

THOUGHT LEADERSHIP

News

MINIMUM FACTUAL ALLEGATIONS SUFFICIENT TO DEFEAT REMOVAL IN NORTHERN DISTRICT PROPERTY DAMAGE CLAIM

Newsbrief

15 AUG 2017

Recently, the United States District Court for the Northern District of Texas ruled that an insured plaintiff's new allegations against an insurance adjuster were sufficient to mandate remand back to state court despite the fact the court previously concluded that the adjuster had been improperly joined. In *Hutchins Warehouse Limited Partners v. American Automobile Insurance Company*, 2017 WL 2691315 (N.D. Tex. 2017), the insured sued AAIC and its adjuster in Texas state court after a tornado caused damage to its property. AAIC promptly removed the action to federal court. In response, the insured filed a motion to remand the action to state court, but AAIC successfully argued that its adjuster McMillan had been improperly joined solely to defeat diversity jurisdiction. Based on the facts in the insured's original petition, the court agreed. As a result, the lawsuit remained in federal court.

Undaunted, the insured filed an amended petition containing new allegations and new causes of action against AAIC's adjuster. The court then examined whether the new facts were sufficient to state a viable claim against the in-state defendant adjuster, mandating remand back to state court. In doing so, the court used a plaintiff-friendly standard, noting that it "need not decide whether [the insured] has sufficiently pleaded each cause of action; rather, if the court finds a reasonable basis to predict that it can potentially recover on any of these causes of action, the court must remand the entire case." With that principle in mind, the court found the new petition stated potentially viable claims. Specifically, the court found allegations that the adjuster "misrepresented material facts related to the coverage at issue," conducted an outcome-oriented investigation, and refused to provide an estimate for certain damages sufficient to show potential violations of Chapter 541 of the Texas Insurance Code. The feasible claims against the in-state defendant adjuster defeated diversity jurisdiction and caused the judge to remand the lawsuit back to state court.