

THOUGHT LEADERSHIP

News

## ASSAULT BY DRIVER NOT COVERED BY UNDERINSURED MOTORIST PROVISIONS OF AUTO POLICY

Newsbrief

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The Dallas Court of Appeals recently reversed a trial court's denial of summary judgment holding that a physical assault by a passenger following an automobile collision did not fall within the underinsured motorist provisions of the assault victim's auto policy. In *Home State County Mutual Ins. Co. v. Binning*, No. 05-12-0246-CV, 2012 WL 6510165 (Tex. App.—Dallas Dec. 14, 2012), the insurance claim and lawsuit followed an incident in a parking lot where the insured was rear-ended, then attacked by the passenger of the car that rear-ended him. The passenger hit the insured on the head with a pistol when the insured was exiting his car, but fled the scene when he heard sirens. The police did not catch the attacker.

Coverage was the sole issue on appeal. The court was tasked with determining whether the injuries the insured suffered bore a causal connection with the use of the motor vehicle. The three factors to consider are (1) whether the accident arose out of the inherent nature of the automobile, (2) whether the accident arose with "the natural territorial limits of the automobile," and (3) whether the automobile did not merely contribute to cause the condition that produced the injury, but itself produced the injury." The insured contended that his injuries arose out of the use of a motor vehicle in an attempting carjacking.

The court of appeals disagreed finding that the events underlying the claim did not qualify for coverage. First, the insured's only legal authority was from outside the state of Texas. Second, even if the court considered the insured's citations holding that carjackings could support a UIM claim, there were insufficient facts to establish conclusively that the events constituted a carjacking. Finally, the automobile itself did not produce the damages alleged; it was, instead, the assault, and not the car that caused the insured's injuries. The court of appeals reversed the trial court's denial of summary judgment and remanded for further proceedings.