Supreme Court of Texas

No. 23-0782

In re The Lubbock Independent School District,
Relator

On Petition for Writ of Mandamus

PER CURIAM

Justice Devine did not participate in the decision.

The Texas Insurance Code requires an insured who makes a claim for property damage caused by hail or other "forces of nature" to give the insurer pre-suit notice that includes "the specific amount alleged to be owed by the insurer on the claim." TEX. INS. CODE §§ 542A.001-.003. If the insured files suit without having provided the required notice, the trial court must grant an uncontroverted motion to abate the action until sixty days after the insured complies. *Id.* § 542A.005. An insured who fails to provide the required notice or whose notice over-estimates the amount owed may be unable to recover the full amount of its attorney's fees. *Id.* § 542A.007.

The insured in this case, The Lubbock Independent School District, sent a pre-suit notice to numerous insurance companies that provided the District with layers of coverage during two separate

storms. Without distinguishing between the insurers or the storms, the single notice stated that the "specific amount alleged to be owed" was $20 million "in actual damages (less any amounts you paid, if any, and any applicable deductible)." It then stated, "It is likely that the damages ultimately sought at trial will be well in excess of the damages that have been identified to date because our investigation is not complete, and we do not yet know the full extent of coverages." After filing suit, the District estimated in its initial disclosures that the covered damages would range from $100 million to $250 million.

The insurers sought an abatement, asserting that the notice failed to comply with the statute's requirements. The trial court denied the abatement, but the court of appeals granted the insurers' petition for writ of mandamus, requiring the trial court to grant the abatement. *In re Westchester Surplus Lines Ins. Co.*, __ S.W.3d __, 2023 WL 4488269, at *4-5 (Tex. App.—Amarillo July 10, 2023).[1] The appellate court concluded that the statute "does not permit claimants to generally allege *any* amount of money, but" instead requires the notice "to state '*the specific amount*' allegedly owed by each insurer for each claim." *Id.* at *3-4. More particularly, the court held that the statute "does not permit a claimant to equivocate, or suggest an estimate, or offer a placeholder sum that might be changed after further investigation takes

[1] One insurer filed a separate mandamus petition, and the court of appeals granted relief for that insurer "for the same reasons as those articulated in *In re Westchester*." *In re James River Ins. Co.*, No. 07-22-00357-CV, 2023 WL 4487722, at *1-2 (Tex. App.—Amarillo July 10, 2023, orig. proceeding). The District filed a separate mandamus petition in this Court, which we also deny today. *See In re Lubbock Indep. Sch. Dist.*, No. 23-0970.

place," but instead requires the notice to "clearly articulate" the "precise sum alleged to be owed." *Id.* at *4.

We have not previously construed the statute's "specific amount" requirement, but several federal courts have. Contrary to the court of appeals' holding in this case, the federal courts have consistently held that the "specific amount" language requires only that the notice assert a specific dollar amount, not that it must provide a "fixed and final total dollar sum" that is free from estimate and can never change.[2] This

[2] *See Montiel v. Allstate Vehicle & Prop. Ins. Co.*, No. 2:23-CV-186-Z-BR, 2024 WL 1184424, at *5 (N.D. Tex. Mar. 19, 2024) (holding statute merely requires notice to state a specific dollar amount that "could be subject to change in the future"); *Burke v. Liberty Mut. Ins. Co.*, No. 4:23-CV-1839, 2024 WL 197639, at *3 (S.D. Tex. Jan. 18, 2024) (holding amount stated in notice need not "necessarily" be the "final amount owed"); *611 Carpenter LLC v. Atl. Cas. Ins. Co.*, No. 1:23-CV-00867-DII, 2023 WL 8481022, at *4 (W.D. Tex. Dec. 7, 2023) (holding notice need only state a specific dollar amount, which may be an "estimate" and need not be a "fixed and final total dollar sum"), *report and recommendation adopted*, No. 1:23-CV-00867-DII, 2024 WL 270192 (W.D. Tex. Jan. 23, 2024); *Combs v. Allstate Tex. Lloyd's*, No. 4:23-CV-02901, 2023 WL 8237268, at *2 (S.D. Tex. Nov. 27, 2023) ("The statutory language does not mandate that the notice letter contain a fixed and final total dollar sum allegedly owed by the insurer."); *Koncak v. Am. Sec. Ins. Co.*, No. 3:22-CV-1160-G, 2023 WL 51035, at *2 (N.D. Tex. Jan. 3, 2023) ("Even if the pre-suit demand letter's specific amount was an estimate and 'vague and ambiguous' as [the insurer] contends, that does not render the notice invalid under section 542A.003(b) because the letter alleges an amount to be owed."); *Mount Canaan Missionary Baptist Church v. Westchester Surplus Lines Ins. Co.*, No. 4:19-CV-00660, 2019 WL 13114309, at *5 (S.D. Tex. Aug. 14, 2019) ("That the specific amount alleged was not necessarily the final amount owed may affect the merits arguments at a later juncture in the lawsuit, but did not deprive [the insurer] of the statutory notice owed to it under Section 542A.007(d)."). Addressing a related but different issue, some courts have held that providing an estimate to the insurer before the insurer makes a coverage decision does not qualify as a pre-suit notice because the insured's legal claim does not arise until the insurer denies coverage. *See, e.g.*, *Henry v. Nationwide Prop.*, No. CV H-23-2488, 2023 WL 6049519, at *3 (S.D. Tex. Sept. 15, 2023); *Gilbane Bldg.*

construction appears to be most consistent with the statute as a whole, in light of its provisions suggesting that the amount awarded may vary from the amount stated in the notice.[3]

We need not actually decide that issue, however, because we agree that the District's notice was inadequate because it failed to separately state the amount alleged to be owed by each insurer and for each claim arising from the two separate storms. *See* 2023 WL 4488269, at *4-5. As the court explained, the statute requires the notice to provide "the specific amount alleged to be owed by *the insurer* on *the claim*." TEX. INS. CODE § 542A.003 (emphases added); 2023 WL 4488269, at *3-4. We agree that the District's single notice to all insurers failed to satisfy these requirements.

We therefore deny the District's mandamus petition, but our decision should not be read as an approval of the court of appeals' construction of the statute's "specific amount" requirement.

OPINION DELIVERED: October 25, 2024

Co. v. Swiss Re Corp. Sols. Elite Ins. Co., No. CV H-22-2369, 2023 WL 2021014, at *2 (S.D. Tex. Feb. 15, 2023).

[3] *See, e.g.*, TEX. INS. CODE §§ 542A.003(h) ("The giving of notice under this chapter does not provide a basis for limiting the evidence of attorney's fees, damage, or loss a claimant may offer at trial."), .007 (acknowledging for purposes of calculating attorney's fees that amount awarded may vary from amount stated in pre-suit notice).