

TEXAS INSURANCE LAW NEWSBRIEF

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SAN ANTONIO COURT HOLDS ATTORNEY'S FEES ARE RECOVERABLE IN A UIM/UM CASE THROUGH A DECLARATORY JUDGMENT ACTION

In a significant decision and a case of first impression under Texas law, last week, the San Antonio court of appeals upheld a trial court judgment awarding attorney's fees in a UIM case as part of the claim for relief under the Uniform Declaratory Judgments Act (UDJA). In *Allstate Insurance Company v. Irwin*, No. 04-18-00293-CV, 2019 WL 3937281, (Tex.App.—San Antonio, August 21, 2019), Irwin sued Allstate Insurance Company after a car wreck with an underinsured motorist, seeking a declaration that he was entitled to recover damages under his UIM policy. The sole issue presented to the jury at the trial court was whether Irwin was legally entitled to recover his excess damages. The parties stipulated to coverage under the UIM policy and the offset from a prior settlement with the tortfeasor. The jury returned a verdict in Irwin's favor, awarding him \$498,968.36 in damages. The trial court signed a judgment awarding Irwin the policy limit of \$50,000 plus court costs. The trial court also awarded Irwin \$45,540 in attorney's fees. Allstate appealed.

On appeal, Allstate argued that because an insured must first establish the amount he is legally entitled to recover before pursuing a breach of contract claim to recover UIM benefits, an insured cannot file a claim for declaratory relief to obtain the judgment required by the *Brainard v. Trinity Universal Insurance Co.* decision. Irwin argued that a declaratory judgment action is proper for pursuing a UIM claim and that nothing in the *Brainard* decision precludes its use. The court began its analysis by noting that this is a case of first impression for it and the Texarkana Court of Appeals has been the only Texas appellate court to address the issue. The court agreed with the Texarkana court and held that an insured may use the UDJA to establish the prerequisites to recovery in a UM/UIM claim. The court further held that because the UDJA is to be "liberally construed and administered" there is nothing preventing the award of reasonable attorney's fees. The court specifically distinguished the *Brainard* decision because it was based on a breach of contract claim and not a claim for declaratory judgment. The court affirmed the trial court's judgment as to the declaratory judgment and the award of attorney's fees.

Editor's Note: This decision represents a significant turn in the way UM/UIM cases have been litigated. It should be noted, however, that in successfully defending a declaratory judgment action, the insurer may be entitled to and award of its attorney fees as well. We will continue to monitor this case to see if it makes its way to the Texas Supreme Court. Insurers interested in an amicus brief supporting the (we presume forthcoming) petition for review to the Supreme Court of Texas, should reach out to Chris Martin martin@mdjwlaw.com or David Disiere disiere@mdjwlaw.com for further information.