

TEXAS INSURANCE LAW NEWSBRIEF

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SOUTHERN DISTRICT OF TEXAS REFUSES TO EXTEND THE SUBSIDIARY RULE TO UNINCORPORATED DIVISIONS OF A PARENT COMPANY IN DIVERSITY ACTIONS

Last week, Judge Ellison of the District Court for the Southern District of Texas denied a Plaintiff's Motion for Remand against her insurer Blue Cross Blue Shield ("BCBS") in *Coghlan v. Blue Cross Blue Shield of Texas*, Civil Action No. H-12-2703, 2013 WL 150711 (S.D. Tex. Jan. 14, 2013). Plaintiff's health insurance policy did not provide coverage for routine maternity procedures, but did cover maternity care in case of "emergency" or "complication of pregnancy". During Plaintiff's pregnancy, the doctors performed a Cesarean operation. Afterward, Plaintiff requested BCBS cover the cost of her pregnancy because of her operation. BCBS denied coverage for the cost associated with her pregnancy, and Plaintiff sued BCBS in Texas state court alleging numerous violations of the Texas Insurance Code, Texas Deceptive Trade Practices Act, and breach of contract.

BCBS removed the lawsuit to federal court on the basis of diversity jurisdiction. Plaintiff moved to remand the case and alleged no diversity existed between BCBS and herself. Specifically, Plaintiff argued that BCBS maintains its principal place of business in Texas—BCBS maintains a large office in Richmond, Texas. BCBS argued in its response that it is an unincorporated division of HCSC, its parent company located in Illinois, and where it conducts business, principally or otherwise, is irrelevant in light of its parent company's citizenship.

The Court's analysis addressed the subsidiary rule, whereby a subsidiary corporation which is incorporated as a separate entity is considered to have its own principal place of business. The Court, however, refused to extend the subsidiary rule to *unincorporated divisions* of parent companies. Since BCBS was an unincorporated division of HCSC rather than a subsidiary, the Court determined its principal place of business was in Illinois. As such, diversity existed between the parties, and plaintiff's motion to remand was denied.

FOREIGN CORPORATIONS NOT REGISTERED WITH THE TEXAS SECRETARY OF STATE MAY MAINTAIN A LAWSUIT IN TEXAS IF THEY POSSESS AN ACTIVE LICENSE WITH THE TEXAS DEPARTMENT OF INSURANCE

Last Monday, the District Court for the Northern District of Texas denied a motion to dismiss filed against Arch Insurance Company ("Arch") in *Arch Ins. Co. v. WM Masters and Associates, Inc. et al.*, Civil Action No. 3:12-cv-2092-M, 2013 WL 145201, (N.D. Tex., Jan. 14, 2013). Arch brought a diversity action against WM Masters and Associates, Inc. ("WM Masters") to enforce provisions of a general indemnity agreement between the parties. WM Masters argued that Arch, as a foreign corporation, cannot maintain a lawsuit in Texas because under the Texas Business Organizations Code ("TBOC") Arch was not registered with the Texas Secretary of State to conduct business.

Section 9.051 of the TBOC expressly precludes a foreign corporation which is transacting business in Texas, without a certificate of authority from the Texas Secretary of State, from obtaining affirmative relief in Texas courts on any matter arising out of the transaction of intrastate business. It is important to note that foreign corporations may maintain a cause of action in Texas courts arising from the transaction of *interstate* business without a certificate of authority.

The court found section 9.002 of the TBOC persuasive in that a foreign entity is not required to register under the TBOC if another Texas law authorizes the entity to transact business in Texas. The Court looked for further guidance in the Texas Insurance Code and concluded that Arch possessed an active license from the Texas Department of Insurance ("TDI") to engage in the business of issuing insurance in Texas pursuant to Tex. Ins. Code § 982.052. Ultimately, the court held that Arch was not precluded under the TBOC from maintaining its action to enforce a general indemnity agreement against WM Masters.