

THOUGHT LEADERSHIP

News

FEDERAL DISTRICT COURTS DIVERGE ON CORRECT WAY TO DISMISS AN ADJUSTER UNDER NEW INSURANCE CODE 542A

Newsbrief

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Texas Insurance Code § 542A.006, enacted September 1, 2017, allows an insurer to accept liability for the acts of its adjusters and achieve early dismissal of adjuster defendants, theoretically making it easier to remove lawsuits against insurers to federal court. However, litigants and courts appear to be still feeling out the procedural logistics of this provision and its interplay with existing Fifth Circuit removal law. In June 2018, a Houston federal court rejected a removal after the insurer obtained dismissal of its adjuster in state court under 542A and then removed the case after the adjuster was dismissed, holding this method violated the “voluntary-involuntary rule.” See *Massey v. Allstate Vehicle & Prop. Ins. Co.*, No. CV H-18-1144, 2018 WL 3017431 (S.D. Tex. June 18, 2018) (slip op.).

In August 2018, we reported on another case in which a San Antonio federal court approved a different approach – immediately removing the case under an improper joinder theory, without attempting to dismiss the adjuster in state court, and allowing the federal court to conduct a traditional improper joinder analysis. See *Electro Grafex, Corp. v. Acadia Ins. Co.*, No. SA-18-CA-589-XR, 2018 WL 3865416 (W.D. Tex. Aug. 14, 2018) (slip op.), Article

Last week, the San Antonio court considered the approach previously rejected in *Massey*, and approved it. In *Flores v. Allstate Veh. & Prop. Ins. Co.*, No. SA-18-CV-742-XR, 2018 WL 5695553 (W.D. Tex. Oct. 31, 2018) (slip op.), Allstate accepted responsibility for the adjuster and obtained the adjuster’s dismissal in state court. Two days later (and still within 30 days after being served), Allstate removed the case on diversity grounds, but did not expressly invoke improper joinder because the adjuster had already been dismissed.

In the resulting remand battle, the court considered facts similar to those in *Massey*, but concluded that improper joinder is a recognized exception to the voluntary-involuntary rule, and applies whether the improperly joined defendant is still in the suit or has already been dismissed. Thus, the outcome was the opposite of *Massey*, despite similar facts. The key factual difference between the two was that in *Flores*, Allstate was able to get the adjuster dismissed within the first 30 days and thus could argue that the case was removable from the beginning because of the improper joinder. In contrast, in *Massey*, the dismissal of the adjuster took more than 30 days, and thus in order for the removal to be timely, Allstate had to argue the suit was originally not removable, but had been rendered removable by the adjuster’s dismissal. As acknowledged by the court in the *Flores* opinion, this was the very argument that sank the removal effort in *Massey*.