

THOUGHT LEADERSHIP

News

## COURT OF APPEALS HOLDS THAT TRIAL COURT ABUSED ITS DISCRETION BY NOT ABATING DISCOVERY ON EXTRACTIONAL CLAIMS IN UM/UIM CASE

Newsbrief

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Last week, in a UM/UIM case, a Houston court of appeals held that the trial court abused its discretion in permitting the insured to conduct discovery on the insured's Texas Insurance Code and Texas Deceptive Trade Practices Act ("DTPA") claims. In *In Re Colonial County Mutual Ins. Co.*, No. 01-19-00391-CV, 2019 WL 5699735, (Tex. App.—Houston Nov. 5, 2019, mem. op.), the Insured sued Colonial County Mutual Insurance Company ("Colonial"), asserting that Colonial failed to pay uninsured/underinsured motorist benefits under the policy. The Insured asserted causes of action of breach of contract and breach of the common law duty of good faith and fair dealing. Additionally, the Insured alleged violations of the Texas Insurance Code and DTPA (the "Statutory Claims").

Colonial filed a motion to sever and abate the extracontractual claims from the underlying UIM claim. In response, the Insured conceded to severance and abatement of her common law bad faith claims. However, she argued that her Statutory Claims were not "extracontractual" and that Colonial could be liable for them even absent coverage; therefore, those claims should be severed, but not abated. The trial court agreed and permitted the Insured to conduct discovery on her Statutory Claims (in addition to her underlying UIM claim). Colonial subsequently filed a petition for writ of mandamus.

On mandamus, Colonial asserted that the trial court abused its discretion in denying abatement of discovery regarding the severed Statutory Claims. The Court of Appeals agreed. To that end, the court first referenced the general rule that Colonial was under no contractual duty to pay UIM benefits until the Insured obtained a judgment establishing the liability and underinsured status of the other motorist. Next, the court noted the rationale for abating extracontractual claims – the extracontractual claims may be rendered moot in the UIM case and, without abatement, unnecessary litigation expenses and judicial resources could result. Lastly, in addressing the Insured's argument that Colonial could be liable for the Statutory Claims even absent coverage, the court concluded that the Statutory Claims were predicated upon the denial of UIM benefits and there was no allegation that the Insured suffered damages "independent" of her contract claim for the denial of UIM benefits. For these reasons, the Court of Appeals held that the trial court abused its discretion in permitting discovery on the Statutory Claims and reversed the trial court's decision.