

UT CAR CRASH SEMINAR

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Important Cases in the Prosecution and Defense of UM/UIM Claims

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Hot Topic at Texas Supreme Court

The Texas Supreme Court issued four opinions in Uninsured / Underinsured (UM/UIM) Cases in 2021:

- *Allstate Ins. Co. v. Irwin* (declaratory judgment / attorney's fees)
- *In re State Farm Mut. Auto. Ins. Co.* (abatement and separate trials)
- *In re USAA Gen. Indem. Co.* (corporate rep depositions)
- *In re USAA Gen. Indem. Co.* (consent to be bound)

The Supreme Court denied review in a fifth UM/UIM case:

- *In re State Farm Mut. Auto. Ins. Co.* (extra-contractual claims)

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Pleading a UM/UIM Case

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Allstate Ins. Co. v. Irwin

No. 19-0885, 2021 WL 2021446 (Tex. May 21, 2021)

Affirmed in 5-4* decision

Majority by Justice Devine

Dissent by Chief Justice Hecht

*Justice Guzman was in the dissent and thereafter retired

Motion for rehearing filed on August 6, 2021

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Allstate Ins. Co. v. Irwin

Holdings

- 1. An insurer's liability for benefits under a UM/UIM policy can be established in a declaratory judgment action under the Uniform Declaratory Judgment Act (UDJA).**
- 2. The litigation between the insured and his UM/UIM insurer is to resolve "the underlying conditions precedent of liability and damages" (i.e., the car crash case), which is a coverage question.**
- 3. Attorney's fees may be awarded under the UDJA .**

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Allstate Ins. Co. v. Irwin

Unanswered Questions

- 1. Can a UM/UIM claim only be litigated as a declaratory judgment action—and not as a breach of contract action?**
- 2. Will the ability to recover fees in the car crash case impact extra-contractual litigation?**
- 3. Attorney's fees must be reasonable and necessary (a fact question) and equitable and just (a legal question):**
 - a. how/when will the issue of reasonable and necessary fees be litigated?**
 - b. when will fees be considered equitable and just?**

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