

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

Robert E. Valdez
Valdez & Trevino,
Attorneys at Law, P.C.
San Antonio, Texas

1

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.

2

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.

3

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.

4

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

5

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.

6

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

Title search: Important Cases Affecting the Prosecution and Defense of UM / UIM Cases

Also available as part of the eCourse

[2020 The Car Crash eConference](#)

First appeared as part of the conference materials for the
2020 Car Crash Seminar session

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