

THOUGHT LEADERSHIP

News

SHOW CAUSE HEARING ORDERED AFTER INSURED'S COUNSEL ARGUES PROPOSED POST-REMOVAL STIPULATION DEFEATS REMOVAL

Newsbrief

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Last Thursday, Judge Micaela Alvarez denied an insured's motion to remand, emphasizing that post-removal stipulations are irrelevant in determining whether removal is proper and ordering insured's counsel to appear at a show cause hearing. In *Cantu v. Allstate Vehicle & Property Ins. Co.*, 2016 WL 1695284 (S.D. Tex., McAllen Division, April 28, 2016), the insured brought various insurance-related claims in state court based on alleged wind and hail damage. Allstate timely removed the action to federal court based on diversity jurisdiction because the amount-in-controversy exceeded \$75,000. The insured then filed a motion to remand to state court based on an alleged stipulation between the parties that the claimed damages were limited to \$23,945.43. The court focused its analysis on the insured's pleadings and well-established Fifth Circuit law on post-removal stipulations in denying insured's motion. Because the insured's pleadings sought more than \$200,000, the insured bore the burden to show with legal certainty that the claimed damages were actually less than \$75,000. In a failed attempt to meet this burden, the insured argued that the parties had agreed to a binding stipulation prior to removal limiting the claim to \$23,945.63. In fact, the parties had not actually signed the stipulation. Even if the stipulation had been signed, the court noted it would have been irrelevant to the court's removal analysis as a post-removal stipulation. Accordingly, the court denied insured's motion to remand.

The court then admonished insured's counsel for representing that the insured had filed a stipulation with her original petition prior to removal. Instead, the insured had merely attached a proposed stipulation with its motion to remand filed *after removal*. The court reminded the insured's counsel of his obligations under Rule 11 of the Federal Rules of Civil Procedure that by filing a motion, he certified that his claims regarding the amount-in-controversy had evidentiary support. Due to the utter lack of support for insured's claim that a pre-removal agreed stipulation existed, the Court ordered insured's counsel to appear at a show cause hearing to explain why the court should not issue sanctions against him.

Editor's Note: The order marks the second time this spring that Judge Alvarez has ordered an insured's counsel to appear at a show cause hearing after determining that their claims lacked factual support.