

THOUGHT LEADERSHIP

News

FEDERAL DISTRICT COURT EMPHASIZES DIFFICULTY IN MEETING IMPROPER JOINDER STANDARDS & REMANDS CASE TO STATE COURT

Newsbrief

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In a decision that emphasizes the difficulty in establishing removal based on improper joinder, last Monday a Federal District Court for the Northern District of Texas remanded a case where all allegations were made generally against all defendants and no specific allegations were made against the non-diverse adjuster. In *Ridgeview Presbyterian Church v. Philadelphia Indemnity Insurance Company*, 2013 WL 5477166 (N.D. Tex., September 30, 2013), the insured claimed damage to the church building as a result of a storm. An independent adjuster investigated the claim for the insurer and based on the investigation, the claim was denied. A lawsuit alleging bad faith and insurance code violations followed. Interestingly, the non-diverse independent adjuster removed the lawsuit to federal court and alleged improper joinder to defeat diversity.

The church moved to remand the case to state court, and the court observed that for the adjuster to establish improper joinder, he had to demonstrate either 1) actual fraud in pleading of jurisdictional facts, or 2) the plaintiff's inability to establish a cause of action against the non-diverse party in state court. The court found that even applying Texas "fair notice" of pleadings standard, which requires the petition to be liberally construed in favor of the pleader, allegations that simply mention a defendant in passing but fail to state any specific actionable conduct, will not support a claim. And in this case, the petition only addressed the adjuster in two instances, stating that he was an independent adjuster and was retained by the insurer as an adjuster on the claim. But every cause of action was asserted against all "defendants" without distinction. This alone was not enough to establish actionable claims against the adjuster.

But the court went further. The court noted that the Fifth Circuit has endorsed a "summary judgment-like procedure for reviewing improper joinder claims" that required the court to examine whether the plaintiff has "any evidence at all that would support any of [its] claims." As a result, the court reviewed the church's post-removal filings to further evaluate the claims alleged in the petition. And in an appendix attached to the church's motion to remand, the court reviewed a letter from the insurer to the church that referenced the adjuster's investigation and findings on which they based their denial. The court found that the letter provided information regarding the adjuster's specific conduct and "[t]hough minimal, these details provide a basis for determining what evidence Plaintiff has to support its claim against him." As a result, the court was unable to say that there was no reasonable possibility for recovery against the adjuster under state law and, accordingly, remanded the case to state court.