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News

SOUTHERN DISTRICT OF TEXAS INTERPRETS FEDERAL QUESTION JURISDICTION REGARDING NFIA PREEMPTION FOR HURRICANE HARVEY CLAIMS

Newsbrief

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Last week, the United States District Court addressed a key jurisdictional issue regarding National Flood Insurance Act preemption of claims stemming from Hurricane Harvey. In *Alexander v. Woodlands Land Development Co. L.P., et. al*, 2018 WL 4242451, H-18-2291 (S.D. Tex., Sep. 6, 2018), 486 plaintiffs sued the Woodlands Land Development Company L.P., The Howard Hughes Corporation, LJA Engineering, Inc. and James R. Bowls for negligence, gross negligence and violations of the Texas Deceptive Trade Practices resulting from the design and development of the residential community of Timarron Park in Tomball, Texas. Plaintiffs allege that when the development was planned, it was located within a FEMA 500 year floodplain and, despite a 1994 storm exceeding the 500 year floodplain, the developers did not reduce the likelihood of flooding. Plaintiffs contend that, as a result, following Hurricane Harvey in the summer of 2017, they were displaced from their homes and will endure months and years of repairs.

Defendants removed the matter to Federal court asserting federal question jurisdiction in that Plaintiffs' claims were preempted by federal law or raise disputed and substantial federal issues based on FEMA's determination of flood plains. Plaintiffs moved to remand the case back to state court on the basis that their claims did not invoke federal question jurisdiction.

The court noted that the presence of a federal question is measured under the well-pleaded complaint rule—considering if the federal question is presented on the face of plaintiffs' properly pleaded complaint. However, an exception to the rule is the complete preemption doctrine which converts a state law claim into a federal claim when the federal statute “so forcibly and completely displace[s] the state law that plaintiff’s cause of action is either wholly federal or nothing at all.”

Addressing preemption, the Court rejected defendants' arguments that plaintiffs were actually challenging FEMA's statutorily-mandated floodplain determinations, and because the National Flood Insurance Act is the sole basis to challenge the determinations, plaintiffs' claims were preempted. Instead, the Court observed that plaintiffs' claims did not arise out of the handling or disposition of federal flood insurance policies and found no authority that the NFIA creates a cause of action that replaces and protects state tort claims, thereby preempting plaintiffs' claims of

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negligence, gross negligence and DTPA violations.

Lastly the Court addressed the issue of substantial federal question, concluding that since plaintiffs' allegations were failure to conform to the standard of care applicable to professional engineers and developers (which are duties under state law), it was unnecessary to resolve any federal issues to decide the causes of action. Furthermore, because plaintiffs attacked the issues of the engineers/developers' judgment and representations and not the FEMA floodplain determinations, the Court found that there was no disputed and substantial federal issue. Finally, the Court concluded that Texas courts have an interest in deciding professional negligence and Texas DTPA claims.

Because plaintiffs did not allege federal causes of action under the NFIA and plaintiffs' negligence and DTPA claims were created by state law, the court granted plaintiffs' motion to remand.