IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THOMAS PAREDES and KERRY PAREDES,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 3:20-CV-3180-K
	§	
THE CINCINNATI INSURANCE COMPANY and JOHN SCHUSTER,	§	
	§	
Defendants.	§	

ORDER

Before the Court is Plaintiffs' Motion to Abstain and Remand ("Motion to Remand") (Doc. No. 13). After careful consideration of the Motion to Remand, responsive briefing, relevant portions of the record, and applicable law, the Court **DENIES** the Motion to Remand because Plaintiffs Thomas Paredes and Kerr Paredes (collectively, "Plaintiffs") improperly joined Defendant John Schuster ("Adjuster"), the non-diverse claim adjuster.

I. Factual and Procedural Background

This is a hail damage case in which Plaintiffs brought state law claims against Defendant The Cincinnati Insurance Company ("Defendant Insurer") and Adjuster for not sufficiently covering the cost of wind and hail damage to Plaintiffs' property pursuant to their insurance policy.

According to Plaintiffs' state court original petition ("Petition"), Defendant Insurer assigned Adjuster to investigate and adjust the claim. Unhappy with the results of the investigation, Plaintiffs allege causes of action against Adjuster in his individual capacity for violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act ("DTPA"), and common law claims for fraud, negligence, and gross negligence.

Defendant Insurer removed the case to federal court on the grounds that Adjuster, the non-diverse defendant, was improperly joined because, in short, Plaintiffs' allegations in the Petition are nothing more than mere recitations of statutory language and conclusory factual allegations. Plaintiffs filed the present Motion to Remand, contending that they did not improperly join Adjuster and this Court does not have subject-matter jurisdiction over the case because Adjuster and Plaintiffs are Texas citizens and therefore not diverse. Defendant Insurer responded to the Motion to Remand, arguing that Plaintiffs' claims against Adjuster was improperly joined. Defendant Insurer contends that Plaintiff's Petition is devoid of factual support to survive the federal pleading standard and does not provide a reasonable basis to predict that Adjuster is individually liable. Defendant Insurer asserts that because Adjuster was improperly joined, his citizenship must be disregarded in determining diversity jurisdiction, and the Court must deny the Motion to Remand because the Court has subject-matter jurisdiction over this case. Plaintiffs did not file a reply and the time to do has expired. As such, the Motion to Remand is now ripe for review.

II. Applicable Law

A defendant may remove a state court action to federal court if the district court has original jurisdiction over the case at the time of removal and Congress has not expressly prohibited removal. 28 U.S.C. § 1441(a). The party seeking removal bears the burden of establishing federal jurisdiction. *Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005). Removal jurisdiction is strictly construed "and any doubt about the propriety of removal must be resolved in favor of remand." *Gasch v. Hartford Acc. & Indem. Ins. Co.*, 491 F.3d 278, 281-21 (5th Cir. 2007).

When removing a case based on diversity jurisdiction, the defendant must establish "that all of the prerequisites of diversity jurisdiction contained in 28 U.S.C. § 1332 are satisfied." *Smallwood v. Ill. Cent. R.R. Co.*, 385 F.3d 568, 572 (5th Cir. 2004) (en banc). Section 1332 requires complete diversity of citizenship between all plaintiffs and all defendants, in that all plaintiffs must be citizens of different states than all defendants. 28 U.S.C. § 1332; *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1079 (5th Cir. 2008). Section 1441(b) provides that when a case is removed on the basis of diversity jurisdiction, a defendant may remove only "if none of the parties in interest *properly* joined and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b) (emphasis added); *see Smallwood*, 385 F.3d at 572.

Improper joinder is a narrow exception to complete diversity. "The doctrine of improper joinder implements [the court's] duty to not allow manipulation of our jurisdiction." *Smallwood*, 385 F.3d at 576. The removing defendant "bears a heavy

burden of proving that the joinder of the in-state party was improper." *Id.* at 574. Improper joinder may be established in two ways: (1) actual fraud in the plaintiff's pleading of jurisdictional facts; or (2) inability of the plaintiff to establish a cause of action against the non-diverse defendant in state court. *See Gasch*, 491 F.3d at 281; *Smallwood*, 385 F.3d at 573. The second type is at issue in this case. Under the second type of improper joinder, the court's analysis focuses on "whether the defendant has demonstrated that there is no possibility of recovery by the plaintiff against an in-state defendant, which stated differently means that there is no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant." *Smallwood*, 385 F.3d at 573. "This possibility [of recovery], however, must be reasonable, not merely theoretical." *Great Plains Tr. Co. v. Morgan Stanley Dean*, 313 F.3d 305, 312 (5th Cir. 2002).

In determining whether there is any reasonable basis to predict that the plaintiff may recover against non-diverse defendant under state law,

> [t]he court may conduct a Rule 12(b)(6)-type analysis, looking initially at the allegations of the complaint to determine whether the complaint states a claim under state law against the in-state defendant. Ordinarily, if a plaintiff can survive a Rule 12(b)(6) challenge, there is no improper joinder. That said, there are cases, hopefully few in number, in which a plaintiff has stated a claim, but has misstated or omitted discrete facts that would determine the propriety of joinder. In such cases, the district

> court may, in its discretion, pierce the pleadings and conduct a summary inquiry.

Smallwood, 385 F.3d at 573. Citing the en banc opinion in *Smallwood*, the Fifth Circuit reiterated that federal courts must use the federal pleading standard, not the Texas "fair notice" pleading standard, in conducting a Rule 12(b)(6)-type analysis for improper joinder. *Int'l Energy Ventures Mgmt., L.L.C. v. United Energy Grp., Ltd.*, 818 F.3d 193, 200-02 (5th Cir. 2016). "At bottom, the improper-joinder analysis in the context of removal and remand is solely about determining the *federal* court's jurisdiction . . . . When determining the scope of its own jurisdiction, a federal court does so without reference to state law, much less state law governing pleadings." *Id.* at 202. If the court determines the non-diverse defendant was improperly joined, the court must disregard the citizenship of that defendant when determining diversity jurisdiction. *Smallwood*, 385 F.3d at 572-73.

III. Analysis

Defendant Insurer removed this case to federal court based on diversity jurisdiction, arguing that Adjuster was improperly joined to destroy diversity. Diversity jurisdiction exists where the amount in controversy exceeds $75,000.00 and each plaintiff's citizenship is diverse from each defendant's citizenship. 28 U.S.C. § 1332(a). The amount-in-controversy is satisfied in this action. *See* Doc. No. 9. Plaintiffs seek to recover damages from Defendants in excess of $100,000.00 in this action. *See* Doc. No. 1-3 at ¶ 93.

It is undisputed that Plaintiffs are Texas citizens, Defendant Insurer is an Ohio citizen, and Adjuster is a Texas citizen. The parties dispute whether "each plaintiff's citizenship is diverse from each defendant's citizenship." 28 U.S.C. § 1332(a). In the Motion to Remand, Plaintiffs insist that complete diversity is lacking because Plaintiffs and Adjuster are Texas citizens. Plaintiffs also contend that Defendant Insurer cannot and has not met the burden to show Adjuster was improperly joined, so the Court must remand the case to state court for lack of subject-matter jurisdiction. Defendant Insurer counters that Plaintiffs' claims against Adjuster are devoid of factual support and do not provide a reasonable basis to predict that Adjuster is individually liable to Plaintiffs. For this reason, Defendant Insurer contends that Adjuster was improperly joined, his citizenship must be disregarded in determining diversity jurisdiction, and the Court must deny the Motion to Remand.

Defendant Insurer does not contend that there is any actual fraud in Plaintiffs' Petition regarding jurisdictional facts; therefore, to establish improper joinder, Defendant Insurer must show there is no possibility Plaintiffs can recover against Adjuster for any of the state law claims asserted by Plaintiffs. *See Smallwood*, 385 F.3d at 573. For this type of improper joinder, the Court examines Plaintiffs' Petition using a "Rule 12(b)(6)-type analysis, which is part and parcel with the federal pleading standard." *Int'l Energy Ventures Mgmt.*, 818 F.3d at 206 (citing *Smallwood*, 385 F.3d at 573). Although "detailed factual allegations" are not required, the federal pleading standard requires a plaintiff to provide "more than labels and conclusions, and a

formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted); *see Int'l Energy Ventures Mgmt.*, 818 F.3d at 200 (internal quotations omitted) ("To pass muster under Rule 12(b)(6), [a] complaint must have contained enough facts to state a claim for relief that is plausible on its face."). "Factual allegations must be enough to raise a right to relief above a speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 550 U.S. at 555. In making the determination of improper joinder, the Court will "evaluate all of the factual allegations in the plaintiff's state court pleadings in the light most favorable to the plaintiff, resolving all contested issues of substantive fact in favor of the plaintiff" and "then examine the relevant state law and resolve all uncertainties in favor of the nonremoving party." *Cavallini v. State Farm Mut. Auto. Ins. Co.*, 44 F.3d 256, 259 (5th Cir. 1995) (quoting *Green v. Amerada Hess Corp.*, 707 F.2d 201, 205 (5th Cir. 1983)) (internal quotation marks omitted).

Defendant Insurer has met its heavy burden of demonstrating that there is no reasonable basis to predict that Plaintiffs can recover against Adjuster. Plaintiffs allege that Adjuster committed violations of Texas Insurance Code §§ 541.060(a)(2)(A), 541.060(a)(3), 542.003(b)(3) and 542.003(b)(4). Plaintiffs further posit that Adjuster's violations of the Texas Insurance Code create a cause of action under DTPA § 17.50(a)(4), and they allege other violations under DTPA §§ 17.46(b)(2),

17.46(b)(5), 17.46(b)(7), and 17.50(a)(3). Plaintiffs also bring common law claims against Adjuster for fraud, negligence, and gross negligence.

A. Texas Insurance Code Claims

Plaintiffs assert that Adjuster violated Texas Insurance Code §§ 541.060(a)(2)(A), 541.060(a)(3), 542.003(b)(3), and 542.003(b)(4). *See* Doc. No. 1-3 at ¶¶ 63-64.

Plaintiffs have not adequately pleaded a § 541.060 violation against Adjuster. Notably, the allegations for Defendant Insurer and Adjuster are identical for the § 541.060 claims. Section 541.060(a)(2)(A) prohibits engaging in unfair settlement practices by failing to attempt a proper, fair, and equitable settlement of a claim where the insurer's liability is reasonably clear. Plaintiffs' allegations against Adjuster for this claim are merely legal conclusions and recitations of the statutory language. Moreover, the allegations against Adjuster predominantly mimic the allegations against Defendant Insurer, and to the extent they do not, the allegations are conclusory and do not satisfy the federal pleading standard.

Similarly, Plaintiffs' allegations do not contain the measure of factual support courts have accepted as sufficient to state a claim under § 541.060(a)(3). Section 541.060(a)(3) "does not obligate an insurer to provide an insured every piece of information . . . the insurer has regarding the offer or the investigation." *Mid-Continent Cas. Co. v. Eland Energy, Inc.*, 795 F. Supp. 2d 493, 534 (N.D. Tex. 2011) (Fitzwater, J.), *aff'd*, 708 F.3d 515 (5th Cir. 2013). Rather, an insurer is required to "provide a

reasonable explanation of the factual or legal basis in the policy" for an offer. *Id.* A plaintiff who "fails to provide any factual basis for its belief that [the insurer's] explanation for a claim was unreasonable" has not stated a claim under § 541.060(a)(3). *See Columbia Mut. Ins. Co. v. Cedar Rock Lodge, LLC*, 2016 WL 1073051, at *4 (N.D. Tex. Feb. 3, 2016), *adopted by,* 2016 WL 1059677 (N.D. Tex. Mar. 17, 2016) (Solis, J.).

The Court acknowledges that Plaintiffs allege Adjuster provided no explanation at all for the offer; however, this allegation is inadequate. In *Avila*, the court found an allegation that defendants "failed to offer Plaintiffs adequate compensation, without any explanation why full payment was not being paid" sufficient under § 541.060(a)(3) given the factual allegations "as a whole," because it was evident from the petition that defendants "never explained why [plaintiffs'] claim was denied with respect to several specific types of damages to their home." *Avila v. Metro. Lloyds Ins. Co. of Texas*, No. 3:16-CV-3007-L, 2017 WL 1232529, at *13 (N.D. Tex. Feb. 21, 2017), *adopted by,* 2017 WL 1211339 (N.D. Tex. Apr. 3, 2017) (Lindsay, J.). Unlike the plaintiffs in *Avila* who specifically stated types of damages that the adjuster likely missed in the short, 30-minute inspection of the residence, Plaintiffs fail to provide factual support for their contentions with any specificity as to how Adjuster's investigation was substandard or unreasonable. In a bareboned manner, Plaintiffs recite the statutory language without providing sufficient facts to satisfy the federal pleading standard. *See id.* Moreover, Plaintiffs largely lump together the conduct of diverse

Defendant Insurer and non-diverse Adjuster without differentiating actionable conduct as to non-diverse Adjuster. *See Plascencia v. State Farm Lloyds*, No. 4:14-CV-524-A, *14 (N.D. Tex. Sept. 25, 2014) (McBryde, J.) ("Merely lumping diverse and non-diverse defendants together in undifferentiated liability averments of a petition does not satisfy the requirement to state specific actionable conduct against the non-diverse defendant.") (internal citations omitted). Considering the allegations as a whole, there is no reasonable basis for the Court to predict that Plaintiffs can recover against Adjuster under § 541.060(a)(3).

Plaintiffs also assert claims against Adjuster under Chapter 542 of the Texas Insurance Code. However, an individual adjuster cannot be liable under Chapter 542 because that chapter only applies to insurers. *Mainali Corp. v. Covington Specialty Ins. Co.*, No. 3:15-CV-1087-D, 2015 WL 5098047, at *6 (N.D. Tex. Aug. 31, 2015) (Fitzwater, J.). An adjuster is not an insurer under Texas Insurance Code § 542.002. Thus, the Court finds no reasonable basis to predict that Plaintiffs could recover against Adjuster for violations under Chapter 542 of the Texas Insurance Code.

A. DTPA Claims

Plaintiffs also bring claims against Adjuster for violations of §§ 17.46(b)(2), (5), and (7), as well as §§ 17.50(a)(3) and (4) of the DTPA. There is no reasonable basis for the Court to predict that Plaintiffs can recover against Adjuster for any of these DTPA claims.

Plaintiffs cannot recover against Adjuster under DTPA §§ 17.46(b)(2), (5), or (7). Section 17.46(b)(2) prohibits "causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services." TEX. BUS. & COM. CODE § 17.46(b)(2). Plaintiffs alleges that Adjuster's violations include "(1) failure to give Plaintiffs the benefit of the doubt, and (2) failure to write up an estimate reflecting the proper repair of Plaintiffs' Property when liability has become reasonably clear." Doc. No. 1-3 at ¶ 68.B. Section 17.46(b)(2) is subject to the heightened pleading requirement under Federal Rule of Civil Procedure 9(b). *Int'l Energy Ventures Mgmt.*, 818 F.3d at 208. Here, Plaintiffs' allegations, without any more specific facts, are conclusory and therefore do not satisfy the heightened pleading standard of Federal Rule of Civil Procedure 9(b). Accordingly, the Court finds that there is no reasonable basis on which the Court could predict that Plaintiffs can recover against Adjuster on this claim.

Section 17.46(b)(5) provides that "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not" is an actionable deceptive trade practice. TEX. BUS. & COM. CODE § 17.46(b)(5). While § 17.46(b)(7) provides that "representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another" is also an actionable deceptive trade practice. *Id.* § 17.46(b)(7). Plaintiffs allege that Adjuster "represented to Plaintiffs

that the Policy and his adjusting and investigative services had characteristics or benefits they did not possess" and that "the Policy and his adjusting services were of a particular standard, quality, or grade when they were of another." Doc. No. 1-3 at ¶ 68.B-C. Notably, Plaintiffs do not allege that Adjuster represented that he or the insurance policy had any particular characteristic or quality. Plaintiffs' allegations for this claim are nothing more than a recitation of the statutory language. On this basis alone, the Court finds there is no reasonable basis on which the Court can predict that Plaintiffs can recover against Adjuster under § 17.46(b)(5) and (7).

Plaintiffs also cannot recover against Adjuster under § 17.50(a)(3). Section 17.50(a)(3) prohibits "any unconscionable action or course of action by any person." TEX. BUS. & COM. CODE § 17.50(a)(3). Plaintiffs simply allege that Adjuster's "actions are unconscionable in that [Adjuster] took advantage of Plaintiff's lack of knowledge, ability, and experience to a grossly unfair degree." Doc. No. 1-3 at ¶ 68.D. Plaintiffs' skeletal recitation of the statutory language without more factual support fails to rise above the standard of conclusory. Thus, there is no reasonable basis for the Court to predict that Plaintiffs can recover against Adjuster on this claim.

In addition, Plaintiffs cannot recover under § 17.50(a)(4). Section 17.50(a)(4) provides a cause of action for one who suffers damages resulting from claims brought under Chapter 541 of the Texas Insurance Code. *See* TEX. BUS. & COM. CODE § 17.50(a)(4). Because there is no reasonable basis for the Court to predict that Plaintiffs can recover against Adjuster for the alleged Chapter 541 violations, there is likewise no

reasonable basis for the Court to predict that Plaintiffs could recover against Adjuster under § 17.50(a)(4). *See Meritt Buffalo Events Ctr., LLC v. Cent. Mut. Ins. Co.*, No. 3:15-CV-3741-D, 2016 WL 931217, at *6 (N.D. Tex. Mar. 11, 2016) (Fitzwater, J.) (holding that insured could not recover against adjusters under § 17.50(a)(4) where insured could not recover against adjusters under Texas Insurance Code because "[t]he DTPA claim is derivative of the Texas Insurance Code claims." (citing *Mainali*, 2015 WL 5098047, at *6)).

B. Texas Common Law Claims

Plaintiffs contend that Adjuster committed fraud, negligence, and gross negligence. Defendant Insurer contends that Plaintiffs fail to allege facts sufficient to support any of these Texas common law claims against Adjuster.

1. Fraud

Under Texas law, a party must prove the following elements to establish fraud:

> (1) the defendant made a material misrepresentation; (2) the defendant knew the representation was false or made the representation recklessly without any knowledge of its truth; (3) the defendant made the representation with the intent that the other party would act on that representation or intended to induce the party's reliance on the representation; and (4) the plaintiff suffered an injury by actively and justifiably relying on that representation.

Exxon Corp. v. Emerald Oil & Gas Co., 348 S.W.3d 194, 217 (Tex. 2011).

Plaintiffs generally assert that Adjuster misrepresented the scope of the damage to Plaintiffs property. Plaintiffs vaguely state that "misrepresentations include damage to the Property owning from wear and tear, damage from a previous claim, and damage from a type not consistent with the type of claim that was made." Doc. No. 1-3 at ¶ 71d. This is insufficient specificity as to what misrepresentations were made (other than general disagreement on the scope of damages) and fails to include specificity as to what about those statements is fraudulent. Plaintiffs also made no allegations regarding how they relied on Adjuster's alleged misrepresentations or how the alleged misrepresentations damaged them; instead, Plaintiffs lump together vague allegations against "Defendants" with respect to damages. Plaintiffs' fraud claim fails to comply with the specificity requirements of Federal Rule of Civil Procedure 9(b), which requires, at a minimum, identification of the "who, what, when, where, and how" of the alleged fraud. *United States ex rel. Williams v. Bell Helicopter Textron Inc.*, 417 F.3d 450, 453 (5th Cir. 2005) (quoting *United States ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899, 903 (5th Cir. 1997)); *see also Plotkin v. IP Axess Inc.*, 407 F.3d 690, 696 (5th Cir. 2005) ("[T]he Rule 9(b) standards require specificity as to the statements (or omissions) considered to be fraudulent, the speaker, when and why the statements were made, and an explanation why they are fraudulent."). Thus, Plaintiffs' allegations do not give the Court a reasonable basis to predict that Plaintiffs can recover against Adjuster on a claim of fraud.

2. Negligence and Gross Negligence

Plaintiffs also assert negligence and gross negligence claims against Adjuster. The Fifth Circuit has ruled that an adjuster owes no duty to the insured under Texas common law. *See Bui v. St. Paul Mercury Ins. Co.*, 981 F.2d 209, 210 (5th Cir. 1993). As the district court recognized in *Zimmerman v. Travelers Lloyds of Texas Insurance Co.*, No. 5:15-CV-325, 2015 WL 3971415 (W.D. Tex. June 15, 2015), explained:

> Although the Texas Supreme Court has not addressed the issue of whether an independent adjuster could be held liable for negligence separate from good faith and fair dealings, the Fifth Circuit has spoken to this issue. In Bui, a boat owner alleged that the insurance adjuster who handled the owner's claim for boat damage acted negligently in preparing the claim. The Fifth Circuit upheld the district court's dismissal of the common law negligence claim, holding that the adjuster owed no duty to the insured under Texas law. The existence of a legal duty owed by the defendant to the plaintiff is one of the necessary elements of common law negligence in Texas. Because independent adjusters, absent a contract or other special circumstances, owe no duty to the insured in Texas, they cannot be held liable for common law negligence. Texas law does not recognize a cause of action for common law negligence by the insured against independent insurance adjusters[.]

Id. at *5 (citations, brackets, and quotation marks omitted); *see also Gutierrez v. Allstate Fire & Cas. Ins. Co.*, No. 3:17-CV-0636-D, 2017 WL 2378298, at *5 (N.D. Tex. June

1, 2017) (Fitzwater, J.). Because there is no cause of action for negligence against adjusters in Texas, there is no reasonable basis on which the Court could conclude that Plaintiff could recover against Adjuster on either of the negligence claims.

In conclusion, Plaintiffs' Petition includes sparse allegations against Adjuster. The formulaic recitation of the statutory language for each of the above claims is insufficient to fulfill Plaintiffs' obligation to provide the grounds on which they are entitled to relief against Adjuster. Therefore, there is no reasonable basis on which the Court could predict Plaintiff can recover against Adjuster under the Texas Insurance Code, the DTPA, or Texas common law. Accordingly, the Court finds Adjuster was improperly joined and ignores his citizenship in determining whether there is complete diversity for purposes of diversity jurisdiction. Because there is complete diversity between Plaintiffs and Defendant Insurer and the amount in controversy is satisfied, the Court has subject-matter jurisdiction over this case, and Plaintiffs' Motion to Remand must be **denied**.

IV. Election of Legal Responsibility Under Texas Insurance Code § 542A.006

Plaintiffs raise the issue of election of legal responsibility in their brief in support of the Motion to Remand. *See generally* Doc. No. 13 at ¶¶ 18-30. Because Defendant did not address Plaintiffs' arguments with respect to the impact of post-suit election under Texas Insurance Code § 542A.006 on improper joinder analysis, the Court declines to address the issue at length as it would not change the Court's decision to deny the Motion to Remand. Instead, the Court points the parties to Northern District

of Texas precedent related to this issue. *Tadeo as Tr. of John E. Milbauer Tr. v. Great N. Ins. Co.*, No. 3:20-CV-00147-G, 2020 WL 4284710, at *3 (N.D. Tex. July 27, 2020) (Fish, J.); *Stowell*, 2020 WL 3270709, at *3; *Williams*, 2019 WL 3304684, at *3; *Trentin v. Allstate Vehicle & Prop. Ins. Co.*, No. 3:19-CV-378-K-BN, 2019 WL 2374163, at *6 (N.D. Tex. May 14, 2019), *adopted by*, 2019 WL 2372943 (N.D. Tex. June 5, 2019) (Kinkeade, J.); *Fortress Iron, LP v. Travelers Indem. Co.*, No. 3:18-CV-3137-K, 2019 WL 2374834, at *3-4 (N.D. Tex. May 14, 2019), *adopted by*, 2019 WL 2372910 (N.D. Tex. June 5, 2019) (Kinkeade, J.); *see also Barnes Burk Self Storage, LLC v. United Fire & Cas. Co.*, No. 7:19-cv-00099-M, 2019 WL 6717590, at *1-2 (N.D. Tex. Dec. 10, 2019) (Lynn, C.J.).

V. Conclusion

Because (1) Plaintiffs' allegations are legal conclusions couched as factual allegations for claims brought under Chapter 541 of the Texas Insurance Code and the DTPA, (2) Plaintiffs' allegations fail to satisfy the heightened pleading standard for fraud claims, and (3) no claim exists against an adjuster under Chapter 542 of Texas Insurance Code or for common law negligence, the Court concludes that there is no reasonable basis to predict that Plaintiffs could recover against Adjuster on any of their claims, and therefore Adjuster is improperly joined.

Because Adjuster is improperly joined, the Court ignores Adjuster's citizenship for purposes of determining whether it can exercise federal subject-matter jurisdiction over this case. The requirements for diversity jurisdiction are met because Plaintiffs and

Defendant Insurer are completely diverse, and the amount-in-controversy threshold is satisfied. The Court may therefore exercise subject-matter jurisdiction over this case. The Court **DENIES** the Motion to Remand.

SO ORDERED.

Signed June 16th, 2021.

Ed Kinkeade

ED KINKEADE
UNITED STATES DISTRICT JUDGE