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**IMPORTANT CASES IN THE
PROSECUTION AND DEFENSE OF UM / UIM CASES**

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1. Allstate v. Rodriguez, 2021 Tex. App. Lexis 7095 (Tex.App.—Corpus Christi, Aug 26, 2021).
2. Allstate v. Howell-Herring, 2022 Tex.App. Lexis 2613 (Tex.App.—Fort Worth (Apr 21, 2022)).

G. SEVERANCE/SEPARATE TRIALS & ABATEMENT

1. In re State Farm Mut. Auto. Ins. Co. and Dauper, 2023 WL 3860440 (Tex.App.—Dallas, June 7, 2023 orig. proceeding).

H. 541 CLAIMS FOR BAD FAITH AND PROMPT PAYMENT OF CLAIMS

1. Burgess v. Allstate Fire and Casualty Ins. Co., 641 S.W.3d 474 (Tex.App. – Austin 2021).

I. REMOVAL

1. Molina v. American Access Casualty Company, A-Max Automobile Ins. Co., 2021 U.S. Dist. Lexis 155019, (Aug 17, 2021).

J. DEPOSING AND CALLING THE CORPORATE REPRESENTATIVE AS A WITNESS

1. In re Central Mut. Ins. Co., 2022 Tex.App. Lexis 7138 (Tex.App.—Tyler 2022, no pet.)
2. In re Home State County Mut. Ins. Co. (d/b/a Safeco), No. 05-21-00873-CV, 2022 WL 1467984 (Tex. App.--Dallas May 10, 2022, orig. pro.)
3. The Cincinnati Ins. Co. v. Villanueva, 2022 WL 608962 (Tex.App.—San Antonio 2022, no pet.).

K. PIP CLAIMS

1. PROMPT PAYMENT OF PIP CLAIMS

- a. State Farm v Rumbaugh. 642 S.W.3d 901 (Tex.App.—Texarkana 2022).

I. RULES OF CONSTRUCTION FOR CONSTRUING INSURANCE POLICIES

A. *General Rules:*

1. Same Rules of Construction as Any Contract.
2. Insurance policies are construed according to the same rules of construction that apply to contracts generally. **Don's Bldg. Supply, Inc. v. OneBeacon Ins. Co.**, 267 S.W.3d 20, 23 (Tex. 2008). Interpretation or construction of an unambiguous contract is a matter of law to be determined by the court. **Coats v. Farmers Ins. Exch.**, 230 S.W.3d 215, 217 (Tex. App.—Houston [14th Dist.] 2006, no pet.).

B. *Plain Language:*

1. **Security Mut. Cas. Co. v. Johnson**, 584 SW 2d 703, 704 (Tex. 1979). Words in an insurance policy are to be given their plain, ordinary meaning unless the policy gives them a different meaning.
2. **Fiess v. State Farm Lloyds**, 202 SW 3d 744, 751 and n.30 (Tex. 2006) To determine the plain and ordinary meaning of the words of an insurance policy, Courts routinely turn to dictionary definitions.

C. *Ambiguity:*

1. **National Union Fire Ins. vs. Hudson Energy Co.**, 811 S.W.2d 552, 555 (Tex. 1991). "Generally, a contract of insurance is subject to the same rules of construction as other contracts. If the written instrument is worded so that it can be given only one reasonable construction, it will be enforced as written. However, if a contract of insurance is susceptible of more than one reasonable interpretation, we must resolve the uncertainty by adopting the construction that most favors the insured. The Court must adopt the construction of an exclusionary clause urged by the insured as long as that construction is not unreasonable, even if the construction urged by the insurer appears to be more reasonable or a more accurate reflection of the parties' intent. In particular, exceptions or limitations on liability are strictly construed against the insurer and in favor of the insured."

D. *Interpretations of Exclusionary Clauses:*

1. If the language of an exclusionary clause in an insurance policy is clear and unambiguous, the well-established rule of construction directing adoption of that construction most favorable to the insured, is not applicable. Consequently, absent ambiguity, neither party can be favored by its construction. **Maryland Casualty Co. v. State Bank & Trust Co.**, 425 F.2d 979 (5th Cir. 1970) *cert. denied*, 400 U.S. 828, 27 L. Ed. 2d 57, 91 S. Ct. 55 (1970). **Monte Christo Drilling Corp. v. Byron-Jackson Tools, Inc.**, 266 F. Supp. 123 (S.D. Tex. 1966).
2. The court must adopt the construction of an exclusionary clause urged by the insured as long as that construction is not unreasonable, even if the construction urged by the insurer appears to be more reasonable or a more accurate reflection of the parties' intent." **Nat'l Union Fire Ins. Co. v. Hudson Energy Co.**, 811 S.W.2d 552, 555, (Tex. 1991).

E. ***Severability Clauses:***

1. **Clause:** “This insurance applies separately to each insured. This condition will not increase our limit of liability for any one occurrence.”
2. A severability clause generally serves to provide coverage to an “innocent” insured who did not commit the intentional conduct excluded by the policy. ***Bituminous Cas. Corp. v. Maxey***, 110 S.W.3d 203, 210 (Tex. App.—Houston [1st Dist.] 2003, pet. denied). (citing ***State Farm Fire & Cas. Ins. Co. v. Keegan***, 209 F.3d 767, 769 (5th Cir. 2000)). Each insured against whom a claim is brought is treated as if he or she is the only insured under the policy, and thus, stands alone with respect to exclusion provisions. ***Williamson v. Vanguard Underwriters Ins. Co.***, No. 14-97-00276-CV, 1998 WL 831476, at *1 (Tex. App.—Houston [14th Dist.] Dec. 3, 1998, pet denied.)

II. COVERAGE ISSUES

A. ***Eight Corners Rule***

- 1) **Heyden Newport Chemical Corp. v. Southern General Ins. Co.**, 387 SW 22 (Tex. 1965). The duty to defend is determined, regardless of the truth or falseness of the allegations, by reviewing the facts alleged within the four corners of the petition and the coverages and exclusions contained within the four corners of the policy.
- 2) **Richards v. State Farm Lloyds**, 597 S.W.3d 492 (Tex. 2020). The Texas Supreme Court addressed a certified question from the 5th Circuit about whether there is a “policy language exception” (a/k/a the Northfield Exception based on ***Northfield Ins. Co.***, 363 F.3d at 531) to the eight-corners rule if the insurance policy does not contain language requiring the insurer to defend all actions against its insured no matter if the allegations of the suit are groundless, false or fraudulent. An insurer’s duty to defend is determined by the claims alleged in the petition and the coverage provided in the policy.

The Court noted that insurers can contract out of the eight corners rule, but merely omitting the language “even if groundless, false or fraudulent” does not contract out of the eight corners rule. The Court notes that State Farm makes good faith arguments, but it is well aware of the courts’ longstanding approach to the contractual duties to defend and it knows how to contract around that approach.

- 3) **Richards v. State Farm Lloyds**, 597 S.W.3d 492 (Tex. 2020). The Texas Supreme Court addressed a certified question from the 5th Circuit about whether there is a “policy language exception” (a/k/a the Northfield Exception based on ***Northfield Ins. Co.***, 363 F.3d at 531) to the eight-corners rule if the insurance policy does not contain language requiring the insurer to defend all actions against its insured even matter if the allegations of the suit are groundless, false or fraudulent. An insurer’s duty to defend is determined by the claims alleged in the petition and the coverage provided in the policy.

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