

TEXAS INSURANCE LAW NEWSBRIEF

JUL 24, 2019

FEDERAL JUDGE DENIES MOTION TO REMAND AFTER PLAINTIFF FAILED TO STIPULATE WITH LEGAL CERTAINTY THAT DAMAGES WILL NOT EXCEED \$75,000

Last week, a Houston federal judge denied a motion to remand because the insured failed to stipulate that his damages will not exceed \$75,000. In *Abascal v. United Property and Casualty Insurance Company*, No. 4:18-CV-03930, 2019 WL 3229174, (S.D. Tex., July 19, 2019) the Plaintiff filed suit over property damage from Hurricane Harvey. Plaintiff's insurer partially denied his claim. Plaintiff subsequently filed suit in state court stating in his Original Petition that damages would not exceed \$75,000. The Defendant insurer timely removed the case to federal court on diversity grounds. Plaintiff filed a Motion to Remand arguing that remand is proper because he stated in his Original Petition that he "will never ask, receive, or take a judgment for any amount exceeding \$75,000." The Defendant argued that the statement does not qualify as a binding stipulation and that the Original Petition demonstrates on its face that the amount in controversy exceeds \$75,000.

The Court began its analysis by noting that even though Plaintiff's original pleading contained a statement regarding damages, Texas law does not permit a Plaintiff to simply plead that damages will not exceed \$75,000. Further, when seeking to remove a case a Defendant can show that it is apparent from the face of the pleading that the claims are likely to exceed the jurisdictional amount. In this case, Plaintiff alleged that he incurred economic damages of \$19,303.41 plus treble damages, eighteen percent penalty interest, attorney's fees, court costs, "punitive and exemplary damages" for alleged violations of the Texas Insurance Code, fraud, and breach of good faith and fair dealing. Finally, the Court noted that a Plaintiff must file an affidavit or a stipulation along with the Original Petition in order to show with certainty that the claim is less than the jurisdictional amount. Based on this analysis, the Court denied the motion to remand because Plaintiff's claims on the face of the original pleading exceeded \$75,000 and no binding stipulation was filed as to damages.