

THOUGHT LEADERSHIP

News

## FEDERAL DISTRICT COURT HOLDS JUDGMENT CREDITOR NOT BOUND BY ADMISSIONS OF INSURED

Newsbrief

04 MAR 2020

A recent district court opinion from Laredo highlights the importance of admissible evidence when attempting to enforce policy exclusions. *Cavazos v. Sias*, 5:18-CV-72, 2020 WL 883223 (S.D. Tex. Feb. 24, 2020) (slip op.) is a suit for coverage under an auto liability insurance policy. After obtaining a default judgment against Insured arising out of an auto accident, Claimant sued Carrier to recover the judgment under Insured's auto liability policy.

Carrier's first major defense was that Insured had admitted her husband, a named excluded driver, was driving the car at the time of the accident. Facing an admissibility challenge from Claimant, Carrier argued Insured's statement was both attributable to Claimant and admissible as a statement against interest by a party-opponent under the general rule that a judgment creditor, when suing the carrier to recover the judgment, "steps into the shoes" of the insured. The court disagreed, noting that while the general rule subjects the judgment creditor to the same coverage defenses the carrier would have against the insured, it does not mean, as an evidentiary matter, that statements against interest made by the insured, which would be hearsay as to another party, become admissible against the judgment creditor.

The court went on to grant summary judgment in favor of Carrier because it was able to show, with no evidentiary complications, that Insured had failed to notify Carrier of the accident or the lawsuit until after default judgment was rendered, thus prejudicing Carrier as a matter of law.

**Editor's note:** The exact context of Insured's statement about the excluded driver is unclear from the opinion, but Carrier's inability to enforce a Named Driver exclusion highlights the importance of a well-documented file. Presumably if this central piece of evidence had been obtained in the form of a recorded statement or a writing from the insured, or proven up during litigation by either interrogatories or requests for admission, Carrier would not have faced this problem laying the foundation for its evidence. In this case, another coverage defense was successful, so the outcome was not affected.