869 S.W.2d 453
Court of Appeals of Texas,
San Antonio.

BENEFIT TRUST LIFE INSURANCE COMPANY, Appellant,

v.

Leslie LITTLES and The City of Victoria, Appellees.

The CITY OF VICTORIA, Appellant,

v.

BENEFIT TRUST LIFE INSURANCE COMPANY, Appellee.

No. 04–91–00673–CV.
|
Oct. 29, 1993.
|
Rehearing Denied Oct. 29, 1993.
|
Second Rehearing Denied Dec. 21, 1993.

Synopsis
Medical care provider brought action against city employee and insurance company retained by city to administer city's self-funded employee group health insurance plan, arising from company's refusal to authorize payment of portion of city employee's medical bills arising from burn accident. Employee filed cross action against company and third-party claim against city, and defendants filed additional claims against each other. After provider won summary judgment against employee and nonsuited the other defendants, the 285th District Court, Bexar County, Antonio Cantu, J., entered judgment for employee and city against company. On appeal, the Court of Appeals, Chapa, C.J., held that: (1) employee had standing to sue company under Insurance Code; (2) evidence supported award of mental anguish damages to employee; and (3) evidence supported actual damages award of $35,000 to city.

Modified in part and affirmed.

West Headnotes (54)

[1] **Insurance** Persons entitled to recover; companies and persons liable

City employee was "third-party beneficiary" of administration contract between city and insurance company retained by city to administer city's self-funded employee group health insurance plan and, thus, employee had standing to sue company under Insurance Code, despite contract language stating that company shall assume no liability except to provide administrative services; contract was entered into for benefit of plan participants, and language was inserted to guarantee that company was not personally liable to claimants for benefits under plan. V.A.T.S. Insurance Code, art. 21.21, § 16(a).

[2] **Contracts** Presumptions and burden of proof

Presumption exists against contracts creating status of intended third-party beneficiary.

[3] **Contracts** Agreement for Benefit of Third Person

"Intended third-party beneficiary" is either donee or creditor beneficiary of contract and not merely benefitted incidentally by performance of contract.

[4] **Contracts** Agreement for Benefit of Third Person

Intended third-party beneficiary can sue on contract, whereas incidental beneficiary has no enforceable rights against promisor or promisee of contract.

[5] **Contracts** Agreement for Benefit of Third Person

To establish intended third-party beneficiary status, one must prove that contracting parties had intent to create third-party beneficiary and that intent is clearly and fully spelled out in terms of contract.

1 Case that cites this headnote

[6] **Contracts** Agreement for Benefit of Third Person

Courts will not create third-party beneficiary status by implication.

[7] **Insurance** Persons entitled to recover; companies and persons liable

City employee had standing to sue insurance company, retained by city to administer city's self-funded employee group health insurance plan, under Insurance Code, as employee was directly injured by company's refusal to authorize payment of portion of employee's medical bills; company wielded control over payment of employee's claims and knew that its actions would directly affect employee or any employee whose claims were adjusted under plan. V.A.T.S. Insurance Code, art. 21.21, § 16(a).

[8] **Insurance** Parties

For person to have standing to sue under Insurance Code, there must be direct and close relationship between wrongdoer and claimant. V.A.T.S. Insurance Code, art. 21.21, § 16(a).

[9] **Appeal and Error** Nature of Interrogatory or Finding

By failing to raise it through objection at trial, insurance company retained by city to administer city's self-funded employee group health insurance plan waived for appeal contention, that jury question failed to submit any act which constituted violation of Insurance Code and thus could not support judgment against company arising from company's refusal to authorize payment of portion of city employee's medical bills. Vernon's Ann.Texas Rules Civ.Proc., Rule 274; V.A.T.S. Insurance Code, art. 21.21, § 1 et seq.

1 Case that cites this headnote

[10] **Appeal and Error** Necessity of objections in general

Party on appeal is confined to objections made at trial.

[11] **Insurance** Actions

Jury question submitted act constituting violation of Insurance Code and could support judgment against insurance company, retained to administer city's self-funded employee group health insurance plan, arising from company's refusal to authorize payment of portion of city employee's medical bills; although first part of question broadly asked whether company engaged in unfair or deceptive act or practice, question continued with instructions requiring jury to determine whether company committed any of four enumerated acts of unfair or deceptive practices, each of which fell within cause of action available under Insurance Code. V.A.T.S. Insurance Code, art. 21.21, § 1 et seq.

[12] **Insurance** Duty to, and effect on, non-parties in general

Insurance company's contract with city to administer claims of city's self-funded employee group health insurance plan created special relationship between city employee and company, imposing on company a duty of good faith and fair dealing to employee; contract created third-party beneficiary status in employee, company delayed and refused to pay portion of employee's medical bill arising from burns, preventing additional surgery and delaying treatment, and employee had unequal bargaining power compared with company. V.A.T.S. Insurance Code, art. 21.21, § 16.

[13] **Insurance** Good faith and fair dealing

Common-law duty of good faith and fair dealing exists between parties to insurance contract.

[14] **Insurance** Insurer's settlement duties in general

Insurance Duty to settle or pay

Insurer owes duty of good faith and fair dealing to insured in processing and payment of claims.

[15] **Insurance** Good faith and fair dealing

Insurer's duty of good faith and fair dealing to insured arises because of special relationship that exists between parties governed or created by contract.

[16] **Insurance** Settlement Duties; Bad Faith

Special relationship between parties governed or created by contract, so as to give rise to insurer's duty of good faith and fair dealing to insured, arises from parties' unequal bargaining power and nature of insurance contracts which would allow unscrupulous insurers to take advantage of their insureds' misfortunes in bargaining for settlement or resolution of claims.

[17] **Insurance** Settlement Duties; Bad Faith

Kinds of situations producing unfairness, giving rise to special relationship between parties governed or created by contract so as to result in insurer's duty of good faith and fair dealing to insured, are possibility that insurers can arbitrarily deny coverage and delay payment of claim with no more penalty than interest on amount owed, and fact that insurers have exclusive control over evaluation, processing, and denial of claims.

[18] **Appeal and Error** Nature or Subject-Matter of Issues or Questions

By failing to raise it as cause of action at trial, insurance company retained by city to administer city's self-funded employee group health insurance plan waived for appeal contention, that damages awarded to city employee, arising from company's refusal to authorize payment of portion of city employee's medical bills, were improperly based on collusive effort of employee and other parties to file summary judgment against employee to inflate company's damages. V.A.T.S. Insurance Code, art. 21.21, § 1 et seq.

[19] **Appeal and Error** Necessity of objection in general

Appeal and Error Specification of Errors

Court of Appeals would deny contention of insurance company, retained by city to administer city's self-funded employee group health insurance plan, that instruction improperly prevented jury from considering payment made by city for city employee's medical bills after certain date in employee's action arising from company's refusal to authorize payment of portion of city employee's medical bills; company did not submit specific point about instruction on appeal, failed to allege or show that it objected to instruction below, and failed to show that contention was presented to trial judge. Rules App.Proc., Rules 74, 74(d).

[20] **Damages** Nature and theory of compensation

Judgment for city employee on his claim against insurance company retained by city to administer city's self-funded employee group health insurance plan, arising from company's refusal to authorize payment of portion of employee's medical bills, did not violate one satisfaction rule on ground that award partially included employee's medical bill debt and city had paid part of balance of employee's medical bills to medical care provider; provider had final judgment against employee and there was no evidence that employee was credited for amount paid by city. Vernon's Ann.Texas Rules Civ.Proc., Rule 274; V.A.T.S. Insurance Code, art. 21.21, § 1 et seq.

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