

THOUGHT LEADERSHIP

News

FEDERAL COURT IN SAN ANTONIO ISSUES BACK-TO-BACK RULINGS IN FAVOR OF UIM INSURER

Newsbrief

28 SEP 2021

Recently, the District Court for the Western District of Texas – San Antonio Division issued two orders in favor of an insurer faced with a dispute over whether a insured is entitled to UIM coverage. *Blazjewski v. Allstate Fire and Cas. Ins. Co.*, Case No. SA-21-CV-00700-JKP, 2021 WL 417349 (W.D. of Tex. Sept. 14, 2021) and *Blazjewski v. Allstate Fire and Cas. Ins. Co.*, Case No. SA-21-CV-00700-JKP, 2021 WL 4204148 (W.D. of Tex. Sept. 15, 2021) arise from a motor vehicle accident and a insured's subsequent assertion of entitlement to underinsured motorist (UIM) benefits under her policy with the insurer.

After the insured filed her original state court petition, the insurer removed the case to federal court on the basis of diversity jurisdiction. The insured then filed a motion to remand, asserting that the insurer's notice of removal was procedurally and substantively deficient. First, the insured argued that the insurer failed to allege in the Notice of Removal ("Notice") the parties' citizenship at the time suit was filed and at removal, and that the insurer failed to attach evidence of its citizenship. The Court considered this argument "frivolous," as the Notice contained a clear statement of the parties' citizenship at the time of filing and at the time of removal. The Court further reiterated that the insurer was not required to attach evidence of its allegations regarding citizenship. Second, the insured argued that removal was improper because the amount in controversy was less than the required \$75,000. As evidence, the insured pointed to the insurer's response the insured's pre-suit demand letter indicating the insurer's valuation of the claim was \$0. At the outset, the Court reminded the insured that the proponent of removal has the burden of proving that it is facially apparent from the petition that damages are more likely than not to exceed \$75,000. Once the proponent of removal does so, the burden switches to the other party to establish to a legal certainty that his recovery would not exceed the amount stated in the petition. Upon review of the insured's petition—which asserted claims that, if proven, would allow for a recovery of treble and exemplary damages, and pled for recovery of damages less than \$250,000—the Court held that the \$75,000 threshold was met. The Court then turned to the insured, who could not point to anything other than the insurer's response to their demand letter in support of their argument. Accordingly, the Court concluded that the insured had not met her burden and denied her motion to remand.

The Court's other decision in this matter addressed the insurer's motion for partial dismissal. In her petition, the insured sued the carrier for breach of contract, breach of the duty of good faith and fair dealing, and violations of the Texas Insurance Code, and sought a declaratory judgment regarding her claim for UIM coverage. Except for the claim for declaratory relief, the carrier sought dismissal of the insured's causes of action because it contended it had

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no contractual duty to pay UIM benefits until the insured obtained a judgment establishing the tortfeasor's liability, his underinsured status, and the amount of recoverable damages, none of which had occurred.

Without getting to the merits of the carrier's motion, the Court held that any of the insured's causes of action based on the carrier's failure to pay UIM benefits were premature because the insured had not obtained a judgment against the tortfeasor, so the Court did not have subject matter jurisdiction over them. Consequently, the Court dismissed the claims without prejudice but allowed the insured to pursue declaratory relief to determine her entitlement to UIM benefits.