

THOUGHT LEADERSHIP

News

## SOUTHERN DISTRICT OF TEXAS RECOMMENDS PROMPT PAYMENT CLAIMS BE CONSIDERED “EXTRA-CONTRACTUAL”

Newsbrief

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A magistrate judge for the Southern District of Texas recently recommended dismissal of “Prompt Payment” claims under Texas Insurance Code Chapter 542 as part of the bundle of claims considered to be “extra-contractual” in nature. In *Pointwest Center, LLC v. National Sur. Co.*, No G-10-598 (S.D. Tex April 10, 2013), the plaintiff’s extra-contractual claims had previously been dismissed by the court. The parties disagreed whether that order included the plaintiff’s claim for 18% interest under Chapter 542’s Prompt Payment statute, and the defendant filed a motion to dismiss it as well. The magistrate stated, “this Court is of the opinion that [the Chapter 542] claim has already been dismissed.”

For good measure, the magistrate went on to recommend dismissal of the Prompt Payment claim, to the extent it remained at issue, on the ground that the evidence unequivocally showed the defendant had acted reasonably, and dismissal of all claims other than breach of contract was justified. The court analogized the Prompt Payment claim to a tort claim which has no legal predicate if there is any reasonable basis for the insurer’s claim decision.