

THOUGHT LEADERSHIP

News

COURT OF APPEALS AFFIRMS SUMMARY JUDGMENT IN FIRST PARTY CASE ALLEGING FRAUD BASED ON CHANGE IN CLAIMS-HANDLING PRACTICES

Newsbrief

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On Thursday, the Corpus Christi Court of Appeals affirmed summary judgment in favor of Allstate Insurance Company in a lawsuit where Allstate's insured alleged a change in claims handling practices that, if the insured had known about it, would have caused him not to purchase his Allstate policies. In *Juan M. Espinosa v. Allstate Ins. Co.*, No. 13-12-00509-CV (Tex. App.—Corpus Christi Feb. 14, 2013) (mem. op.), the plaintiff had sued claiming that Allstate had a business practice of treating its insureds less favorably if they retained legal counsel, but paying less on average to policyholders who did not retain attorneys. The court of appeals quoted the plaintiff's petition as claiming that Allstate's claims handling put the plaintiff "in a 'damned if you do and damned if you don't' position, with respect to employing legal counsel in connection with obtaining policy benefits." The plaintiff sought restitution of his premiums and exemplary damages.

The trial court granted summary judgment against the plaintiff, and the Court of Appeals affirmed the trial court's ruling. In a brief opinion, the Court of Appeals did not address the truth of the plaintiff's claims about Allstate, but observed that the plaintiff failed to demonstrate any economic loss based on the alleged fraud. The plaintiff had received the benefit of coverage, and did not show that he had suffered "a distinct tortuous injury with actual damages." Since there was no injury, the trial court correctly granted judgment as a matter of law.