

# CHALLENGE COUNTER AFFIDAVITS *AFTER IN RE ALLSTATE*

UT CAR CRASH SEMINAR  
AUGUST 27, 2021



DREW GIBBS  
GIBBS & CRIVELLI, PLLC  
3307 Northland Drive, Suite  
320  
Austin, Texas 78731  
(800) 488-7840 ext 101  
[drew@slingshotlaw.com](mailto:drew@slingshotlaw.com)

## RECOVERING PAST MEDICAL DAMAGES REQUIRES PROVING:

- ☐ The injury being treated was proximately caused by the breach
- ☐ The damage amount claimed was paid or is owed
- ☐ **The amount charged for the medical services is reasonable**
- ☐ **The treatment provided was medically necessary**



## CPRC 18.001

Formerly a simple route to proving R &N



## REASONABLE

**“Reasonable” means the medical expense was comparable to the usual and customary charges for such services at the time and place the service was rendered.** *Ibrahim v. Young*, 253 S.W. 3d 790, 808 (Tex. App.—Eastland 2008, pet denied); *Fort Worth v. Barlow*, 313 S.W.2d 906 (Tex. Civ. App.—Fort Worth 1958, writ ref’d n.r.e.). *Haygood v. De Escabedo*, 356 S.W.3d 390, 391 (Tex. 2011).



## NECESSARY

**“Necessary” means the treatment was required as a result of claimant’s injury.** *Dallas Ry. & Terminal Co. v. Gossett*, 294 S.W.2d 377 (Tex. 1956) In addition, Plaintiff must prove that the expenses were incurred or paid by the Plaintiff or on Plaintiff’s behalf. Tex. Civ. Prac & Rem. Code 41.0105; *Haygood v. De Escabedo*, 356 S.W.3d 390, 391 (Tex. 2011). *Dallas Ry. & Terminal Co., supra*.



## WHAT IT DOESN'T MEAN:

### Opinions:

After careful review of the records provided, I am of the professional opinion, based on a reasonable degree of medical certainty, that the incident of July 1, 2019, **could not have necessitated the treatment** to [REDACTED]'s left foot, nor to the sequela thereafter that occurred due to surgical treatments aimed to correct pre-existing conditions and ultimately complications from the initial surgery.



Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Challenge Counter Affidavits: After In Re Allstate

Also available as part of the eCourse

[Answer Bar: Taking on the Car Crash Client](#)

First appeared as part of the conference materials for the  
2021 The Car Crash Seminar session

"Medical Specials: The Defendant's and Plaintiff's Perspective"