

# IN THE SUPREME COURT OF TEXAS

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No. 98-1053  
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THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, PETITIONER

v.

FINANCIAL REVIEW SERVICES, INC., RESPONDENT

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ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS  
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**Argued October 6, 1999**

JUSTICE HECHT, joined by JUSTICE OWEN and JUSTICE BAKER, dissenting.

The Court concludes that Prudential was justified as a matter of law in writing to its insureds that it was being double-billed by their hospital, even if there was some evidence that its statements were false, but Prudential was not justified in complaining of double-billing *to the hospital itself*.<sup>1</sup> Any logic lurking in this reasoning eludes me. How can telling policyholders that their hospital is overbilling be more justified than telling the hospital to its face?

The Court says that Prudential had no right to falsely accuse FRS of fraud. In some circumstances, that would be true. But what harm does it do to tell X that Y is a fraud if X knows it is not true? The hospital could look at its own records and decide for itself whether FRS was

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<sup>1</sup> *Ante* at \_\_\_\_.

overbilling. The hospital had no need to rely on Prudential's view on the subject; indeed, the hospital had every reason to disbelieve Prudential.

In fact, the hospital did look at its records. And having looked, has it complained that Prudential forced it to terminate its relationship with FRS even though FRS was acting properly? No. The hospital takes the *opposite* position: that it terminated the relationship because it, too, was concerned about FRS's bills. How did Prudential disparage FRS's billing to the hospital *when the hospital itself was troubled by FRS's bills?*

The rule in this case is that if a person complains that he has been overcharged, and his creditor agrees and terminates its agent who sent the bill, the agent may sue the person who complained for tortious interference. I disagree with this rule and therefore dissent.

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Nathan L. Hecht  
Justice

Opinion delivered: June 29, 2000