

THOUGHT LEADERSHIP

News

CLAIMS ASSERTED AGAINST INSURANCE AGENT DEEMED INSUFFICIENT, LEADING TO AGENT'S DISMISSAL AND DENIAL OF MOTION TO REMAND

Newsbrief

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In an order dismissing an insurance agent and denying an insured's motion to remand last Monday, Judge Gray Miller concluded that an insured failed to assert plausible claims against an insurance agency that sold the relevant policy because the petition failed to differentiate between the claims against the agency and the claims against the insurer. In *The Landing Council of Co-Owners v. Federal Ins. Co.*, Civ. No. H-12-2760, 2013 WL 530315 (S.D. Tex. Feb. 11, 2013), the plaintiff, a non-profit manager of a condominium facility, had been sued by a number of parties alleging mishandling of matters relating to Hurricane Ike. Federal denied demands for coverage as excluded by the Council's policy, and the Council sued Federal and the Higginbotham Insurance Agency in Texas state court alleging breach of contract, negligence, fraud, common law bad faith, and violations of the Texas Insurance Code. Federal removed to federal court.

The Council moved to remand, and Higginbotham filed a motion to dismiss. The court denied the former, and granted the latter. Higginbotham was included in the petition by generally referring to "Defendants." The court observed that all Higginbotham did was sell the Council's policy; there was no contract between Higginbotham and the Council that could be breached, and that Higginbotham had nothing to do with the denial of coverage that was the subject of the suit. Finally, the Council failed to "sufficiently allege[] the who, what, when, where, and how" to sufficiently allege a fraud claim against Higginbotham.

For the same reasons, the Court concluded that because "[t]he only allegation specific to Higginbotham is that Federal wrote the insurance policy 'through' Higginbotham," the Council had failed to state a claim against Higginbotham. Thus, the agent was improperly joined. Because complete diversity of citizenship existed between the Council and Federal, the Council's motion for remand was denied.