

THOUGHT LEADERSHIP

News

FEDERAL JUDGE REMANDS INSURANCE CASE DESPITE A PROPER SECTION 542A.006 ELECTION BY THE INSURER

Newsbrief

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Recently, an Austin federal judge remanded a case back to state court even though the insurer made an election to accept responsibility for the in-state adjuster under Section 542A.006 of the Texas Insurance Code. *River of Life Assembly of God v. Church Mutual Ins. Co.*, No. 1:19-CV-49-RP, 2019 WL 1767339, (W. D. Tex. April 22, 2019), involved insurance coverage for storm damage to a church. In an attempt to avoid removal, the church filed a state court suit against its insurance company, Church Mutual, along with the adjuster that handled the claim. The individual adjuster was a Texas resident. Church Mutual availed itself of the new statutory right under Tex. Ins. Code Section 542A.006 to accept responsibility for the adjuster and removed the case. The Court addressed whether to remand the case or to keep it because the adjuster was improperly joined.

The Court noted that several cases in its circuit have found that removal is proper in these circumstances as there can be no individual liability for the adjuster if the insurance company has made an election under 542A.006. However, the Court then noted two cases that found that when the election is made after the adjuster is joined, removal is improper. The Court began its analysis by noting that the “possibility-of-recovery inquiry” is only a means to discerning whether the joinder was improper, not an end in itself. Further, the court noted the focus must remain on whether the non-diverse party was properly joined when joined. Based on that analysis, the Court found that because the election was made after the adjuster had been joined, joinder was proper at the time. Accordingly, the case was remanded back to the state court.

Editor’s Note: This case illustrates the need for insurers who wish to remove cases filed in state court against them and an in-state adjuster, to: 1) make a prompt election under Tex. Ins. Code Section 542A.006 to accept responsibility for the adjuster and, 2) to get the adjuster dismissed before seeking removal to federal court. Otherwise, depending on the allegations against the adjuster, insurers may be unable to successfully remove the case based on diversity jurisdiction.