

THOUGHT LEADERSHIP

News

FOREIGN CORPORATIONS NOT REGISTERED WITH THE TEXAS SECRETARY OF STATE MAY MAINTAIN A LAWSUIT IN TEXAS IF THEY POSSESS AN ACTIVE LICENSE WITH THE TEXAS DEPARTMENT OF INSURANCE

Newsbrief

24 JAN 2013

Last Monday, the District Court for the Northern District of Texas denied a motion to dismiss filed against Arch Insurance Company (“Arch”) in *Arch Ins. Co. v. WM Masters and Associates, Inc. et al.*, Civil Action No. 3:12-cv-2092-M, 2013 WL 145201, (N.D. Tex., Jan. 14, 2013). Arch brought a diversity action against WM Masters and Associates, Inc. (“WM Masters”) to enforce provisions of a general indemnity agreement between the parties. WM Masters argued that Arch, as a foreign corporation, cannot maintain a lawsuit in Texas because under the Texas Business Organizations Code (“TBOC”) Arch was not registered with the Texas Secretary of State to conduct business.

Section 9.051 of the TBOC expressly precludes a foreign corporation which is transacting business in Texas, without a certificate of authority from the Texas Secretary of State, from obtaining affirmative relief in Texas courts on any matter arising out of the transaction of intrastate business. It is important to note that foreign corporations may maintain a cause of action in Texas courts arising from the transaction of *interstate* business without a certificate of authority.

The court found section 9.002 of the TBOC persuasive in that a foreign entity is not required to register under the TBOC if another Texas law authorizes the entity to transact business in Texas. The Court looked for further guidance in the Texas Insurance Code and concluded that Arch possessed an active license from the Texas Department of Insurance (“TDI”) to engage in the business of issuing insurance in Texas pursuant to Tex. Ins. Code § 982.052. Ultimately, the court held that Arch was not precluded under the TBOC from maintaining its action to enforce a general indemnity agreement against WM Masters.