

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MICHAEL NEWMAN and SUNNI NEWMAN

Plaintiffs,

v.

**HOMESITE INSURANCE COMPANY
and PAMELA BOONE,**

Defendants.

CASE NO. 1:25-CV-01472-ADA-ML

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge Mark Lane. Dkt. 12. In the report, Magistrate Judge Lane raises the issue of subject matter jurisdiction sua sponte and recommends that this Court **DISMISS WITHOUT PREJUDICE** Defendant Pamela Boone from this case. *Id* at 1-3. The report was filed on January 22, 2026.

A party may file specific, written objections to the proposed findings and recommendations of the magistrate judge within fourteen days after being served with a copy of the report and recommendation, thereby securing *de novo* review by the district court. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). As of today, neither party has filed objections.

When no objections are timely filed, a district court reviews the magistrate judge’s report and recommendation for clear error. *See* Fed. R. Civ. P. 72 Advisory Committee’s Note (“When no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”). The Court has reviewed the report and recommendation and finds no clear error.

IT IS THEREFORE ORDERED that the Report and Recommendation of United States Magistrate Judge Lane (Dkt. 12) is **ADOPTED**.

IT IS FURTHER ORDERED that Defendant Pamela Boone is **DISMISSED WITHOUT PREJUDICE** from this case.

SIGNED this 17th day of February, 2026.



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**MICHAEL NEWMAN and SUNNI
NEWMAN,**

Plaintiffs,

V.

**HOMESITE INSURANCE COMPANY
and PAMELA BOONE,**

Defendants.

CIVIL NO. A-25-CV-1472-ADA-ML

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

TO THE HONORABLE ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE:

Defendant Homesite Insurance Company (“Homesite”) removed this matter to federal court on the basis of diversity jurisdiction, arguing that Defendant Pamela Boone (“Boone”), a non-diverse party, was improperly joined as a Defendant in this matter. Dkt. 1 ¶¶ 7-10. Since removal, no party has moved to dismiss Boone or remand to state court. Accordingly, the undersigned raises the issue of subject matter jurisdiction *sua sponte* and issues the following recommendation to the District Judge.¹

I. BACKGROUND

Plaintiffs filed this suit in state court, asserting claims state-law claims under the Texas Insurance Code and the Texas Deceptive Trade Practices Act and for breach of contract. Dkt. 1-2 (Pet.). Plaintiffs allege that their property, which was insured by Homesite, was severely damaged in a storm. *Id.* ¶ 12. Plaintiffs allege that they submitted a claim to Homesite and that Homesite’s independent adjuster, Boone, was sent to inspect the property. *Id.* ¶¶ 14-15. However, Plaintiffs

¹ United States District Judge Alan D Albright referred motions in this case to the undersigned for disposition or report and recommendation pursuant to 28 U.S.C. § 636(b)(1), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. *See* Standing Order dated Feb. 27, 2025.

allege Defendants failed to perform a proper inspection, wrongfully undervalued the damage, and left Plaintiffs unable to properly repair their property, which caused additional damage. *Id.* ¶ 20.

Homesite removed this case to federal court on the basis of diversity jurisdiction, asserting that Plaintiffs are citizens of Texas, Homesite is a citizen of Wisconsin and Massachusetts, and Boone, also a citizen of Texas, was improperly joined. Dkt. 1 ¶ 7. Homesite argues that it elected to accept Boone’s liability, and thus, her dismissal from this suit is required. *Id.* ¶¶ 9-10.

II. LEGAL STANDARD

Federal courts “have an independent obligation to assess subject matter jurisdiction before exercising the judicial power of the United States.” *SXSW, L.L.C. v. Federal Ins. Co.*, 83 F.4th 405, 407 (5th Cir. 2023) (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 93-99 (1998)). “The burden of establishing subject matter jurisdiction in federal court rests on the party seeking to invoke it.” *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998) (footnote omitted). Accordingly, if a defendant removes a case to federal court, the burden rests on the defendant to establish that the case “arises under” federal law or that diversity exists and that the amount in controversy exceeds the jurisdictional threshold.

“If the plaintiff improperly joins a non-diverse defendant, then the court may disregard the citizenship of that defendant, dismiss the non-diverse defendant from the case, and exercise subject matter jurisdiction over the remaining diverse defendant.” *Advanced Indicator & Mfg., Inc. v. Acadia Ins. Co.*, 50 F.4th 469, 473 (5th Cir. 2022) (citation modified). Improper joinder may be established in one of two ways: the defendant either must show “(1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court.” *Smallwood v. Ill. Cent. R.R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004) (citation omitted). Only the second method of establishing improper joinder is at issue, and

the test under this second approach is whether “there is no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant.” *Id.*

III. ANALYSIS

The Texas Insurance Code states, “an insurer that is a party to the action may elect to accept whatever liability an agent might have to the claimant for the agent’s acts or omissions related to the claim by providing written notice to the claimant.” TEX. INS. CODE § 542A.006(a). “If a claimant files an action to which this chapter applies against an agent and the insurer thereafter makes an election under Subsection (a) with respect to the agent, the court shall dismiss the action against the agent with prejudice.” *Id.* § 542A.006(c).

Homesite has demonstrated that it made such an election with respect to Boone. *See* Dkt. 1-5. It follows that Plaintiffs no longer have the ability to assert a cause of action against Boone. *See Advanced Indicator*, 50 F.4th at 472-75. Accordingly, the undersigned finds that removal was proper, Boone is improperly joined in this action, and applicable law requires her dismissal from this case. Furthermore, following Boone’s dismissal, the court’s subject matter jurisdiction over this action will no longer be in question as the parties will be completely diverse and the amount in controversy is satisfied. Dkt. 1-2 (Pet.) ¶ 5.

IV. RECOMMENDATION

For the reasons given above, the undersigned **RECOMMENDS** that the District Judge **DISMISS WITHOUT PREJUDICE** Defendant Pamela Boone from this case.

V. OBJECTIONS

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Judge need not consider frivolous, conclusive, or general objections. *See*

Battles v. United States Parole Comm'n, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Judge of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Judge. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140 (1985); *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

SIGNED January 22, 2026.



MARK LANE
UNITED STATES MAGISTRATE JUDGE