

THOUGHT LEADERSHIP

News

FEDERAL DISTRICT COURT DISMISSES ALL CLAIMS AGAINST INSURER IN HURRICANE IKE LAWSUIT

Newsbrief

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Recently, Judge Melinda Harmon (Federal District Court Judge from the Southern District of Texas) dismissed all claims brought against Allstate Texas Lloyds' arising from alleged non-payment of insurance benefits for damage to Judy Hudgens' home caused by Hurricane Ike, including claims of breach of contract, fraud, unfair settlement practices, noncompliance with the prompt payment provisions of the Texas Insurance Code, and breach of the duty of good faith and fair dealing. See *Hudgens v. Allstate Texas Lloyd's*, C.A. No. H-11-2716, 2012 WL 2887219 (S.D. Tex. July 13, 2012).

On Allstate's motion to dismiss, the court dismissed Hudgens' claims of common law fraud, breach of duty of good faith and fair dealing, and violations of the Texas Insurance Code because she failed to meet the pleading standards and she had already had "two bites of the apple" in filing two pleadings. As examples of pleading deficiencies, the court noted Hudgens did not provide any facts that show that Allstate's liability was reasonably clear, that her claims were covered under particular provisions of the policy, what Allstate knew at the time it denied her claims, any proposed settlement within the policy limits that Allstate failed to effectuate, why and how Allstate's payments were unreasonably delayed, or where its investigation was not reasonable.

The court also granted Allstate's motion for summary judgment on Hudgens' breach of contract claim. Allstate submitted evidence proving that Hudgens voluntarily invoked the appraisal provision in the policy, that she and Allstate each appointed appraisers, and that a binding appraisal award issued on the claim that was signed by both appraisers. Allstate paid Hudgens the amount of the appraisal award after subtracting the deductible and amounts previously paid and Hudgens accepted that payment. Hudgens argued in response that the appraisal award should be set aside. The court found she failed to produce any evidence showing the grounds required to set aside an appraisal award and granted summary judgment. The most recent ruling dismissed all of the insured's remaining extra-contractual claims.