Important Cases Affecting the Prosecution and Defense of UM / UIM Cases

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It's a Contract!

- Contract benefits depend on tort law;
- Plaintiff / Insured must establish "legal entitlement";
- Requirement in insuring agreement—P's burden;
- See page 1 of my article.

Henson

- Contractual obligation to pay benefits does not arise "until liability and damages are determined";
- Settlement with third-party tortfeasor not enough to establish "legal entitlement";
- NO obligation to pay benefits until tortfeasor's liability and damages established by factfinder in UIM case.
- See page 2 of my article.

Brainard

- Confirms *Henson*: no obligation to pay contractual benefits until legal entitlement established (liability and damages of tortfeasor);
- Demand for UIM benefits / filing a lawsuit for UIM benefits = NOT ENOUGH to trigger duty;
- No attorney's fees before obtaining judgment establishing legal entitlement.
- See page 3 of my article.

Two ways to establish "legal entitlement"

Settlement between the Plaintiff-Insured and Insurer

or

Trial, binding on insurer, that establishes negligence, proximate cause, and damages in excess or offsets / credits

How to establish "legal entitlement"

- 1) Sue the insurer directly without suing the tortfeasor (UIM motorist);
- 2) Sue the tortfeasor **with the written consent** of the insurer **to be bound** by judgment; or
- 3) Sue the tortfeasor without the written consent to be bound—and then re-litigate the issues of liability and damages in separate suit against UIM insurer.
- See page 4 of my article.

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