

THOUGHT LEADERSHIP

News

INSURED'S "FORUM MANIPULATION" AND "DECEPTIVE MISCONDUCT" RESULTS IN IRONIC EXPIRATION OF THE STATUTE OF LIMITATIONS AND COMPLETE DISMISSAL OF HIS CLAIMS

Newsbrief

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Recently, in *Van Tassel v. State Farm Lloyds*, Civil Action No. 4:14-CV-02864 (S.D. Tex. July 31, 2015), a Federal District Court Judge in the Southern District of Texas denied Plaintiff's motion to remand and granted summary judgment to State Farm as to all of the Insured's contractual and extra-contractual causes of action against it.

The "convoluted" procedural history of this case began when suit was originally brought in November in 2012 in state court in Brazoria County, Texas by Van Tassel against State Farm's Lloyds, Inc. ("Inc."), a different entity than State Farm Lloyds, and against an individual insurance adjuster from Texas. Although the suit was against Inc., which is State Farm Lloyds' registered agent for service of process (as required by state statute), State Farm Lloyds was Van Tassel's actual insurer, so State Farm Lloyds answered the petition. In December of 2012, State Farm Lloyds also directly informed Van Tassel that State Farm Lloyds was the proper defendant and Inc. was not. As the Court noted, Van Tassel's insurance policy's declaration page and State Farm's coverage letters also stated clearly that Van Tassel's policy was issued by State Farm Lloyds, not Inc., and those documents should have been reviewed by Van Tassel's attorney before filing suit, as required by both Texas Rule of Civil Procedure 13 and Federal Rule of Civil Procedure 11.

At his deposition, Van Tassel admitted he had read his insurance policy. Van Tassel, however, did not modify his pleadings or join State Farm Lloyds as a party defendant. His lawyer insisted that his petition asserted causes of action which he could not bring against State Farm Lloyds and that Inc. was the proper defendant. State Farm Lloyds removed the suit to federal court arguing the individual adjuster was improperly joined solely to defeat diversity jurisdiction. In January of 2013, Van Tassel filed his first motion to remand, finally acknowledging that State Farm Lloyds had issued his policy and had assigned the adjuster to investigate the claim. The Court denied the motion to remand and dismissed the adjuster as an improperly joined party because the claims were identical to those against the insurer.

Shortly before the trial setting, Van Tassel filed his second motion to remand based on "new information" stating that State Farm Lloyds misrepresented that it was incorrectly named in this suit, claiming when he filed his first motion he thought Inc. was not a citizen of Texas, and asserting that he now realized that all the named parties were

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citizens of Texas at the time of the improper removal by nonparty State Farm Lloyds. As such, he argued the case should be remanded for lack of subject matter jurisdiction. Van Tassel, through his lawyers, represented that he actually intended to sue Inc. Because State Farm Lloyds had never properly become a party in the suit, Plaintiff served Inc., Inc. was never dismissed from the suit, and Van Tassel maintained that he intended to sue Inc., the federal court granted the second motion and remanded the case to state court.

After the case was remanded to state court, Inc. moved for summary judgment on the grounds that it was not Van Tassel's insurer and thus not liable for breach of the insurance contract or the other claims. In September of 2014, Van Tassel filed an Amended Petition and, contrary to his earlier representations to the court, reversed course and for the first time dropped Inc. as a party and named State Farm Lloyds as the defendant in the case. In his response to State Farm's motion for summary judgment, Van Tassel made factual statements totally contrary to his previous representations to the Court. The insured, through counsel, amended his pleadings to correct his earlier misnomer of State Farm Lloyds as "State Farm Lloyds, Inc." after previously telling the federal court that the doctrine of misnomer did not apply.

After Plaintiff amended his petition in state court, State Farm Lloyds again removed the case to federal court and Plaintiff filed another motion to remand. In response, the Court found the amended petition filed in September of 2014 commenced a new lawsuit after his voluntary dismissal of Inc. In ruling on the motion to remand, the Court found Van Tassel attempted to "manipulate the forum by significant misrepresentations and deceptive misconduct." The Court dismissed the allegations against the individual adjuster and denied the third motion to remand.

State Farm Lloyds also filed a motion for summary judgment asserting statute of limitations defenses to all of the claims. At issue was whether Van Tassel's initial petition suing State Farm Lloyd's, Inc. was a misnomer or misidentification of the proper Defendant which was critical to determine whether or not the statute of limitations were subject to tolling. The Court noted that Van Tassel insisted "until recently" that it was not a misnomer. The Court agreed with State Farm that Van Tassel was now judicially estopped from asserting his suit against Inc. was a misnomer and State Farm Lloyds, Inc. was the wrong party defendant. Furthermore, the Court found State Farm had met its burden to show Van Tassel was in court with unclean hands which defeated his request for equitable tolling. Based on the statutory and contractual limitations periods in Texas, the Court granted summary judgment as to all of Plaintiff's claims.

[Editor's Note: State Farm was represented in this case by Chris Martin, Marilyn Cayce and Raymond Kutch of our firm and we are grateful for the opportunity to defend State Farm in this procedurally fascinating case and we congratulate the company on this significant win.]