TRAUB LIEBERMAN

FIRST PARTY COVERAGE BLOG

March 3, 2021

Federal District Court Addresses Forum Defendant Rule

BY: James M. Eastham

In *West Bend Mut. Ins. Co. v. MSPPR, LLC,* No. 20-CV-03308, 2021 WL 463259 (N.D. Ill. Feb. 9, 2021), the United States District Court for the Northern District of Illinois addressed the "forum-defendant rule" in the context of a removal taken before the "home town" defendant was served with process. West Bend originally filed the action in the Circuit Court of Cook County, Illinois seeking a declaration that it's insured, MSPPR, was required to participate in an appraisal as set forth in the West Bend Policy. MSPPR learned of the lawsuit prior to being served with a summons and proceeded to remove the action to Federal Court. West Bend moved to remand because MSPPR's sole member is a citizen of Illinois such that the "forum-defendant rule" should apply to defeat removal. MSPPR countered by arguing that pursuant to its terms, the "forum-defendant rule" only applies to defendants that are "properly joined and served" and MSPPR had not been served at the time of removal.

In declining West Bend's request to remand, the Court began its analysis by recognizing that the Courts in the Northern District and Seventh Circuit were divided on the issue. Some Court's apply a "plain text" approach and interpret the statute exactly as written. Other Courts apply a "purpose-based" approach holding that because the purpose of the statute is to prevent removal when the defendant is at home it should apply even where service is not yet perfected. In applying the "plain-text" approach, the *West Bend* Court looked to the specific language of the "forum-defendant rule" which provides:

A civil action otherwise removable solely on the basis of [diversity] jurisdiction ... may not be removed if any 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)(2).

The Court found that Section 1441(b)(2) is plain and unambiguous and only a "properly joined and served" defendant is a forum defendant barred from removing an action. As MSPPR was not served in the state court action when it effected the removal, the "forum-defendant rule" did not mandate that the matter be remanded. As noted by the Court, "the statute says what it says".

© Traub Lieberman Straus & Shrewsberry LLP