

HANDLING UNINSURED & UNDERINSURED MOTORIST CLAIMS

BASIC OUTLINE AND UPDATE OF RECENT DECISIONS

RECENT CASES

- **WHO IS AN UNINSURED MOTORIST?**
- **WHAT IS AN AUTO ACCIDENT? "ASSAULT"**
- **CONDUCT THAT IS NOT BAD FAITH**
- **SEVERANCE/SEPARATE TRIALS & ABATEMENT**
- **REMOVAL**
- **EXPEDITED CASES**

WHO IS AN UNINSURED MOTORIST?

State Farm Mutual Auto. Ins. Co. v. Bowen, No. 11-11-00082-CV, 2013 WL 1087796 (Tex. App.—Eastland March 14, 2013).

- The inability to pursue a claim due to expiration of the statute of limitations is not a denial of coverage.
- A driver does not become “uninsured” simply because the claimant is unable to pursue a claim against that driver due to the expiration of the statute of limitations.

WHAT IS AN AUTO ACCIDENT? “ASSAULT”

Home State County Mutual Ins. Co. v. Binning, 390 SW 3d 696 (Tex.App.—Dallas 2012).

A physical assault by a passenger following an automobile collision did not fall within the underinsured motorist provisions of the assault victim’s auto policy.

Factors to determine if there is causal connection:

- (1) whether the accident arose out of the inherent nature of the automobile,
- (2) whether the accident arose with “the natural territorial limits of the automobile,” and
- (3) whether the automobile did not merely contribute to cause the condition that produced the injury, but itself produced the injury.”

CONDUCT THAT IS NOT “BAD FAITH”

- FAILURE TO DISCLOSE CLAIMS HANDLING PRACTICES DURING PURCHASE OF INSURANCE POLICY IN THE ABSENCE OF ACTUAL ECONOMIC DAMAGES
- *In Juan M. Espinosa v. Allstate Ins. Co., No. 13-12-00509-CV (Tex. App.—Corpus Christi Feb. 14, 2013) (mem. op.)*
- *Insured alleged Allstate had a business practice of treating its insureds less favorably if they retained legal counsel, but paying less on average to policyholders who did not retain attorneys.*

SEVERANCE/SEPARATE TRIALS & ABATEMENT

In re Old American County Mutual Fire Insurance Company, No. 13-12-00700-CV (Tex.App. – Corpus Christi January 30, 2013).

Mandamus was conditionally granted ordering the trial court to vacate its order denying the insurer’s motion to sever and abate extra-contractual claims in an uninsured motorist case, even when no settlement offers had been made.

REMOVAL & REMAND

- Nichols v. Allstate Texas Loyds, 2012 WL 3780308 (S.D. Tex. 2012), a homeowner's case based on damage from a wildfire, and Benton v. Lexington Ins. Co., No. 4:12-cv-01546, 2012 WL 3780312 (S.D. Tex. Aug. 31, 2012), a windstorm claim.
- Motions to remand were granted.
- Insurers alleged claims against the adjusters were "vague" or "conclusory", and mere recitation of statutory language.
- In granting the remand, the Court held:
 - pleadings established that the adjusters could *potentially* be held personally liable, and
 - the insurers were under a "heavy burden to establish with certainty that the plaintiff has *no reasonable possibility* of recovery against [the adjusters] individually," and
 - the insurers had not provided any evidence to meet this burden.

- **HANDLING UNINSURED & UNDERINSURED
MOTORIST CLAIMS**

EXPEDITED CASES

GET A COPY OF THE POLICY



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 \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Handling Uninsured & Underinsured Motorist Claims: Basic Outline and Update of Recent Decisions

Also available as part of the eCourse

[Auto Insurance Coverage plus The Uninsured/Underinsured Motorist](#)

First appeared as part of the conference materials for the
2013 The Car Crash Seminar session

"The Uninsured/Underinsured Motorist—What's New Since 2012?"