

THOUGHT LEADERSHIP

News

AUTO INSURER NARROWLY ESCAPES LARGE DEFAULT IN UIM SUIT ON RESTRICTED APPEAL

Newsbrief

31 OCT 2016

Last Wednesday, a Texas court of appeals threw out a \$960,000 default judgment against State Farm in an underinsured motorist case. In *State Farm County Mutual Automobile Ins. Co. v. Diaz-Moore*, No. 04-15-00766-CV, 2016 WL 6242842 (Tex. App.—San Antonio Oct. 26, 2016), State Farm's insured was injured in a motor vehicle accident. She sued both the alleged tortfeasor and State Farm, alleging the tortfeasor was an underinsured motorist and she was entitled to UIM benefits from State Farm as well as damages from the underinsured motorist. Neither defendant answered the suit and Diaz-Moore took a default judgment in excess of \$960,000 against the driver and State Farm.

State Farm missed the window to overturn the default judgment by ordinary means and filed a restricted appeal. State Farm argued Diaz-Moore's claim against State Farm was not yet ripe because she had not yet established both liability and that her damages exceeded the tortfeasor's liability insurance. The court disagreed and noted that while this would be true at trial, to determine ripeness at this stage of the case, it would only examine whether she had pleaded facts which, if true, would establish a claim against State Farm. The court held she had adequately pleaded her UIM case against State Farm, and pointed out that Texas law allows a policyholder to sue its insurer directly for UIM benefits without joining the tortfeasor motorist at all and then litigate both liability and underinsured status in that lawsuit. This is a sharp contrast to the Texas rule for liability carriers which generally prohibits joining a liability carrier in the suit against the alleged tortfeasor.

Ultimately, the default judgment was reversed but only due to Diaz-Moore's failure to obtain a reporter's record of the default judgment proceedings. A failure to obtain a reporter's record establishes error on the face of the record as a matter of law.