Defense Perspective: Attorney's Fees after *Irwin*

ROBERT E. VALDEZ
Valdez & Treviño,
Attorneys at Law, P.C.
San Antonio, Texas

1

Attorney's Fees in UIM Cases

Pre-*Irwin*	**Post-*Irwin***
• No recovery since no breach of contract (TCPRC chapter 38); • No "legal entitlement"; • No recovery since no "presentment" • Declaratory Judgment no vehicle for recovery of fees (*Jordan*).	• Recovery possible under Texas Declaratory Judgment Act (TCPRC chapter 37); • Fees must be **"just and equitable"** • Declaratory Judgment Act is proper vehicle.

2

Defenses under *Irwin*

Pick the proper battlefield.

Is there **federal (diversity) jurisdiction**? Amount in controversy--$75,000; complete diversity of citizenship.

Reason: **No attorney's fees** in federal declaratory judgment action.
See page 2 of my article.

3

Narrow the issues:
Stipulate to coverage issues (except legal entitlement).
Make the case a "car wreck" case.

4

Basis for Recovery (under DJA): "reasonable"

The fees must be "reasonable".

Question of fact

"Not excessive"; "Moderate and fair"; *Arthur Andersen* factors.

See page 2 of my article

5

Who is proving up the fee?

Defense perspective: Consider designating **independent expert** to controvert / rebut plaintiff's testimony re the reasonableness of fee.

- Designating yourself (or your law firm) as comparator in challenging opponent's fees: **puts your attorney's fees** in issue.
- "**opens the door** to expert witness discovery"

See page 4-6 of my article (*In re National Lloyds*)

6

Title search: Defense Perspective: Attorney's Fees after Irwin

Also available as part of the eCourse
2022 The Car Crash eConference

First appeared as part of the conference materials for the
2022 The Car Crash Seminar session
"Recent Developments in Prosecuting and Defending UM/UIM Actions"