

THOUGHT LEADERSHIP

News

U.S. DISTRICT COURT CONCLUDES THAT THE IMPROPER-JOINDER RULE DOES NOT OVERRIDE THE VOLUNTARY-INVOLUNTARY RULE & JOINS LINE OF CASES HOLDING IMPROPER-JOINDER RULE IS NOT APPLICABLE TO POST-FILING 542A ELECTION

Newsbrief

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Two weeks ago, the United States District Court for the Northern District of Texas remanded suit against the insurer back to state court despite the insurer's post-suit 542A.006 election and subsequent dismissal of the non-diverse agent. In *Morgan v Chubb Lloyds Ins. Co. of Texas*, Civil Action No. 4:21-cv-00100-P (N.D. Tex. May, 25, 2021), after a storm allegedly damaged Plaintiffs' property, they submitted a claim to their insurer, Chubb. Believing that the agent performed an "outcome-oriented investigation" and improperly denied their claim, Plaintiffs sued Chubb and the non-diverse agent in state court. Chubb (post-filing of suit) accepted responsibility for the agent and moved for dismissal of the agent, pursuant to 542A.006 of the Texas Insurance Code (allowing insurer to elect to accept potential liability of the agent and requiring dismissal of the action against the agent upon such acceptance). The state court dismissed the agent. Chubb subsequently removed the case to federal court based on diversity jurisdiction. Then, Plaintiffs moved for remand to state court.

In deciding whether the agent's (non-diverse) citizenship should be considered for jurisdictional purposes (an issue for which "the district courts are deeply divided"), the Court undertook to resolve "two conflicting rules within removal jurisdiction": (1) the voluntary-involuntary rule, which states that an action nonremovable when commenced may become removable thereafter only by the voluntary act of the plaintiff (for example, by the plaintiff's nonsuit or dismissal of a party) and (2) the improper-joinder rule, which allows defendants to remove actions when the plaintiff cannot establish a cause of action against the non-diverse party in state court.

The Court concluded that the improper-joinder rule is not an exception to the voluntary-involuntary rule. Further, "even if a post-filing § 542A.006 election qualified as an improper joinder, this could not override the voluntary-involuntary rule."

The Court further concluded that "a post-filing 542A.006 election cannot convert a properly joined defendant into an improperly joined defendant." "[I]n a post-filing, § 542A.006 election, the improper-joinder rule is inapplicable." To that end, the Court found that the Fifth Circuit's phrase "at the time of removal"—which has formerly been applied to find

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that post-suit 542A elections result in improper joinder and, thus, removal—“is dicta” and “has never been part of Fifth Circuit holdings.”

Editor’s Note:

The U.S. District Court for the Northern District of Texas issued an almost identical opinion in *Kessler v. Allstate Fire and Casualty Ins. Co.*, No. 4:21-CV-00173, 2021 WL 2102067 (N.D. Tex. May 25, 2021, mem. op.).

The Fifth Circuit has ordered briefing on an appeal which involves this issue; the case on appeal is 21-20092; *Adv. Indicator v. Acadia Ins. Co.*