

THOUGHT LEADERSHIP

News

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

Newsbrief

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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.