

THOUGHT LEADERSHIP

News

## DALLAS COURT OF APPEALS SAYS NO WAY TO ACCIDENT-OBSERVING PRO SE WITNESS

Newsbrief

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A Dallas court of appeals recently upheld a motion to dismiss against a third-party witness to an accident. In *Bitten v. State Farm*, No. 05-18-01296-CV, 2019 WL 4686517 (Tex. App.—Dallas Sept. 26, 2019, no pet. h.), a third-party witness to an auto accident, Terrell E. Bitten, attempted to sue the insurer directly for benefits under the policy.

State Farm filed a motion to dismiss under well-established Texas law arguing that a witness to an accident cannot enforce the policy directly against the insurer until it has been established, by judgment or agreement, that the insured has a legal obligation to pay damages to the injured party. In response, Bitten filed a motion arguing State Farm did not have all the facts and he was the reason 911 was called from the accident scene. Despite Bitten's response, the trial court granted State Farm's motion to dismiss. Bitten then appealed to the Dallas court of appeals.

Bitten's original appellate brief was filed on December 31, 2018. Unfortunately, the brief failed to comply with appellate rule 38 in at least four ways—including failing to contain a succinct, clear and accurate statement of arguments or a concise statement of facts. Bitten was given two extensions to file an amended brief, and eventually filed an amended brief on March 19, 2019. However, the amended brief still failed to present any specific issue for review supported by citation to any legal authority.

In ruling, the Dallas appellate court recognized that Bitten was pro se; however, he was required to adhere to the rules of evidence and procedure, including the appellate rules of procedure. The appellate court then upheld the dismissal. Despite his best efforts, Mr. Bitten, had indeed bitten off more than he could chew.