

THOUGHT LEADERSHIP

News

FORT WORTH FEDERAL JUDGE SUMMARILY DISMISSES EXTRA-CONTRACTUAL CLAIMS IN MULTIPLE WIND/HAIL SUITS

Newsbrief

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Federal District Court Judge John McBryde of the Fort Worth Division recently granted the latest in a string of dismissals in favor of insurance carriers in residential wind/hail suits with formulaic cookie-cutter petitions against the carriers. In *Fernandez v. Allstate Texas Lloyds*, 4:17-CV-729-A, 2017 WL 6514684 (N.D. Tex. Dec. 19, 2017) (slip copy), Judge McBryde found improper joinder and dismissed the individually named adjuster, preventing a remand. After requiring the plaintiffs to amend their complaint to meet federal pleading standards, he then granted Allstate's motion to dismiss all extra-contractual claims, observing that the amended complaint did not allege any independent injury and at best alleged only a disagreement on the amount of money needed to repair the roof.

Similarly, Judge McBryde denied a motion to remand and dismissed an individual adjuster based on improper joinder in *5857 Park Vista, LLV v. United States Liability Insurance Company, et al.*, No. 4:17-CV-818-A, 2017 WL 6210829, (N.D. Tex. December 7, 2017). Here, the court identified this case as one in "a long line" of cases in which a plaintiff attempted to join as a defendant an insurance adjuster or other non-diverse party in an effort to defeat removal jurisdiction. Plaintiff asserted the adjuster was liable for Texas Insurance Code violations, but failed to provide the court any facts to support the claims made in its petition. While liability for a violation of § 541 may extend to an adjuster who undertakes a proscribed settlement practice, mere nonpayment by the insurer of a claim cannot, by itself, create liability for the adjuster who handles the claim. Judge McBryde pointed out conclusory allegations of legal violations will not suffice, and a plaintiff "must spell out the who, what, when, where, and how" of the purported violations. Accordingly, the court concluded the adjuster was improperly joined to prevent the court from obtaining jurisdiction, and that the adjuster's citizenship should be disregarded for purposes of determining subject matter jurisdiction. The court dismissed the adjuster from the action, and denied the motion to remand.

[Editor's Note: In recent years, many federal judges have taken an increasingly lenient position on whether the facts alleged in a petition are sufficient to support Insurance Code claims against an individual adjuster. Thus, preemptive removals to federal court have become a less reliable tactic for carriers, and policyholders' motions to remand have been regularly granted by some Texas Federal Courts. These cases from Ft. Worth demonstrate the importance of knowing the history of the federal judges in the area where cases are filed which might be removable to federal court otherwise.]