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# Texas Supreme Court Disallows Windfall in Personal Injury Protection Insurance Suit—Court looks to actual medical expense incurred, not full list rates

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On March 27, 2020, the Texas Supreme Court, in *Farmers Texas County Mutual Insurance Company v. Beasley*, No. 18-0469, decided whether "an injured plaintiff had standing to bring suit against his personal injury protection (PIP) policy insurer after the insurer paid the incurred medical expenses pursuant to the PIP policy, but the amount the PIP insurer paid was the negotiated rate between the plaintiff's health care insurer and the medical providers—not the medical providers' list rate." The Court held that the insured plaintiff lacked standing because he was unable to allege he had suffered any threatened or actual injury as a result of his insurer's PIP payments of the medical expenses actually incurred, rather than payment of the medical providers' list rates that were not charged to, or incurred by, the insured.

The insured, Rodney Beasley, was injured in a car accident. He received medical treatment for his injuries. The list rates for his medical expenses totaled $2,662.54. As is common, Beasley's medical insurer, BlueCross BlueShield ("BCBS") had negotiated discounted rates with his medical providers. BCBS paid the medical providers $1,068.90 in accordance with their agreement. Beasley's medical providers accepted that amount as payment in full and did not attempt to recover, or hold Beasley liable for, the difference between the providers' list rates and the negotiated rates that BCBS actually paid.

In addition to medical insurance, Beasley also had coverage under a PIP policy through Farmers Texas County Mutual Insurance Company ("Farmers") that provided for payment of reasonable expenses incurred for necessary medical services. PIP is different from other types of insurance in that PIP benefits are payable to the insured without regard to any collateral source of medical benefits—here, the BCBS payment. Beasley made a PIP claim to Farmers, but he asked to be reimbursed based on the medical providers' list rates even though the medical providers had accepted far less as payment in full. Farmers paid Beasley $1,068.90—the amount of medical expenses actually incurred. Beasley subsequently sued for an additional payment of $1,431.10—the difference between what Farmers paid based on what the medical providers had accepted and the PIP policy maximum benefit of $2,500.

Following the Texas Supreme Court's holding in *Allstate Indemnity Co. v. Forth*, 204 S.W.3d 795 (Tex. 2006), the trial court granted Farmer's plea to the jurisdiction holding Beasley had alleged no threatened or actual injury because Farmers had paid Beasley for all of the medical expenses he incurred. The Tyler Court of Appeals reversed, holding that *Forth* was distinguishable because, unlike Beasley, the plaintiff in *Forth* was not making a claim for monetary damages.

The Texas Supreme Court disagreed and unanimously held there were no meaningful grounds on which to distinguish Beasley's claims from those in *Forth*, and that Beasley failed to allege a threatened or actual injury. Although the Texas Supreme Court did not mention *Spokeo, Inc. v. Robins* in its opinion, its analysis is similar in requiring a threatened or actual injury as opposed to a lost windfall.

Although the dollar amounts were small, the case has industry-wide significance. A contrary ruling would have created a cottage industry of insureds who incurred no out-of-pocket expenses suing their insurers for the oftentimes substantial differences between medical providers' list rates and the discounted rates they in fact accept. Indeed, the attorneys representing Beasley indicated the case was merely a prelude to further litigation, likely class action claims like those asserted in *Forth*.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

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