

United States Court of Appeals  
for the Fifth Circuit

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No. 24-30472

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 27, 2025

TRAVIS SPINOSA,

Lyle W. Cayce  
Clerk

*Plaintiff—Appellant,*

*versus*

FOREMOST INSURANCE COMPANY GRAND RAPIDS MICHIGAN,

*Defendant—Appellee.*

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. 3:23-CV-1226

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Before HAYNES, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:\*

Travis Spinosa alleges breach of insurance contract and bad faith under Louisiana law based on Foremost Insurance Company's failure to investigate and pay claims for hurricane damage. Spinosa makes two arguments on appeal—the district court erred by (1) dismissing his claims,<sup>1</sup>

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

<sup>1</sup> Spinosa's complaint seeks relief for nineteen properties, eighteen of which are located within the district court's jurisdiction, one of which is not. The district court dismissed claims based on the eighteen properties within the district court's jurisdiction for failure to state a claim, and transferred claims based on the property outside of its

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and (2) denying his request to amend. Reviewing the first issue de novo and the second for abuse of discretion, *see Carroll v. Fort James Corp.*, 470 F.3d 1171, 1173–74 (5th Cir. 2006), both arguments fail, so we AFFIRM.

The district court did not err in dismissing Spinosa’s claims. “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted). Instead of pleading facts, Spinosa makes generic, conclusory allegations that a hurricane damaged his property, and Foremost failed to “thoroughly investigate[]” or “pay the requested amounts.” That is not consistent with the requirements of *Twombly/Iqbal*. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–63 (2007); *Iqbal*, 556 U.S. at 678. The complaint fails to allege the nature of the damage, when Spinosa submitted the claims, how much Spinosa requested, whether or when Foremost investigated the claims, how Foremost did “[n]ot act[] reasonable,” or how the investigation was “[n]ot thorough[].” *See Moore v. Allstate Tex. Lloyd’s*, 742 F. App’x 815, 818 (5th Cir. 2018) (per curiam). Accordingly, the district court did not err in concluding that Spinosa failed to plausibly allege breach of contract or bad faith. *See Bayle v. Allstate Ins. Co.*, 615 F.3d 350, 363 (5th Cir. 2010) (“Breach of contract is a condition precedent to recovery for the breach of the duty of good faith . . .”).<sup>2</sup>

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jurisdiction for lack of subject matter jurisdiction. The transfer is not the subject of this appeal.

<sup>2</sup> Foremost asserts that Spinosa’s complaint should be dismissed because he failed to plead the specific breached provision. Our cases supporting that requirement appear to rely on a state court decision. *E.g., Louque v. Allstate Ins.*, 314 F.3d 776, 782 (5th Cir. 2002) (quoting the district court’s conclusion that “[t]o state a claim for breach of an insurance contract under Louisiana law, a plaintiff must allege a breach of a specific policy provision” and citing *Bergeron v. Pan Am. Assurance Co.*, 98-2421, p. 14 (La. App. 4 Cir. 04/07/99), 731 So. 2d 1037, 1045); *Spears v. La. Coll.*, No. 20-30522, 2023 WL 2810057, at \*5 (5th Cir.

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Nor did the district court abuse its discretion in implicitly denying leave to amend and dismissing the claims with prejudice. After declining to amend his complaint within twenty-one days of receipt of the motion to dismiss, FED. R. CIV. P. 15(a)(1)(B), Spinoso filed his memorandum in opposition 144 days late. During that time, Spinoso did not file a motion for leave to amend. Instead, he asserts that his opposition brief—which did not include a proposed amended complaint—should be construed as requesting amendment. Spinoso did not “set forth with particularity the grounds for the amendment and the relief sought,” *United States ex rel. Doe v. Dow Chem. Co.*, 343 F.3d 325, 331 (5th Cir. 2003) (citation omitted); instead, he merely promised to cure any deficiencies. But general curative amendment requests are not enough. *Goldstein v. MCI WorldCom*, 340 F.3d 238, 254–55 (5th Cir. 2003). The district court thus did not abuse its discretion in its implicit denial of Spinoso’s amendment request.

Because the district court did not err in dismissing the complaint, nor did it abuse its discretion in denying leave to amend, we AFFIRM.

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Apr. 6, 2023) (per curiam) (“The plaintiff must also ‘allege a breach of a specific provision of the contract.’” (citing *Louque*, 314 F.3d at 782)). But, of course, while Louisiana law is in play here, federal law is the key to the pleading standards, and we do not require plaintiffs to plead the specific breached provision. See *Sanchez Oil & Gas Corp. v. Crescent Drilling & Prod., Inc.*, 7 F.4th 301, 309 (5th Cir. 2021) (“While litigants should, when possible, identify specific contractual provisions alleged to have been breached, Rule 8 does not require that level of granularity.”); *Innova Hosp. San Antonio, Ltd. v. Blue Cross & Blue Shield of Ga., Inc.*, 892 F.3d 719, 731–32 (5th Cir. 2018) (rejecting the notion that “to properly plead a breach of contract claim, a plaintiff must identify a specific provision of the contract that was allegedly breached”). However, even if the exact specific provision is not required, something more than conclusory comments is required as the Supreme Court made clear in *Twombly/Iqbal*. See, e.g., *Favre v. Sharpe*, 117 F.4th 342, 346 (5th Cir. 2024) (“We . . . disregard conclusory allegations and legal conclusions.”); *Heinze v. Tesco Corp.*, 971 F.3d 475, 479 (5th Cir. 2020) (“[W]e do not accept as true conclusory allegations . . . .” (internal quotation marks and citation omitted)).

*United States Court of Appeals*

FIFTH CIRCUIT  
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January 27, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing  
or Rehearing En Banc

No. 24-30472 Spinosa v. Foremost Ins  
USDC No. 3:23-CV-1226

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that Appellant pay to Appellee the costs on appeal. A bill of cost form is available on the court's website [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov).

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Melissa B. Courseault, Deputy Clerk

Enclosure(s)

Ms. Valerie Briggs Bargas  
Mr. Brian Gerard Reaney II