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





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



- Notice of claims
 - Late Notice
 - Prejudice



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



Suits Against Us Provision



- 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 Chapter542
 - Unfair Settlement Practices Act Chapter
 541

Martin, Disiere,

Ch. 541 Settlement Opportunities

Door #1

60 Days Before Suit

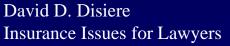
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Door #2

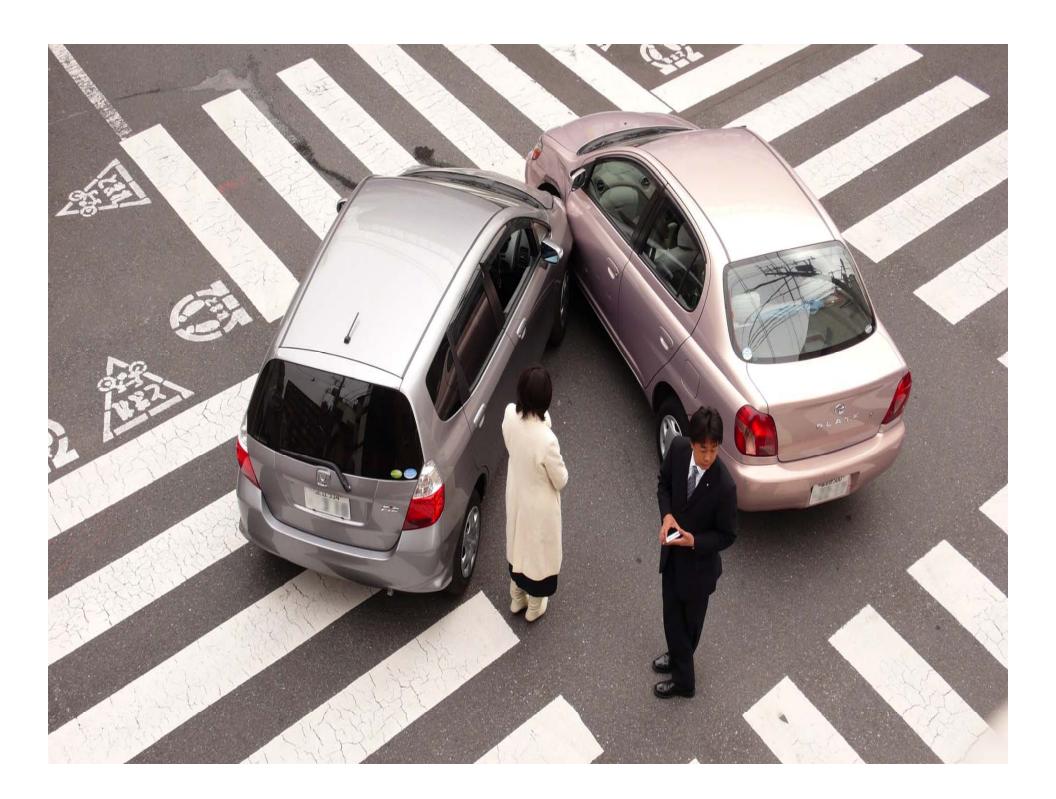
90 Days After Answer Filed

Door #3

Mediation Plus 20 Days







- Forward suit papers
 - Cooperate



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



- 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



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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