

THOUGHT LEADERSHIP

News

## TEXAS SUPREME COURT ALLOWS CORPORATE DEPOSITIONS IN UIM CASES

Newsbrief

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In a recently released mandamus opinion, the Supreme Court of Texas held that a policyholder seeking UIM benefits from his own auto carrier may take depositions of corporate representatives in the UIM case, even where no extra-contractual claims are asserted and the only issue is the insured's legal entitlement to recover damages from the underinsured motorist. However, the court issued partial mandamus relief requiring the scope of any such deposition to be strictly limited.

*In re USAA Gen. Indem. Co.*, 20-0281, 2021 WL 2483767 (Tex. June 18, 2021) was a suit to brought recover UIM benefits after the policyholder settled with the tortfeasor driver. It did not include any common-law or statutory "bad faith" type claims. The policyholder initially sought to depose USAA's corporate representative on a broad list of 19 topics, which was later narrowed to include topics such as the policyholder's compliance or failure to comply with policy conditions and USAA's contention that it was entitled to offset other recoveries. USAA contended that a UIM case of this type should resemble a typical car wreck case in which the tortfeasor's liability and the plaintiff's damages are determined first, and then the amount owed under the plaintiff's UIM insurance is determined. USAA argued its corporate representatives could add nothing to questions of liability and damages because they had no personal knowledge of the car accident.

The supreme court rejected that argument, noting discovery extends to all relevant facts, and lack of *personal* knowledge does not necessarily equate to lack of *relevant* knowledge. USAA disputed both liability and damages, which suggested USAA had some information about those issues, and the court noted the rules of procedure allow all permissible forms of discovery to be taken in any order. But the court emphasized that it was *not* tacitly approving stealth discovery on bad faith issues, stating, "A plaintiff may not obtain discovery on an unasserted, abated, or unripe bad-faith claim under the guise of investigating a claim for benefits."

The court also rejected USAA's proportionality argument, stating it was hard to see how one deposition of one party's corporate representative, who likely had knowledge of some relevant facts (even if second-hand), was out of proportion to the needs of the case. The court reached this conclusion although it admitted the corporate representative's knowledge was likely to be cumulative of other sources of information. The court also rejected the notion that a deposition is inherently more burdensome than written discovery. However, the court held out the possibility that USAA's proportionality and undue burden argument might have carried the day if it had put on more

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concrete evidence of the burden involved in presenting its witness for deposition.

Although the court allowed the deposition to proceed, it aggressively limited the topics which could be covered, and its opinion gives carriers fairly wide latitude to instruct their witnesses not to answer questions which attempt to delve into either topics that are not disputed, such as the existence of the policy, the coverage limits, and the conditions precedent that are being asserted; or unripe topics like entitlement to offsets or the basis for the carrier's claim decision.

**Editor's note:** In summarily rejecting the notion that depositions are more burdensome than written discovery, we presume the members of the supreme court did not ask the witnesses who must appear and be subjected to hours of preparation and questioning. The court's comments suggest that a detailed affidavit from the witness setting forth the travel and hours away from normal duties that would be required, along with the availability of other, more direct sources of information about the limited permissible topics, might be the way to reach a different result.