UIM OTHER INSURANCE CLAUSE ENFORCEABLE IF CLAIMANT HAS SUFFICIENT AVAILABLE INSURANCE

Newsbrief
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The Eastland Court of Appeals recently affirmed judgment in favor of an auto insurer enforcing the “other insurance” clause in its UIM coverage. In *Elwess v. Texas Farm Bureau Mut. Ins. Co.*, 11-15-00286-CV, 2017 WL 6559654 (Tex. App.—Eastland Dec. 21, 2017, no pet. h.) (slip copy), Elwess, the claimant injured in an auto accident, recovered the $25,000 liability limit of the driver who hit him, and then recovered a $70,000 settlement from the UIM coverage covering the vehicle he was driving, which was owned and insured by his employer. He then sought to recover an additional $50,000 in UIM benefits from his own personal auto policy.

The UIM endorsement in his personal policy contained an “other insurance” clause which stated that with respect to vehicles not owned by the insured, it was excess over any other collectible insurance. Elwess argued that such clauses are invalidated as a matter of law and public policy by the Texas Insurance Code and Texas court opinions (including *Ranzau* and *Stracener*). The court recognized that public policy requires the claimant to have sufficient insurance available to cover his actual damages, but noted in this case, the parties stipulated Elwess's actual damages were $77,505 – less than the total amount he had already recovered from the tortfeasor's liability coverage and his employer's UIM coverage. The court observed that under these circumstances, the other insurance clause was valid, the claimant's damages had been fully compensated, and his personal carrier owed nothing. In other words, there is no public policy that requires courts to disregard the clear terms of policy to allow a claimant to recover a windfall above his actual damages.