

TEXAS INSURANCE LAW NEWSBRIEF

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SOUTHERN DISTRICT ABATES LAWSUIT FOR PLAINTIFF'S FAILURE TO COMPLY WITH NEW INSURANCE CODE SECTION 542A.003 NOTICE LETTER REQUIREMENTS

Last week, the U.S. District Court for the Southern District of Texas applied the pre-suit notice provisions of Section 542A.003 of the Texas Insurance Code and abated a lawsuit claiming property damage from Hurricane Harvey. In *Jose Luis Perrett v. Allstate Insurance Company*, No. 4:18-CV-01386, 2018 WL 2864132 (S.D. Tex. June 11, 2018), the insured sued Allstate Insurance Company alleging violations of the Texas Deceptive Trade Practices Consumer Protection Act, the Texas Insurance Code, and breach of contract related to a claim arising from Hurricane Harvey. After Perrett filed in state court Allstate timely removed.

On October 10, 2017, Perrett's counsel sent Allstate a letter alleging that Allstate violated the Texas Insurance Code and the Texas Deceptive Trade Practices Act. Allstate moved to abate under § 542A.003 of the Texas Insurance Code, which requires plaintiffs seeking damages to give prior written notice of the complaint and the damages, including fees, "not later than the 61st day before the date a claimant files an action." Allstate argued that Perrett's notice did not include "a statement of the acts or omissions giving rise to the claims and the amount of reasonable and necessary attorney's fees incurred by the claimant" or a statement that a copy of the notice was provided to the claimant. Perrett argued that the notice satisfied the statutory requirements.

Judge Rosenthal found that although the notice letter satisfied the requirements in § 542A.002(b), it did not satisfy § 542A.003(c)'s requirement that "[i]f an attorney or other representative gives the notice required under this section on behalf of a claimant, the attorney or representative shall: (1) provide a copy of the notice to the claimant; and (2) include in the notice a statement that a copy of the notice was provided to the claimant." Perrett did not respond to Allstate's argument that the notice letter did not contain a statement that the letter was provided to Perrett. And because the letter did not satisfy this requirement, the case was abated until 60 days after Allstate receives proper written notice and Perrett was ordered to provide proper notice by June 18, 2018.

DALLAS COURT OF APPEALS FINDS STATUTE OF LIMITATIONS ON INSURANCE CLAIMS BEGINS WHEN A CLAIM IS CLOSED

Last Thursday, the Dallas Court of Appeals upheld a summary judgment granted in favor of an insurer for a suit filed after the applicable statute of limitations. In *Jackson v. Gainsco Inc./Gainsco Auto Insurance*, et al, No. 05-16-01190-CV, 2018 WL 2979960 (Tex. App.—Dallas June 14, 2018) (slip op.), Alberta Jackson filed a lawsuit against Gainsco for uninsured motorist coverage related to a "hit and run" accident.

On January 27, 2013, Jackson was involved in a motor vehicle collision. She contended that this was a "hit and run" accident with an uninsured motorist. Jackson's vehicle was covered by an Auto Policy issued by Gainsco. Her policy included collision coverage, rental car reimbursement, and comprehensive uninsured/underinsured motorist coverage. Jackson reported the collision and vehicle damages to Gainsco. Gainsco completed its claim investigation and closed its investigation file on May 20, 2013. Jackson's vehicle was in the body shop for approximately six weeks and Jackson alleged that Gainsco did not pay the body shop the full amount of the repairs. On March 25, 2013, Jackson sued Gainsco in the 191st District Court of Dallas County, Texas. Jackson sought declaratory relief regarding her uninsured motorist coverage and also alleged that Gainsco breached its duty of good faith and fair dealing by refusing to timely pay her claim for vehicle repairs and rental car expenses. After Gainsco moved for summary judgment, Jackson voluntarily dismissed the first lawsuit. On May 22, 2015, Jackson again sued Gainsco, this time in the County Court at Law No. 4 of Dallas County, Texas. In this second lawsuit, Jackson claimed breach of the duty of good faith and fair dealing under the Insurance Code and Deceptive Trade Practices Act (DTPA). Gainsco filed a motion for summary judgment on the grounds that Jackson's claims were barred by the two-year statute of limitations. The trial court granted summary judgment and an appeal followed.

The appellate court found that under Texas law, claims against insurers asserting a cause of action for breach of the duty of good faith and fair dealing accrue upon (1) the written denial of the claim or (2) some other indication of the insurer's position that it was not going to provide the requested coverage. In this case, the court found that Gainsco closing its file provided an "objectively verifiable event that unambiguously demonstrated intent not to pay the claim and triggered the limitations period." Thus, the statute of limitations period began when the claim file was closed. Summary judgment was proper as the second lawsuit was filed more than two years after the causes of action accrued.