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TX Supreme Court: Insureds' Pre-Suit Notice Must Specify Amounts for Each Insurer and Claim

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The Texas Supreme Court's **recent ruling** could tighten notice requirements for insureds before they can file suit against multiple carriers for multiple claims. In a suit concerning claims from multiple storms, policy periods, and insurers, the Court ruled the insured must give notice of the amount allegedly owed by each insurer for each claim. The decision could have major implications for Texas insurers, especially excess carriers and those involved in market policies.

In first-party insurance claims for property damage caused by forces of nature such as wind or hail, the Texas Insurance Code requires the claimant to give the insurer pre-suit notice of its intent to file suit. This pre-suit notice must provide certain information, including the "specific amount alleged to be owed by the insurer on the claim for damage to or loss of covered property." If the claimant fails to provide proper pre-suit notice, then the insurer is entitled to an abatement and the court "may not" award the claimant any attorney's fees.

The insured in *Lubbock* made a claim for storm events occurring in 2019 and 2020 and sent a pre-suit notice letter to counsel for several insurers. The pre-suit notice identified nearly 20 insurers, stating a total of $20 million was owed, "less any amounts you paid, if any, and any applicable deductible." This amount did "not necessarily include all of the damages" to which the insured claimed to be entitled. It did not specify how much each individual insurer allegedly owed on either claim. The notice further stated the insured "cannot and will not resolve this dispute" for the amount stated in the letter.

The insured then filed suit against the insurers, including the excess carriers in the insurance towers. In discovery, the insured alleged its damages were as high as $250 million, more than ten times the amount of the pre-suit demand. The insurers responded by filing pleas in abatement, arguing the pre-suit notice was deficient, which the trial court denied. The insurers petitioned the Amarillo Court of Appeals for a writ of mandamus. The appellate court vacated the trial court's decision and rendered an order abating the underlying suit until the 60th day after the insured gave proper pre-suit notice.

The appellate court found three defects in the pre-suit notice. First, the insured's notice failed to state the "**specific**" amount because the insured would not resolve the dispute for the claimed amount. Second, while there were two alleged occurrences in two separate years, the notice did not say whether the insured sought to recover for one or both of these events.

Third, the notice failed to provide notice of the amounts each particular insurer owed. This was problematic because excess carriers' "potential liability is only triggered after the primary insurers and all lower layers have exhausted their policy limits." A pre-suit notice of $20 million was insufficient to put certain excess carriers on notice of any amounts

allegedly owed because this amount did not exhaust all lower policy layers necessary to reach the excess carriers' attachment points.

The insured then petitioned the Texas Supreme Court for a writ of mandamus, asking the Court to vacate the Amarillo Court of Appeals' decision. The Texas Supreme Court declined. Although it did not rule on the issue, the Court disagreed with the appellate court's analysis of the "specific amount" requirement. The Court nonetheless affirmed, finding the insured's pre-suit notice was defective for failing "to separately state the amount alleged to be owed by each insurer and for each claim arising from the two separate storms."

The Takeaway and Best Practices Moving Forward

The full extent of *Lubbock*'s application is yet to be seen, but a straightforward application of *Lubbock* may have far-reaching results. Two scenarios warrant specific attention.

First, the ruling could impact claims involving excess insurers, like in *Lubbock*. The appellate court found the excess carriers were not properly notified because the $20 million demand did not reach the excess carriers' attachment points. While not discussed in detail in *Lubbock*, it is possible the notice's flaw was that it was too small. If sufficient amounts were demanded which reached all excess carrier's attachments points, the notice may have been sufficient.

Applying the plain language of *Lubbock's* holding, however, in a hypothetical claim against a $100 million tower of insurance, a notice to all insurers claiming a lump sum of $100 million is still improper. The notice must state the amount alleged to be owed by each insurer to notify "*the* insurer" on the claim. A narrower reading could suggest the key deficiency is that the notice did not delineate between the two claims under different policy periods. Whether *Lubbock* requires notice to be given individually to each insurer in a tower of insurance is yet to be realized by the lower courts, although the Texas Supreme Court's holding supports such a requirement.

Second, *Lubbock* could affect cases involving market policies where several insurers subscribe to different percentages of the risk. *Lubbock's* holding strongly indicates that the insured must identify its claim against *each* of the market insurers and identify the amount the insured alleges *each insurer* owes on the claim. However, this could create questionable results in practice. For example, if a demand of $100 is propounded on the entire market collectively, then an insurer subscribing to 5% of the policy already knows that the amount claimed against them is only 5%, or $5.

The clearest takeaway is that, to properly give notice for multiple loss events, the pre-suit notice must identify what amounts the insured is claiming for each event. Where multiple insurers are involved, whether in the case of excess carriers or market policies, *Lubbock*'s holding strongly indicates insureds must give pre-suit notice to each insurer identifying the amount each allegedly owes.

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