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News

FEDERAL JUDGE IN MCALLEN ISSUES REBUKE ON 542A REMOVALS

Newsbrief
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As our regular readers know, federal courts of Texas have been grappling with the removal of weather-based insurance cases that name local adjusters under Texas Insurance Code § 542A.006 since it was passed in late 2017. A split among the four federal districts of Texas has been gradually developing during that time, with the Northern District strongly favoring remand of cases in which the insurer does not elect to accept its adjuster's responsibility until after suit is filed, while the other districts have been somewhat less cohesive in their approach.

In *Valverde v. Maxum Cas. Ins. Co.*, No. 7:21-CV-00240, 2021 WL 3885269 (S.D. Tex. Aug. 31, 2021), a McAllen judge took a hard look at several recent opinions on this topic issued out of the Northern District, and openly rejected their reasoning. In this case, Maxum made its election to accept its in-state adjuster's liability after being sued and removed the case to federal court, seeking dismissal of the adjuster under §542A.006. Under these circumstances, Northern District courts have been reliably rejecting the removals and remanding the cases to the originating state courts.

In a lengthy and detailed opinion which appears to be designed to both persuade other district judges and potentially set the case up for eventual review by the Fifth Circuit, the court carefully traced the history of the voluntary-involuntary rule, examined modern Fifth Circuit opinions, and looked to commentary from other federal circuit courts on the intended scope and application of the rule. The court then closely examined the improper joinder rule and the most comprehensive statements on its operation by the Fifth Circuit, concluding Fifth Circuit precedent requires federal courts to determine improper joinder based on the facts that exist at the time of removal, ***not*** the time the suit is originally filed.

Finally, the court formulated this rule synthesizing all of its analysis:

"One rule is consistent with the Supreme Court and Fifth Circuit jurisprudence on 28 U.S.C. § 1446(b)(3), the improper joinder rule, and the voluntary-involuntary rule and governs this case: A case may not be removed from state court to federal court on the basis of federal diversity jurisdiction unless (1) the plaintiff voluntarily dismisses all out-of-state defendants, or (2) the plaintiff improperly joined all out-of-state defendants such that no out-of-state defendant may be restored to the case by any court."

Applying that rule, the court dismissed the local adjuster under §542A.006 and held that diversity jurisdiction existed.

Editor's Note: This opinion appears to be a salvo in an ongoing jurisprudential duel between two federal judges who have each openly disagreed with and rejected the other's legal reasoning on this topic. This opinion included barbs such as, "… the Court does not find that the Fifth Circuit has left the law in such disarray that the Court is entitled to breezily remand a case over which diversity jurisdiction evidently attaches." Chapter 542A is now five years old, and the split between the federal districts only appears to be widening.