

THOUGHT LEADERSHIP

News

## HOUSTON FEDERAL COURT EXAMINES WHEN A FOREIGN INSURER CAN BE SUED IN TEXAS

Newsbrief

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On March 31st, Federal District Court Judge Lee Rosenthal from Houston issued a lengthy pair of opinions dismissing claims brought by a foreign company against a foreign insurance carrier, a related domestic entity, and individual defendants. In *Air Tropiques, SPRL v. Northern & Western Ins. Co. Ltd., et. al.*, cause No. 4:13-cv-0148 (S.D. Tex. March 31, 2014), the court granted motions to dismiss under Fed. R. Civ. P. 12(b)(2), 12(b)(6) and 9(b).

This case was a first party coverage dispute which included allegations of fraud, conversion, violations of the Texas Insurance Code, the Texas Prompt Payment Statute, and breaches of the duties of good faith and fair dealing. Plaintiff Air Tropiques provides airplane charter services and is organized under the laws of the Democratic Republic of Congo. Plaintiff sued Northern & Western Ins. Co., an insurance company organized under the laws of the Federation of St. Kitts & Nevis. Air Tropiques also sued Supra Management Solutions, Inc. (formerly known as NWIC Management Corp, a Texas entity (and related to NWIC). Finally, Air Tropiques also sued the President of NWIC and the Senior Vice President of NWIC Management, individually.

Air Tropiques owned a 1972 Beechcraft King Air 100 aircraft which was insured by NWIC for a time. The insurance policy was brokered overseas through a foreign broker and agent. On December 4, 2011, the aircraft crashed while attempting a landing at Point Noire Air Port in the Republic of Congo. After reporting the accident, the parties disputed choice of law and the aircraft's value. While Air Tropiques initially demanded arbitration, it ultimately sued all the parties in Texas.

Plaintiff asserted the court had jurisdiction over Defendants because underwriting and claims handling activity occurred through NWIC Management and/or NWIC's administrative office in Texas. Defendants moved to dismiss claims against all Defendants. After extensive briefing, the court issued opinions *granting* motions to dismiss under Fed. R. Civ. P. 12(b)(2), (6) and 9(b).

While the court noted NWIC conducted some activity in Texas, it did not insure any property in Texas and NWIC directed all communications, including underwriting communications outside the state regarding insured property in Africa. After acknowledging a nonresident entity could structure its conduct so as to avoid being brought into court in a particular state, the court analyzed and applied the recent Supreme Court of the United States opinion in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (U.S. 2011).

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The court held that in order to establish personal jurisdiction over a foreign corporation, that corporation's contacts with the forum must be continuous and systematic such that the company is "...essentially at home in the forum state" The court held it is the parent corporation's home, and not its subsidiary's corporate home, which must be considered in this analysis. Likewise, activity and communication emanating from, but directed outside Texas, did not create any foreseeable Texas consequences sufficient to create personal jurisdiction. The court dismissed NWIC based on Fed. R. Civ. P. 12(b)(2).

As to other defendants, the court dismissed fraud allegations under Fed. R. Civ. P. 9(b). The court also dismissed claims related to agency and alter ego theories of recovery, including claims for breach of contract and conversion. The court dismissed all claims against NWIC Management and the individual defendants under Fed. R. Civ. P. 12(b)(6) for failing to state claims.

The court granted Plaintiff leave to amend by April 25, 2014, however, in a further significant ruling, the court held that English law applied to the dispute. In light of this, the court dismissed the Texas-based claims under the DTPA and insurance code. Finally, the court charged the Plaintiff with re-pleading to "... make clear the effect of the parties' agreement that English law applies and what claims are asserted under English law."

**[Editor's Note:** Martin, Disiere, Jefferson & Wisdom's attorneys Chris Martin, Barrie Beer and Greg Finney represented all Defendants in this action and wish to congratulate our clients on this significant ruling and thank them for the opportunity to represent them in this matter.]