

FRAUDULENT JOINDER OF ADJUSTERS

Presented by
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**WHAT COURT DO I WANT TO
TRY/SETTLE/APPEAL MY
COVERAGE CASE?**

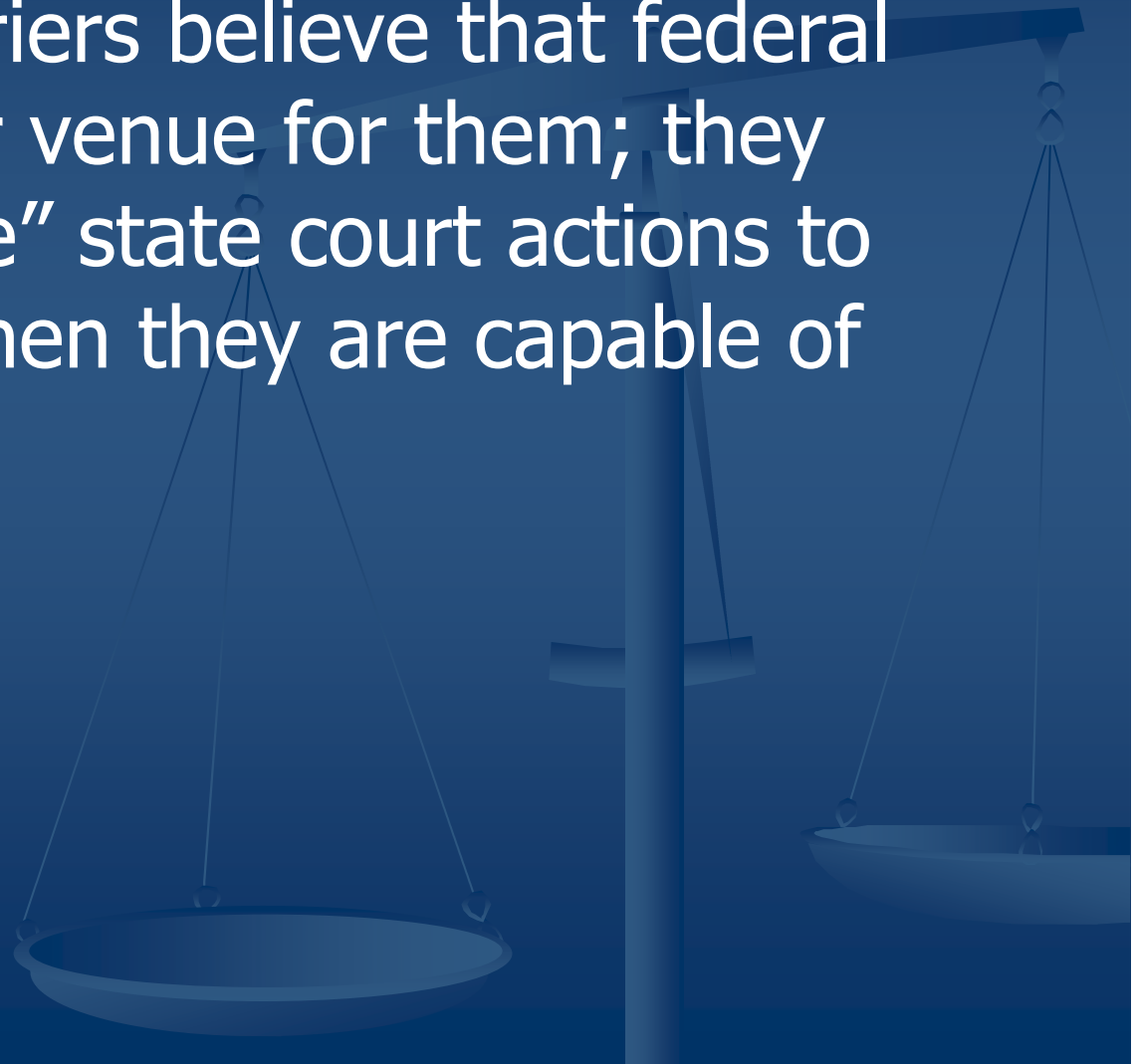


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**THE PERCEPTION IS THAT
FEDERAL COURT IS BETTER
FOR COVERAGE CASES
FROM THE INSURANCE
CARRIER PERSPECTIVE**

REMOVAL

- Since many carriers believe that federal court is a better venue for them; they seek to “remove” state court actions to federal court when they are capable of doing so



IS IT REMOVABLE?

Federal Question/based on a Federal Statute;

All Defendants are citizens of different states and agree on removal;

Amount is over \$75,000;

Removal is sought within 30 days of service.

DETERMINING CORPORATE CITIZENSHIP

- A corporation is a “citizen” both of the state in which it was incorporated and of the state where it has its principal place of business. 28 U.S.C. §1332(c)(1).
- Therefore, actions brought in the courts of either state cannot be removed to federal court.

**WHY IS THE ADJUSTER
BEING SUED IN ADDITION TO
THE INSURANCE COMPANY?**



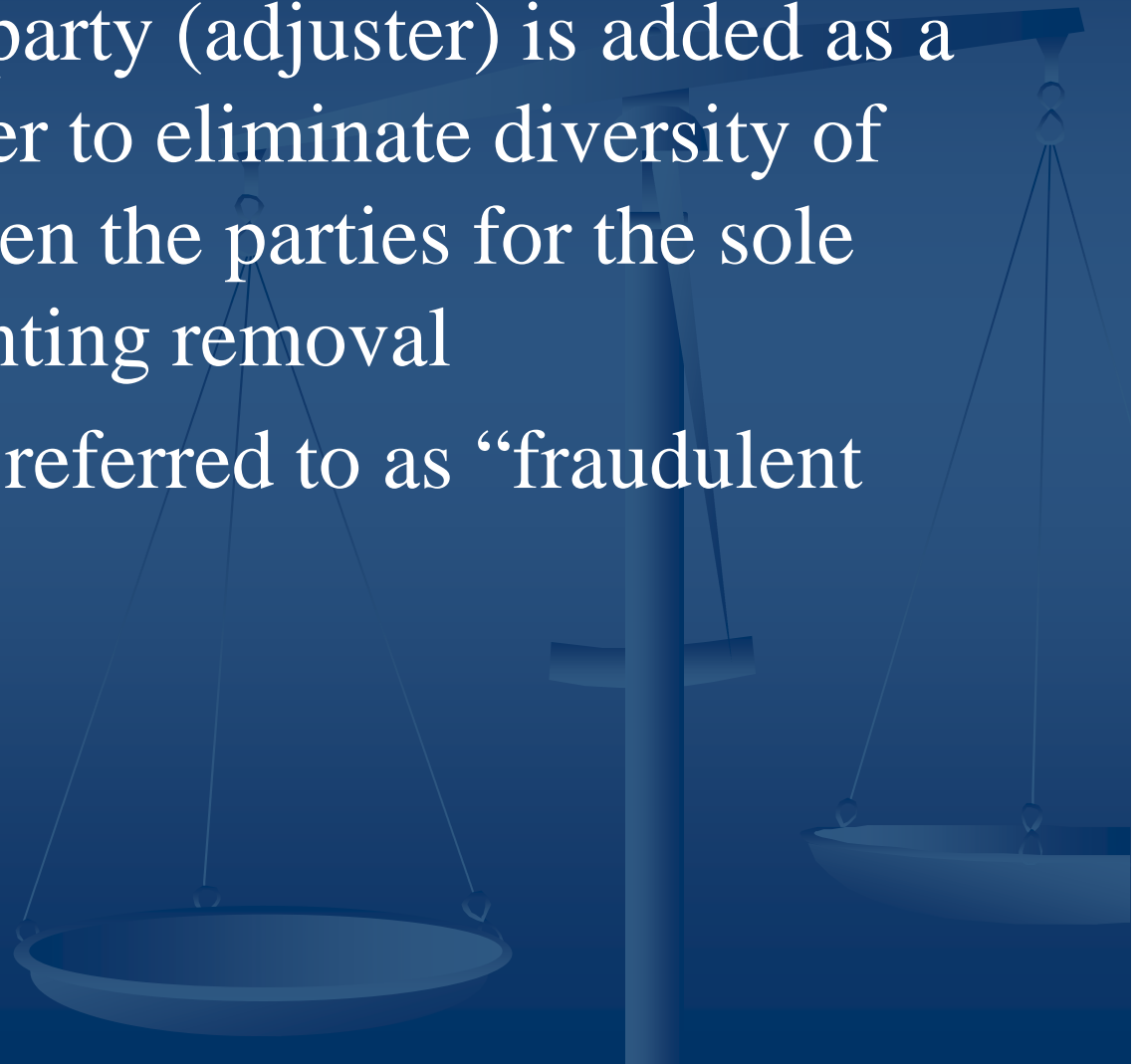
POLICYHOLDER STRATEGY

- Prevent Removal
- Perception works both ways
- Policyholders believe state court provides a better remedy



FRAUDULENT JOINDER

- In some cases, a party (adjuster) is added as a Defendant in order to eliminate diversity of citizenship between the parties for the sole purpose of preventing removal
- Generally, this is referred to as “fraudulent joinder”



ELEMENTS OF FRAUDULENT JOINDER

- To prove fraudulent joinder, the removing party must prove either:
- (1) actual fraud in the pleading of jurisdictional facts, or
- (2) plaintiff's inability to establish a cause of action against the non-diverse party in state court.

Smallwood v. Illinois Cen. R.R. Co., 385 F. 3d 568, 573
(5th Cir. 2004).

ANALYSIS OF FRAUDULENT JOINDER



1. Does it appear the plaintiff intended to pursue a claim against the in-state defendant;
2. Does state law recognize the cause of action against the defendant;
3. Does the state court petition allege sufficient facts against the defendant;
4. When the state court petition fails to allege sufficient facts, is there other evidence in the record which clarifies the claim set forth in the petition?

ANALYSIS OF FRAUDULENT JOINDER

1. Does it appear the plaintiff intended to pursue a claim against the defendant?

-- Petition usually controls

-- Factors:

1. whether the defendant is only minimally mentioned;
2. whether any actionable facts or causes of action are specifically alleged against the defendant; and,
3. whether the defendant was ever served.

First Baptist Church of Mauriceville, Texas v. GuideOne Mut. Ins. Co., 2008 WL 4533729 (E.D. Tex. Sep. 29, 2008)

ANALYSIS OF FRAUDULENT JOINDER

2. Does state law recognize the cause of action against the defendant?

- If the court determines that a plaintiff cannot recover from the [defendant] because the asserted claims are not valid under state law, the individual is not properly joined.

First Baptist Church of Mauriceville, Texas v. GuideOne Mut. Ins. Co., 2008 WL 4533729, at *4 (E.D. Tex. Sep. 29, 2008)

ANALYSIS OF FRAUDULENT JOINDER OF INSURANCE ADJUSTERS

2. Does state law recognize the cause of action against the adjuster?

<i>BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING *</i>	<u>In-House Adjuster</u>	<u>Independent Adjuster</u>
May be liable		
NOT Liable	X	X

* Absent any contractual relationship between the insured and the adjuster

ANALYSIS OF FRAUDULENT JOINDER OF INSURANCE ADJUSTERS

2. Does state law recognize the cause of action against the adjuster?

<i>BREACH OF CONTRACT *</i>	<u>In-House Adjuster</u>	<u>Independent Adjuster</u>
May be liable		
NOT Liable	X	X

* Absent any contractual relationship between the insured and the adjuster

ANALYSIS OF FRAUDULENT JOINDER OF INSURANCE ADJUSTERS

2. Does state law recognize the cause of action against the adjuster?

<i>VIOLATIONS OF TEXAS INSURANCE CODE §541</i>	<u>In-House Adjuster</u>	<u>Independent Adjuster</u>
May be liable	X	X (unsettled)
NOT Liable		

ANALYSIS OF FRAUDULENT JOINDER OF INSURANCE ADJUSTERS

2. Does state law recognize the cause of action against the adjuster?

<i>NEGLIGENT CLAIMS HANDLING</i>	<u>In-House Adjuster</u>	<u>Independent Adjuster</u>
May be liable		
NOT Liable	X	X

ANALYSIS OF FRAUDULENT JOINDER OF INSURANCE ADJUSTERS

2. Does state law recognize the cause of action against the adjuster?

<i>FRAUD</i>	<u>In-House Adjuster</u>	<u>Independent Adjuster</u>
May be liable	X	X
NOT Liable		

ANALYSIS OF FRAUDULENT JOINDER

3. Does the state court petition allege sufficient facts against the defendant? (FACTUAL FIT ANALYSIS)

1. whether the defendant is only minimally mentioned;
2. whether any actionable facts or causes of action are specifically alleged against the defendant; and,
3. whether the defendant was ever served.

A defendant may defeat remand (to state court) by showing that the petition fails to allege “specific actionable conduct” sufficient to support the cause of action.

First Baptist Church of Mauriceville, Texas v. GuideOne Mut. Ins. Co., 2008 WL 4533729, at *4 (E.D. Tex. Sep. 29, 2008).

ANALYSIS OF FRAUDULENT JOINDER

4. When the state court petition fails to allege sufficient facts, is there other evidence in the record which clarifies the claim set forth in the petition?

A federal court has discretion to consider other evidence in the record ... *to the extent that the factual allegations contained therein clarifies or amplifies the claims actually alleged in the petition....*

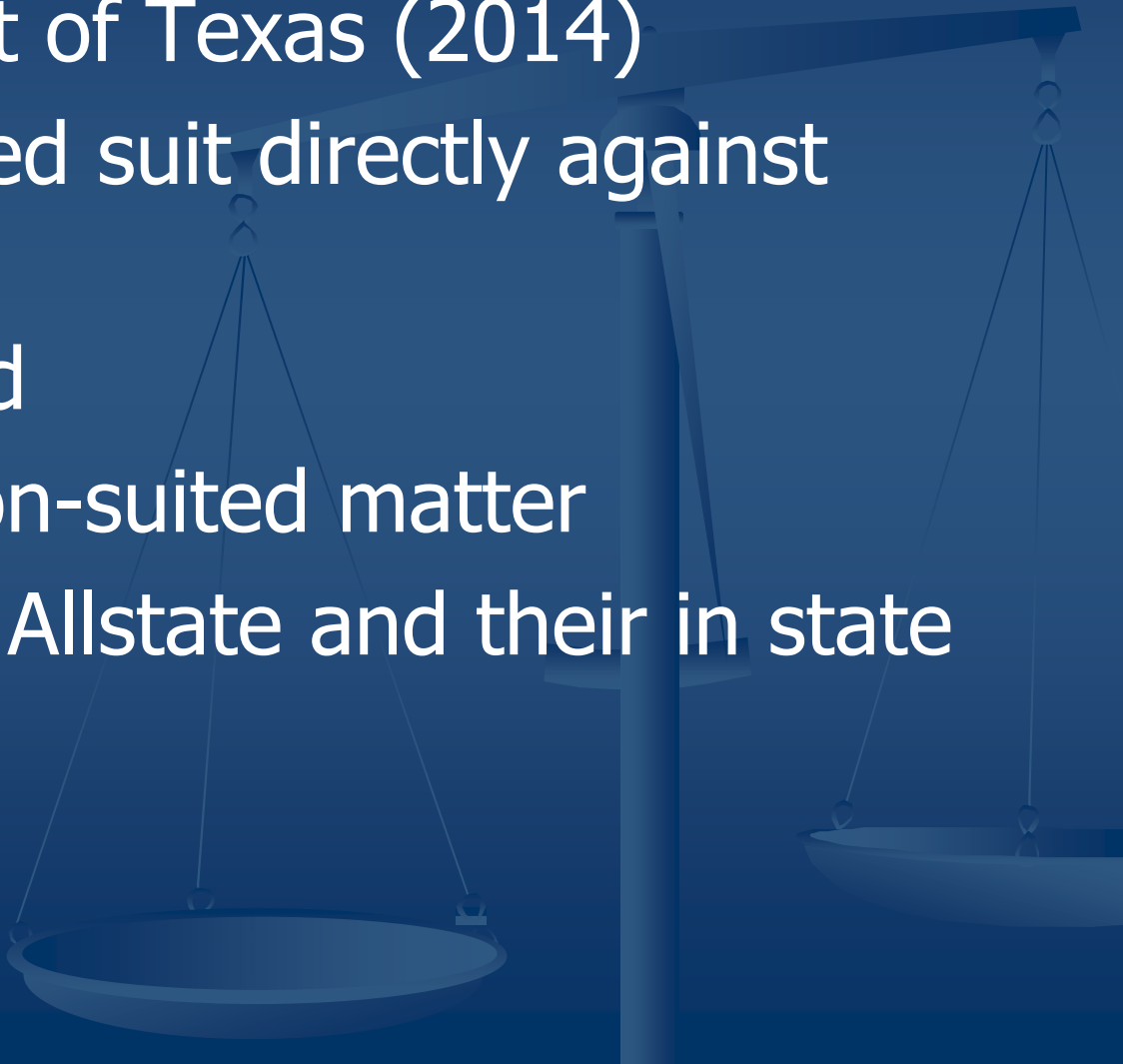
Examples of such evidence include affidavits and deposition testimony.

Griggs v. State Farm Lloyds, 181 F.3d 694, 699-700 (5th Cir. 1999)

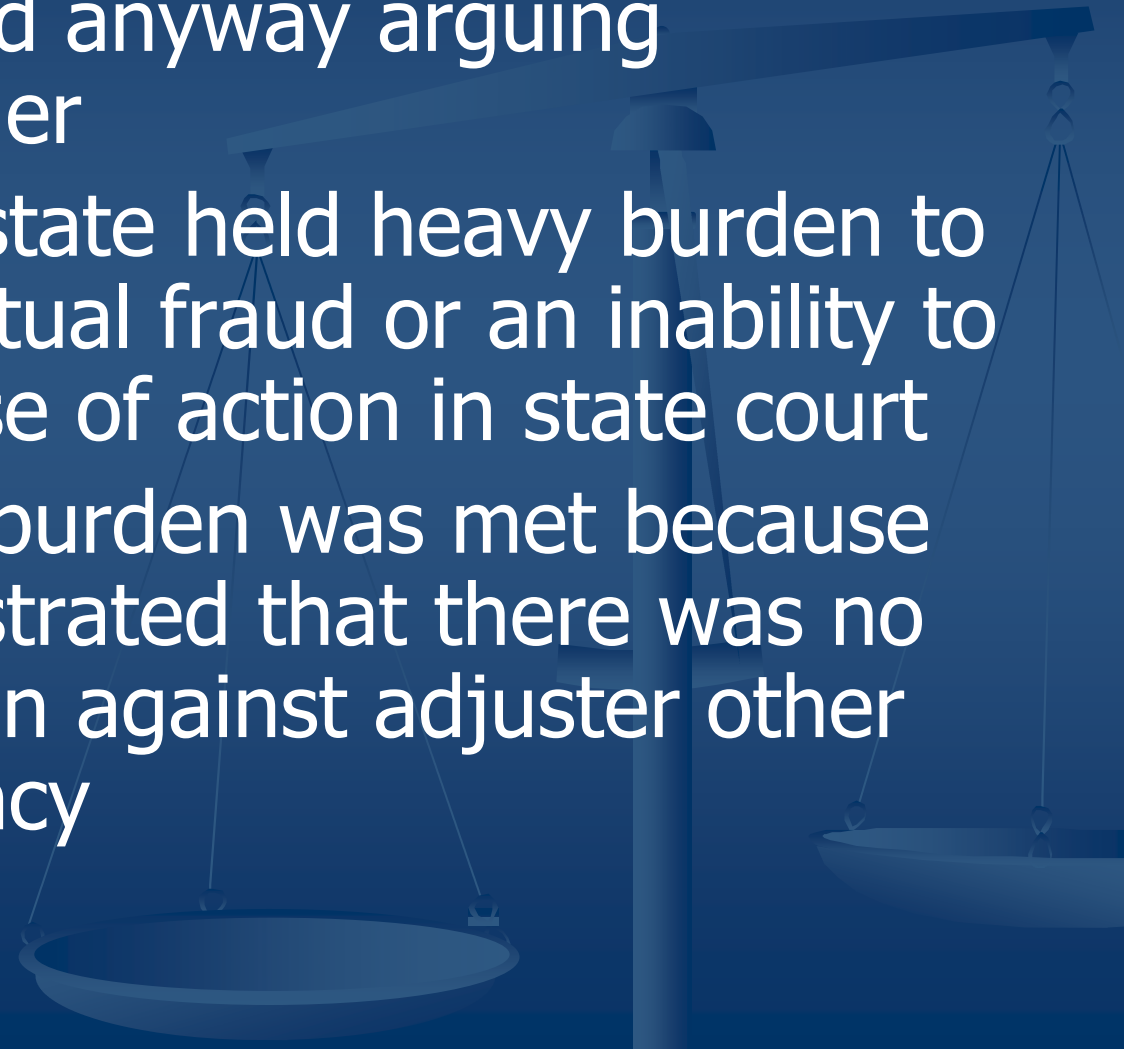
RECENT DECISIONS



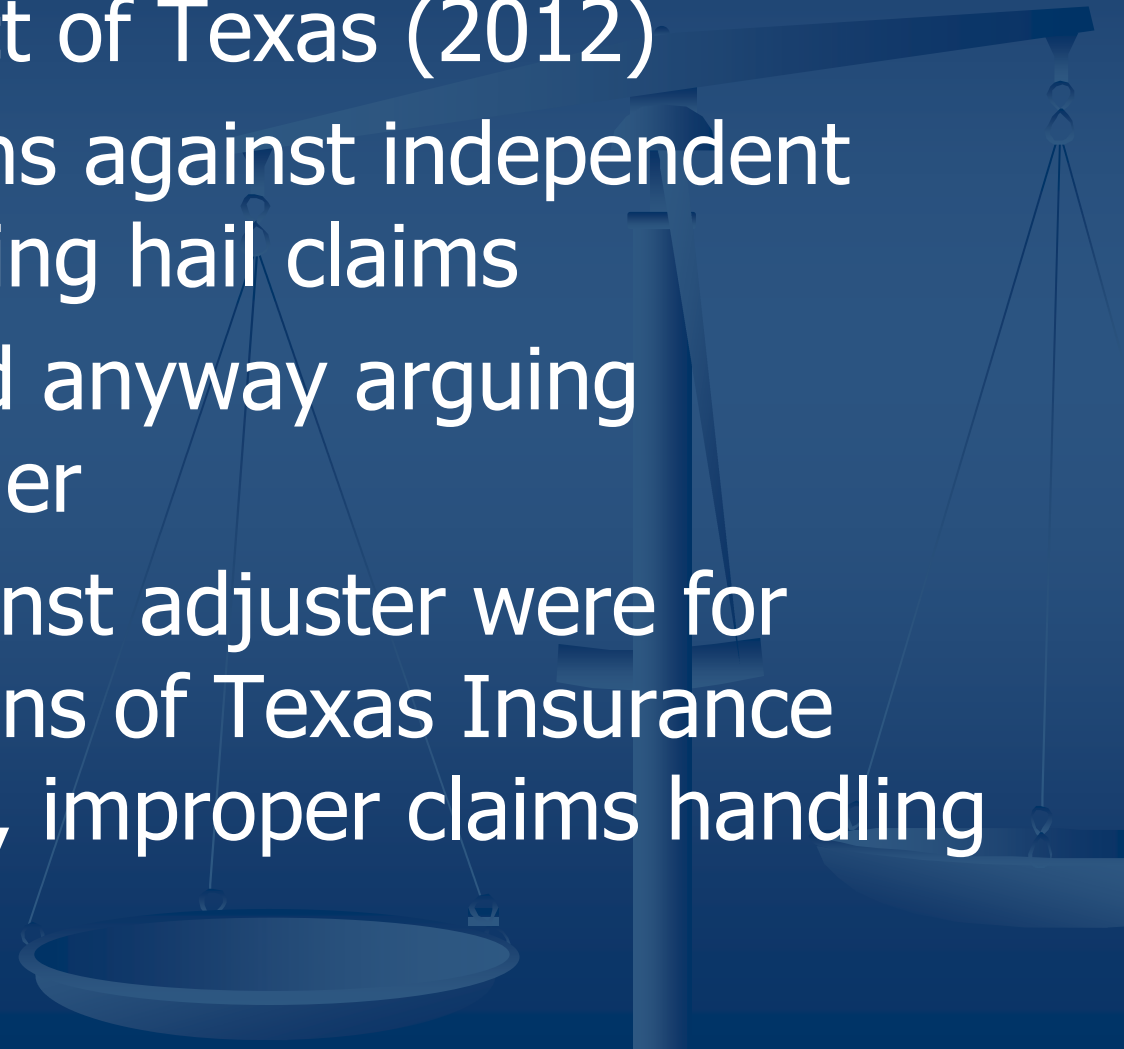
JONES V. ALLSTATE

- Northern District of Texas (2014)
 - Policyholders filed suit directly against Allstate
 - Allstate removed
 - Policyholders non-suited matter
 - Re-filed against Allstate and their in state adjuster
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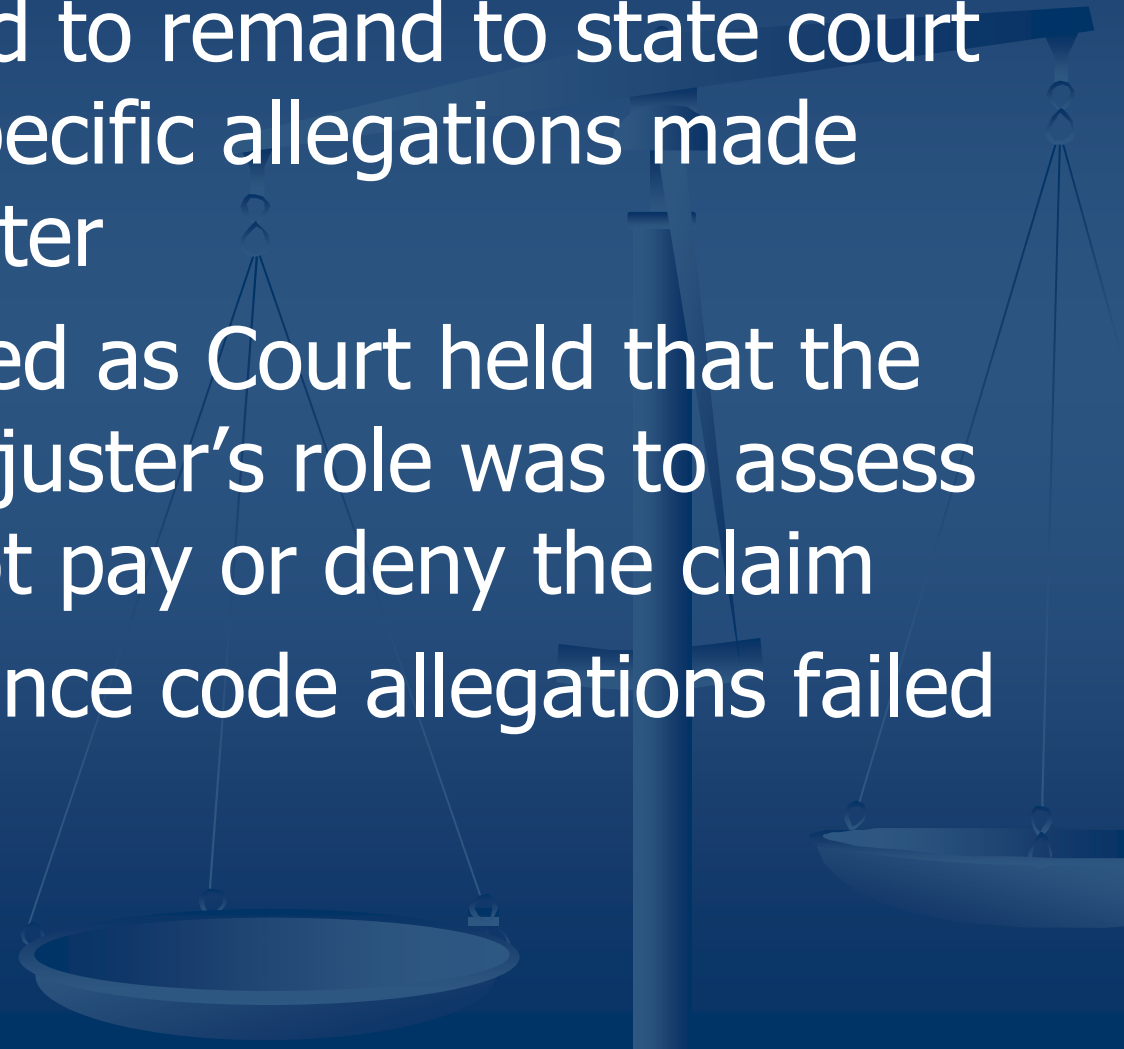
JONES V. ALLSTATE

- Allstate removed anyway arguing fraudulent joinder
 - Court noted Allstate held heavy burden to demonstrate actual fraud or an inability to establish a cause of action in state court
 - Court held this burden was met because Allstate demonstrated that there was no factual allegation against adjuster other than his residency
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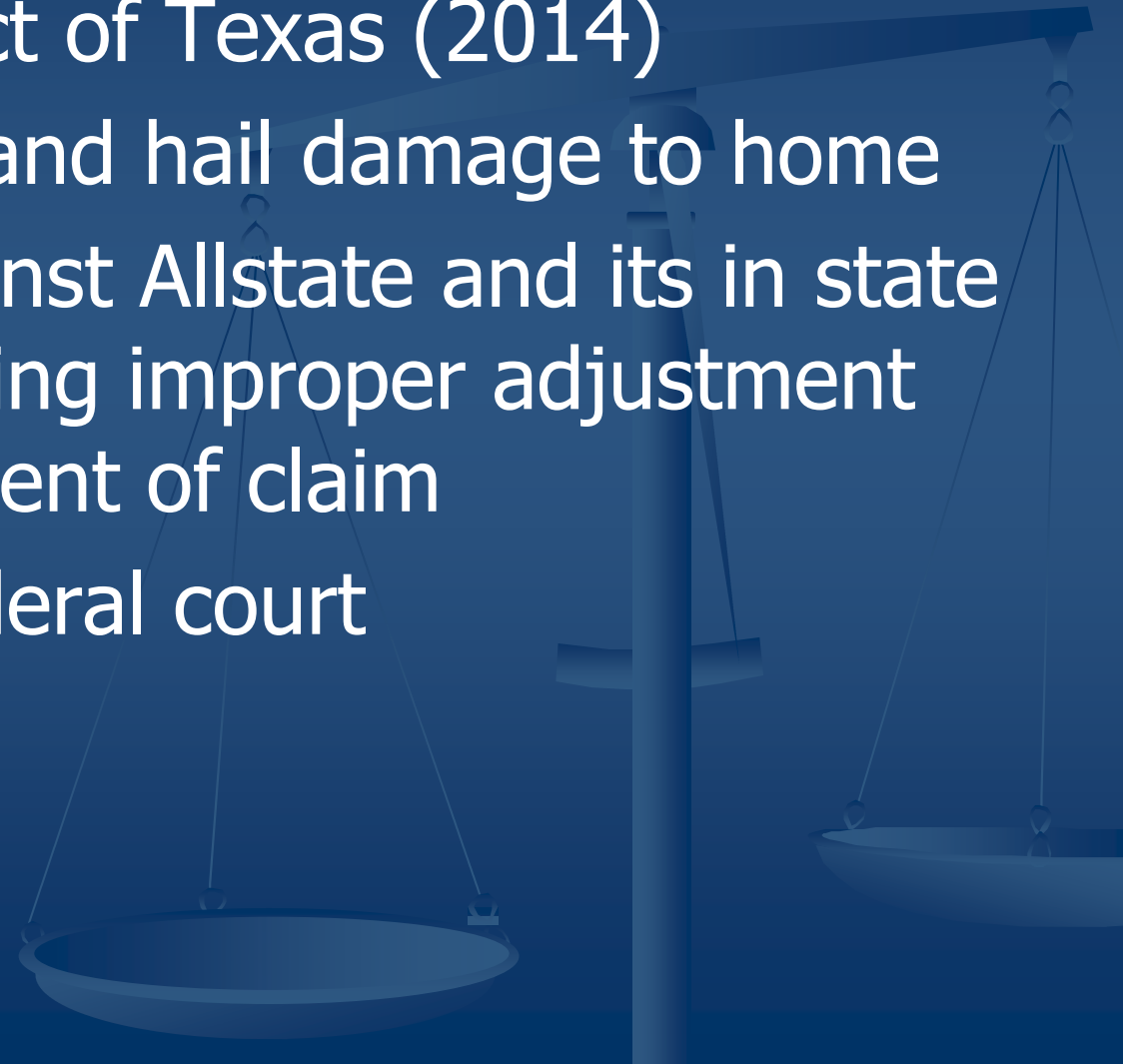
ONE WAY INVESTMENTS V. CENTURY SURETY COMPANY

- Northern District of Texas (2012)
 - Direct allegations against independent adjuster regarding hail claims
 - Carrier removed anyway arguing fraudulent joinder
 - Allegations against adjuster were for multiple violations of Texas Insurance Code; bad faith, improper claims handling
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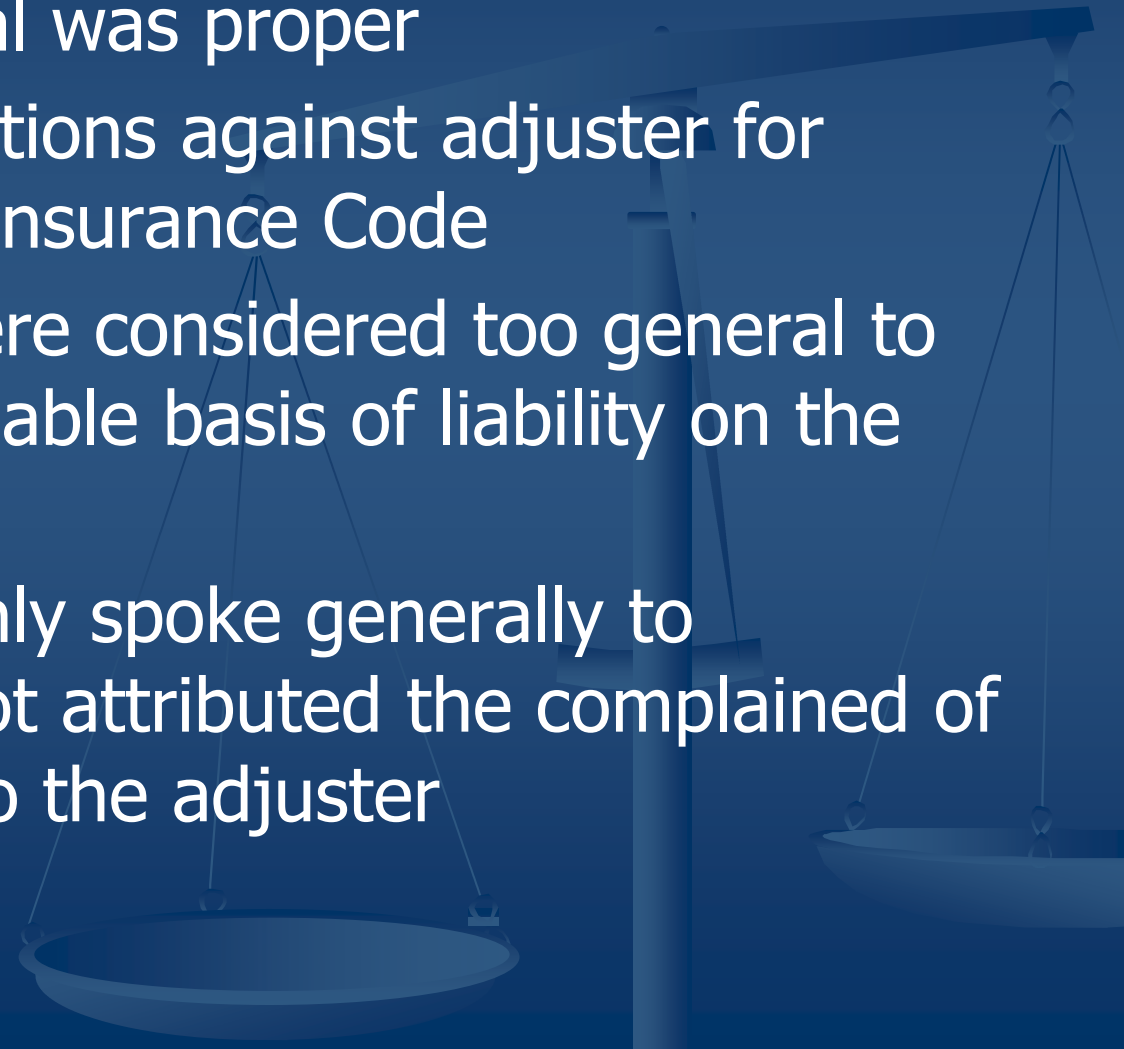
ONE WAY INVESTMENTS V. CENTURY SURETY COMPANY

- One Way moved to remand to state court on basis that specific allegations made about the adjuster
 - Century prevailed as Court held that the independent adjuster's role was to assess the damage, not pay or deny the claim
 - All of the insurance code allegations failed as a result
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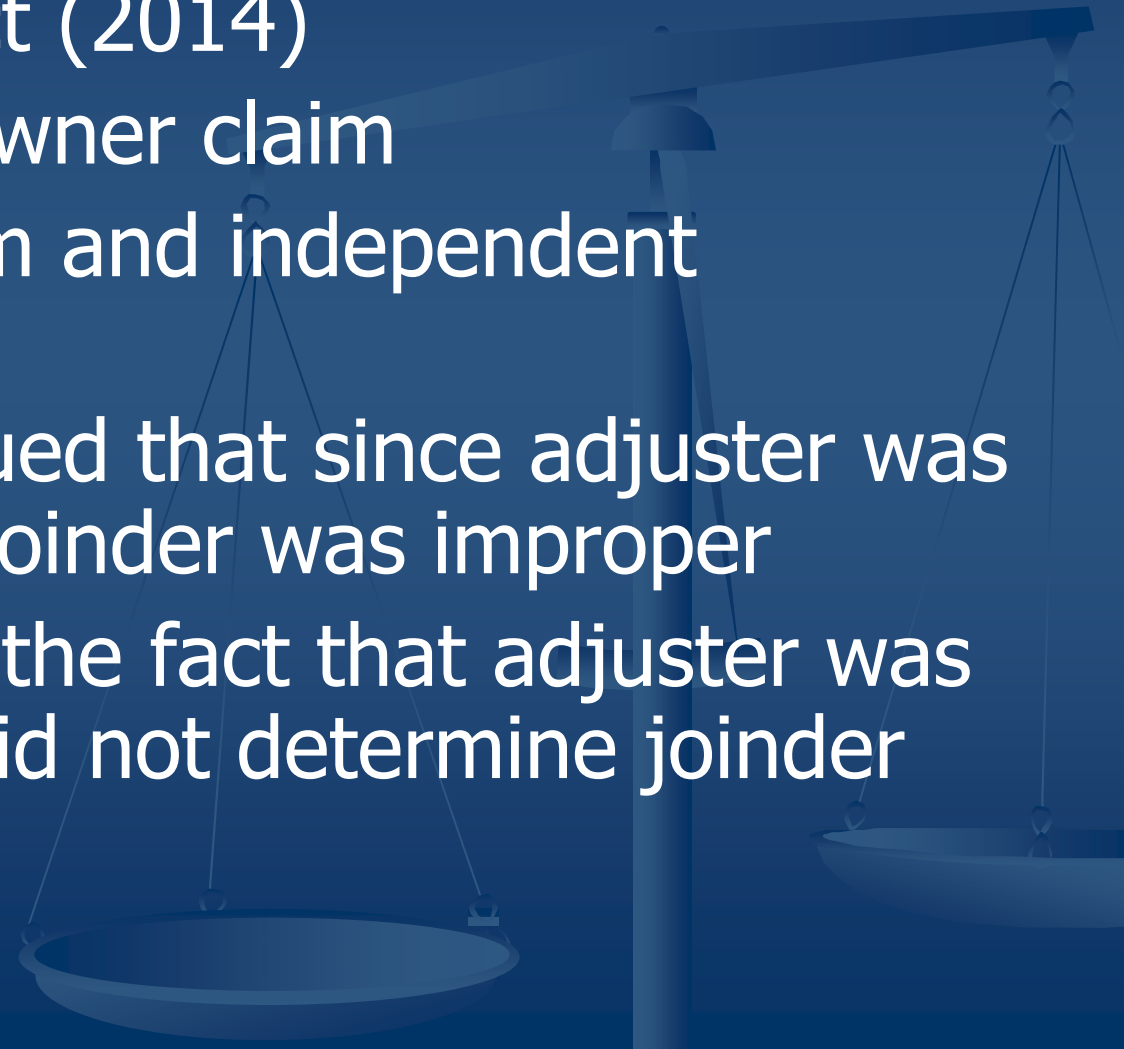
MARQUEZ V. ALLSTATE LLOYDS

- Southern District of Texas (2014)
 - Claim for wind and hail damage to home
 - Allegations against Allstate and its in state adjuster regarding improper adjustment and underpayment of claim
 - Removed to federal court
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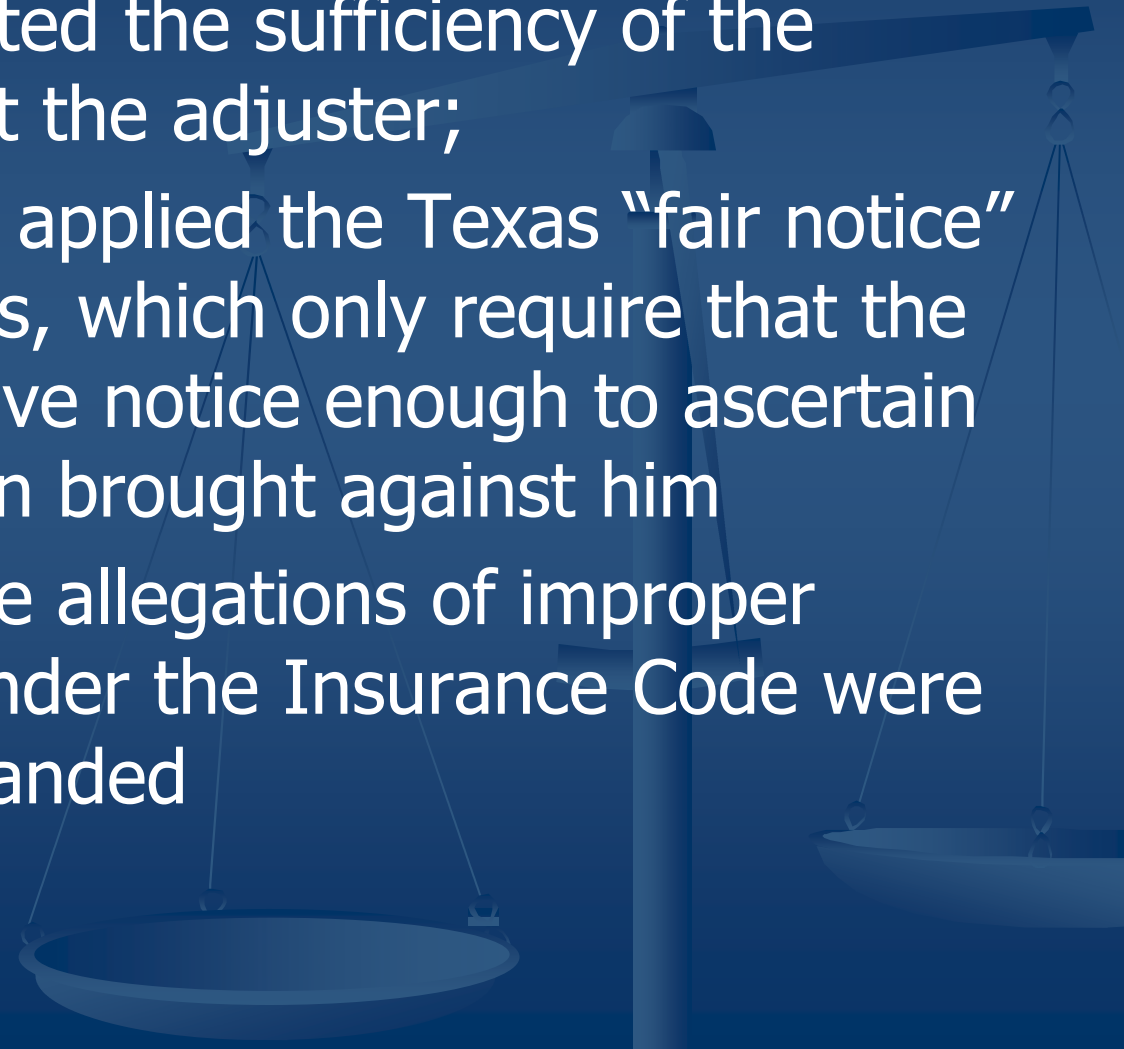
MARQUEZ V. TEXAS LLOYDS

- Court that removal was proper
 - There were allegations against adjuster for action under the Insurance Code
 - However, they were considered too general to establish a reasonable basis of liability on the adjuster
 - The allegations only spoke generally to “Defendants” – not attributed the complained of conduct specific to the adjuster
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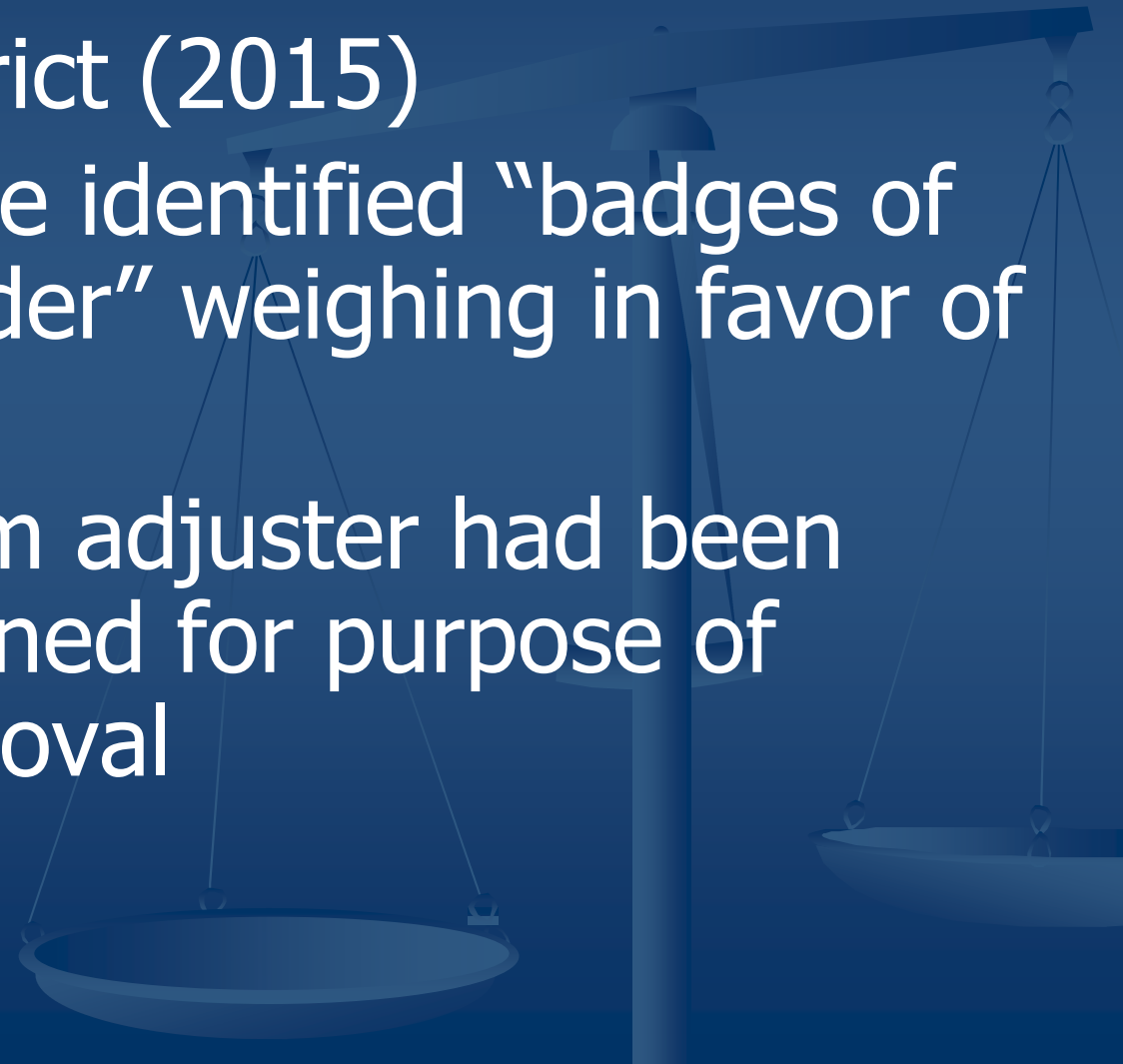
ESTEBAN V. STATE FARM LLOYDS

- Northern District (2014)
 - Another homeowner claim
 - Sued State Farm and independent adjuster
 - State Farm argued that since adjuster was not employee, joinder was improper
 - Court held that the fact that adjuster was not employee did not determine joinder improper
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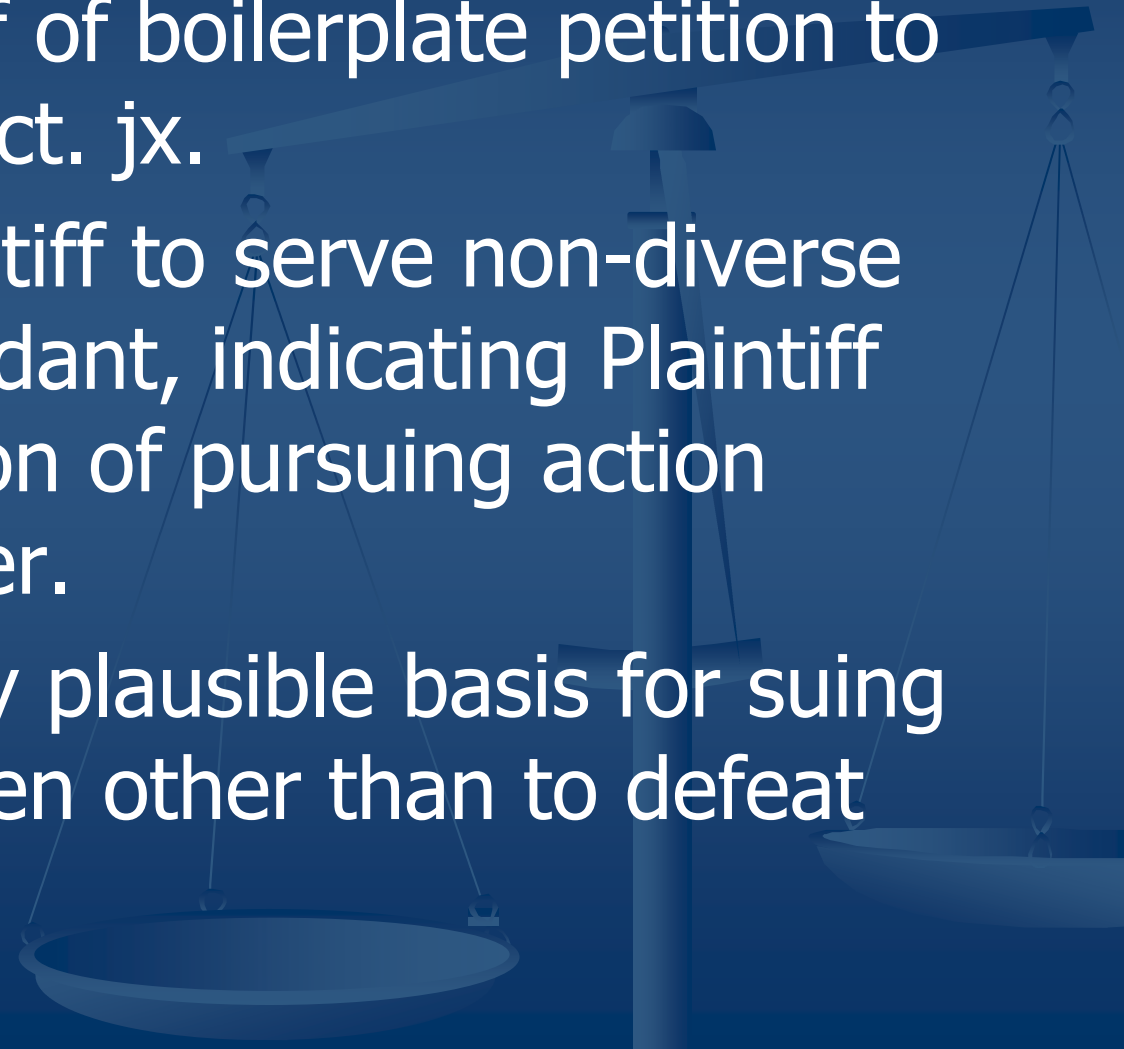
ESTEBAN V. STATE FARM

- Court then evaluated the sufficiency of the allegations against the adjuster;
 - This district judge applied the Texas “fair notice” pleading standards, which only require that the opposing party have notice enough to ascertain the cause of action brought against him
 - Court held that the allegations of improper claims handling under the Insurance Code were sufficient and remanded
- 

DAVIS V. METRO. LLOYDS INSURANCE CO. OF TEXAS

- Northern District (2015)
 - Judge McBryde identified “badges of improper joinder” weighing in favor of decision
 - Held that claim adjuster had been improperly joined for purpose of defeating removal
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BADGES OF IMPROPER JOINDER (DAVIS)

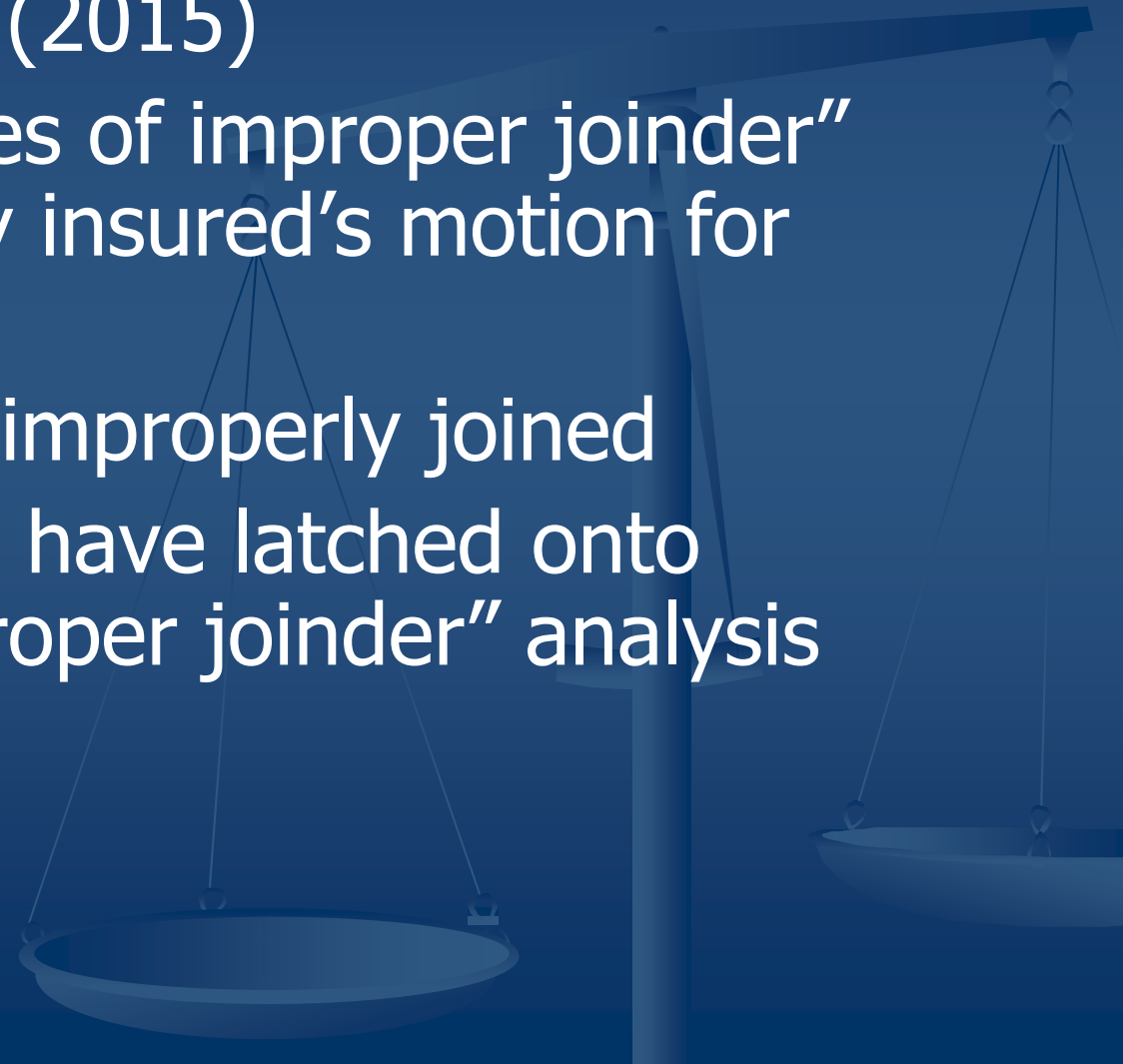
1. Use by Plaintiff of boilerplate petition to defeat federal ct. jx.
 2. Failure of Plaintiff to serve non-diverse adjuster defendant, indicating Plaintiff had no intention of pursuing action against adjuster.
 3. Absence of any plausible basis for suing the Texas citizen other than to defeat diversity.
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SIMILAR DECISIONS

DENYING REMAND

- *See Davis v. Metro. Lloyds Insurance Co. of Texas*, No. 4:14-CV-957-A, (N.D. Tex. Feb. 3, 2015); *Vann v. Allstate Insurance Co.*, No. 4:15-CV-277-A, (N.D. Tex. May 12, 2015); *SYP–Empire LC v. Travelers Casualty Insurance Co. of America*, No. 4:15–CV–213–A, (N.D.Tex. May 12, 2015); *Cano v. Allstate Texas Lloyds*, No. 4:15–CV–096–A, 2015 U.S. Dist. LEXIS 63477, at *1 (N.D.Tex. May 14, 2015); *Gonzalez v. State Farm Lloyds*, No. 4:15-CV-305-A, (N.D. Tex. May 27, 2015); *Arriaga v. State Farm Lloyds*, No. 4:15–CV–308–A (N.D.Tex. May 27, 2015); *Hershon v. State Farm Lloyds*, No. 4:15–CV–312–A (N.D.Tex. May 27, 2015); *Ogden v. State Farm Lloyds*, No. 4:15-CV-139-A, (N.D. Tex. May 28, 2015).
- **SAFE TO SAY JUDGE MCBRYDE HAS ISSUED A WHOLE SLEW OF THESE DECISIONS. (8 TOTAL)**

SLABAUGH V. ALLSTATE

- Eastern District (2015)
 - Applying “badges of improper joinder” analysis to deny insured’s motion for remand
 - Found adjuster improperly joined
 - Appears Judges have latched onto “badges of improper joinder” analysis
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LINRON PROPERTIES V. WASAU UNDERWRITERS INS. CO.

- But see *Linron*.
- Northern District (2015)
- Underlying claim involved storm damage to commercial property
- Filed suit against adjuster for failure to conduct full, fair, prompt, and reasonable investigation
- Court found that because Ch. 541 used the word “effectuate,” adjuster plays primary role in investigating and evaluating insurance claims
- Thus, allegations in petition sufficient to support an individual claim against adjuster

DAVIS V STATE FARM

- From same Court as *Linron*. (Northern District, 2015).
- Insured sued State Farm and agent, asserting claims for negligent misrep., fraud, violations of DTPA and civil conspiracy.
- This time, Court denied motion to remand, but decision appeared to be based on insufficiency of plaintiff's petition rather than improper reason for joining agent

NEW LIFE ASSEMBLY OF GOD OF THE CITY OF PAMPA V. CHURCH MUTUAL INSURANCE CO.

- Northern District (2015)
- Another case where Judge failed to find “badges of joinder” relevant
- Court instead found that defendants had no objectively reasonable grounds for believing removal was proper
- Granted request for award of attorney’s fees