

THOUGHT LEADERSHIP

News

TRIAL COURT'S FAILURE TO SEVER AND ABATE UIM EXTRA-CONTRACTUAL CLAIMS DEEMED IMPROPER – MANDAMUS CONDITIONALLY GRANTED

Newsbrief

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Last Tuesday, the 14th Court of Appeals in Houston considered a trial court's refusal to sever and abate extra-contractual claims asserted in a declaratory judgment action seeking underinsured motorist (UIM) benefits and determined that the trial court abused its discretion in denying the insurer's motion. In *In re James River Insurance Company*, 2020 WL 6143163 (Tex. App. - Houston [14th Dist.] Oct. 20, 2020), the insured sued for injuries arising from a rear-end motor vehicle accident and included a declaratory judgment action against her own insurer for UIM benefits and claiming both contractual and extra-contractual damages. The insured claimed that based on her medical expenses her insurer's liability was reasonably clear, but they failed to make a settlement offer. So, she also alleged extra-contractual / unfair settlement practice claims against her insurer.

The insured served discovery on her insurer related to their UIM claims handling, including requests for claims handling history on unrelated accidents. The insurer moved to sever and abate the extra-contractual claims and related discovery until coverage could be determined by the declaratory judgment action. The trial court denied the motion and this mandamus action followed seeking to set aside the trial court's discovery order.

The Court of Appeals in Houston (14th Dist.) noted that under Texas law, an "insured's claim for breach of an insurance contract is distinct and independent from claims an insurer violated its extra-contractual common law and statutory duties." And, that a "UIM insurer has no contractual duty to pay benefits until the liability of the other driver and amount of damages sustained by the insured are determined." Further, an "insured first must establish that the insurer is liable on the contract before the insured can recover on extra-contractual claims against an insurer for failure to pay or settle a UIM insurance claim." The court noted that the insured's extra-contractual claims were based on a contractual duty to pay UIM benefits that has not yet been determined. And, that the discovery sought is irrelevant to the contractual determination. Accordingly, the Court of Appeals found that the trial court abused its discretion by not severing and abating the insured's extra-contractual claims. The insurer's petition for writ of mandamus was conditionally granted directing the court to vacate its discovery order and to sever and abate the extra-contractual claims.