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Determining an Insurer's Duty to Indemnify Before Settlement or Judgment

UT LAW CLE

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Is the Duty to Indemnify Ripe Before the Lawsuit Ends?

Never

- *Firemen's Ins. Co. v. Burch*, 442. S.W.2d 331 (Tex. 1968).

Sometimes

- *Farmers Tex. Ins. Exch. v. Griffin*, 856 S.W.2d 81 (Tex. 1997).

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PRE-GRIFFIN

- The duty to defend and duty to indemnify are separate and distinct.
- The duty to defend is broader than the duty to indemnify.
- If there is no duty to defend, then there can be no duty to indemnify.

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Am. Physicians Ins. Exch. V. Garcia

We start with the proposition that an insurer has no duty to settle a claim that is not covered under its policy. *See generally Western Heritage Ins. Co. v. River Entertainment,* 998 F.2d 311, 312 (5th Cir.1993) (holding that if no duty to defend is invoked by the pleadings, "the possibility of future indemnity under the terms of the policy is foreclosed").

Am. Physicians Ins. Exch. v. Garcia, 876 S.W.2d 842, 848 (Tex. 1994)

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Griffin v. State Farm

[S]uddenly and without warning a vehicle driven by [insured] approached [plaintiff]. Several rounds of gunfire were discharged from [insured's] vehicle in the direction of the Plaintiff. … This drive-by shooting was a random act of violence which has permanently injured and scarred the plaintiff.

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Griffin v. State Farm

No facts can be developed in the underlying tort suit that can transform a drive-by shooting into an "auto accident."

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