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IMPORTANT CASES IN THE PROSECUTION AND DEFENSE OF UM / UIM CASES

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I. RULES OF CONSTRUCTION FOR CONSTRUING INSURANCE POLICIES

A. ***General Rules:***

1. Same Rules of Construction as Any Contract.
2. Insurance policies are construed according to the same rules of construction that apply to contracts generally. **Don's Bldg. Supply, Inc. v. OneBeacon Ins. Co.,** 267 S.W.3d 20, 23 (Tex. 2008). Interpretation or construction of an unambiguous contract is a matter of law to be determined by the court. **Coats v. Farmers Ins. Exch.,** 230 S.W.3d 215, 217 (Tex. App.—Houston [14th Dist.] 2006, no pet.).

B. ***Plain Language:***

1. **Security Mut. Cas. Co. v. Johnson,** 584 SW 2d 703, 704 (Tex. 1979). Words in an insurance policy are to be given their plain, ordinary meaning unless the policy gives them a different meaning.
2. **Fiess v. State Farm Lloyds,** 202 SW 3d 744, 751 and n.30 (Tex. 2006) To determine the plain and ordinary meaning of the words of an insurance policy, Courts routinely turn to dictionary definitions.

C. ***Ambiguity:***

1. **National Union Fire Ins. vs. Hudson Energy Co.,** 811 S.W.2d 552, 555 (Tex. 1991). "Generally, a contract of insurance is subject to the same rules of construction as other contracts. If the written instrument is worded so that it can be given only one reasonable construction, it will be enforced as written. However, if a contract of insurance is susceptible of more than one reasonable interpretation, we must resolve the uncertainty by adopting the construction that most favors the insured. The Court must adopt the construction of an exclusionary clause urged by the insured as long as that construction is not unreasonable, even if the construction urged by the insurer appears to be more reasonable or a more accurate reflection of the parties' intent. In particular, exceptions or limitations on liability are strictly construed against the insurer and in favor of the insured."

D. ***Interpretations of Exclusionary Clauses:***

1. If the language of an exclusionary clause in an insurance policy is clear and unambiguous, the well-established rule of construction directing adoption of that construction most favorable to the insured, is not applicable. Consequently, absent ambiguity, neither party can be favored by its construction. **Maryland Casualty Co. v. State Bank & Trust Co**., 425 F.2d 979 (5th Cir. 1970) *cert*. denied, 400 U.S. 828, 27 L. Ed. 2d 57, 91 S. Ct. 55 (1970). **Monte Christo Drilling Corp. v. Byron-Jackson Tools, Inc.**, 266 F. Supp. 123 (S.D. Tex. 1966).
2. The court must adopt the construction of an exclusionary clause urged by the insured as long as that construction is not unreasonable, even if the construction urged by the insurer appears to be more reasonable or a more accurate reflection of the parties' intent." **Nat'l Union Fire Ins. Co. v. Hudson Energy Co**., 811 S.W.2d 552, 555, (Tex. 1991).

E. ***Severability Clauses:***

1. **Clause**: "This insurance applies separately to each insured. This condition will not increase our limit of liability for any one occurrence."
2. A severability clause generally serves to provide coverage to an "innocent" insured who did not commit the intentional conduct excluded by the policy. ***Bituminous Cas. Corp. v. Maxey***, 110 S.W.3d 203, 210 (Tex. App.—Houston [1st Dist.] 2003, pet. denied). (citing ***State Farm Fire & Cas. Ins. Co. v. Keegan***, 209 F.3d 767, 769 (5th Cir. 2000)). Each insured against whom a claim is brought is treated as if he or she is the only insured under the policy, and thus, stands alone with respect to exclusion provisions. ***Williamson v. Vanguard Underwriters Ins. Co.***, No. 14-97-00276-CV, 1998 WL 831476, at *1 (Tex. App.—Houston [14th Dist.] Dec. 3, 1998, pet denied.)

II. COVERAGE ISSUES

A. ***Eight Corners Rule***

1) **Heyden Newport Chemical Corp. v. Southern General Ins. Co.,** 387 SW 22 (Tex. 1965). The duty to defend is determined, regardless of the of the truth or falseness of the allegations, by reviewing the facts alleged within the four corners of the petition and the coverages and exclusions contained within the four corners of the policy.

2) **Richards v. State Farm Lloyds**, 597 S.W.3d 492 (Tex. 2020). The Texas Supreme Court addressed a certified question from the 5th Circuit about whether the there is a "policy language exception" (a/k/a the Northfield Exception based on ***Northfield Ins. Co.,*** 363 F.3d at 531) to the eight-corners rule if the insurance policy does not contain language requiring the insurer to defend all actions against its insured no matter if the allegations of the suit are groundless, false or fraudulent. An insurer's duty to defend is determined by the claims alleged in the petition and the coverage provided in the policy. The Court noted that insurers can contract out of the eight corners rule, but merely omitting the language "even if groundless, false or fraudulent" does not contract out of the eight corners rule. The Court notes that State Farm makes good faith arguments, but it is well aware of the courts' longstanding approach to the contractual duties to defend and it knows how to contract around that approach.

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4) **Encompass Indemnity Company v. Steele**, 2022 U.S. Dist. Lexis 152823 (Northern Dist. – Dallas, Aug 24, 2022). In this case addressing the duty to defend and the eight corners rule, all parties filed motions for summary judgment to determine whether the occurrence was an "accident" under the relevant insurance policies. Encompass argued that the comments to the driver to "nail it" by continuing his off-road driver was the natural result of an intentional act. Encompass also argues that the claims of negligence in the petition do not transform the intentional conduct into a covered accident. The policies do not define accidents so the ordinary meaning is "a fortuitous, unexpected and unintended event." The Texas Supreme Court and the Fifth Circuit made clear: accidents are accidents. The statement to "Nail It!" was not an intentional tort. It was only a comment to continue driving, not to eject passengers. Therefore, this was an accident and there is a duty to defend.

B. ***Exceptions to the Eight Corners Rule:***

3. **Loya Ins. Co. v. Avalos**, 610 S.W.3d 878, (Tex. 2020) The Texas Supreme Court modifies the eight-corners rule to adopt its first and only exception to the eight-corners rule that permits court to consider extrinsic evidence regarding whether the insured and a third party suing the insured colluded to make false representations of fact in that suit for the purpose of securing a defense and coverage where they such coverage and the duty to defend would not otherwise exist. If the insurer conclusively proves such collusive fraud, it owes no duty to defend. An insurer confronted with undisputed evidence of collusive fraud may choose to withdraw its defense without first seeking a declaratory

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