

# TEXAS INSURANCE LAW NEWSBRIEF

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## FIFTH CIRCUIT APPLIES MENCHACA DECISION, AFFIRMS DISMISSAL OF HOMEOWNER'S CONTRACTUAL AND EXTRA-CONTRACTUAL CLAIMS

Last week, the Fifth Circuit Court of Appeals issued a decision upholding the dismissal of contractual and extra-contractual claims against Allstate Texas Lloyds. In *Glen Moore v. Allstate Texas Lloyds*, No. 17-10904, 2018 WL 3492818 (5th Cir. July 19, 2018), the insured brought an action against Allstate asserting claims for breach of contract and violations of the Texas Insurance Code arising from a storm claim on a residential policy. The insured sued Allstate in state court asserting breach of contract and extra-contractual claims. Allstate removed the action to the Northern District of Texas, and the district court ordered the parties to file amended pleadings. The insured filed an amended complaint and Allstate moved to dismiss under the Federal Rules of Civil Procedure. The district court granted Allstate's motion dismissing all claims, and the insured appealed.

The insured alleged that his property "suffered incredible damage due to storm related conditions." He filed a claim with Allstate, and Allstate inspected the property three times and found no covered damage to the property. On appeal, the insured argued that his amended pleading contained sufficient facts to support a breach of contract claim. The insured further argued that in the recent *USAA Texas Lloyds v. Menchaca* decision, the Texas Supreme Court established that if statutory violations cause an injury that is independent from breach of contract, then a plaintiff can recover even if the policy does not provide benefits. The insured further contended that the independent-injury rule does not reflect a "pleading requirement."

The court began by concluding that the district court properly granted the motion to dismiss on the contractual claims because the amended pleading did not provide sufficient facts. Specifically, the court noted that a factual assertion that Allstate's settlement did not match the insured's public adjuster is not enough in itself to support a breach of contract claim. The court then found the trial court properly dismissed the extra-contractual claims as well. The insured argued that the independent-injury rule should allow his claims to continue, even absent a contractual claim. The court disagreed and found that the insured misread *Menchaca* because in that case the Texas Supreme Court found the independent-injury rule does not apply if the damages flow or stem from the denial of policy benefits. The court concluded that the insured's extra-contractual claims in this case were predicated on the loss being covered. Thus, because the insured failed to state claim for breach of contract, his extra-contractual claims must also fail. The trial court's dismissal was affirmed.

## EASTLAND COURT OF APPEALS UPHOLDS RULE THAT TEXAS IS NOT A DIRECT ACTION STATE

The Texas Court of Appeals for Eastland recently upheld the rule that Texas is not a direct action state and applied the rule to suits seeking a declaratory judgment. In *Randy Durham v. Hallmark County Mutual Insurance Company*, No. 11-16-00183-CV, 2018 WL 3469257 (Tex. App.— Eastland, July 19, 2018) Durham added Hallmark to a personal injury suit seeking a declaratory judgment that the alleged tortfeasor was covered under a Hallmark policy. After being added as a Defendant to the personal injury lawsuit, Hallmark filed an answer in which it denied that Durham was an insured or third-party beneficiary under the policy or a judgment creditor of the insured. Hallmark then filed a Motion for Summary Judgment and Motion to Dismiss for Lack of Jurisdiction. The trial court granted both parts of the motion for summary judgment and the plea to the jurisdiction and severed and dismissed Hallmark from the primary suit. Durham appealed.

The court began its analysis by noting that the general rule in Texas is that a personal injury Plaintiff cannot sue the tortfeasor's insurer unless they first obtain a judgment that reflects the tortfeasor's liability. Durham argued that a direct claim for a declaratory judgment is allowed and cited to cases in which an insurer brought a declaratory judgment on its own duty to defend. The court rejected this argument and held that because a third-party claimant's claims regarding an insurer's coverage are not ripe for adjudication until a judgment is obtained establishing the insured's liability, the trial court did not err when it granted Hallmark's motion for summary judgment and motion to dismiss.