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News

APPEALS COURT REVERSES TRIAL COURT RULING DENYING INSURER'S MOTION TO ABATE A CLAIMANT'S EXTRA-CONTRACTUAL CLAIMS IN UM/UIM DISPUTE

Newsbrief

08 NOV 2022

Last week, an appeals court in Houston granted an insurer's petition for writ of mandamus asking the court to compel the trial court to vacate its order denying the insurer's motion to abate a claimant's extra-contractual claims in an uninsured/underinsured (UM/UIM) motorist coverage suit. *In re United Financial Casualty Company*, No. 14-22-00502-CV, 2022 WL 16645497 (Tex.—Houston [14th Dist.] Nov. 3, 2022).

After the claimant, Elizabeth Echeverria, was involved in a motor vehicle accident as a passenger in a vehicle operated by an Uber driver, she sought a declaratory judgment action against the Uber driver's insurer, United Financial Casualty Company (United Financial), seeking entitlement to UM/UIM benefits. In the same suit, Echeverria also alleged breach of contract, violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act, breach of the duty of good faith and fair dealing, and fraud.

United Financial then asked the trial court to abate Echeverria's extra-contractual claims, which the trial court denied. The appeal followed.

The appeals court emphasized that claims for breach of contract and extra-contractual claims and alleged violations of statutory duties are separate and distinct, and a UIM insurer has no duty to pay benefits until liability of the other driver and the amount of the claimant's damages are determined. Additionally, a claimant must first establish that the insurer is liable on the contract before the claimant can recover on extra-contractual claims for failing to pay or settle a UIM claim. The appeals court also reminded Echeverria that her extra-contractual claims are premised on an alleged contractual obligation to pay her UIM claims, she had not established liability nor the underinsured status of the other driver, and allowing information from the extra-contractual claims into a trial on the breach of contract claims would be "manifestly unjust." As such, and because United Financial lacked an adequate remedy on appeal for the trial court's denial of its request for an abatement, the appeals court granted United Financial's petition and ordered it to vacate its prior order and grant abatement of Echeverria's extra-contractual claims until the declaratory judgment action and breach of contract claim were decided.