

THOUGHT LEADERSHIP

News

## NORTHERN DISTRICT OF TEXAS COURT REFUSES TO REMAND HOMEOWNER'S CASE - FINDS ADJUSTER WAS IMPROPERLY JOINED

Newsbrief

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Recently, in *Messersmith v. Nationwide Mut. Fire Ins. Co.*, 3:13-CV-4101-P, 2014 WL 1347872 (N.D. Tex. April 7, 2014), Federal District Judge Jorge A. Solis denied Plaintiff homeowners' motion to remand this removed case to Texas state court. Plaintiffs filed suit against their Nationwide and an adjuster for denying an insurance claim regarding hail damage to the roof of their business premises. The Adjuster had inspected the damage to the roof, "but stated the damage was cosmetic" and Nationwide denied the claim. The insured contended that Nationwide and the adjuster violated Tex. Ins. Code sec. 541.060; the Prompt Payment of Claims Act, Tex. Ins. C. sec. 542.060; the Texas Deceptive Trade Practices Act ("DTPA"); breach of contract, negligence and fraud. Nationwide removed the case to federal district court based on diversity of citizenship and argued that the adjuster was "improperly joined," so her citizenship was irrelevant for purposes of determining diversity jurisdiction. The insured disagreed and filed a motion to remand.

In order to determine improper joinder of the adjuster, the Court examined the complaint under a Rule 12(b)(6)-type analysis as to "whether the complaint states a claim under state law against the in-state defendant." The Court concluded the insured could not recover against the adjuster for several reasons. First, the insured cannot have a claim against the Adjuster under the Prompt payment of Claims Act because the Act only applies to insurance carriers. Second, the insured had no contract with the adjuster, so there cannot be a breach of contract claim. Third, the insured had no negligence claim against the Adjuster. The insured further alleged that the Adjuster "owed a duty to Plaintiffs when Defendants took money from Plaintiffs for liability insurance, to provide Plaintiffs with the Insurance coverage purchased." The Court recognized the adjuster "would not have been involved in taking money for the insurance and consequently did not owe ... the type of duty they allege here." Fourth, under the fraud claim, the insured alleged, "Defendants represented to Plaintiffs that if Plaintiffs gave money to Defendants, that Defendants would provide insurance to Plaintiffs." Again, the Court recognized that the adjuster was "uninvolved in providing insurance," and rejected the fraud claim. Fifth, the DTPA claims failed because they also "revolve around the sale and provision of insurance for hail damage" and the adjuster was unrelated to such transactions.

Finally, the Court recognized that Texas law allows adjusters to be held individually liable for violations of the Texas Insurance Code, but the adjuster must have "committed some act that is prohibited by the section and not just be connected to an insurance company's denial of coverage." The Court rejected the three Texas Insurance Code

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allegations against the adjuster. First, under Section 541.060(a)(1), a party is prohibited from “misrepresenting to a claimant a material fact or policy provision relating to coverage at issue.” The Court noted the denial of damage or the representation “that the damage was only cosmetic” are not statements that relate to the coverage at issue. “The misrepresentation must be about the details of a policy, not the facts giving rise to a claim for coverage.... Here, the misrepresentation is not about the breadth or existence of coverage, it is about the facts that gave rise to a policy claim.” Second, Section 541.060(a)(2) prohibits the “failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement” of claims where the insurer’s liability is reasonably clear.” The Court rejected this claim because adjusters do not have settlement authority on behalf of the carrier. “[H]er sole role is to assess the damage.” Finally, Section 541.060(a)(7) prohibits “refusing to pay a claim without conducting a reasonable investigation with respect to the claim.” Again, the Court recognized that the Adjuster did not have authority to refuse to pay a claim. She simply investigates.

**[Editor’s Note:** Martin, Disiere, Jefferson & Wisdom’s attorneys Chris Martin, Patrick M. Kemp and Robert R. Russell represented all Defendants in this action and wish to congratulate our clients on this significant ruling and thank them for the opportunity to represent them in this matter.]