

THOUGHT LEADERSHIP

News

EASTLAND COURT OF APPEALS UPHOLDS RULE THAT TEXAS IS NOT A DIRECT ACTION STATE

Newsbrief

24 JUL 2018

The Texas Court of Appeals for Eastland recently upheld the rule that Texas is not a direct action state and applied the rule to suits seeking a declaratory judgment. In *Randy Durham v. Hallmark County Mutual Insurance Company*, No. 11-16-00183-CV, 2018 WL 3469257 (Tex. App.— Eastland, July 19, 2018) Durham added Hallmark to a personal injury suit seeking a declaratory judgment that the alleged tortfeasor was covered under a Hallmark policy. After being added as a Defendant to the personal injury lawsuit, Hallmark filed an answer in which it denied that Durham was an insured or third-party beneficiary under the policy or a judgment creditor of the insured. Hallmark then filed a Motion for Summary Judgment and Motion to Dismiss for Lack of Jurisdiction. The trial court granted both parts of the motion for summary judgment and the plea to the jurisdiction and severed and dismissed Hallmark from the primary suit. Durham appealed.

The court began its analysis by noting that the general rule in Texas is that a personal injury Plaintiff cannot sue the tortfeasor's insurer unless they first obtain a judgment that reflects the tortfeasor's liability. Durham argued that a direct claim for a declaratory judgment is allowed and cited to cases in which an insurer brought a declaratory judgment on its own duty to defend. The court rejected this argument and held that because a third-party claimant's claims regarding an insurer's coverage are not ripe for adjudication until a judgment is obtained establishing the insured's liability, the trial court did not err when it granted Hallmark's motion for summary judgment and motion to dismiss.