

THOUGHT LEADERSHIP

News

## COURT DISMISSES PLAINTIFF'S CAUSES OF ACTION AFTER AFFORDING PLAINTIFF MULTIPLE OPPORTUNITIES TO AMEND ITS PLEADINGS

Newsbrief

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In *Springcrest Partners LLC v. Admiral Insurance Company, et al.* No. 4:12-CV-457-A, 2013 WL 1197780, (N.D. Tex. March 25, 2013), a federal District Court judge in the Northern District of Texas recently granted a 12(b)(6) Motion to Dismiss after permitting the commercial property insured multiple opportunities to amend its pleadings. The plaintiff sought damages for an apartment complex that allegedly sustained damages during a February 12, 2010 snowstorm. The parties agreed to appraisal after which the plaintiff maintained the appraisal award was inconsistent, ambiguous, and exceeded the scope of its authority. The parties acknowledged the appraisal did not address all of the damages, but the insurer offered to settle the outstanding claims it believed still existed in exchange for a release of claims. The insurer, through the claims adjusting company ("Engle Martin"), later informed the insured it had overpaid its claims by approximately \$29,800, but would forego seeking reimbursement in exchange for a release of all claims. Based on these facts, the plaintiff alleged multiple violations of the Texas Insurance Code.

Early on, Engle Martin moved to dismiss the plaintiff's claims against it. However, instead of dismissing the plaintiff's claims, the Court ordered the plaintiff to file an amended complaint, twice. After a number of delays, the plaintiff finally filed its Second Amended Complaint. Engle Martin, joined by the insurer, filed another Motion to Dismiss, and the Court agreed the plaintiff failed to plead sufficient facts against the adjusting company and also failed to support its claims against the insurer under the Texas Insurance Code.

The Court carefully analyzed Plaintiff's Second Amended Complaint and determined it failed to give the defendants fair notice of the plaintiff's claims pursuant Federal Rules of Civil Procedure 8 and 9. The Court noted that Plaintiff's Second Amended Complaint was comprised of nothing more than lengthy recitations of various provisions of the Texas Insurance Code and conclusory statements that defendants acted unlawfully in violation of the Texas Insurance Code. The Court dismissed Engle Martin from the lawsuit and all of the claims asserted against the insurer, except for the breach of contract claim.