

Martha Sheehy
SHEEHY LAW FIRM
P.O. Box 584
Billings, MT 59103-0584
(406) 252-2004
msheehy@sheehylawfirm.com

Randall G. Nelson
Thomas C. Bancroft
NELSON LAW FIRM, P.C.
2619 St. Johns Avenue, Suite E
Billings, MT 59102
(406) 867-7000
rgnelson@nelsonlawmontana.com

Attorneys for Allied World Assurance Co.

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

| | |
|--|--|
| DANA ROLAN, on her own behalf and on behalf of the class she represents, |) Cause No. CDV-2010-91 |
| |) |
| Plaintiffs, |) Judge Christopher Abbott |
| |) |
| vs. |) DEFENDANT |
| |) ALLIED WORLD ASSURANCE |
| |) COMPANY'S SUPPLEMENTAL BRIEF |
| NEW WEST HEALTH SERVICES, |) IN OPPOSITION TO AMENDMENT OF |
| DARWIN SELECT INSURANCE |) THE COMPLAINT |
| COMPANY and ALLIED WORLD |) |
| ASSURANCE COMPANY and DARWIN |) |
| NATIONAL ASSURANCE COMPANY, |) |
| Defendants. |) |
| _____ |) |
| |) |
| ALLIED WORLD ASSURANCE |) |
| COMPANY, |) |
| Counterclaimant, |) |
| |) |
| vs. |) |
| |) |
| DANA ROLAN, on her own behalf and on behalf of the class she represents, |) |
| Counterdefendants. |) |
| _____ |) |

Thirty days after receipt of Plaintiff Dana Rolan’s Proposed Third Amended Complaint, Defendant Allied World Assurance Company (“Allied”) removed this action to federal district court. Shortly thereafter, the parties stipulated to facts allowing remand of the matter to this court. (See Ex. 1, Stipulation). Allied reserved the right to remove the action in the event this Court allows amendment of the complaint to include first-party and third-party claims – including class claims – based on violations of the Unfair Trade Practices Act (“UTPA”). (Ex. 1, ¶ 11).

The purpose of this brief is to clarify Allied’s position with respect to removal. Should the complaint be amended to add UTPA claims, Allied will exercise its right to remove to federal court as previously asserted. (Ex. 2, Notice of Removal). However, Allied does not wish to disrupt the longstanding and nearly completed adjudication of the underlying claim in state court. Therefore, Allied requests that if the Court allows amendment of the complaint to include UTPA claims against Allied, those UTPA claims be immediately bifurcated from the underlying claims against New West.

Section 33-18-242(6), MCA, provides:

(6) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

Pursuant to subsection (a), first-party UTPA claims may be bifurcated where justice so requires. Pursuant to subsection (b), third-party UTPA claims may not be filed in conjunction with the underlying claim. *Peris v. Safeco Ins. Co.*, 276 Mont. 486, 492, 916 P.2d 780, 784 (1996) (“By creating two different statutes of limitation [for third-party and first-party claims], the legislature has accommodated the concept that third-party claims may not be brought until the settlement or adjudication of the underlying claim, while claims by the insured may be brought at any time.”)

For all the reasons set forth in Allied’s Brief in Opposition to Amendment of the Pleadings, Rolan should not be granted leave to amend. However, in the event that this Court allows amendment of the pleadings to include UTPA claims against Allied, justice requires that the claims be bifurcated immediately to avoid removal of the underlying action with the newly pled claims.

DATED this 13th day of July, 2022.

NELSON LAW FIRM, P.C.
SHEEHY LAW FIRM

Attorneys for Defendant / Counterclaimant
Allied World Assurance Company

By /s/ Martha Sheehy
Martha Sheehy
P.O. Box 584
Billings, MT 59103

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of July, 2022, a copy of the foregoing was duly served by first class mail, postage prepaid, upon the following, as well as by email:

Erik B. Thueson
THUESON LAW OFFICE
c/o Elayne Simmons
58 South View Road
Clancy MT 59634

Erik@thuesonlawoffice.com
Elayne@thuesonlawoffice.com

/s/ Martha Sheehy