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## INSURANCE LAW BULLETIN

### **Re: West Virginia District Court Sustains Removal To Federal Court After Dismissing Corporate Employee**

The United States District Court for the Southern District of West Virginia recently sustained removal of an action filed by a health care provider against both an insurer and a non-diverse employee, finding no claim was stated against the employee.

The health care provider filed a state court action alleging, among other claims, violations of the West Virginia Unfair Trade Practices Act (the “UTPA”) and the West Virginia Clean Claims Act (the “CCA”). Although the West Virginia UTPA has been interpreted as permitting employee liability, the insurer removed, alleging fraudulent joinder.

The health care provider moved to remand, claiming the non-diverse employee could be liable for violations of both the UTPA and the CCA. The District Court refused to remand, holding (i) the UTPA applies to claims under an insurance policy, not claims under a provider agreement; and (ii) the CCA only applies to the insurer, not the employee.

For further information or a copy of the Court’s decision, please contact **Cheryl A. C. Brown**, who represented the insurer in this matter, at 410.659.4977 or [cbrown@fblaw.com](mailto:cbrown@fblaw.com). Please visit our website at [www.fblaw.com](http://www.fblaw.com).