

# **INSURANCE ISSUES FOR LAWYERS: Everything You Wanted to Know But Were Afraid to Ask**

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# Insurance Law

- First-party claim
  - Property damage to home, vehicle, business, E & O,...
  - Request for a liability defense
- Third-party claim
  - Claims / Lawsuits against insured

# First-Party Claims

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# Homeowners

- Contract
  - Bound by terms
- Duties after loss
  - Inspection
  - Cooperate
  - Records
  - EUO
  - Sworn Proof of Loss Forms
- Flood coverage
- TWIA

# Homeowners

- Appraisal
  - State Farm v. Johnson

# Homeowners

- Recoverable Depreciation
  - Payment for Actual Cash Value
  - Recoverable Depreciation Withheld
  - Repairs Completed
  - Recoverable Depreciation Paid

# First-Party Policy Issues

- Notice of claims
  - Late Notice
  - Prejudice



# First-Party Policy Issues

- Conditions Precedent to Coverage
  - Cooperation
  - Appraisal
  - Records
  - EUO's

# First-Party Policy Issues

- Suits Against Us Provision

# First-Party Policy Issues

- Statute of limitations contained in the contract
  - “Two years and one day”

# First-Party Issues

- Extra contractual duties
  - Good Faith and Fair Dealing
  - Texas Insurance Code
- Texas Insurance Code
  - Prompt Payment of Claims Act – Chapter 542
  - Unfair Settlement Practices Act – Chapter 541

# Ch. 541 Settlement Opportunities

## Door #1

60 Days  
Before  
Suit

## Door #2

90 Days  
After  
Answer  
Filed

## Door #3

Mediation  
Plus 20  
Days

# Third-Party Claims

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# Third-Party Claims

- Forward suit papers
  - Cooperate



# Third-Party Claims

- Reservation of rights letter
  - Coverage counsel
  - Tilley Counsel v. Independent counsel

# Third-Party Claims

- Tilley Counsel
  - Insurer pays
  - Insured is client
  - Absolute duty of loyalty to insured

# Stowers

- Plaintiff demand for settlement of a third-party claim against insured

# Stowers

- (1) the policy covers the claim;
- (2) the insured's liability is reasonably clear;
- (3) the claimant has made a proper settlement demand within policy limits; and
- (4) the demand's terms are such that an ordinarily prudent insurer would accept it.

# Stowers

- Insured's potential for excess exposure shifted to insurer

# Maximizing Coverage

- “Show me the money”
  - Other Driver
  - Car Owners
  - Employers
  - Client’s UM/UIM & PIP

# UM/UIM - First-Party Claim with a Third-Party Twist

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# UM/UIM

- Damages “legally entitled to recover”  
from another driver
  - Insured v. Other Driver



# UM/UIM & PIP – Do They Have It?

- Insurer is Required to have Signed Rejection form

# UM/UIM

- Policy requires Insured obtain Permission to Settle Third-Party Claim

# UM/UIM

- *Jankowiak*
  - No-fault passenger
  - Disputed liability

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