

# Les Pickett and Jake Kauffman Secure Appellate Victory Confirming Prohibition of Third-Party Actions Against Texas Insurers

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Les Pickett and Jake Kauffman of the firm's Houston office recently obtained an appellate victory that simultaneously affirmed dismissal of a slip-and-fall claimant's direct lawsuit against a commercial insurer and resolved an unsettled question of Texas law. The Plaintiff alleged that he was injured when he slipped at a Houston-area business, and filed suit directly against the business owner's commercial insurer seeking payment under the Medical Payments, or "Medpay," coverage part in the liability insurance policy covering the business. Les secured a swift dismissal on behalf of the insurer at the trial level based in part on the "no direct action" rule, which is a general rule in Texas that prohibits direct lawsuits against a tortfeasor's insurer without a prior determination of the tortfeasor's liability.

The Plaintiff appealed, asserting that language in the policy's MedPay provision made him a third-party beneficiary to the insurance contract between the insurer and the business, and entitled him to enforce that contract directly against the insurer without first obtaining a liability determination as to the business. In their brief on behalf of the insurer, Les and Jake argued that the Plaintiff had not established his status as a third-party beneficiary, and that his claims were precluded by the "no direct action" rule as a result. The Fourteenth Court of Appeals agreed, and affirmed dismissal of the insurer in an opinion that unequivocally confirms application of the "no direct action" rule to breach of contract suits brought on MedPay provisions in Texas commercial general liability policies.

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