

TEXAS INSURANCE LAW NEWSBRIEF

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COURT REJECTS THIRD-PARTY BENEFICIARY APPROACH TO CIRCUMVENT TEXAS' NO-DIRECT-ACTION RULE

Last week, the Houston Fourteenth Court of Appeals opinion affirmed a trial court's judgment that dismissed a claim against an insurer based on lack of standing utilizing Texas Rule of Civil Procedure 91a and awarded the insurer \$1,000 in attorney's fees. In *Auzenne v. Great Lakes Reinsurance, PLC*, No. 14-15-00159-CV, 2016 WL 2758615 (Tex.App.- Houston [14th Dist.] May 10, 2016), the dispute arose out of a claim for personal injury following a slip and fall on the insured premises. Christopher Auzenne sued Great Lakes Reinsurance, PLC directly, asserting third-party beneficiary rights for payment of medical expenses resulting from injuries he sustained while on the premises of Great Lake's insured, Snowflake Donuts.

On December 8, 2014, Auzenne sued Great Lakes for breach of contract and violations of the Texas Insurance Code. At the time he filed the suit, Auzenne had not brought a suit against or entered into a settlement with the insured. Great Lakes filed simultaneously a motion to dismiss the lawsuit under Texas Rule of Civil Procedure 91a and its original answer. Great Lakes argued lack of standing to bring this suit because Auzenne was not an insured. Auzenne filed a response arguing that as a third-party beneficiary he has standing to sue without first getting a determination of Snowflake Donuts' liability.

In its analysis, the court recognized that Texas follows the no-direct-action rule that an injured party generally has no direct claim against the tortfeasor's insurer until the insured tortfeasor is determined liable to the tort claimant. The court further explained that while this is often referred to as a standing issue, it is more appropriately analyzed as a ripeness issue. Further, ripeness implicates subject-matter jurisdiction and emphasizes the need for a concrete injury for a justiciable claim to be presented. The court found that an injured party does not have a ripe breach-of-contract claim against an insurer until that final determination of the insured's liability has been secured, and that a suit brought directly against an insurer before liability has been determined is subject to dismissal.

Auzenne argued that claims under a medical payments coverage clause should be treated differently and that the trial court erred in not taking as true his alleged third-party beneficiary status. The court rejected both arguments. First, the court noted that there is no authority indicating that medical payments should be treated any differently under the general no-direct-action rule. Second, the court found that the assertion of third-party beneficiary status was a legal conclusion and need not be taken as true under Rule 91a. Further, even if it were taken as true, the "rights" as a third-party beneficiary still would not ripen until it has been established, by judgment or agreement, that the insured has a legal obligation to pay damages to the injured party.

The court affirmed the trial court's order granting Great Lakes' motion to dismiss.