

THOUGHT LEADERSHIP

News

## FORT WORTH FEDERAL COURT DISMISSES COOKIE-CUTTER WIND/HAIL SUIT

Newsbrief

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Recently, Federal District Court Judge McBryde from Ft. Worth summarily dismissed all claims pled against an insurer in a typically vague and formulaic lawsuit alleging severe but unspecified damage to a Fort Worth home as a result of a recent hailstorm. In *Cruz v. Allstate Ins. Co.*, No. 4:17-CV-491-A, 2017 WL 3887923 (Sep. 5, 2017), Allstate filed a motion to dismiss all causes of action as inadequately pleaded under Federal Rule 8. The court agreed with Allstate, pointing out that the plaintiffs' complaint "pleaded very few facts," and "contain[ed] only conclusory allegations." The court went on to observe: "Here, at most, plaintiffs' complaint seems to be that they did not get paid as much as they think they should have been paid, but they have not alleged any facts to show that Allstate breached a contract between them." The court then concluded that having failed to allege any factual basis for a breach of contract claim, there could be no recovery for extra-contractual damages unless facts were alleged supporting an independent injury. In this regard, the court noted the recent Supreme Court of Texas opinion in *USAA Texas Lloyds v. Menchaca*, but concluded the extra-contractual claims asserted here were of the type predicated on coverage under the policy, regardless of *Menchaca*.

This outcome is a reminder to carriers not to overlook early opportunities for success in federal courts. Early motions for dismissal under Rules 8, 9, and 12 can be powerful tools. Although not all federal judges are as decisive as Judge McBryde, you can't get what you don't ask for.