

Lessons From Llano:

a Review and Reflection on Mass
Litigation in the Appraisal Industry

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What's a Llano?



Llano is a city in Llano County, Texas. As of 2010, the city population was 3,232. It is the county seat of Llano County. Located deep in the heart of the scenic central Texas Hill Country, Llano is the home of enchanted rock, and the deer capitol of Texas.

The Brothers Ganter

- PayDirt REIT
 - Bought foreclosed properties for pennies on the dollar
 - Re-sold properties at profit
 - Sought bankruptcy protection in 2010
- Heritage Pacific Financial
 - Bought charged-off second-mortgage loans for pennies on the dollar
 - Tried to collect on debts
 - Target of class action litigation, sanctioned by courts, closed
- Savant Claims Management (Savant LG)
 - Began sending letters to appraisers accusing them of, among other things, overvaluation

Friends Of...

- Mutual First, LLC/First Mutual Group, LP
 - Began suing appraisers in 2014
 - Over 100 lawsuits filed
 - Mostly in Florida, some in Texas and New Jersey
 - Almost all appraisals more than 7 years old at time lawsuit filed
- Llano Financing Group
 - Began suing appraisers in 2015
 - Claimed right to sue from Savant LG/Impac Funding
 - Over 300 lawsuits filed
 - More states involved including Illinois
 - Over 50 lawsuits filed in state and federal courts in IL
- Carrington Capital Management/Carrington Mortgage

Impac Funding

- Impac Funding/Impac Mortgage Holdings, Inc.
 - A corporate affiliate of Impac Mortgage Corp.
 - Originated loans as CashCall Mortgage
- Impac sold “right to sue” to Savant LG
 - Under agreement, Impac would receive percentage of recovery
 - Can recall “right to sue”
 - Presumably could reassign right to sue
- Impac retains control of some aspects of litigation
 - Can be brought into litigation

Here and Abroad

- Over 100 filed by First Mutual/Mutual First
- Over 300 filed by Llano/Carrington
- Multiple lawsuits in Florida, Texas, New Jersey, Arizona, Nevada, Illinois, Colorado, Indiana, Iowa, New Hampshire

In Illinois:

- Cook County (40 filed, 8 remain)
- Lake County
- Kane County
- Winnebago County

- United States District Court – Northern District of Illinois (8 filed, 2 remain)
- United States District Court – Central District of Illinois

The reviewer

- In some instances, an “appraisal review” accompanied the complaint
- In many cases, the “review appraiser” was not disclosed
- Where there was disclosure, the appraiser was often “Faye Dunnaway”



The Attack

- Lack of Standing
 - Does Llano really have ability to file suit?
 - Forces Llano to prove assignment of rights
- Statute of Limitations
 - There is a limit to how long a party has to sue for harm
 - Public policy to allow the defendant to adequately prepare a defense
 - Statutes of Limitations vary by cause of action and by state
- Duplicative charges
 - Llano filed multiple counts in various complaints alleging essentially the same action in different ways
 - Courts may limit the counts to avoid duplicative findings

The Discovery Rule

- A rule in tort law: the statute of limitations for a cause of action does not begin to run until the time that the injured party discovers or reasonably should have discovered the injury
- Often utilized to extend the applicable statute of limitation cutoff date in a negligence or malpractice claim
- Illinois is a “discovery rule” state

What to do

- Contact your insurance carrier
 - You must notify them of any pending or potential claim
 - Find out if you have coverage
 - Fight for coverage if there is question
- Call an attorney
 - Do not respond directly to demand letter or complaint
 - Do not wait or ignore
 - Locate your complete file or as much of it as you still have
- Call your professional association
 - They may be able to direct you to legal help
 - They may be able to put you in contact with others in the same situation

Ounces and Pounds

- Protect yourself and your business
 - Pay attention to where your work comes from
 - If you are unfamiliar with the lender/client/intended user, research them before accepting the assignment
 - When in doubt, turn it down
 - Limit your liability
 - Use appropriate restrictions when able
 - Limit/restrict intended users to greatest degree possible
 - Keep good records of the work you perform
 - Know your exposure and how you're covered
 - When in doubt, ask a professional

Are you covered?



- Know your insurance policy
- Are you current?
- Are you an additional insured?
- Is your policy covering anyone else?
- Do you have prior acts coverage?
- Do you have tail coverage?

Stick together

- The majority of cases have been dismissed
- A number of others have settled at low cost
 - Primarily uninsured appraisers
 - Many representing themselves
- Thousands of additional foreclosed loans are still out there for Impac/Savant
- The profession must stand united against these tactics or they will be repeated
- Protect yourself and don't hesitate to ask for help

Bio-Contact Information

Craig Capilla is a trial lawyer, concentrating his practice in a wide range of civil litigation, including professional liability and commercial claims. He has successfully defended residential and commercial appraisers and appraisal firms accused of negligence or improper activity in their valuation services. Craig has also represented numerous licensed professionals in state licensing matters including real estate brokers, real estate appraisers, and medical doctors, process servers, mortgage loan originators and brokers. He has appeared for clients in various courts throughout Illinois in both state and federal matters. He has also assisted professionals with licensing proceedings in Wisconsin, Iowa, and Missouri.

Craig earned a B.A. from the University of Michigan in 2004, majoring in History and Political Science. He then earned a Juris Doctor from the DePaul University College of Law in 2007. Craig is authorized to practice law in the State of Illinois and is a member of the trial bar of the United States District Court for the Northern District of Illinois.

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