

APPENDIX

- Item 1:** Copy of opinion of Fifth Circuit issued/ filed 10 December 2018 and reported as **Mr. William Mauldin, Individually and As Representative of The Estate of Pauline Gibson, Deceased v. All-state Insurance Company; Mayella Gonzales; and Theresa Hernandez, Defendants-Appellees, 2018 U.S. App. LEXIS 34697** App. 1
- Item 2:** Copy of **Memorandum Opinion and Order** issued/filed 2 October 2017 by District Court App. 11
- Item 3:** Copy of **Final Judgment as to Certain Defendant** issued/filed 2 October 2017 as to Mayella Gonzales by District Court App. 24
- Item 4:** Copy of Order of 14 February 2019 which ***denied*** Petitioner’s Petition For Rehearing App. 26

APPENDIX – Continued

- Item 5:** Copy of the entire **Appellant’s Motion to Supplement Record** [Document 00514504112 as filed at the Fifth Circuit Court of Appeals on 7 June 2018, and including exhibit materials as filed with the motion, which are copies of the pages of the two page letter of “September 12, 2016” sent by Allstate Insurance Company employee Mayella Gonzales to Mr. Mauldin and stating clearly near top of its first page that all attorneys at the “firm” called Susan L. Florence & Associates are in fact “Employees of Allstate Insurance Corporation” and that this so-called “law firm” office “is not a Partnership of a Corporation” App. 28
- Item 6:** Copy of portions of **Defendant Allstate Insurance Company’s Notice of Removal** dated 3 August 2017 [pages 1, 3 and 9 only]..... App. 44
- Item 7:** Copy of portions of **Plaintiff’s Original Petition, Including Requests for Disclosure, First Requests for Admissions, First Request for Production, and First Interrogatories to Defendants** as filed in Texas State Court App. 48
- Item 8:** Copy of State Court **Officer’s Return** for Mayella Gonzales served on 7 July 2017 and filed with the Court on 10 July 2017 App. 66

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-11274

WILLIAM MAULDIN, Individually and As
Representative of The Estate of Pauline Gibson,
Deceased,

Plaintiff - Appellant

v.

ALLSTATE INSURANCE COMPANY;
MAYELLA GONZALES; THERESA HERNANDEZ,

Defendants - Appellees

Appeal from the United States District Court
for the Northern District of Texas
No. 4:17-CV-641

Before HIGGINBOTHAM, GRAVES, and WILLETT,
Circuit Judges.

PER CURIAM:*

In this appeal we consider whether the district court had diversity jurisdiction over Appellant William Mauldin's ("Mauldin") state law insurance claims.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Concluding that the district court's denial of Mauldin's motion to remand was proper, we affirm.

I.

The underlying dispute arises from the alleged underpayment of insurance claims by Allstate Property and Casualty Insurance Company ("Allstate"). Mauldin filed his original petition in Texas state court individually and as the representative of the estate of his grandmother, Pauline Gibson. Mauldin alleges that the home he resided in with Gibson was damaged, causing personal property and real estate damage. Mauldin claims that Allstate failed to properly investigate the claim and eventually underpaid the claim. In addition to Allstate, Mauldin named two individual defendants: Mayella Gonzalez and Theresa Hernandez.¹

Before answering the complaint in state court, Allstate timely filed its notice of removal in the Northern District of Texas pursuant to 28 U.S.C. §§ 1441 and 1446. In that notice of removal, Allstate claimed that there was diversity of citizenship between Mauldin and defendants Allstate and Hernandez. With respect to Gonzalez, Allstate acknowledged that she was a citizen of Texas, but argued that she had been fraudulently joined as a defendant. Shortly thereafter, Mauldin filed an opposed motion to remand, asserting

¹ The state court petition does not contain any specific factual allegations about the individual defendants' conduct or explain their relationship to Mauldin or Allstate.

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that Allstate failed to establish diversity of citizenship and the amount in controversy and identifying several purported procedural deficiencies with Allstate's notice of removal. The district court denied the motion and dismissed Mauldin's claims against Gonzalez. In the order dismissing Gonzalez, the district court stated explicitly: "The court determines that there is no just reason for delay in, and hereby directs, entry of final judgment as to the dismissal of plaintiff's claims against Gonzalez." It concurrently entered a separate final judgment as to Gonzalez, dismissing the claims against her without prejudice. Two weeks later, the court granted Allstate's motion to transfer venue, transferring the action to the Western District of Oklahoma. This appeal followed.

II.

Before turning to the merits of Mauldin's argument, we must first determine whether we have jurisdiction to hear this appeal. First, Allstate contends that we lack subject matter jurisdiction because an order denying a motion to remand is not a final order that is immediately appealable. As a general rule, we have jurisdiction over "appeals from all final decisions of the district courts" located within our circuit.² A final decision is generally one "which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment."³ Following from that, "[a]n

² 28 U.S.C. § 1291.

³ *Catlin v. United States*, 324 U.S. 229, 233 (1945).

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order denying a motion to remand, ‘standing alone,’ is ‘obviously . . . not final and immediately appealable’ as of right.”⁴ However, we have recognized an exception to that general rule where an order denying a motion to remand is accompanied by a final judgment characterized by the district court as final and appealable under 54(b) of the Federal Rules of Civil Procedure.⁵

Allstate attempts to distinguish this case, arguing that the order dismissing Gonzalez does not specifically cite to Rule 54(b) or state that the order is appealable. Further, Allstate suggests that Mauldin’s focus in his briefing on appeal is not the final order dismissing Gonzalez, but rather the order denying the motion to remand. We find those distinctions unavailing. As a preliminary matter, when determining whether the district court entered a final order, “[w]e have . . . cautioned that ‘[t]he intention of the judge is crucial in determining finality.’”⁶ In dismissing Gonzalez and directing the entry of final judgment, the district judge here quoted straight from Rule 54(b): “The court

⁴ *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 74 (1996) (quoting *Chicago, R.I. & P.R. Co. v. Stude*, 346 U.S. 574, 578 (1954) (internal alterations omitted)).

⁵ *B., Inc. v. Miller Brewing Co.*, 663 F.2d 545, 548 (5th Cir. Unit A 1981) (“In this case however, the trial court did more than merely rule upon the plaintiff’s motion for remand. The court actually proceeded to enter judgment in favor of the four Texas defendants; judgments which the trial court expressly characterized as being final and appealable for the purposes of Rule 54(b) of the Federal Rules of Civil Procedure.”)

⁶ *McLaughlin v. Miss. Power Co.*, 376 F.3d 344, 350 (5th Cir. 2004) (quoting *Vaughn v. Mobil Oil Expl. & Producing S.E., Inc.*, 891 F.2d 1195, 1197 (5th Cir. 1990)).

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determines that there is *no just reason for delay* in, and hereby directs, entry of final judgment as to the dismissal of plaintiff's claims against Gonzalez." The record reflects the intent of the district court to enter a Rule 54(b) final order. Although Allstate is correct that Mauldin spends most of his energy on appeal rehashing the same arguments made below in his motion to remand, that does not somehow cause him to forfeit his right to appeal given the district court's entry of final judgment; we have jurisdiction to review the order denying the motion to remand by virtue of the final judgment entered alongside it.⁷

One additional jurisdictional question bears mention. Although not raised by either party, because it is our duty to police the limits of our own jurisdiction *sua sponte*,⁸ we turn briefly to the question of whether the district court's subsequent order transferring the case to the Western District of Oklahoma divested us of

⁷ See *Ford v. Elsbury*, 32 F.3d 931 (5th Cir. 1994) ("Further, the denial of the motion to remand and the granting of the partial summary judgment were inextricably linked. Both grew out of the same round of motions and briefing, both relied on the same evidentiary showing, both are found in the same judgment and amended judgment, and both turned on the district court's conclusion that no claim existed against the non-diverse defendants. In such circumstances we have held that we can review on appeal the denial of the motion to remand along with the grant of the final partial judgment.").

⁸ *Vincent v. Consol. Operating Co.*, 17 F.3d 782, 785 (5th Cir. 1994) ("We pause briefly to address the matter of our own jurisdiction in this case. Although neither party has raised the issue, we must do so *sua sponte* if we perceive any possible defect in our jurisdiction.").

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jurisdiction to consider this appeal. Under 28 U.S.C. § 1294(1) an appeal can be taken only by the “court of appeals for the circuit embracing the district.”⁹ Therefore as a general rule, when a case is transferred to another circuit, it is removed from our jurisdiction.¹⁰ The question becomes whether “the appellate court in the transferor circuit *retains* jurisdiction over an immediately appealable decision of its district court following a § 1404(a) transfer, at least during the time period allowed for the filing of such an appeal.”¹¹ In other words, having found that the district court’s order denying the motion to remand and dismissing Gonzalez is immediately appealable, do we lose jurisdiction to consider that appeal because of the subsequent transfer to an out-of-circuit district court. We now hold that we do not, persuaded by several sister circuits’ decisions holding that “an otherwise appealable order remains appealable even if a transfer is ordered at a later time.”¹² As those courts have recognized, it would make

⁹ 28 U.S.C. § 1294(1).

¹⁰ *In re Red Barn Motors, Inc.*, 794 F.3d 481, 484 (5th Cir. 2015) (citing *In re Sw. Mobile Homes, Inc.*, 317 F.2d 65, 66 (5th Cir. 1963)).

¹¹ *TechnoSteel, LLC v. Beers Const. Co.*, 271 F.3d 151, 155 (4th Cir. 2001).

¹² *Jones v. InfoCure Corp.*, 310 F.3d 529, 533 (7th Cir. 2002) (citing *TechnoSteel*, 271 F.3d at 153 (“The district court’s decision denying the petition to compel arbitration, which is immediately appealable under 9 U.S.C.A. § 16, is subject to review in our circuit notwithstanding the concurrent § 1404(a) transfer of the balance of the action, rendering the fact that the transfer was complete before the appeal was actually filed irrelevant.”)); see also *Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1129–30 (9th Cir. 2012) (finding that the district court’s transfer to an out-of-

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little sense to strip the transferor circuit of jurisdiction because the plain language of § 1294 prevents the transferee circuit court from reviewing a decision made by a district court in the transferor circuit, meaning that without the right to appeal in the transferor circuit, the appealing party would have no opportunity to pursue its appeal.¹³ Because the Tenth Circuit has no jurisdiction to review a decision by the Northern District of Texas, we hold that we retain jurisdiction over the immediately appealable order denying the motion to remand and dismissing Gonzalez from the suit.

III.

Having determined we have jurisdiction, we turn to the merits of Mauldin's appeal, which essentially rehashes his motion to remand rejected below. Mauldin contends that Allstate's removal filing was procedurally deficient for failing to file all state court documents, improperly filing "a veritable 'flurry' of extraneous documents," and failing to join all state court defendants in the removal filing or otherwise obtain their consent. Mauldin then turns to his substantive arguments, asserting that Allstate failed to establish diversity or the amount in controversy. His complaints can be disposed of swiftly.

circuit district court did not strip the court of jurisdiction over an immediately appealable decision of a district court within its circuit.).

¹³ *Terenkian*, 694 F.3d at 1130.

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The statute governing removal requires that the removing party file a notice of removal stating the grounds for removal, together with a copy of “all process, pleadings, and orders served upon such defendant . . . in such action.”¹⁴ Mauldin points to three “citation documents” and a “civil case information sheet” which he suggests were not filed, as well as the improper filing of unidentified extraneous documents. While Allstate responds to each claim in its brief, Mauldin’s argument fails for the simple reason that the complained-of procedural defects (assuming they exist) are not jurisdictional and do not require remand.¹⁵ Next we turn to Mauldin’s complaint that only one defendant joined in the notice of removal and Allstate has not submitted proof of the non-removing defendants’ consent. The removal statute requires that all defendants join in or consent to removal.¹⁶ First, the failure to join in the removal petition is procedural and “not a jurisdictional defect.”¹⁷ Moreover, we agree with the district court that defendant Hernandez *did* consent to the removal.¹⁸ With respect to Gonzalez, this court has

¹⁴ 28 U.S.C. § 1446(a).

¹⁵ *Dukes v. S.C. Ins. Co.*, 770 F.2d 545, 547–48 (5th Cir. 1985) (“Failure to file a copy of the removal petition with the state court clerk is a procedural defect, and does not defeat the federal court’s jurisdiction.”).

¹⁶ 28 U.S.C. § 1446(b)(2)(A).

¹⁷ *Johnson v. Helmerich & Payne, Inc.*, 892 F.2d 422, 423 (5th Cir. 1990).

¹⁸ The notice of removal states that “Defendant Hernandez consents to this removal” and is signed by her counsel. There is no requirement that Hernandez actually *sign* the petition for removal. *Getty Oil Corp. v. Ins. Co. of N. Am.*, 841 F.2d 1254, 1262

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repeatedly made clear that a removing defendant “need not obtain the consent of a co-defendant that the removing party contends is improperly joined.”¹⁹

Mauldin’s substantive arguments fare no better. Where a state court complaint alleges a damages amount, that number controls for purposes of determining whether the amount in controversy threshold is met when the case is removed to federal court.²⁰ In his state court petition, Mauldin sought damages between \$200,000 and \$1,000,000, satisfying the amount in controversy requirement. With respect to diversity of citizenship, we agree with Allstate that the district court correctly determined that Gonzalez was improperly joined and complete diversity existed. Mauldin advances no argument that Gonzalez was properly joined, instead just reasserting that Allstate did not offer sufficient proof of diversity. The burden to establish jurisdiction falls to the removing party, and the burden on those who claim fraudulent joinder “is a heavy one.”²¹ Nonetheless, reviewing the district court’s joinder determination *de novo*, we affirm its conclusion that Gonzalez was not a proper party to the suit.

n.11 (5th Cir. 1988) (“This does not mean that each defendant must sign the original petition for removal, but there must be some timely filed written indication from each served defendant, or from some person or entity purporting to formally act on its behalf in this respect and to have authority to do so, that it has actually consented to such action.”).

¹⁹ *Rico v. Flores*, 481 F.3d 234, 239 (5th Cir. 2007).

²⁰ *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

²¹ *Travis v. Irby*, 326 F.3d 644, 649 (5th Cir. 2003).

Reviewing again Mauldin's state court petition, he does not make any allegations naming Gonzalez or discussing her conduct, and the complaint offers no basis for entitlement to relief from Gonzalez, whose only connection to the underlying dispute was in conducting Mauldin's examination under oath as Allstate's attorney.²² Reviewing Gonzalez's affidavit, her limited role demonstrates she had no duty or liability to Mauldin for the insurance claims raised in his petition, and he does not state a claim entitling him to relief against Gonzalez.²³

IV.

Finding that we have jurisdiction to consider this appeal, we affirm the district court's order denying Mauldin's motion to remand and dismissing Gonzalez from the case. Appellant's motion to supplement the record is DENIED.

²² Mauldin specifies that Allstate insured against the losses at issue but with respect to Hernandez and Gonzalez, merely alleges "and in due course all of the Defendants became involved in this matter."

²³ See, e.g., *Badon v. RJR Nabisco, Inc.*, 224 F.3d 382, 393 (5th Cir. 2000) ("We agree with the district court that, considering defendants' affidavits 'in light of the plaintiffs' lack of evidence,' there is no reasonable basis for predicting that plaintiffs might establish liability in their conspiracy claim against the in-state defendants.").

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WILLIAM MAULDIN,	§	
INDIVIDUALLY AND AS	§	
REPRESENTATIVE OF	§	
THE ESTATE OF PAULINE	§	
GIBSON, DECEASED,	§	
Plaintiff,	§	NO. 4:17-CV-641-A
vs.	§	
ALLSTATE INSURANCE	§	
COMPANY, ET AL.,	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

(Filed Oct. 2, 2017)

Came on for consideration the motion of plaintiff, William Mauldin, Individually and as representative of the Estate of Pauline Gibson, Deceased, to remand. The court, having considered the motion, the response of defendants, Allstate Insurance Company (“Allstate”), Mayella Gonzalez¹ (“Gonzalez”), and Theresa Hernandez (“Hernandez”), the reply, the record, and applicable authorities, finds that the motion should be denied and that the claims against Gonzalez should be dismissed.

¹ Gonzalez says that plaintiff has misspelled her last name as Gonzales.

I.

Background

On June 30, 2017, plaintiff filed his original petition (including discovery requests) in the 153rd Judicial District Court of Tarrant County, Texas. Doc.² 1, Ex. B-1. Plaintiff alleged:

He, William Mauldin (“Mauldin”), is the grandson, sole heir, and court-appointed representative of the Estate of Pauline Gibson, Deceased (“Gibson”). Gibson and Mauldin lived together. Their residence and personal property was damaged. They timely notified Allstate, which insured against the losses. “[I]n due course all of the Defendants became involved in this matter . . .” Doc. 1, Ex. B-1 at 4. Plaintiffs [sic] were led to believe that their claims would be paid, but that did not happen. Eventually, “a ridiculously small sum of money was tendered in the form of a check” that has never been cashed or presented. *Id.* at 5. Plaintiffs [sic] did everything they were supposed to do, but claims were not paid promptly or fairly.

Plaintiff asserts causes of action for violation of the Texas Insurance Code, violation of the “prompt pay statute,” violation of the “Texas D.T.P.A.,” fraud, bad faith tortious misconduct, negligence, and gross negligence. Doc. 1, Ex. B-1 at 7. Plaintiff declares that he seeks to recover monetary damages of “over \$200,000.00 but not more than \$1,000,000.00.” *Id.* at 3-4, 8.

² The “Doc. __” reference is to the number of the item on the docket in this action.

On August 3, 2017, Allstate filed its notice of removal, bringing the action before this court. Doc. 1. Allstate alleged that removal was proper on the basis of diversity because the amount in controversy exceeds \$75,000 and defendant Gonzalez had been improperly joined, there being complete diversity of citizenship between the remaining parties. Id. at 4-8.

II.

Grounds of the Motion

The grounds of plaintiff's motion are too numerous to concisely list here, as will be discussed below.

III.

Applicable Legal Standards

A. Removal

Under 28 U.S.C. § 1441(a), a defendant may remove to federal court any state court action of which the federal district court would have original jurisdiction.³ “The removing party bears the burden of showing that federal subject matter jurisdiction exists and that removal was proper.” Manguno v. Prudential Prop. & Cas. Ins. Co., 276 F.3d 720, 723 (5th Cir. 2002)

³ The removal statute provides, in pertinent part, that: [A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. 28 U.S.C. § 1441(a) (emphasis added).

(citations omitted). “Moreover, because the effect of removal is to deprive the state court of an action properly before it, removal raises significant federalism concerns . . . which mandate strict construction of the removal statute.” Carpenter v. Wichita Falls Indep. Sch. Dist., 44 F.3d 362, 365-66 (5th Cir. 1995). Any doubts about whether removal jurisdiction is proper must therefore be resolved against the exercise of federal jurisdiction. Acuna v. Brown & Root Inc., 200 F.3d 335, 339 (5th Cir. 2000).

B. Fraudulent or Improper Joinder

To determine whether a party was fraudulently or improperly joined to prevent removal, “the court must analyze whether (1) there is actual fraud in pleading jurisdictional facts or (2) the plaintiff is unable to establish a cause of action against the nondiverse defendant.” Campbell v. Stone Ins., Inc., 509 F.3d 665, 669 (5th Cir. 2007). Because defendants have not alleged actual fraud in the pleadings, the applicable test for improper joinder is:

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 v. Ill. Cent. R.R., 385 F.3d 568, 573 (5th Cir. 2004). To answer this question, the court may either:

(1) conduct a Rule 12(b)(6)-type analysis or (2) in rare cases, make a summary inquiry “to identify the presence of discrete and undisputed facts that would preclude plaintiff’s recovery against the in-state defendant.” *Id.* at 573-74. A Rule 12(b)(6)-type analysis of plaintiff’s claims appears to be the proper method here to determine whether there exists a reasonable basis for a conclusion that plaintiff might be able to recover against Gonzalez.

C. The Pleading Standard to be Used in the Rule 12(b)(6)-Type Analysis

Although there has been some uncertainty as to the pleading standard to be applied, the Fifth Circuit has most recently held that federal courts should use the federal court pleading standard when conducting the Rule 12(b)(6)-type analysis of an improper joinder claim in a motion to remand to determine if the plaintiff has stated a claim against a nondiverse defendant. Int’l Energy Ventures Mgmt., L.L.C. v. United Energy Grp., Ltd., 818 F.3d 193, 208 (5th Cir. 2016).⁴ Rule 8(a)(2) of the Federal Rules of Civil Procedure provides, in a general way, the applicable standard of pleading.

⁴ The court notes that Texas now has a failure-to-state-a-claim rule that is substantially the same as the federal rule and that Texas courts have interpreted their Rule 91a as requiring a Federal Rule 12(b)(6)-type analysis and have relied on federal case law in applying Rule 91a. *See, e.g., Wooley v. Schaffer*, 447 S.W.3d 71, 76 (Tex. App.-Houston [14th Dist.] 2014, pet. denied); GoDaddy.com, LLC v. Toups, 429 S.W.3d 752, 754-55 (Tex. App.-Beaumont 2014, pet. denied). Thus, the outcome would be the same if the court were to apply the Texas pleading standard.

It requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), “in order to give the defendant fair notice of what the claim is and the grounds upon which it rests,” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation marks and ellipsis omitted). Although a complaint need not contain detailed factual allegations, the “showing” contemplated by Rule 8 requires the plaintiff to do more than simply allege legal conclusions or recite the elements of a cause of action. Twombly, 550 U.S. at 555 & n.3. Thus, while a court must accept all of the factual allegations in the complaint as true, it need not credit bare legal conclusions that are unsupported by any factual underpinnings. See Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009) (“While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.”).

Moreover, to survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), the facts pleaded must allow the court to infer that the plaintiff’s right to relief is plausible. Iqbal, 556 U.S. at 678. To allege a plausible right to relief, the facts pleaded must suggest liability; allegations that are merely consistent with unlawful conduct are insufficient. Id. In other words, where the facts pleaded do no more than permit the court to infer the possibility of misconduct, the complaint has not shown that the pleader is entitled to relief. Id. at 679. “Determining whether a complaint states a plausible claim for relief . . . [is] a

context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Id.

Rule 9(b) sets forth the heightened pleading standard imposed for fraud claims: “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” The Fifth Circuit requires a party asserting fraud to “specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent.” Hermann Holdings, Ltd. v. Lucent Techs., Inc., 302 F.3d 552, 564-65 (5th Cir. 2002) (internal quotations and citations omitted). Succinctly stated, Rule 9(b) requires a party to identify in its pleading “the who, what, when, where, and how” of the events constituting the purported fraud. Dorsey v. Portfolio Equities, Inc., 540 F.3d 333, 339 (5th Cir. 2008). Rule 9(b) applies to all cases where the gravamen of the claim is fraud even though the theory supporting the claim is not technically termed fraud. Frith v. Guardian Life Ins. Co. of Am., 9 F. Supp. 2d 734, 742 (S.D. Tex. 1998). Claims alleging violations of the Texas Insurance Code and the Texas DTPA as well as those for fraud, fraudulent inducement, fraudulent concealment, and negligent misrepresentation are subject to the requirements of Rule 9(b) Berry v. Indianapolis Life Ins. Co., 608 F. Supp. 2d 785, 800 (N.D. Tex. 2009); Frith, 9 F. Supp. 2d at 742.

IV.

Analysis

A. Alleged Procedural Failings

Plaintiff first complains that Allstate has failed to file all state court case documents and that it has filed extraneous documents along with the notice of removal. The removal statute requires that the notice contain “a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants.” 28 U.S.C. § 1446(a). Local Civil Rule LR 81.1(a) requires that the removing party provide to the clerk for filing: a completed civil cover sheet, a supplemental civil cover sheet, a notice of removal with an index of all documents (clearly identifying each and the date it was filed in state court), a copy of the docket sheet in the state court action, each document filed in the state court action (except discovery materials), and a separately signed certificate of interested persons. The record reflects that Allstate complied with the substance of these requirements.

Plaintiff says that certain “citation documents” and a civil case information sheet were contained in the state court clerk’s file but copies were not attached to the notice of removal. Plaintiff does not explain what possible relevance those items would have. The citations do not reflect that they were filed in the state court, but the returns (which necessarily include the citations) reflecting service on defendants were and were filed with the notice of removal. And, the civil

information sheet plaintiff references does not appear to contain any information not otherwise in the papers attached to the notice of removal.⁵ As the court has previously noted, technical defects in a notice of removal are not jurisdictional and are not a basis for remand. Jana Food Serv., Inc. v. Nationwide Agribusiness Ins. Co., No. 4:16-CV-864-A, 2016 WL 7165973, at *1 n.1 (N.D. Tex. Dec. 7, 2016).

Plaintiff also complains that Allstate “filed a veritable ‘flurry’ of extraneous documents.” Doc. 23 at 13, ¶ 3. And, he alleges that Allstate’s filing of a paper copy of its notice of removal “contained all sorts of things attached to it . . . as a ‘hodge-podge.’” *Id.*, ¶ 4. Plaintiff insinuates that there is some difference between the electronic and paper versions of the notice of removal, but does not explain what it is or why it is material.⁶ Plaintiff never identifies the alleged extraneous documents to which he refers. Nor does he cite any authority to support the contention that their inclusion would be cause for remand.⁷

Plaintiff further complains that the individual defendants did not join in the notice of removal. Plaintiff asserts that there must be some kind of proof

⁵ The court does note that the civil information sheet confirms that plaintiff is seeking to recover more than \$200,000 but not more than \$1,000,000. Doc. 24, App. Ex. p. 1.

⁶ As best the court can tell, the documents appear to be substantially the same, as they are required to be.

⁷ It appears that plaintiff is referring to the insurance contract to which he refers in his petition but which was not attached thereto.

of consent but does not cite any authority for that proposition. As the Fifth Circuit has noted, the removal statute does not require that each served defendant must sign the notice of removal, but only that there must be some timely filed written indication that the defendant has actually consented to the removal. Getty Oil Corp. v. Ins. Co. of N. Am., 841 F.2d 1254, 1262 n.11 (5th Cir. 1988). Here, the notice of removal clearly reflects that Hernandez consents to the removal and the notice is signed by the attorney acting on her behalf. Doc. 1 at 9, ¶ 3.6. And, as stated in that same paragraph, consent of Gonzalez, who is alleged to have been improperly joined, is not required. Rico v. Flores, 481 F.3d 234, 239 (5th Cir. 2007); Jernigan v. Ashland Oil Inc., 989 F.2d 812, 815 (5th Cir. 1993).

B. Alleged Substantive Failings

Plaintiff alleges that Allstate has not established that the court has diversity jurisdiction. He says that there is no proof that the amount in controversy exceeds \$75,000 and that Allstate admits that there is not complete diversity of citizenship.

The cases plaintiff cites in support of his argument regarding amount in controversy involve pleadings where the plaintiffs did not specify an amount in controversy. Doc. 23 at 10 (citing DeAguilar v. Boeing Co., 11 F.3d 55 (5th Cir. 1993), and Allen v. R&H Oil & Gas Co., 63 F.3d 1326 (5th Cir. 1995)). The law is clear that where the plaintiff has alleged a sum certain that exceeds the requisite amount in controversy, that

amount controls if made in good faith. St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288 (1938). Here, plaintiff has pleaded that the amount in controversy lies between \$200,000 and \$1,000,000. Doc. 1, Ex. B-1 at 3-4, 8. Thus, the jurisdictional amount is met. 28 U.S.C. § 1332(a).

As for the citizenship of the parties, complete diversity exists but for the joinder of Gonzalez. And, after a review of plaintiff's pleading, the court is satisfied that this is but another in a long line of cases where a plaintiff joins as a defendant an insurance adjustor or other non-diverse party in an effort to defeat removal jurisdiction.⁸ Plaintiff argues that his petition gives adequate notice of the theories of liability pleaded against defendants and thus removal was improper because he has stated viable claims against each defendant. Doc. 23 at 17. However, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than a formulaic recitation of the elements

⁸ See, e.g., Aguilar v. State Farm Lloyds, No. 4:15-CV-565-A, 2015 WL 5714654 (N.D. Tex. Sept. 28, 2015); Parish v. State Farm Lloyds, No. 4:15-CV-339-A, 2015 U.S. Dist. LEXIS 79293 (N.D. Tex. June 18, 2015); Ogden v. State Farm Lloyds, No. 4:15-CV-139-A, 2015 WL 3450298 (N.D. Tex. May 28, 2015); Gonzalez v. State Farm Lloyds, No. 4:15-CV-305-A, 2015 WL 3408106 (N.D. Tex. May 27, 2015); Vann v. Allstate Texas Lloyds, No. 4:15-CV-277-A, 2015 WL 2250243 (N.D. Tex. May 12, 2015); SYP-Empire L.C. v. Travelers Cas. Ins. Co. of Am., No. 4:15-CV-213-A, 2015 WL 2234912 (N.D. Tex. May 12, 2015); Davis v. Metropolitan Lloyds Ins. Co., No. 4:14-CV-957-A, 2015 WL 456726 (N.D. Tex. Feb. 3, 2015); Plascencia v. State Farm Lloyds, No. 4:14-CV-524-A, 2014 WL 11474841 (N.D. Tex. Sept. 25, 2014).

of a cause of action or mere labels and conclusions. Iq-bal, 556 U.S. at 678.

Here, plaintiff has done nothing more than make conclusory allegations without any plausible facts to support them. He has made no attempt to spell out the who, what, when, where, and how of the purported fraud and other statutory violations. He does not even mention the individual defendants by name or identify who they are and what role they played. He only says that “in due course all of the Defendants became involved in this matter.” Doc. 1, Ex. B-1 at 4. After a study of plaintiff’s state court pleading, and a review of applicable authorities, for essentially the same reasons given in the cases cited in footnote 8 why the claims adjustors were improperly joined in those cases, the court concludes that plaintiff named Gonzalez as a defendant in this action for the purpose of attempting to defeat federal court jurisdiction.⁹ Gonzalez was improperly joined. None of the claims asserted against her would survive a motion to dismiss for failure to state a claim upon which relief may be granted, with the consequence that her citizenship should be disregarded in determining whether diversity jurisdiction

⁹ The court is satisfied that plaintiff joined both of the individual defendants for an improper purpose in hopes of defeating removal jurisdiction. Plaintiff apparently believed that Hernandez was a citizen of Texas as she could be served in Dallas, Texas, but does not now dispute that she is a citizen of Ohio. Nevertheless, the issue of whether plaintiff has stated any claims against her is not now before the court.

exists. And, the court has concluded, for the same reason, that the claims against her should be dismissed.¹⁰

V.

Order

The court ORDERS that plaintiff's motion to remand be, and is hereby, denied.

The court further ORDERS that plaintiff's claims against Gonzalez be, and are hereby, dismissed.

The court determines that there is no just reason for delay in, and hereby directs, entry of final judgment as to the dismissal of plaintiff's claims against Gonzalez.

The court further ORDERS that the caption of this action be, and is hereby, amended to reflect that Allstate and Hernandez are the only defendants.

SIGNED October 2, 2017.

/s/ John McBryde

JOHN McBRYDE
United States District Judge

¹⁰ The court need not undertake an analysis of whether plaintiff's claims should be governed by Texas or Oklahoma law. Plaintiff simply has not alleged facts sufficient to state any claim against Gonzalez.

App. 24

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WILLIAM MAULDIN,	§	
INDIVIDUALLY AND AS	§	
REPRESENTATIVE OF	§	
THE ESTATE OF PAULINE	§	
GIBSON, DECEASED,	§	
Plaintiff,	§	NO. 4:17-CV-641-A
VS.	§	
	§	
ALLSTATE INSURANCE	§	
COMPANY, ET AL.,	§	
Defendants.	§	

FINAL JUDGMENT AS TO CERTAIN DEFENDANT

(Filed Oct. 2, 2017)

In accordance with the court's memorandum opinion and order signed this date,

The court ORDERS, ADJUDGES, and DECREES that the claims of plaintiff, William Mauldin, individually and as representative of the Estate of Pauline Gibson, Deceased, against defendant Mayella Gonzalez (named as Mayella Gonzales in the original petition) be, and are hereby, dismissed without prejudice.

App. 25

SIGNED October 2, 2017.

/s/ John McBryde

JOHN McBRYDE
United States District Judge

App. 26

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-11274

WILLIAM MAULDIN, Individually and
As Representative of The Estate of
Pauline Gibson, Deceased,

Plaintiff - Appellant

v.

ALLSTATE INSURANCE COMPANY;
MAYELLA GONZALES; THERESA HERNANDEZ,

Defendants - Appellees

Appeal from the United States District Court
for the Northern District of Texas

ON PETITION FOR REHEARING

(Filed Feb. 14, 2019)

Before HIGGINBOTHAM, GRAVES, and WILLETT,
Circuit Judges.

PER CURIAM:

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IT IS ORDERED that the petition for rehearing is
DENIED.

ENTERED FOR THE COURT:

/s/ Patrick Higginbotham
UNITED STATES
CIRCUIT JUDGE

App. 28

CASE NO. 17-11274

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MR. WILLIAM MAULDIN,
Plaintiff-Appellant

v.

ALLSTATE INSURANCE COMPANY,
and MAYELLA GONZALES, and
THERESA HERNANDEZ,
Defendants-Appellees

On Appeal from the United States District Court
For the Northern District of Texas, Case No. 4:17-cv-0064-A
The Honorable John McBryde, United States District Court

**APPELLANT'S MOTION TO
SUPPLEMENT RECORD
[and request for relief from certain improprieties]**

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314 Main Street, Suite 202
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ATTORNEY FOR
PLAINTIFF-APPELLANT
MR. WILLIAM MAULDIN

App. 29

[1] CASE NO. 17-11274

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MR. WILLIAM MAULDIN,
Plaintiff-Appellant

v.

ALLSTATE INSURANCE COMPANY,
and MAYELLA GONZALES, and
THERESA HERNANDEZ,
Defendants-Appellees

**APPELLANT'S MOTION TO
SUPPLEMENT RECORD**
[and request for relief from certain improprieties]

TO THE HONORABLE JUDGES OF THE FIFTH
CIRCUIT COURT OF APPEALS:

COMES NOW Appellant, Mr. William Mauldin, Plaintiff-Appellant, filing this Motion after receiving and reviewing the recently received BRIEF OF APPELLEES, and filing this Motion to request leave to supplement the record [see: Fifth Circuit Rule 27.1.11], and also to request relief from certain improprieties being practiced by Appellees before this Court [which Appellant notes were also being practiced by Appellees before the Honorable District Court in Fort Worth];

and Appellant would show unto this Appellate Court as follows:

[2] I.

Appellant will rely upon, and now incorporates herein by reference, Appellant's previously filed brief. It states Appellant's position fully; but in view of the contents of the Brief of Appellees, and in order to keep this appeal properly focused, Appellant concludes it to be necessary to file this present Motion, which will have one (1) letter [two (2) pages long] as an exhibit item, appearing as EXHIBIT 1-A [page one of the letter] and EXHIBIT 1-B [page 2 of the letter]. This letter has not previously been filed as or made a part of the record in this case. Appellant now does request leave of this Court to permit it to be filed as a supplement to the record of this case.

II.

Attached hereto as EXHIBIT I-A and EXHIBIT I-B, and made for all purposes a part hereof, is a copy of a letter [total of two (2) pages long dated 12 September 2016, sent to Appellant [William Mauldin] before he had secured the services of counsel, and signed by one of the Appellees, Defendant Mayella Gonzalez [showing that her email address at her place of employment, Allstate Insurance, was mgou6@allstate.com. . . . and showing her to be an employee of Allstate, and showing her "law firm" to be a "storefront" office of staff counsel all employed by Allstate Insurance Company. . . .].

[3] III.

When the state court defendants, now the Appellees in this case before this Honorable Federal Court of Appeals, were going to remove this case Appellant [Plaintiff below] took the position that removal would be improper. The Defendants and their attorney were effectively informed of this but took the position that they would go ahead and remove because they had in the past had good luck with removals; then, as the record in this case clearly shows, and as is pointed out clearly in Appellant's Brief now on file before this Court, the Appellees engaged in a pattern of procedural misbehavior, and disregarded statutory and procedural requirements that always govern removal proceedings. Appellant [Plaintiff below] requested the federal district court to take note of this, and now has requested this Federal Court of Appeals to take note of it; but there was one impropriety in the removal process which Appellant was aware of but did not point out with clarity before the federal district court, which does now need to be pointed out: this had to do with the use of a misleading/deceptive affidavit-type instrument by the removing parties, coupled with an attempt [in essence] to convert the removal proceeding into some type of irregular Rule 56 summary judgment proceeding. As the removal process was not a summary judgment matter, Appellant did not point out to the federal district court something of significance which is now being pointed out to this Court of Appeals. [4] Appellant did not file the letter [the EXHIBIT 1-A and EXHIBIT 1-B document] in federal district court, but

Appellant does request leave of this Court to permit it to be filed now, and will discuss the reason why Appellant now requests that it be filed in the paragraph of this pleading immediately below.

IV.

In this case at the federal district court, and now again before the Court of Appeals, the removing parties [Defendants below, and now Appellees] filed a duplicitous/misleading “affidavit” [styled “Affidavit of Mayella Gonzalez”] which was never filed in the Texas state trial court and thus should not have been considered by the federal district court in any proper consideration of whether the case should have been removed, or should have been remanded.¹ Apparently the deceptive “affidavit” effectively deceived the federal district court judge who, going past the issues properly before the Court having to do with a remand motion, took action to sign an order purporting to dismiss Defendant Gonzalez. This is probably because the misleading/deceptive “affidavit” makes it appear that Defendant Gonzalez is some sort of an innocent bystander who was off at a distance from anything really related [5] to the matters in issue in this litigation, and was simply practicing at a “law firm” which she says [in the “affidavit”] serves as staff counsel for various

¹ Affidavits are routinely filed at some stages of federal court litigation in connection with Rule 56 summary judgment proceedings, but in the procedural posture of this case when it was before the federal district court in Fort Worth it was premature for consideration of any summary judgment proceeding.

insurance carriers including Allstate Insurance Company, and her “affidavit” indicates that she had only peripheral involvement; which simply is not so. In fact, Gonzalez was at all times “knee deep” if not “neck deep” in all of the activities of Allstate Insurance Company regarding matters pertaining to the instant case and relating to claims made in this lawsuit, and the letter [the EXHIBIT 1-A and EXHIBIT 1-B] document irrefutably shows that before Appellant Mauldin ever engaged counsel, it was not some nameless or faceless functionary of Defendant Allstate who was dealing with Mauldin on behalf of Allstate, but it was in fact a direct employee [Defendant, Mayella Gonzalez] of Allstate, who was not working at a real “law firm”, but was working for an insurance company [working as an employee of Defendant Allstate Insurance Company] at a phony “law firm” which was actually a “store front” operation employing a bunch of attorneys who were direct employees of Allstate. If the Honorable Federal District Judge, John McBryde, had known this he probably would have considered things differently [and likely would not have purported to “dismiss” Gonzalez]; but it is also true that this distracting procedural “side point” [about Gonzalez and her “law firm”] never should have been brought to Judge McBryde’s attention in connection with a removal/remand situation, as it went [6] beyond and outside of the proper record from the state court, and went beyond any issue proper for consideration in connection with the remand motion which was before the federal district court. All of this background is now brought to the attention of this Federal Appeals Court because it is obvious that the

removing parties, having “pulled the wool” over the eyes of the learned Federal District Judge, are now trying to rely on the same misleading/deceptive “affidavit” document to try to work the same deception upon this Federal Court of Appeals. This tactic of the Appellees is totally improper, and Appellant now respectfully takes exception to, and objects to, this improper and deceptive tactic.

V.

This Court is asked to consider what would happen if, following a collision which injured a plaintiff, a corporation in the trucking business was sued, and the driver of its truck was sued, and the defendant trucking company claimed that the driver was only peripherally involved and should be summarily dismissed, and then the truck company corporation claimed that without the driver in the law suit the case could be properly removed from a state court to a federal court. The reason this example is given is because it is so closely analogous to what has happened here. Allstate is a corporation, and here [as shown by the Mayella Gonzalez Letter: EXHIBIT 1-A and EXHIBIT 1-B] the “driver” of its “claims operation truck” was its [7] direct employee [just as the driver was the employee of the trucking company, in the hypothetical example given], Defendant Gonzalez. Just as the truck driver in the hypothetical example would not be a mere bystander, it is clear Defendant Gonzalez is not a mere bystander.

VI.

Appellant now brings this matter of the apparent deception of the Gonzalez “affidavit”, and the apparent duplicitous “distraction tactic” of the removing parties/Appellees, to the attention of this Court. Appellant complains of the improper tactics of the removing parties [Appellees] regarding the “affidavit”, and requests relief from the improprieties associated with these improper tactics. Specifically, relief requested by Appellant in this connection from this Honorable Court of Appeals is as follows: first, the Court of Appeals is requested please, to grant leave to permit the filing of the Gonzalez letter [EXHIBIT 1-A and EXHIBIT 1-B] as a supplement to the record of this case; and second, the Court of Appeals is requested to recognize that the “affidavit” is a misleading and duplicitous document, and is not a proper part of the removal record as it was never filed in the Texas State Court, and that it should not be permitted to improperly influence this Court to deviate from the proper path of asking questions about what does constitute the proper removal record before the Court in connection with removal and remand proceedings [what constitutes the [8] proper record has been plainly and properly shown to the Court by Appellant in Appellant’s Brief which was filed on 29 March 2018. . . .], and then to consider remand in this case in the same proper way as any Federal Court would, referring only to the proper parts of the record, and not being unfairly distracted by the “affidavit”. This Honorable Court of Appeals is asked to disregard the misleading “affidavit”, and to determine this

appeal in the same manner in which it would determine any other appeal dealing with issues of removal and remand, sticking to the well-established statutory and case law, as this Court would do in any other case involving the question of whether a removal is proper, or whether a remand order should issue.

Respectfully submitted,

/s/ Ernest (Skip) Reynolds III

Ernest (Skip) Reynolds III

State Bar Number 16806300

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ATTORNEY FOR

PLAINTIFF-APPELLANT

MR. WILLIAM MAULDIN

[9] CERTIFICATE OF FILING

I hereby certify that on June 7, 2018, I filed the foregoing APPELLANT'S MOTION TO SUPPLEMENT RECORD [and request for relief from certain improprieties] using the Court's CM/ECF filing system.

/s/ Ernest (Skip) Reynolds III

Ernest (Skip) Reynolds III

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2018, a true and correct copy of the foregoing APPELLANT'S MOTION TO SUPPLEMENT RECORD [and request for relief from certain improprieties] was served in accordance with the Federal Rules of Appellate Procedure on the following persons by email via the Court's CM/ECF system.

Gino J. Rossini
Roger D. Higgins
Thompson, Coe, Cousins & Irons, LLP
700 N Pearl St. 25th Floor
Dallas, Texas 75201-2832,
Attorney for Appellee

/s/ Ernest (Skip) Reynolds III
Ernest (Skip) Reynolds III

[10] CERTIFICATE OF CONFERENCE

I hereby certify that on 6 June 2018, I attempted to contact opposing counsel, Mr. Gino Rossini, by phone [at his direct number: 214.871.8219] but got a voice-mail. I left a detailed message about the purpose of my conference call, left my name and phone number, and invited a return call; but got no return call.

/s/ Ernest (Skip) Reynolds III
Ernest (Skip) Reynolds III

**[11] CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, AND
TYPE STYLE REQUIREMENTS**

Undersigned counsel, after reviewing the Motion, hereby certifies the following:

1. This Motion complies with the requirements of Federal Rule of Appellate Procedure 27, including the length requirement of Federal Rule of Appellate Procedure 27(d)(2); and complies with Fifth Circuit Rule 27.4.

2. This Motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this motion contains 1,657 words, excluding parts of the motion exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii). Counsel relied upon the word count feature of WordPerfect.

3. This Motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using WordPerfect in 14 point Times New Roman font for text and 12 point Times New Roman font for Footnotes.

/s/ Ernest (Skip) Reynolds III
Ernest (Skip) Reynolds III

Dated: June 7, 2018

EXHIBIT I-A

Copy of page 1 of letter dated 12 September 2016,
sent to Appellant [William Mauldin]
before he had secured the services of counsel,
and signed by one of the Appellees, Mayella Gonzalez,
who sent the letter to Mauldin while
functioning as a direct employee of Allstate

SUSAN L. FLORENCE & ASSOCIATES
Attorneys At Law

Renaissance Tower
1201 Elm Street, Suite 5050
Dallas, Texas 75270

Fax: 1-877-678-4763

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STAFF COUNSEL
Allstate Insurance Company
Encompass Insurance Company
Esurance Insurance Company

All Attorneys are Employees of
Allstate Insurance Company

This Office is not a Partnership or a Corporation

Susan L. Florence⁺
Managing Attorney

Saul Friedman
Lead Counsel

Mayella Gonzalez

Young Jenkins

Scott Whitcomb^{*}

Michael Worthington^{}**

Gerry Xagoraris

Ryan Martin

Sapna Perera
Lead Counsel

Kavita Bhalla

Jennifer Hay

Courtney Gilbert

Kimberly H. Kerns

Samantha Palma

Nathaniel Peevey^{+++^}

Rachel Wright

<hr/>	Charlesa Olmstead^{**++}	
⁺ Board Certified-Personal	<i>Lead Counsel</i>	
Injury Trial Law	Joshua Weems	
Texas Board of Legal	Kelly Hardwicke^{**}	
Specialization	Lisa Chastain	
[*] Also Admitted in California	Jennifer Calvin	
^{**} Also Admitted in New York		
⁺⁺ Also Admitted in Oklahoma		
⁺⁺⁺ Also Admitted in Virginia		
[^] Also Admitted in District of Columbia		
<i>Attorney</i>	<i>Administrative</i>	<i>Paralegal</i>
<i>(214) 659-4324</i>	<i>Assistant</i>	<i>(214) 659-4374</i>
	<i>(214) 659-4306</i>	

September 12, 2016

PERSONAL AND CONFIDENTIAL

CERTIFIED MAIL 7015 1660 0000 3442 6863

cc: REGULAR U.S. MAIL

William Mauldin
PO Box 1221
Bedford TX 76095-1221

Re: EUO: William Mauldin
Date of Loss: April 08, 2016
Our File Number: 0411129497.1 CHH01

Dear Mr. Mauldin:

You have made a claim for losses under a policy of insurance with ALLSTATE INSURANCE COMPANY, Policy Number 000931649212. It is our understanding and belief that an attorney does not represent you. **If an attorney represents you, do not contact us.**

App. 41

Instead, please give this letter to your attorney so that he or she may contact us.

YOU ARE HEREBY NOTIFIED that pursuant to the terms and conditions of said policy of insurance, you are to appear and submit to an Examination Under Oath. Said Examination Under Oath will be conducted by a representative of ALLSTATE INSURANCE COMPANY, at **SUSAN L. FLORENCE & ASSOCIATES, 1201 Elm Street, Suite 5050, Dallas, TX 75270-2104**, on **September 21, 2016**, at **10:00 am**, and at such further times as said Examination Under Oath may be continued.

EXHIBIT I-B

Copy of page 2 of letter dated 12 September 2016,
sent to Appellant [William Mauldin]
before he had secured the services of counsel,
and signed by one of the Appellees, Mayella Gonzalez,
who sent the letter to Mauldin while
functioning as a direct employee of Allstate

Please note said Examination Under Oath must be confirmed one (1) day in advance. If an interpreter is required, please advise this office at least two (2) days in advance of the scheduled Examination Under Oath. Further, please note that you are required to bring photo identification to the Examination Under Oath.

You are further notified that on or before September 21, 2016, you are to produce to the undersigned

attorney, in person or by mail, the following documents for inspection and/or copying:

1. Please provide your bank statements, including checking and savings, and credit card statements from January 1, 2015 to current;
2. Please provide bank statements, including checking and savings, and credit card statements belonging to Pauline Gibson from January 1, 2015 to current;
3. Please provide any proof of ownership and/or proof of purchase of claimed items, including but not limited too original receipts, bank and/or credit card statements showing purchase of claimed items, original boxes, manuals, photographs, etc.

If you are unable to comply with the demand for production of the above records and documents at the date, time and place indicated, or if you are unable to submit to the Examination Under Oath at the date, time and place indicated, you should contact the undersigned attorney to make alternative arrangements.

Please be further advised that neither this demand for an Examination Under Oath or anything contained herein should be construed by you to be a waiver of any terms and conditions of the ALLSTATE INSURANCE COMPANY policy under which you have filed a claim or of any rights of ALLSTATE INSURANCE COMPANY under said policy.

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Sincerely,

/s/ Mayella Gonzalez

Mayella Gonzalez

mgou6@allstate.com

dm

ct: TLC & Associates, fax 940-591-1925

Rebecca Hamilton, claims

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

MR. WILLIAM MAULDIN,	§	
INDIVIDUALLY AND AS	§	
REPRESENTATIVE OF THE	§	
ESTATE OF PAULINE	§	
GIBSON, DECEASED	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION
	§	NO. _____
ALLSTATE INSURANCE	§	
COMPANY, MAYELLA	§	
GONZALES AND THERESA	§	
HERNANDEZ,	§	
Defendants	§	

**DEFENDANT ALLSTATE INSURANCE
COMPANY'S NOTICE OF REMOVAL**

TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Allstate Insurance Company in Cause No. 153-292983-17, pending in the 153rd Judicial District Court of Tarrant County, Texas, files this Notice of Removal from that court to the United States District Court for the Northern District of Texas, Fort Worth Division, on the basis of diversity of citizenship and amount in controversy and respectfully shows:

I.
FACTUAL BACKGROUND

1.1 On or about June 30, 2017, Plaintiff, William Mauldin, Individually and as representative of the Estate of Pauline Gibson, Deceased, filed Plaintiff's Original Petition, Including Requests For Disclosure, First Requests For Admission, First Request for Production, and First Interrogatories, To Defendants ("Plaintiff's Original Petition") in the matter styled *MR*.

* * *

II.
BASIS FOR REMOVAL

2.1 Defendant files this notice of removal within 30 days of receiving Plaintiff's Original Petition. *See* 28 U.S.C. §1446(b). This Notice of Removal is being filed within one year of the commencement of this action. *See id.*

2.2 Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

A. THE PROPER PARTIES ARE OF DIVERSE CITIZENSHIP.

2.3 Plaintiff asserts in Plaintiff's Original Petition that he is and was at all times relevant to this lawsuit, a natural person who is a resident and domiciliary of Tarrant County, Texas and thus, is a citizen of Texas. *See* Plaintiff's Original Petition, p. 2. Plaintiff also brings suit in his capacity as representative of the

Estate of Pauline Gibson, deceased. *Id.* On information and belief, Plaintiff intends to continue residing in Texas and is thus domiciled in Texas. *See Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011) (evidence of a person’s place of residence is prima facie proof of his state of domicile, which presumptively continues unless rebutted with sufficient evidence of change).

2.4 Allstate Insurance Company is an Illinois corporation with its principal place of business in Illinois and is a citizen of the State of Illinois for diversity purposes, and therefore, complete diversity exists.¹

2.5 Defendant Gonzalez, although not a proper party to this lawsuit, is, and was at the time the lawsuit was filed, a citizen of the State of Texas. *See* Plaintiff’s Original Petition, p.3 (this Defendant’s name has been erroneously spelled as “Mayella Gonzales”).

* * *

3.4 Pursuant to 28 U.S.C. §1446(d), promptly after Allstate files this Notice, written notice of the filing will be given to Plaintiff, the adverse party.

3.5 Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the Tarrant County District Court, promptly after Defendant files this Notice.

¹ The proper party in interest is “Allstate Property and Casualty Insurance Company” and not “Allstate Insurance Company.” Allstate Property and Casualty Insurance Company is also a citizen of the State of Illinois for diversity purposes.

3.6 Although Defendant Gonzalez has been served, her consent is not required in this case as she has been fraudulently joined solely to defeat diversity jurisdiction. *See Jernigan v. Ashland Oil, Inc.*, 989 F.2d 812, 815 (5th Cir. 1993). Defendant Hernandez consents to this removal.

IV.
CONCLUSION

4.1 Based upon the foregoing, the exhibits submitted in support of this Removal and other documents filed contemporaneously with this Notice of Removal and fully incorporated herein by reference, Defendant Allstate Insurance Company hereby removes this case to this Court for trial and determination.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

/s/ Roger D. Higgins

Roger D. Higgins

State Bar No. 09601500

rhiggins@thompsoncoe.com

THOMPSON, COE, COUSINS & IRONS, L.L.P.

Plaza of the Americas

700 North Pearl Street, 25th Floor

Dallas, Texas 75201-2832

Telephone: (214) 871-8200

Fax: (214) 871-8209

ATTORNEY FOR DEFENDANTS

App. 48

153-292983-17

FILED
TARRANT COUNTY
6/30/2017 9:23 AM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. _____

MR. WILLIAM MAULDIN,	§	IN THE DISTRICT
individually and as	§	
representative of the	§	
estate of Pauline Gibson,	§	
deceased,	§	
Plaintiffs,	§	
VS.	§	COURT OF
ALLSTATE INSURANCE	§	
COMPANY, and MAYELLA	§	
GONZALES, and THERESA	§	
HERNANDEZ	§	TARRANT
Defendants	§	COUNTY,
	§	TEXAS

**PLAINTIFFS' ORIGINAL PETITION,
INCLUDING REQUESTS FOR DISCLOSURE,
FIRST REQUESTS FOR ADMISSION, FIRST
REQUEST FOR PRODUCTION, AND FIRST
INTERROGATORIES, TO DEFENDANTS**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Mr. William Mauldin, Plaintiff [and
hereinafter sometimes referred to as "Plaintiff", or as

“Mr. Mauldin] coming individually and as the representative of the estate of Mrs. Pauline Gibson, deceased, the said estate also being a party Plaintiff, and Plaintiffs file this lawsuit complaining of and against the following Defendants: Allstate Insurance Company [hereinafter sometimes referred to as “Defendant Allstate” or “Allstate” or as “Defendant Insurance Company” or as “Insurance Company”], and Defendant Mayella Gonzales [hereinafter sometimes referred to as “Gonzales” or “Defendant Gonzales”], and against Defendant Theresa Hernandez [hereinafter sometimes referred to as “Hernandez” or “Defendant Hernandez”]; and Plaintiff now brings suit against these Defendants; and for cause of action Plaintiff would show unto this Honorable Court as follows:

1.

DISCOVERY

Discovery is intended to be conducted under Level 2 of Tex. R. Civ. P. 190.

2.

PARTIES

Plaintiff, Mr. William Mauldin, is an adult person who is a resident and domiciliary of Tarrant County, Texas. **He is, and at all times relevant to this lawsuit has been, a natural born citizen of The Untied States of America.** Mr. Mauldin is, by Court Order, the sole representative of the Estate of Mrs. Pauline G. Gibson, deceased. Both Mr. Mauldin, individually, and the Estate [by and through is

representative, Mr. Mauldin], come now to this Court by and through this pleading as Parties Plaintiff.

Defendant, Allstate Insurance Company, is an extremely large insurance company which does business in America and globally, and is believed to be a corporation incorporated in some state other than Texas. This Defendant routinely and purposively at the present time, and over many past years and decades, has done business in Texas, and with Texans, and has had offices and employees in Texas [including many in the North Texas area], and has purposely availed itself of the benefits of doing business in Texas and of the protections of the law in Texas. All of this makes this Defendant amenable to jurisdiction before this Court. Further, as noted below, this Defendant has a designated agent for service of process in Texas. It is also pertinent that in connection with this very case this Defendant has not only done business in Texas with the Plaintiffs, but has categorically insisted that the Plaintiffs do business with this Defendant on these matters in Texas, and in Tarrant County, Texas. This Defendant may be served by serving its designated agent for service of process, that being: CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

Defendant, Mayella Gonzales, is believed now and at all times pertinent to this litigation to be, and to have been, a resident of the State of Texas. It is believed that she may be served with process at the following address: 1201 Elm Street, Suite 5050, Dallas, Texas 75270.

Defendant, Theresa Hernandez, is a person who has been very active in connection with this matter and who uses an address in Dallas, Dallas County, Texas, where it is believed she may be served with process. That address is: Allstate, Central Specialty Office, P. O. Box 660636, Dallas, Texas 75226.

3.
JURISDICTION

Subject matter jurisdiction of this cause rests with this Honorable Court, and the amount in controversy is far in excess of its minimum jurisdictional amount. For reasons made clear in the paragraph immediately above, it appears clear that this Court has jurisdiction over the Parties. At this time in this suit, **as required by procedural law** in Texas, Plaintiffs declare that they seek recovery of monetary damages-relief against Defendants over \$200,000.00 but not more than \$1,000,000.00. In accordance with TRCP 47, and all other applicable Texas law, Plaintiffs shall seek in this suit and do demand judgment for all other relief to which Plaintiffs deem themselves entitled, and/or may be shown to be entitled to receive, all as per Texas law, the pleadings, and the evidence and record of this case. This suit is timely commenced.

4.
VENUE

Venue is proper in this county, as it is where all or a substantial part of the events giving rise to this claim

and touching Plaintiffs directly; occurred, and also where certain payments were to be made by one or more of the Defendants to, or for the benefit of, Plaintiffs.

5.

SOME FACTS/FACTUAL BACKGROUND

Plaintiff William Mauldin is the grandson, sole heir, and Court appointed representative of the Estate of Pauline Gibson, deceased. Following the death of Mrs. Gibson's husband, Plaintiff Mauldin and Mrs. Gibson resided together in a residence which contained their personal property. When it was damaged, and there was damage/loss involving its contents, they timely notified Defendant Allstate, which insured against the losses; and in due course all of the Defendants became involved in this matter which involves real estate, and personal property, and damages to both the real estate and the personal property, with the damages to the real estate specifically involving damages to a building which is a residential dwelling.

The Plaintiffs, Mr. Mauldin, individually, and the Estate of Mrs. Gibson, were at all times fully and properly cooperative. Defendants told them that claims for damages would be honored and paid properly and fairly and fully if there was full cooperation from Plaintiffs; and specifically Defendants told the Plaintiffs that these matters were to be [and had to be] adjusted in Texas, and more specifically in North Texas [for example, the Defendants demanded to take

a statement from Mr. Mauldin and they demanded to take it in Texas, and it was taken in Tarrant County, Texas]. Plaintiffs were led to believe that the claims that they were making for reimbursement for damage to the subject real property [and its contents] would be properly and fairly evaluated and fully paid, but in fact after a cursory initial inspection there was no further action taken regarding damage to the real estate, and no payment was made. At the same time, Plaintiffs were led to believe that if they cooperated and provided information then claims for damage/loss to personal property would be fairly and properly and fully paid, but not withstanding full cooperation of the Plaintiffs, this did not happen.

Any and all premiums due were timely and properly paid, and none have been refunded, nor has any request been made for refund.

This matter was being handled and adjusted in Texas at the express direction and requirement of Defendants, but Texas law was disregarded and violated. Defendants did not properly adjust the claim. Defendants did not properly and promptly pay the claim.

Eventually, without any real explanation of how or why any number was arrived at, a ridiculously small sum of money was tendered by the Defendants in the form of a check along with a letter which stated [fraudulently and improperly] that all the claims were handled and closed and resolved; but the check has never been cashed. It has never been presented to any financial institution or other payor to be cashed. It was clear

when it arrived that it was part and parcel of an improper, illegal, fraudulent attempt on the part of Defendants to cheat Plaintiffs.

Plaintiffs did everything they should have done, but claims were not paid promptly, and were not paid fairly. Plaintiffs requested an explanation about how and/or why the Defendants arrived at the ridiculous “evaluation number” reflected in the check that was tendered, but no explanation was provided.

Although this lawsuit is timely filed, much time has passed since this matter initially arose and since the claims were timely presented. There has been a failure to make prompt payment, or fair payment, and Allstate and the other Defendants are part and parcel of this failure and of an obvious scheme and attempt and conspiracy aimed at trying to bully and cheat Plaintiffs.

Defendant Allstate, in particular, is well known for its harsh dealings both in Texas and nationally. In fact, and regrettably, Defendant Allstate is so well known and notorious for this that there is actually a book about it entitled: “From Good Hands To Boxing Gloves”. According to that book, information in it is based upon information obtained through discovery in a lawsuit, which was information that came ultimately from Allstate indicating that while Allstate advertises itself as the “good hands” insurance outfit, if its insureds will not do what it wants then it will switch from “good hands” to “boxing gloves” to beat them into submission. That is not fair, but it appears that is the

type of attitude and approach that has been used in this case by the Defendants in dealing with Plaintiffs, all to the detriment and harm of the Plaintiffs.

Plaintiffs have been compelled to hire legal counsel and to bring this lawsuit because they have no other avenue or recourse to get fair treatment. Plaintiffs now invoke their Constitutional right, guaranteed by the Constitution of the State of Texas, to come to Court, to have “open court” rights and proceedings, and to get “due process” in Court. Plaintiffs do not waive, but rather expressly reserve, their rights guaranteed by the Texas Constitution to a trial by jury. Plaintiffs have brought this case seeking only justice. Plaintiffs have not done anything to harm the Defendants, but the Defendants acting in concert have harmed Plaintiffs grievously.

6.

LIABILITY OF DEFENDANTS AND DAMAGES

Defendant has committed actionable misconduct as described hereinabove; and in so doing has damaged Plaintiffs. The Defendant is liable to Plaintiff under Texas law for (1) violation of the Texas Insurance Code, including failure to properly and fairly adjust and evaluate the Plaintiffs’ losses and damages to the subject real estate and Plaintiffs’ losses and damages to personal property; and (2) violation of the prompt pay statute, and (3) violation [including, but not limited to, unconscionable misconduct] of the Texas D.T.P.A., and (4) fraud; and (5) bad faith tortious misconduct,

and (6) negligence, and (7) gross negligence; and this misconduct has been, and is, the proximate and/or producing and/or legal cause of harm and damage to Plaintiffs; and Plaintiffs have suffered harm and damage; and the Defendants are liable to Plaintiffs under each, and all, of these legal theories for the said damages. The Defendants are liable to Plaintiffs for actual damages [including economic damages] and damages for mental anguish, and for exemplary/punitive damages, and for multiple damages as provided by law [including but not limited to treble damages], and for statutory penalties as provided by law, and for pre and post judgment interest as provided by the law of Texas, and for costs of court, and for any and all attorney fees that may have been, or may be, incurred by Plaintiffs in connection with this suit. At this time in this suit, **as required by procedural law**, in Texas, Plaintiffs declare that they seek recovery of monetary damages-relief against Defendants over \$200,000.00 but not more than \$1,000,000.00. In accordance with TRCP 47, and all other applicable Texas law, Plaintiffs shall seek in this suit and do demand judgment for all other relief to which Plaintiffs deem themselves entitled, and/or may be shown to be entitled to receive, all as per Texas law, the pleadings, and the evidence and record of this case. Damages will be proven with specificity at the time of trial.

**7.
NOTICE**

Plaintiffs did previously and properly make and serve and send written communications to Defendant Allstate trying to get this matter resolved; and Defendant Allstate did receive that written communication. Defendant did not resolve this matter properly; so this suit became necessary.

**8.
NO DEMAND FOR JURY**

Plaintiffs do not request or demand a jury trial on any issues at this time [though reserving the right to do so] and thus do not tender the fee for same with the filing of this Plaintiffs' Original Petition.

* * *

**10.
REQUESTS FOR DISCLOSURE FROM
PLAINTIFF TO DEFENDANT GONZALES**

Under Texas Rule of Civil Procedure 194, the Plaintiffs do now request that the Defendant disclose, within fifty (50) days of the service of this request, all of the information or material described in Rule 194. ***The responses to these Requests For Disclosure are to be served upon Plaintiffs by making service upon their lead counsel attorney, at the address given below at the signature line where the said attorney has signed this pleading.***

* * *

13.

**FIRST REQUESTS FOR ADMISSION FROM
PLAINTIFF TO DEFENDANT GONZALES**

Under Texas Rule of Civil Procedure 198, Plaintiffs request that the Defendant answer these requests for admission, within fifty (50) days of the service of this request, as required by the provisions of Rule 198, and by applicable Texas law. “You” or “Your” used herein refers to Defendant, Gonzales. ***The responses to these Requests for Admission are to be served upon Plaintiffs by making service upon their lead counsel attorney, at the address given below at the signature line where the said attorney has signed this pleading.***

Request for Admission No. 1:

Admit that your fraud as described in the Plaintiffs’ Original Petition was the proximate cause of harm and damage to Plaintiff as alleged in the said petition.

Request for Admission No. 2:

Admit that your violation of the Texas prompt pay statute as described in the Plaintiffs’ Original Petition was the proximate cause of harm and damage to Plaintiffs as alleged in the said petition.

Request for Admission No. 3:

Admit that your violation of the Texas D.T.P.A. as described in the Plaintiffs’ Original Petition was the proximate cause and/or producing cause and/or cause in fact of harm and damage to Plaintiffs as alleged in the said petition.

Request for Admission No. 4:

Admit that your violation of the Texas Insurance Code as described in the Plaintiffs' Original Petition was the proximate cause and/or producing cause and/or cause in fact of harm and damage to Plaintiffs as alleged in the said petition.

Request for Admission No. 5:

Admit that you are liable in damages to Plaintiffs for Fraud liability as described and alleged in Plaintiffs' Original Petition.

Request for Admission No. 6:

Admit that you are liable in damages to Plaintiffs for Bad Faith Tortious Misconduct liability as described and alleged in Plaintiffs' Original Petition.

Request for Admission No. 7:

Admit that your negligence as described in the Plaintiffs' Original Petition was the proximate cause of harm and damage to Plaintiffs as alleged in the said petition.

Request for Admission No. 8:

Admit that your gross negligence as described in the Plaintiffs' Original Petition was the proximate cause of harm and damage to Plaintiff as alleged in the said petition.

Request for Admission No. 9:

Admit that your negligence per se as described in the Plaintiffs' Original Petition was the proximate cause of harm and damage to Plaintiffs as alleged in the said petition.

Request for Admission No. 10:

Admit that you are liable in damages to Plaintiffs for failure to fully and properly comply with Texas laws, rules, and regulations as described and alleged in Plaintiffs' Original Petition.

Request for Admission No. 11:

Admit that in connection with your business dealings with Plaintiffs, you failed to fully and properly comply with Texas laws, rules, and regulations regarding and governing the insurance industry.

Request for Admission No. 12:

Admit that in connection with this present lawsuit Plaintiffs are entitled to recover over and against you, the Defendant, all pre-judgment and post-judgment interest as provided by Texas law, and attorney fees, and expert fees, and deposition fees as provided by Texas law, and taxable costs of court as may be recorded in the records pertaining to this case as maintained by the clerk of the Court in which this case is

Request for Admission No. 13:

Admit that in connection with this present lawsuit Plaintiffs are entitled to recover over and against you, the Defendant, damages [other than exemplary or punitive damages].

Request for Admission No. 14:

Admit that in connection with this present lawsuit Plaintiffs are entitled to recover over and against you, the Defendant, punitive or exemplary damages,

Request for Admission No. 15:

Admit that you do not claim to have some special or unique exemption from complying with the laws of the State of Texas.

* * *

16.

**FIRST INTERROGATORY PLEADING FROM
PLAINTIFF TO DEFENDANT GONZALES**

Under Texas Rule of Civil Procedure 197, Plaintiffs now request the Defendant to answer these interrogatories, within fifty (50) days of the service of this request, as required by the provisions of Rule 197, and by applicable Texas law. ***The responses to this Interrogatory Pleading are to be served upon Plaintiffs by making service upon their lead counsel attorney, at the address given below at the signature line where the said attorney has signed this pleading. Please note that any reference to “You” or to “Your” in theses Interrogatories refers to Defendant.***

Interrogatory No. 1:

Identify [including full name, current address and phone number, and the position which the person holds or held] each person who has been involved in any way with processing any insurance made by or on behalf of Plaintiffs.

Interrogatory No. 2:

Identify [including full name, current address and phone number, and the position which the person holds or held] each person who has been involved

in any way with investigating any insurance claim made by or on behalf of Plaintiffs.

Interrogatory No. 3:

Identify [including full name, current address and phone number, and the position which the person holds or held] each person who has been involved in any way with denying any insurance claim made by or on behalf of Plaintiffs.

Interrogatory No. 4:

Identify each witness who you may call at trial as a trial witness in this case.

Interrogatory No. 5:

Identify [providing the full name and the full business address, and business phone number and FAX number, and business title and employer] each and every person [other than your attorneys] who was involved in way in PREPARING all, or part, of the responses to these Interrogatories.

* * *

19.

**FIRST REQUEST FOR PRODUCTION FROM
PLAINTIFF TO DEFENDANT GONZALES**

Under Texas Rule of Civil Procedure 196, Plaintiffs do now request that the Defendant produce to them, within fifty (50) days of the service of this request, all of the documents, tangible items of any sort, information or material described below, as required by the provisions of Rule 196, and by applicable Texas law. You are requested to provide traditional “hard copies” of the items here requested unless that is

impossible to do. *The responses to these Requests for Production are to be served upon Plaintiffs by making service upon their lead counsel attorney, at the address given below at the signature line where the said attorney has signed this pleading. Please note that any reference to “you” or to “your” in theses Requests refers to Defendant.*

Request for Production No. 1:

All documents or tangible items of any kind [including electronic data in any format) pertaining in any way to the matter(s) made the basis of this suit.

Request for Production No. 2:

Your entire claims file pertaining in any way to the matter(s) made the basis of this suit.

Request for Production No. 3:

All of your e-mails pertaining in any way to the matter(s) made the basis of this suit.

Request for Production No. 4:

All of your telephone records pertaining in any way to the matter(s) made the basis of this suit.

Request for Production No. 5:

All of your calender notes pertaining in any way to the matter(s) made the basis of this suit.

Request for Production No. 6:

All of your correspondence and/or letters sent by you pertaining in any way to the matter(s) made the basis of this suit.

Request for Production No. 7:

All of your correspondence and/or letters sent to you and/or received and/or reviewed by you pertaining in any way to the matter(s) made the basis of this suit.

Request for Production No. 8:

All of your notes and/or memos made by you pertaining in any way to the matter(s) made the basis of this suit.

Request for Production No. 9:

All of your notes and/or memos made by any person other than you which were sent to you and/or received and/or reviewed by you pertaining in any way to the matter(s) made the basis of this suit.

Request for Production No. 10:

All photographs, videos, pictures, images, drawings, diagrams, plats, charts, or reports relating in any way to the matter(s) made the basis of this suit.

* * *

21.

Plaintiffs expressly reserve the right to further amend this Petition pleading.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer; and that upon final trial, Plaintiffs do have judgment over and against Defendants, and each of them, jointly and severally, for damages as prayed for hereinabove, together with pre-judgment

and post-judgment interest to the maximum extent allowed by law; and the said Plaintiffs do also, here and now, pray this Court for all such other and further relief, both general and special, at law and in equity, which they may be shown entitled to receive based upon the law, the evidence, the pleadings, and the record as developed in this case, and shall ever so pray.

Respectfully submitted,

/s/ Ernest (Skip) Reynolds III

Ernest (Skip) Reynolds III

State Bar Number 16806300

Law Offices of Ernest (Skip) Reynolds III

314 Main Street, Suite 202

Fort Worth, Texas 76102-7423

Telephone: (817) 332-8850

Facsimile: (817) 332-8851

E~mail: ereynolds3@aol.com

LEAD COUNSEL FOR PLAINTIFFS

== == == == == == == ==

Certain information regarding Plaintiff [and Estate Representative] Mauldin:

last three number of social security card: 189

last three numbers of Texas Driver's License: 320

App. 66

EXHIBIT "A-8"

Cause Number 153-292983-17

MR. WILLIAM MAULDIN ALLSTATE
INSURANCE
COMPANY, ET AL

VS

OFFICER'S RETURN

Received this Citation By Certified Mail on the 5th day of July, 2017 at 8:42 AM; and executed at 1201 ELM ST STE 5050 DALLAS TX 75270

within the county of _____ State of TX on the 7th day of July, 2017 by mailing to the within named MAYELLA GONZALES a true copy of this Citation By Certified Mail together with the accompanying copy of; PLAINTIFFS' ORIGINAL PETITION INCLUDING REQUESTS FOR DISCLOSURE FIRST REQUESTS FOR ADMISSION FIRST REQUEST FOR PRODUCTION AND FIRST INTERROGATORIES TO DEFENDANTS

Authorized Person/Constable/Sheriff:

Thomas A. Wilder
100 N CALHOUN
FORT WORTH, TX 76196-0402

App. 67

County of Tarrant, State of Texas

By /s/ Anthony Ferrara [SEAL]
ANTHONY FERRARA

Fees \$ 75.00

(Must be verified if served outside the State of Texas)

State of _____ County of _____

Signed and sworn to by the said _____ before me
this _____ to certify which witness my hand and
seal of office

(Seal)

County of Tarrant, State of Texas

FILED
TARRANT COUNTY
2017 JUL 10 AM 10:08
THOMAS A. WILDER
DISTRICT CLERK

[BAR CODE]
* 15329298317000005 *

APP. EXHIBIT PAGE 50
17-11274.504

App. 68

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
 \$ 3.15

Extra Services (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$ 2.85
☐ Return Receipt (electronic) \$ 0.00
☐ Certified Mail Restricted Delivery \$ 0.00
☐ Adult Signature Required \$ 0.00
☐ Adult Signature Restricted Delivery \$ 0.00

Postage
 \$ 0.00

Total Postage
 \$ 0.00

Sent To
 MAYELLA GONZALES
 1201 CLM ST STE 5050
 DALLAS TX 75270

City, State, ZIP+4®
 DALLAS, TX 75270

PS Form 3800, July 2015 PSN 7530-02-000-9053

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>■ Complete Items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>MAYELLA GONZALES 1201 CLM ST STE 5050 DALLAS TX 75270</p> <p>153-292983-17 DP/LL/CM</p> <p>9590 9403 0952 5223 6427 24</p> <p>Article Identifier (Transfer from service label) 7015 0640 0002 0983 9077</p>	<p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i> <input type="checkbox"/> Date of Delivery 7/7/17</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> <p>THOMAS A. WILSON 2017 JUL 10 AM 9:58</p> <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Certified Mail <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Insured Restricted Delivery <input type="checkbox"/> Insured Restricted Delivery</p>

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

APP. EXHIBIT PAGE 51
 17-11274.505

App. 69

FILED
TARRANT COUNTY
2017 JUL 10 AM 10:08
THOMAS A. WILDER
DISTRICT CLERK

APP. EXHIBIT PAGE 51
17-11274.505

ORIGINAL

**THE STATE OF TEXAS
DISTRICT COURT, TARRANT COUNTY**

Cause No. 153-292983-17
CITATION

MR. WILLIAM MAULDIN
VS.
ALLSTATE INSURANCE COMPANY, ET AL
TO: MAYELLA GONZALES
1201 ELM ST STE 5050
DALLAS, TX 75270-

FILED
TARRANT COUNTY
2017 JUL 10 AM 9:58
THOMAS A. WILDER
DISTRICT CLERK

You said DEFENDANTS are hereby commanded to appear by filing a written answer to the PLAINTIFFS' ORIGINAL PETITION INCLUDING REQUESTS FOR DISCLOSURE FIRST REQUESTS FOR

ADMISSION FIRST REQUEST FOR PRODUCTION AND FIRST INTERROGATORIES TO DEFENDANTS at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof before the 153rd district Court in and for Tarrant County, Texas, at the Courthouse in the City of Fort Worth, Tarrant County, Texas said PLAINTIFF being

WILLIAM MAULDIN

Filed in said Court on June 30th, 2017 Against ALLSTATE INSURANCE, MAYELLA GONZALES, THERESA HERNANDEZ

For suit, said suit being numbered 153-292963-17 the nature of which demand is as shown on said PLAINTIFFS' ORIGINAL PETITION INCLUDING REQUESTS FOR DISCLOSURE FIRST REQUESTS FOR ADMISSION FIRST REQUEST FOR PRODUCTION AND FIRST INTERROGATORIES TO DEFENDANTS a copy of which accompanies this citation.

ERNEST (SKIP) REYNOLDS, III
Attorney for WILLIAM MAULDIN
Phone No. (817)332-8850
Address 314 MAIN ST STE 202
FORT WORTH, TX 76102-7423

Thomas A. Wilder, Clerk of the District Court of Tarrant County, Texas. Given under my hand and be of said court, at office in the City of Fort Worth, this the 3rd day of July, 2017.

App. 71

By /s/ Lisa Letbetter
LISA LETBETTER [SEAL]

NOTICE: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with clerk who issued this citation by 10.00 AM. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Thomas A. Wilder, Tarrant County District Clerk,
100 N CALHOUN, FORT WORTH TX 76196-0402

OFFICER'S RETURN *15329298317000005*

Received this Citation on the ____ day of _____,
____ at ____ o'clock __M; and executed at _____
within the county of _____, State of _____ at _____,
o'clock __M on the ____ day of _____, ____ by mail-
ing to the within named _____
a true copy of this Citation together with the accompa-
nying copy of PLAINTIFFS' ORIGINAL PETITION
INCLUDING REQUESTS FOR DISCLOSURE FIRST
REQUESTS FOR ADMISSION FIRST REQUEST
FOR PRODUCTION AND FIRST INTERROGATO-
RIES TO DEFENDANTS having first endorsed on
same the date of delivery.

Deputy/Constable/sheriff: _____

County of _____ State of _____

By _____ Deputy

Fees \$ _____

App. 72

State of _____ County of _____
(Must be verified if served outside the State of Texas)
Signed and sworn to by the said _____
before me this _____ day of _____,
____ to certify which witness my hand and seal of office
(Seal)

County of _____, State of _____

7015 0640 0002 0983 9077

APP. EXHIBIT PAGE 52
17-11274.506

CITATION

Cause No. 153-292983-17

MR. WILLIAM MAULDIN

VS.

ALLSTATE INSURANCE COMPANY, ET AL

ISSUED

This 3rd day of July, 2017

Thomas A. Wilder
Tarrant County District Clerk
100 N CALHOUN
FORT WORTH TX 76196-0402

By LISA LETBETTER Deputy

ERNEST (SKIP) REYNOLDS, III
Attorney for: WILLIAM MAULDIN

App. 73

Phone No. (817)332-8850
ADDRESS: 314 MAIN ST STE 202
FORT WORTH, TX 76102-7423
CIVIL LAW

FILED
TARRANT COUNTY
2017 JUL 10 AM 9:58
THOMAS A. WILDER
DISTRICT CLERK

[BAR CODE]
* 15329298317000005 *

ORIGINAL

APP. EXHIBIT PAGE 53

17-11274.507
