CARLTON FIELDS

Service of Process for Insurers

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We sometimes receive panicked telephone inquiries from insurer clients who have just been made aware of a new complaint that was delayed in their gargantuan mail room, or worse, lost amidst a pile of papers on their desks. They think the response may be due soon, or maybe it was yesterday, and there's a possibility that the case can be removed to federal court but they're not sure when. This memorandum outlines the required statutory method for service of process and the legal basis for when the times to respond and remove begin to run. **1. What are the requirements for service of process on insurers per Florida Statute § 624.422?** Section 624.422 of the Florida Statutes provides that the sole method of all legal process upon an insurer in Florida is via the Chief Financial Officer of the State of Florida.[1] It further states: *"Prior to its authorization to transact insurance in this state, each insurer shall file with the department designation of the name and address of the person to whom process against it served upon the Chief Financial Officer is to be forwarded."* [2] Section 624.423 goes on to state that service of process upon the Chief Financial Officer as process agent of the insurer must be made by serving copies in triplicate of the process upon the Chief Financial Officer. Similarly, Section 48.151(3) of the Florida Statutes declares that the Chief Financial Officer, or his or her assistant or deputy or another person in charge of the office, is the agent for service of process on all insurers in this state. Once the Chief Financial Officer has been served, the statute requires that: *"the [CFO] shall…forward one copy of the process by registered or certified mail* [3] *to the person last designated by the insurer to receive the same."* Florida Statute § 624.423(1). **2. How many days does the insurer have from the time of service for the purposes of responding?** Insurers are required to respond within 20 days of the date upon which the Chief Financial Officer complies with the statutory duty of sending the process to the insurer's designee. The applicable Florida Statute § 624.423[4] provides: *"Process served upon the Chief Financial Officer and copy thereof forwarded as in this section provided shall for all purposes constitute valid and binding service thereof upon the insurer."* Further, the statute provides that the insurer *"shall not be required to answer or plead except within 20 days after the date upon which the Chief Financial Officer mailed a copy of the process served upon her or him…"* West F.S.A. § 624.423(2). Courts have applied this statute narrowly. For example, in *Home Life Ins. Co. v. Regueira*, 243 So. 2d 460 (Fla. 2nd DCA 1970), the court found that only service upon the insurance commissioner *and transmittal* by him as prescribed by the statute constituted valid and binding service on the insurer. In *Regueira*, the plaintiff served process on the Insurance Commissioner's office, but that office apparently failed to forward a copy of the summons and complaint by registered or certified mail to the insurer's named

designees, thereby resulting in an entry of a default against the insurer for failing to appear timely and plead. The court concluded that receipt by the insurer is the aim of the service of process statute, because the essential purpose of process is notice: "Clearly, by the mandate of this subsection only service upon the commissioner *and transmittal* thereof by him *forwarded as prescribed* constitutes valid and binding service. Anything less is fatal." (*emphasis added*) Id. at 462. Therefore, the default judgment against the insurer was vacated because the Insurance Commissioner's office had not satisfied its statutory duty. **3. How many days does the insurer have from the time of service for the purposes of removal?** Insurers are required to remove within 30 days of receiving the forwarded service of process from the Chief Financial Officer. Removal of cases from Florida state courts is governed by the United States Code §1441, which states: *"Except as otherwise expressly provided by Act of Congress, any 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."* The procedure for removal of cases is governed by the United States Code §1446, stating in relevant part: "(a) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter."[5] The U.S. Supreme Court in *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 119 S. Ct. 1322 (1999), stated that regardless of any other issue, the 30 day removal time period cannot be triggered for a complaint removable on its face until a defendant has been served with legal process.[6] When service is effected on a statutory agent, rather than directly on the defendant, the time to remove the action to federal court does not start to run until the defendant actually receives a copy of the complaint.[7] The defendant is said to receive the complaint when the statutory agent (in this case the Chief Financial Officer) transmits the complaint and the defendant receives this transmittal: "The time for removal, in cases in which service is made on a statutory agent, runs from receipt of the pleading by the defendant rather than the statutory agent."[8] A clear majority of district courts addressing this issue have supported the reasoning that the time for removal is initiated upon receipt by the defendant, or the defendant's designee, of transmittal of service from the Chief Financial Officer. For example, in *The Meadows Springlake Condo. Ass'n, Inc. v. Allstate Ins. Co.*, 2006 WL 2864313 (M.D. Fla. 2006), the court held that the 30 day period for removal begins when a defendant receives the complaint and summons from the Florida Chief Financial Officer. In *Meadows*, the plaintiff served the summons and complaint on June 7, 2006 on the Chief Financial Officer of the State of Florida, who serves as agent for all insurers in the state for service of process. *Id.* On June 9, 2006, the Chief Financial Officer sent Allstate's designee a copy of the plaintiff's complaint via certified mail. On June 13, 2006, Allstate's designated agent for Florida received the plaintiff's legal process. The court's reasoning cited that: *"When a statutory agent is served, the clock for removal does not begin ticking as it would if defendant itself had been served but rather starts when defendant receives actual notice of the service from the*

statutory agent."[9] So the 30 day period did not start running until June 13, 2006. Thus, according to *Meadows*, the 30 day removal period does not start running until the insurer receives transmittal of service of process from the Florida Chief Financial Officer. Id. In conclusion, the 30 day time limit for removal does not start for a complaint, removable on its face, until the defendant is served. Insofar as insurers are concerned, the defendant insurer is considered "served" when 1) the plaintiff effects service of process on the statutory registered agent: the Florida Chief Financial Officer and; 2) the insurer receives transmittal of service from the Florida Chief Financial Officer.

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[1] *Confederation of Canada Life Ins. Co. v. Vega & Arminan*, 144 So. 2d 805 (Fla. 1962) (Providing that the legislature could validly require that service upon the (formerly) Commissioner as authorized agent shall be the sole method of service upon an authorized insurer -- domestic or foreign. Service of process is now to be served upon the Chief Financial Officer.) *see also Kephart v. Pickens*, So. 2d 163 (Fla. 4th DCA 1972) (Service of process in civil action on insurer which was a foreign corporation authorized to transact business in state was valid where service complied with § 624.422 which pertained to appointment of insurance commissioner as process agent). [2] Chief Financial Officer was formerly known as "Commissioner." [3] We can look to the following federal case on point for interpretation of this Florida Statute: *Dunn v. Prudential Insurance Company of America*, 2011 WL 52867 (M.D. Fla. Jan 7, 2011) (Holding that the Chief Financial Officer may, in lieu of sending the process by registered or certified mail, send process electronically via e-mail to the last person designated to receive the process). [4] Rule 1.140 of the Rules of Civil Procedure, providing that a defendant shall serve his answer within 20 days after service of original process, does not supersede this section providing that where process is served upon insurance commissioner as an insurer's process agent, insurer shall not be required to answer or plead except within 20 days after date upon which commissioner mailed a copy of process served on him to insurer. *American Liberty Ins. Co. v. Maddox*, 238 So. 2d 154 (Fla. 2nd DCA 1970). [5] *Faulk v. Superior Indust. Int'l, 851 F. Supp. 457, 458 (D. Fla. 1995).* [6] In *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*., Michetti, a Canadian corporation, was sued in Alabama state court by Murphy, an Illinois corporation, for breach of contract and fraud. Though suit was filed, Murphy did not serve Michetti initially, but did send counsel a courtesy copy of the complaint. When negotiations failed, service was perfected. Michetti removed the action based on diversity jurisdiction on the 30th day after service, but 44 days after receipt of the courtesy copy of the complaint. Murphy moved for a remand due to untimeliness under 28 U.S.C. §1446(b) which provides for the 30 day limitation. The Supreme Court rejected Murphy's position and held that the 30 day time period for removal under §1446(b) does not begin to run **until actual service on the defendant**. [7] *Hibernia Cmty. Dev. Corp. v. U.S.E. Comty. Servs. Group, 166 F. Supp. 2d 511, 513 (D. La. 2001).* (not controlling Florida law, but we can look to federal cases for interpretation of the federal statute). [8] *Lilly v. CSX Transp., Inc.*, 186 F. Supp.2d 672, 674 (D.W. Va. 2002). [9] Citing *Wilbert v. Unum Life Ins. Co.*, 981 F. Supp. 61, 63 (D. R. I. 1997).