Cir. 1993); *Gray*, 906 F. Supp. at  
 > 631; *IMCO*  
 > *USA, Inc. v. Title Ins. Co. of Minnesota*, 729 F. Supp. 1322, 1324 (M.D.  
 > Fla.  
 > 1990).  
 >  
 > Although @ 1447(c) does [\*16] not contain an express standard to guide  
 > the  
 > district court's exercise of its discretion thereunder, and although there  
 > is no  
 > one definitive standard shared by all federal courts, case law--and  
 > specifically  
 > post-1988 case law--has rather well elucidated the factors to be  
 > considered.  
 > See, e.g., *Miranti*, 3 F.3d at 928 (holding that, even following 1988  
 > amendment,  
 > the propriety of the removal continues to be central in determining  
 > whether to  
 > impose fees); *Gray*, 906 F. Supp. at 633-35 (discussing various,  
 > non-exclusive  
 > factors relevant to consideration of fee requests under @ 1447(c)).  
 > Further, it  
 > is clear that @ 1447(c) is intended primarily to serve a remedial purpose:  
 > compensation of all costs incurred by the non-removing party, in  
 > appropriate  
 > circumstances. See *Shrader*, 880 F. Supp. at 368 (citing, inter alia,  
 > *Moore*,  
 > supra, and the legislative history of the 1988 amendments to @ 1447(c));



**Sec. 1447. Procedure after removal generally**

- (a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.
- (b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.
- (c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. 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. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.
- (d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.
- (e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

- > Chances
- > Casino, at \*8 (citing Liebig).

> c. Discussion

> [ Having considered all of the foregoing, the Court concludes that it is  
> appropriate to award the Plaintiff both costs and attorney's fees in this  
> instance based upon the clearly improper purpose for which the Defendant  
> [\*17]

> Sphere Drake removed this action to this Court. First, immediately upon  
> removing  
> this action, Sphere Drake moved to compel Plaintiff to arbitrate, therein  
> asking  
> this Court to reconsider an issue upon which the state court had already  
> passed.  
> See Dkt. 2 (Sphere Drake's Motion to Stay and Compel Arbitration). Sphere  
> Drake  
> requested such relief from this Court even though the state court had  
> ruled on  
> such issue in its November 21, 1996, Order; even though the state court  
> clearly  
> had jurisdiction to rule on the matter, see 9 U.S.C. @ 206 (empowering all  
> courts with jurisdiction over actions involving arbitration agreements  
> falling  
> under the Convention, including state courts, to enter orders directing  
> arbitration in accordance with those agreements); and even though any  
> error in

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> the state court's Order denying such a request was appealable as of right  
> to the  
> Florida District Court of Appeal, First District, n4/Second, at least upon  
> arriving in this Court, if not before, n5/Sphere Drake sought to have this  
> Court

> review and overturn the entire judgment entered by the state court, see  
> Dkt. 14

> (Sphere Drake's Motion to Vacate State Court Judgment), without regard for  
> the

> [\*18] Rooker-Feldman doctrine or any other considerations of our federal  
> system. And none of the arguments now presented by Sphere Drake dissuade  
> the

> Court from its conclusion that Sphere Drake removed this case for an  
> improper

> purpose and that an award of costs and attorney's fees under @ 1447(c) is  
> therefore appropriate.

> .....-Footnotes-.....

25 28 U.S.C. Sect. 1447(c) reads in relevant part  
— see photocopy

> ---  
>  
> n4 See Dkt. 47 at 10-11 (Court's January 12, 1998, Order)(noting  
> available  
> appeals as of right, both interlocutory and following the entry of  
> judgment, by  
> which Sphere Drake could have appealed the state court's ruling).

>  
> n5 Recall that Sphere Drake asserts it was not yet aware of the entry  
> of the  
> state court judgment when it removed this action.

> -----End Footnotes-----  
> ---  
>

> [4] First, the Court disagrees with Sphere Drake that the award of fees  
> under @  
> 1447(c) is now only a punitive measure, a sanction. The 1988 amendments to  
> @  
> 1447(c) clearly removed the necessity of making a finding of bad faith as  
> a  
> pre-requisite to the award of fees thereunder and, in keeping with the  
> Supreme  
> Court's ruling in Alyeska, provided [\*19] an express statutory  
> authorization  
> for the award of attorney's fees. Additionally, the Court disagrees with  
> Sphere  
> Drake that the standard under @ 1447(c) is "unusually vague." As set forth  
> above  
> in part III.b. case law provides ample guideposts to inform the Court's  
> exercise of its discretion under @ 1447(c).

>  
> [7] Further, the Court disagrees on several points with Sphere Drake's  
> assertion  
> that where remand depends upon the exercise of discretion (e.g., in cases  
> of  
> application of an abstention doctrine), the awarding of fees under @  
> 1447(c)  
> would have the effect of chilling a party's attempts to exercise its legal  
> rights. The first two points go to assumptions inherent in this assertion;  
> the  
> third to the overall premise. First, the Court disagrees that application  
> of the  
> Rooker-Feldman doctrine is purely a matter of discretion. As explained in  
> the  
> Court's prior Order, the doctrine is based directly on negative inference  
> from  
> two core federal court jurisdictional statutes, 28 U.S.C. @@ 1257 & 1331.  
> Thus

> Rooker-Feldman is qualitatively different from other kinds of  
> non-statutory  
> abstention; the conclusion that the doctrine applies is substantially more  
> akin  
> to a ruling that [\*20] subject matter jurisdiction is lacking. Second,  
> the  
> Court would take issue with the implication that removal of this action  
> provided  
> the only means by which Sphere Drake could exercise its asserted rights  
> under  
> the Convention. As noted above, the state court had concurrent  
> jurisdiction to  
> order arbitration under the Convention; Sphere Drake expressly requested  
> of the  
> state court that it order arbitration pursuant to the Convention; the  
> state  
> court considered and denied such request; and that ruling was appealable  
> as of  
> right to the Florida District Court of Appeal. Thus, Sphere Drake's  
> removal to  
> this Court is not properly characterized as an attempt to assert a right  
> it  
> could not assert otherwise; rather, its removal was clearly an attempt to  
> relitigate a matter already considered and decided. Lastly, as to Sphere  
> Drake's  
> overall assertion that fee awards are chilling, the Court would agree that  
> such

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> is one potential effect of @ 1447(c). As stated by the District Court in  
> Gray,  
> 906 F. Supp. 628, that effect is, at least in part, exactly what Congress  
> intended: that removing Defendants should make an intelligent, honest risk  
> assessment, following studied consideration of the law, [\*21] before  
> reflexively removing an action to a federal district court or risk the  
> imposition of costs, including attorney's fees?"

> IV. Plaintiff's Request for a Hearing

> In her motion, Plaintiff requests that the Court set a hearing before  
> the  
> Magistrate Judge for purposes of determining the amount of any award under  
> @  
> 1447(c). In accordance with the general practice of this District with  
> regard to  
> motions for costs and attorney's fees, see Rule 4.18, Local Rules, Middle  
> District of Florida ("All claims for costs or attorney's fees . . . shall

> be  
> asserted by separate motion or petition . . . ."), the Court will deny the  
> request for a hearing and instead decide the amount of costs and fees to  
> which  
> Plaintiff is entitled on the basis of written submissions filed in  
> accordance  
> with the following: Plaintiff's written submissions thereon shall be filed  
> by  
> July 13, 1998; Defendant's response thereto shall be filed within the  
> standard  
> response time provided by the Federal and Local Rules. Each party's  
> written  
> submission should be in the form of a memorandum, with citations to  
> authority  
> where appropriate, to which are appended necessary supporting evidentiary  
> materials, including [\*22] affidavits, etc.

> Upon consideration thereof, it is hereby ORDERED:

> 1. Plaintiff's Motion for Attorney's Fees, etc. (Dkt. 48) is GRANTED.

> 2. Plaintiff shall file her written submission setting forth the amount  
> of  
> fees and costs sought on or before July 13, 1998.

> 3. Defendant Sphere Drake shall file its response to Plaintiff's  
> written  
> submission within the standard response time provided by the Federal and  
> Local  
> Rules.

> 4. There will be no other submissions on this issue (whether by  
> response,  
> reply, objection, motion to strike, etc.) except as expressly authorized  
> in  
> writing by the Court.

> DONE AND ORDERED, at Jacksonville, Florida, this 24th day of June,  
> 1998.

> /s/

> RALPH W. NIMMONS, JR.

> UNITED STATES DISTRICT JUDGE

**Sec. 1331. Federal question**

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

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