

THOUGHT LEADERSHIP

News

## FEDERAL COURTS REJECT INSURERS' IMPROPER-JOINDER ARGUMENTS REGARDING LIABILITY OF INDEPENDENT ADJUSTERS, AND REMAND CASES TO STATE COURT

Newsbrief

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In three recent cases decided on the same day by federal courts in Dallas and McAllen, the plaintiffs successfully remanded their lawsuits from federal to state court. The Dallas case, *Linron Properties, Ltd. v. Wausau Underwriters Ins. Co.*, No. 3:15-CV-00293-B, 2015 WL 3755071 (N.D. Tex. June 16, 2015), involved a commercial-property dispute related to storm damage and was heard by Judge Jane Boyle. Judge Nelva Ramos heard the two other cases that also involved storm damage but in the residential homeowner's context: *W. Ohio St. Condo Assoc. v. Allstate Ins. Co.*, No. 2:15-CV-192, 2015 WL 3756943 (S.D. Tex. June 16, 2015); *Garza v. Scottsdale Ins. Co.*, No. 2:15-CV-149, 2015 WL 3756917 (S.D. Tex. June 16, 2015).

In each case, the plaintiffs employed the common tactic of joining individual adjusters to their lawsuit against the insurer for the purpose of defeating federal diversity jurisdiction. Although the courts sided with each plaintiff, there are a few helpful points to take from these cases to assist in future efforts by insurers to challenge remand.

First, Judge Boyle acknowledged that other courts "have recently begun to question the appropriateness of holding an adjuster individual liable for unfair settlement practices..." These other courts have reasoned that because adjusters who merely investigate a claim generally do not have settlement authority and do not issue payments, they should not be liable under the prompt-payment statute. Judge Boyle rejected this reasoning, concluding that an inadequate or delayed investigation by an adjuster would necessarily affect the insurance company's settlement of the claim. Following this standard, she found that the plaintiff had sufficiently stated a claim against the adjuster because the plaintiff alleged that the adjuster (1) retained an engineer and contractor known to be biased towards insurance companies; (2) refused to identify covered damage; (3) and failed to respond to the insured's inquiries regarding payment. Although these allegations appear to be sufficiently detailed, insurers may be able to distinguish future cases when the allegations against the adjuster are so conclusory that they in no way state how an adjuster impeded prompt settlement.

Another point to take from these cases was the different results reached by Judge Boyle and Judge Ramos regarding the appropriate pleading standard in an improper-joinder analysis. Judge Boyle first observed that federal courts have traditionally used Texas' lenient "fair notice" standard to analyze whether a plaintiff's allegations against

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individual adjusters were sufficient. She noted, however, that the Texas Supreme Court had recently adopted Rule 91 that mirrored Federal Rule 12(b)(6). Because the federal rules imposed more stringent pleading standards, she found it appropriate to analyze the plaintiff's claims under this higher standard as well. Judge Ramos, on the other hand, cited a recent Fourteenth Court of Appeals case, *Wooley v. Schaffer*, 447 S.W.3d 71, 76 (Tex. App.—Houston[14th Dist.] 2014, pet. filed), to conclude that Rule 91a had not caused “the Texas concept of ‘fair notice’ [to]...morph[]” into the Federal Rule of Civil Procedure 12(b)(6) standard...” Adopting the fair-notice standard, Judge Ramos held that the plaintiffs had stated a reasonable basis of recovery against the adjusters.

Although these cases appear to provide plaintiff's attorneys with more ammunition in avoiding federal jurisdiction as long as their allegations are sufficiently detailed, it is unlikely that plaintiffs with weak claims against adjusters—especially adjusters with little involvement in the investigation—will always be able to assert detailed allegations in good faith if the claims are questionable. Further, Judge Boyle noted a less-common way that insurers may be able to assert that adjusters have been improperly joined: by “piercing the pleadings” and elevating the improper-joinder analysis into a summary-judgment-type analysis. She cautioned that this approach is only appropriate when the “evidence reveals that the plaintiff has withheld facts relevant to the propriety of joinder,” which may sometimes occur when plaintiffs add adjusters solely to defeat federal jurisdiction.