THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

3212 LONG PRAIRIE REAL ESTATE PARTNERSHIP, LTD	§	
	§	
v.	§	CIVIL NO. 4:24-CV-00612-SDJ-BD
	§	
NATIONWIDE PROPERTY & CASUALTY INSURANCE CO.	§	

MEMORANDUM ADOPTING THE REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On January 5, 2026, the Magistrate Judge entered proposed findings of fact and a recommendation (the "Report"), (Dkt. #29), that D Gorup Venture Capital, LLC's Motion to Intervene, (Dkt. #9), and Motion to Remand (Dkt. #24), be denied.

Having received the Report of the United States Magistrate Judge, and no timely objections being filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's Report as the findings and conclusions of the Court.

It is therefore **ORDERED** that the Motion to Intervene, (Dkt. #9), and Motion to Remand (Dkt. #24), are **DENIED**.

So ORDERED and SIGNED this 6th day of April, 2026.

SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

3212 LONG PRAIRIE REAL ESTATE PARTNERSHIP, LTD	§	
	§	
	§	
v.	§	**NO. 4:24-CV-00612-SDJ-BD**
	§	
NATIONWIDE PROPERTY & CASUALTY INSURANCE CO., *et al.*	§	
	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff 3212 Long Prairie Real Estate Partnership, Ltd, sued Nationwide Property & Casualty Insurance Co. and D Gorup Venture Capital, LLC, in state court for breach of an insurance contract. Dkt. 3. Arguing that D Gorup, a Texas entity, was improperly joined, Nationwide removed the case to this court based on diversity of the parties' citizenships. Dkt. 1. D Gorup moved to intervene under Federal Rule of Civil Procedure 24, asserting a claim against Long Prairie. Dkt. 9; *see* Dkts. 12 (response), 21 (reply), 24 (D Gorup's supplemental briefing), 25 (Nationwide's supplemental briefing). In its supplemental briefing, D Gorup also asked the court to remand the case to state court. Dkt. 24. The court will treat that briefing as a motion to remand and recommend that both motions, Dkts. 9, 24, be denied.

BACKGROUND

I. Factual Background

According to the operative complaint, Long Prairie owned a commercial property in Flower Mound, Texas, and contracted to sell it to D Gorup. Dkt. 3 at 3. Between executing the sale contract and closing, Long Prairie maintained insurance on the property through Nationwide. *Id.* Before D Gorup and Long Prairie closed, a hailstorm damaged the property. *Id.* Long Prairie filed an insurance claim with Nationwide. *Id.* Nationwide denied the claim. *Id.* D Gorup now owns the property. *Id.*

II. Procedural History

Long Prairie (a Texas entity) sued Nationwide (an Ohio entity) and D Gorup (a Texas entity) in Texas state court. *Id.* at 1–2. The petition asserted breach of contract, breach of the covenant of good faith and fair dealing, and violations of Texas statutes. *Id.* at 5–8. None of those claims, however, targeted D Gorup. Nationwide removed the case to this court based on diversity of the parties' citizenships, arguing that D Gorup was improperly joined because Long Prairie had failed to state a claim against it. Dkt. 1.

D Gorup then moved to intervene under Federal Rule of Civil Procedure 24, asserting an interest in the outcome of the litigation that, in its view, might be impaired if it is unable to participate. Dkt. 9. Nationwide opposed the motion. Dkt. 12. At a hearing, D Gorup argued that naming it as a defendant in the state-court case was a mistake and that it was actually "a proper party" under Texas Rule of Civil Procedure 39. Minute Entry for Apr. 2, 2025.

After the hearing, D Gorup filed supplemental briefing on subject-matter jurisdiction, arguing for a remand to state court. Dkt. 24. The court stayed the case pending resolution of D Gorup's motion to intervene. Dkt. 27.

LAW

I. Subject-Matter Jurisdiction

"Federal courts are courts of limited jurisdiction" and "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). When in doubt, the court must "presume[] that a cause lies outside this limited jurisdiction." *Id.*

A federal court has original jurisdiction over any "civil action[] where the matter in controversy exceeds . . . $75,000" and is between "citizens of different States." 28 U.S.C. § 1332(a). Section 1332 requires "complete diversity." *MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 313 (5th Cir. 2019). In other words, "all persons on one side of the controversy [must] be citizens of different states than all persons on the other side." *Id.* If a plaintiff brings claims over which the court has original jurisdiction and others over which it does not, the court may exercise

supplemental jurisdiction over all the claims if they form part of the same case or controversy as the claims over which the court has supplemental jurisdiction. 28 U.S.C. § 1367(a).

If a plaintiff files an action in state court over which a federal court could exercise jurisdiction, the defendant or defendants may remove the action to federal court. 28 U.S.C. § 1441. If a defendant removes an action over which the federal court cannot exercise jurisdiction, the federal court must remand the case to state court. *See Royal Canin U. S. A., Inc. v. Wullschleger*, 604 U.S. 22, 38 (2025). But if a non-diverse defendant is improperly joined, "the court may disregard the citizenship of [the improperly joined] defendant, dismiss the non-diverse defendant from the case, and exercise subject matter jurisdiction over the remaining diverse defendant." *Advanced Indicator & Mfg., Inc. v. Acadia Ins. Co.*, 50 F.4th 469, 473 (5th Cir. 2022) (per curiam).

To decide whether a nondiverse defendant was improperly joined, the court "appl[ies] the federal pleading standard." *Int'l Energy Ventures Mgmt., L.L.C. v. United Energy Grp., Ltd.*, 818 F.3d 193, 204 (5th Cir. 2016). It "conduct[s] a Rule 12(b)(6)-type analysis, looking initially at the allegations of the complaint to determine whether the complaint states a claim under state law against the [non-diverse] defendant." *Smallwood v. Ill. Cent. R.R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004) (en banc). The plaintiff's unchallenged allegations must be taken as true and viewed in the light most favorable to the plaintiff. *Travis v. Irby*, 326 F.3d 644, 649 (5th Cir. 2003). But the court may "'pierce the pleadings' and consider summary judgment-type evidence in the record," *id.* at 648–49, to identify "discrete and undisputed facts" that would preclude recovery, *Smallwood*, 385 F.3d at 573–74.

II. Intervention

Federal Rule of Civil Procedure 24 governs intervention. A party not named in the pleadings may intervene in a case as of right if (1) its application is timely; (2) it has "an interest relating to the property or transaction which is the subject of the action"; (3) "disposition of the action may, as a practical matter, impair or impede [its] ability to protect that interest"; and (4) its interests are not adequately represented by the existing parties. *Texas v. United States*, 805 F.3d 653, 657

(5th Cir. 2015) (quoting *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984) (en banc)); Fed. R. Civ. P. 24(a)(2).

If any of those elements is not met, the third party may seek permissive intervention by showing that it "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). When determining whether to permit intervention under Rule 24(b), "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." *Id.* R. 24(b)(3). Generally, "[f]ederal courts should allow intervention when no one would be hurt and the greater justice could be attained." *Wal–Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n*, 834 F.3d 562, 565 (5th Cir. 2016).

DISCUSSION

I. Subject-Matter Jurisdiction

D Gorup's post-hearing brief argues that "there is no independent basis for federal jurisdiction, [and] the Court must remand the case to state court." Dkt. 24 at 5. As noted, the court will treat that brief as a motion to remand. *See* 28 U.S.C. § 1447(c) (providing that, "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded" to state court); *Bridgmon v. Array Sys. Corp.*, 325 F.3d 572, 575 (5th Cir. 2003) (explaining that the court must assess its jurisdiction sua sponte).

Diversity is the only alleged basis for subject-matter jurisdiction. *See* Dkts. 1 at 3, 9-1 at 2. The statute providing for it permits the court to hear claims arising under state law if the amount in controversy exceeds $75,000 and the action is between "citizens of different States." 28 U.S.C. § 1332(a). Only the latter requirement is in doubt. *See* Dkt. 3 at 11.

As noted, Nationwide is a citizen of Ohio. Dkt. 1 at 5. Long Prairie and D Gorup are both citizens of Texas. *Id.* at 3–5. In its notice of removal, Nationwide asserts that complete diversity exists because it and Long Prairie are citizens of different States and D Gorup was improperly joined as a defendant. *See id.* Long Prairie's state-court petition does not allege any facts that could make out a cause of action against D Gorup, *see* Dkt. 3, and Long Prairie and D Gorup agree that

Long Prairie does not have any claims against D Gorup. Minute Entry for Apr. 2, 2025. D Gorup argues that it is not a defendant but rather "a proper party," without specifying what type of party it is. *Id.*; Dkt. 21 at 3.

At the hearing, which the court held to try to sort out this confusing state of affairs, Long Prairie expressed its view that D Gorup should be a plaintiff. Minute Entry for Apr. 2, 2025. But when it filed its state-court petition, Long Prairie believed that Texas Rule of Civil Procedure 39 required D Gorup to be joined as a defendant. *Id.* In its motion to remand, D Gorup agrees that it should be "aligned as a plaintiff," but against Long Prairie, not Nationwide. Dkt. 24 at 4.

Whether complete diversity exists depends on D Gorup's position in the state-court case. If D Gorup was a defendant, Nationwide is right that D Gorup was improperly joined because no claims were asserted against it and complete diversity existed between Long Prairie (the state-court plaintiff; a Texas citizen) and Nationwide (the only proper state-court defendant; an Ohio citizen). Likewise, if D Gorup was a plaintiff against Nationwide, complete diversity would exist because both of the Texas entities would be on the same side of the "v." But if, as D Gorup argues, it was a plaintiff against Long Prairie, the court would lack jurisdiction over its claim because both it and Long Prairie are Texas citizens. *See* 28 U.S.C. § 1367(b) (prohibiting district courts from exercising supplemental jurisdiction over claims by parties joined as plaintiffs under Rule 19 or seeking to intervene as plaintiffs under Rule 24 when jurisdiction is based solely on diversity and the joined parties do not satisfy the requirements of diversity jurisdiction).

D Gorup is best classified as a state-court defendant. And because it was improperly joined, complete diversity exists and the case should therefore proceed in this court.

A. D Gorup's status

Long Prairie's state-court petition styled the suit "3212 Long Prairie Real Estate Partnership, Ltd[,] Plaintiff, v. Nationwide Property & Casualty Insurance Co., and D [Gorup] Venture Capital, LLC[,] Defendants." Dkt. 3 at 1 (caption). But the petition asserted claims only against Nationwide; it asserted no claims against D Gorup. It stated that "3212 Long Prairie Real Estate Partnership, Ltd . . . complain[s] of Nationwide Property & Casualty Insurance Company . . . and

impleads D Gorup Venture Capital, LLC." *Id.* It goes on to assert that D Gorup owns the property at issue, having purchased it from Long Prairie, *id.* at 3, and that D Gorup "should be impleaded as a party" pursuant to Texas Rule of Civil Procedure 39, *id.* at 4.

Under Texas law, the proper classification of parties "is a legal question determined primarily by reviewing the pleadings." *Rhey v. Redic*, 408 S.W.3d 440, 463 (Tex. App.—El Paso 2013, no pet.). "[T]he nature of a pleading" is determined by "its substance, not the form or title given to it." *Serna v. Webster*, 908 S.W.2d 487, 491 (Tex. App.—San Antonio 1995, no pet.). That said, the plaintiff's designation of defendants plays an important role because the plaintiff is responsible for identifying the parties by name in its petition. *See* Tex. R. Civ. P. 79 (providing that "[t]he petition shall state the names of the parties"); *Reynolds v. Haws*, 741 S.W.2d 582, 588 (Tex. App.—Fort Worth 1987, writ denied) (rejecting the argument that a party was impliedly a defendant "even though [it] was not so named").

D Gorup does not qualify as a third-party defendant, an intervenor, a claimant, or a plaintiff under Texas law. With those possibilities off the table, it is best viewed (consistent with Long Prairie's designation) as a defendant.

1. Why D Gorup is not a third-party defendant

As noted, Long Prairie's petition both names D Gorup as a defendant and purports to implead it. Dkt. 3 at 1, 4. Impleader is a mechanism by which the defendant may join a third party "who is or may be liable to him or to the plaintiff for all or part of the plaintiff's claim against him." Tex. R. Civ. P. 38(a); *see also* 3 Moore's Fed. Prac. § 14.02 (3d ed. 2011) (explaining that, in federal court, a party joined by impleader is called a "third-party defendant"); 57 Eric C. Surette, Texas Jurisprudence § 105 (3d ed. 2025 supp.) (referring to impleaded parties as "third party defendants"). A plaintiff may implead a third party only when a counterclaim is filed against it, putting it in the position of a defendant. Tex. R. Civ. P. 38(b). Nationwide, the defendant, did not join D Gorup or file counterclaims against Long Prairie. And neither Nationwide nor Long Prairie contends that D Gorup may be liable to Nationwide for all or part of Long Prairie's claims against Nationwide. So D Gorup could not properly be labeled a third-party defendant.

2. Why D Gorup is not an intervenor

A third party has a right to intervene if its interests may be affected by an action. *Mass. Bay Ins. Co. v. Adkins*, 615 S.W.3d 580, 602 (Tex. App.—Houston [1st Dist.] 2020, no pet.). But the burden is on the intervenor to file a written petition to intervene. *See* Tex. R. Civ. P. 60; *Serna*, 908 S.W.2d at 492. Until it does, the intervenor is not before the court. *See Serna*, 908 S.W.2d at 492. D Gorup did not file a petition to intervene in the state court, so it was not an intervenor there.

3. Why D Gorup is not a claimant

Under Texas Rule of Civil Procedure 43, "[p]ersons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability." But interpleader applies only to specific types of claims against a plaintiff. It is "a procedural device entitling a person holding money or property, concededly belonging at least in part to another, to join in a single suit two or more persons asserting mutually exclusive claims to the fund." 47 E.S. Berggren, Texas Jurisprudence § 1 (3d ed. 2025 supp.); *see* 14D Richard D. Freer, Federal Practice & Procedure § 3825 (4th ed. 2025 supp.) (explaining that, in federal court, a party joined by interpleader is called a "claimant"); *Guaranty Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 658 n.12 (Tex. 1990) (referring to interpleaded parties as claimants). So when a party is holding funds to which other people have claims, the party may initiate a suit as a plaintiff and join the claimants as defendants. *Aaron v. Fisher*, 645 S.W.3d 299, 313 (Tex. App.—Eastland 2022, no pet.); *Clayton v. Mony Life Ins. Co. of Am.*, 284 S.W.3d 398, 401 (Tex. App.—Beaumont 2009, no pet.); *Serna*, 908 S.W.2d at 491. To do so, it must deposit the funds into the registry of the court. *Aaron*, 645 S.W.3d at 313; *Clayton*, 284 S.W.3d at 401; *Serna*, 908 S.W.2d at 491.

Nationwide arguably holds funds that both Long Prairie and D Gorup have a claim to. But it neither initiated an action naming them as defendants nor deposited the disputed funds in court. In other words, Nationwide did not interplead D Gorup. And Long Prairie does not hold funds that both D Gorup and Nationwide have a claim to, so it could not have interpleaded D Gorup. That means D Gorup was not a claimant.

4. Why D Gorup is not a plaintiff

At the hearing, Long Prairie explained that it wanted to join D Gorup as a plaintiff but believed that it could not do so under Texas Rule of Civil Procedure 39. Minute Entry for Apr. 2, 2025. Under that rule,

> [a] person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. *If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.*

Tex. R. Civ. P. 39(a) (emphasis added). Long Prairie argued that D Gorup should be a plaintiff, but, in its view, only the court can join an involuntary plaintiff. According to Long Prairie, Rule 39 compelled it to join D Gorup as a defendant.

Long Prairie's position presupposes that D Gorup "should join as a plaintiff," *id.*, but D Gorup does not bring the kinds of claims that warrant that conclusion. The quintessential feature of a plaintiff is that it asserts an affirmative claim against another. *MCI Telecomms. Corp. v. Logan Grp., Inc.*, 848 F. Supp. 86, 89 (N.D. Tex. 1994). But under Texas law, a party may be necessary as a plaintiff even though it does not voluntarily opt to participate. *McDonald v. Miller*, 39 S.W. 89, 95 (Tex. 1897). In that event, the person who should be joined as a plaintiff must be cited and brought into the case. *Id.*; *Shaffer v. Schaleben*, 236 S.W.2d 234, 238 (Tex. Civ. App.—Waco 1951, writ ref'd n.r.e.).

Unsurprisingly, the parties have not identified a case in which a court required a plaintiff to join a party so that the joined party could bring claims against it, the original plaintiff. Courts applying Rule 39 have instead described parties who should join as plaintiffs as those bringing claims against defendants. *See McCarthy v. George*, 623 S.W.2d 772, 775 (Tex. App.—Fort Worth 1981, writ ref'd n.r.e.) (explaining that a party should be joined as an involuntary plaintiff when it must permit the plaintiff to use its name in support of the action against the defendant); 1 Roy W. McDonald &

Elaine A. Grafton Carlson, Texas Civil Practice § 5:40 (2d ed. 2025 supp.) (explaining that the involuntary-plaintiff mechanism's "principal application is in cases in which an indispensable party plaintiff declines to participate in the action and can[]not be reached by personal service and can[]not be bound by constructive service"). D Gorup does not fit that description.

5. Why D Gorup is best characterized as a defendant

At the hearing, D Gorup noted that it "ha[s] a claim against [Long Prairie], and [Long Prairie] has a claim against Nationwide," but that D Gorup "do[esn't] have a specific claim against Nationwide, because [it] do[esn't] have an insurance policy with Nationwide." Minute Entry for Apr. 2, 2025. Rather, D Gorup "ha[s] to sue [Long Prairie] and [Long Prairie] only." *Id.* D Gorup went on to note that, had it made an appearance in the state court, it would have filed the petition it attached to the motion to intervene that this court is now considering. *Id.*; *see* Dkt. 9-1 (proposed petition in intervention). That petition asserts a breach-of-contract claim against Long Prairie, not Nationwide, because "the only claim [D Gorup] ha[s] is against another in-state defendant, [Long Prairie]." Minute Entry for Apr. 2, 2025.

As noted, D Gorup could not have been joined against its will as a plaintiff because it has no claims against the defendant, Nationwide. D Gorup's only claim is against Long Prairie. D Gorup could have sought to intervene in state court, but it did not. The only way Long Prairie could compel D Gorup to bring its claim against Long Prairie was to sue D Gorup and force it to bring a compulsory counterclaim or lose its claim. *See* Tex. R. Civ. P. 97 (requiring a defendant to bring a counterclaim if it "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction"). Indeed, that is the approach Long Prairie purports to have taken. Believing erroneously that D Gorup "should join as a plaintiff," but that it was unable to join D Gorup as an involuntary plaintiff, Long Prairie took advantage of Rule 39's provision that D Gorup "may be made a defendant." *Id.* R. 39(a)(2)(ii). As the style of Long Prairie's petition suggests, D Gorup is a defendant (albeit one, as explained next, with an easy path to dismissal).

B. Improper joinder

Because D Gorup was best viewed as a defendant in the state-court case, which otherwise involved diverse parties, removal was proper if D Gorup was improperly joined. *See Smallwood*, 385 F.3d at 573. A party is improperly joined if the plaintiff's pleading does not state a claim against it. *Id.* Long Prairie's petition does not allege a cause of action against D Gorup or any facts that could support a cause of action. *See generally* Dkt. 3. Long Prairie's only allegations against D Gorup are that D Gorup owns the property at issue and bought the property from Long Prairie. Dkt. 3 at 3. A plaintiff fails to state a claim when it does not allege any facts supporting a cause of action. *Villarreal v. Wells Fargo Bank, N.A.*, 814 F.3d 763, 766 (5th Cir. 2016).

Nationwide is correct that D Gorup was improperly joined, leaving only a Texas entity (Long Prairie) suing an Ohio entity (Nationwide). Complete diversity exists, so the motion to remand, Dkt. 24, should be denied.

II. Intervention

The next question is whether D Gorup should be permitted to intervene. *See* Dkt. 9 (requesting that relief). It cannot be.

When a federal court adjudicates state-law claims, its jurisdiction is typically based on § 1332, which grants diversity jurisdiction, *see Royal Canin*, 604 U.S. at 26, or § 1367, which grants supplemental jurisdiction over state-law claims that "derive from" the same "nucleus of operative fact" from which attendant claims, usually based on federal law, derive. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966). But as noted, when jurisdiction is based solely on diversity of the parties' citizenships, the court may not exercise supplemental jurisdiction "over claims by persons . . . seeking to intervene as plaintiffs under Rule 24" if doing so would be inconsistent with the requirements of diversity jurisdiction. 28 U.S.C. § 1367(b). That is to say, a court may not exercise jurisdiction over a party seeking to intervene as a plaintiff unless the proposed intervenor-plaintiff's citizenship differs from that of the intervenor-defendant and the amount put in controversy by the intervenor-plaintiff's claims exceeds $75,000. 28 U.S.C. § 1332(a).

D Gorup seeks to intervene as a plaintiff to assert a claim against Long Prairie. No party has alleged a basis for jurisdiction other than diversity. That means the court cannot exercise jurisdiction over D Gorup's claims unless the requirements of § 1332 are satisfied, which they are not. Because the court lacks jurisdiction, D Gorup's motion to intervene, Dkt. 9, must be denied.

III. Indispensable-Party Status

Because the court cannot exercise jurisdiction over D Gorup, this case must be dismissed if D Gorup is an indispensable party that can intervene as of right. *Dixie Brewing Co. v. U.S. Dep't of Veterans Affs.*, 952 F. Supp. 2d 809, 816 (E.D. La. 2013). But D Gorup is not an indispensable party, so dismissal is not required.

A party may intervene as of right if it "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede [its] ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). A party is indispensable if the court determines that, "in equity and good conscience," the action cannot proceed without the party. *Id.* R. 19(b). Factors to consider include:

> (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
> (2) the extent to which any prejudice could be lessened or avoided by:
> (a) protective provisions in the judgment;
> (b) shaping the relief; or
> (c) other measures;
> (3) whether a judgment rendered in the person's absence would be adequate; and
> (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Id.

D Gorup argues that, were it not allowed to intervene, it would "functionally lose the ability to advocate the factual merits of its claim against [Long Prairie]." Dkt. 9 at 3. As it explained at the hearing, both its claim against Long Prairie and Long Prairie's claims against Nationwide depend on whether a hailstorm caused damage to the property. Minute Entry for Apr. 2, 2025.

But even though D Gorup's claim against Long Prairie and Long Prairie's claims against Nationwide involve the same property, they arise out of different contracts. Long Prairie's claims against Nationwide arise from its insurance contract, Dkt. 3 at 3, and D Gorup's claim arises from its sales contract with Long Prairie, Dkt 9-1 at 3. That latter contract states:

> If any part of the Property is damaged or destroyed by fire or other casualty after the effective date [of the contract], [Long Prairie] must restore the Property to its previous condition as soon as reasonably possible and not later than the closing date. If, without fault, [Long Prairie] is unable to do so, [D Gorup] may:
>
> . . .
>
> (3) accept at closing: (i) the Property in its damaged condition; (ii) an assignment of any Insurance proceeds [Long Prairie] is entitled to receive along with the Insurer's consent to the assignment; and (iii) a credit to the sales price in the amount of any unpaid deductible under the policy for the loss.

Dkt. 9-2 at 9–10.

According to D Gorup's proposed complaint in intervention, that provision required Long Prairie to "deliver the property in the condition in which it was at the execution of the sales contract." Dkt. 9-1 at 3. Under that view, Nationwide's alleged liability to Long Prairie does not substitute for Long Prairie's alleged liability to D Gorup. Rather, Long Prairie "was required to repair the roof, and D G[orup] was assigned the right to any insurance proceeds recovered by [Long Prairie]." *Id.* In other words, D Gorup's claim against Long Prairie is independent of Long Prairie's claims against Nationwide. As D Gorup's counsel put it, "[c]urrently [D Gorup] do[es] have a petition and cause of action for breach of contract against 3212 Long Prairie, and regardless of whether or not [Long Prairie] recovers the insurance proceeds, [it] still ha[s] a claim against [Long Prairie]." Minute Entry for Apr. 2, 2025.

At the hearing, D Gorup argued that both its claim against Long Prairie and Long Prairie's claims against Nationwide revolve around whether the damage to the property was caused by hail. *Id.* But it is not clear that they do. Nationwide's rejection of Long Prairie's insurance claim was based on its position that the insurance contract excluded cosmetic damage, not on disbelief that the hail caused damage. *See* Dkts. 12 at 2, 12-1. For that reason, D Gorup would not necessarily be

prejudiced by having to pursue its claim against Long Prairie in state court. *See Sleeth v. Wal-Mart Stores, Tex. LLC*, No. A-07-CA-545 LY, 2007 WL 2908605, at *3 (W.D. Tex. Oct. 4, 2007) (explaining that preclusion did not apply under Texas law where the claims brought in two suits were distinct), *report and recommendation adopted*, No. CV A-07-CA-545-LY, 2007 WL 9710212 (W.D. Tex. Oct. 24, 2007).

It might be more efficient to dispose of D Gorup's and Long Prairie's claims in the same litigation. But D Gorup may pursue its claim independently in state court. Any prejudice to D Gorup is minimal because adequate remedies are available. *See Pan Am Realty, Ltd. v. Wells Fargo Bank, Nat'l Ass'n*, No. 5:14-cv-629-DAE, 2015 WL 4546264, at *4 (W.D. Tex. July 28, 2015). D Gorup is not an indispensable party and this case can proceed without it. It may move for leave to file an amicus brief if it wants to. *See United States v. Texas*, No. SA-21-CV-01085-XR, 2022 WL 22878039, at *1 (W.D. Tex. Jan. 11, 2022).

IV. Realignment

At the hearing, D Gorup also asked the court to realign its status from defendant to plaintiff. Minute Entry for Apr. 2, 2025. It is doubtful whether federal courts are authorized to realign parties in cases removed from state court. *See Perez v. Borrego*, No. DR-09-cv-003-AML-VRG, 2009 WL 10700870, at *5 (W.D. Tex. July 1, 2009), *report and recommendation adopted in part, rejected in part,* No. DR-09-cv-003-AML/VRG, 2009 WL 10700885 (W.D. Tex. Sept. 16, 2009); *Washington v. Ernster*, 551 F. Supp. 2d 568, 573–74 (E.D. Tex. 2007). But even if realignment is generally available, it is inappropriate here.

Washington is instructive. In that case, a Texas citizen sued another Texas citizen in state court, and the defendant impleaded Mississippi and Alabama citizens. *Washington*, 551 F. Supp. 2d at 570–71. The third-party defendants removed the case to federal court and requested realignment of the Texas citizens as plaintiffs and the non-Texas citizens as defendants. *Id.* at 571.

The court noted that, to support diversity jurisdiction, "[t]he necessary collision of interest" between diverse parties "has to be determined from the principal purpose of the suit and the primary and controlling matter in dispute." *Id.* at 574 (quoting *Zurn Indus., Inc. v. Acton Constr.*

Co., 847 F.2d 234, 236 (5th Cir. 1988) (quotation marks omitted)). That collision of interests "does not include the cross-claims and counterclaims filed by the defendants," but "is to be determined by [the] plaintiff's principal purpose for filing its suit." *Id.* In *Washington*, the original plaintiff's primary purpose was to bring claims against the original defendant; he had not brought claims against the third-party defendants. *Id.* Because the original plaintiff's beef was with the original defendant alone, the original plaintiff and defendant could not be realigned to the same side of the case. *See id.*

Likewise here: Long Prairie has claims against Nationwide, and D Gorup may seek to recover against Long Prairie, but D Gorup does not have claims against Nationwide. Because D Gorup is adverse to Long Prairie and not Nationwide, it is not subject to realignment as a plaintiff.

RECOMMENDATION

It is **RECOMMENDED** that D Gorup's motion to remand, Dkt. 24, and motion to intervene, Dkt. 9, be **DENIED**.

* * *

Within 14 days after service of this report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1).

A party is entitled to a de novo review by the district court of the findings and conclusions contained in this report only if specific objections are made. *Id.* § 636(b)(1). Failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this report will bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*; 28 U.S.C. § 636(b)(1) (extending the time to file objections from 10 to 14 days).

So **ORDERED** and **SIGNED** this 5th day of January, 2026.

Bill Davis
United States Magistrate Judge