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TEXAS LAW★ALERT

Texas Supreme Court Opinion Opens Possibility for Corporate Representatives to be Deposed in UM/UIM Cases

On June 18, 2021, in *In Re USAA General Indemnity Company*, the Texas Supreme Court addressed the issue of whether a carrier's corporate representative could be deposed, holding that in a suit for UIM benefits in which the carrier contests the insured's entitlement to recovery by placing in issue the other motorist's liability, the existence and amount of the insured's damages, or both, the discovery rules do not prohibit the deposition of the UIM carrier's corporate representative.

The suit arose out of a personal injury matter in which the plaintiff, Frank Wearden, was allegedly injured in a motor vehicle collision with Michelle Bernal, who Wearden alleges was an underinsured driver and negligently caused the accident. Wearden sued USAA for breach of contract and a declaratory judgment to recover benefits under the UIM provisions. Wearden served a notice of intent to take the oral deposition of a USAA corporate representative, requesting that USAA produce a witness or witnesses to testify about numerous topics. The notice also included a subpoena duces tecum instructing the deponent to produce "any and all reports prepared" concerning Wearden's claim". USAA filed a motion to quash the deposition notice and subpoena duces tecum, seeking "protection from any attempt to depose a corporate representative in this lawsuit." USAA argued that neither how it investigated and evaluated Wearden's insured claim nor how it evaluated the lawsuit is probative of the only issues the jury will be required to decide: whether Bernal's negligence caused the accident and the damages Wearden sustained. USAA argued that whatever discovery may be sought from USAA through the deposition of a corporate representative is unreasonably cumulative and duplicative or could be obtained through other sources that are more convenient, less burdensome, or less expensive. Finally, USAA asserted that the proposed deposition topics were overbroad. The trial court denied USAA's motion to quash and the court of appeals denied USAA's petition for writ of mandamus.

The Court first addressed USAA's contention that the procedural rules did not allow Wearden to depose its corporate representative because the representative's testimony did not involve matters that were "relevant to the subject matter of the pending action." The Court held that relevance considerations do not foreclose the deposition, although they do inform its scope. The Court noted that USAA's insistence that a lack of personal knowledge necessarily equates to a lack of relevant knowledge rings hollow. The Court said that presumably, USAA would be in possession of information that supports its position on those issues, even if gleaned second-hand and that information is discoverable, unless privileged, regardless of its admissibility of trial. The Court therefore held that the deposition of a UIM carrier's corporate representative in a suit for UIM benefits is not prohibited on relevance grounds.

The Court then addressed USAA's contention that the deposition is foreclosed by Rule 192.4 because (1) the discovery sought through the deposition is "unreasonably cumulative or duplicative" or "obtainable from some other source that is more convenient, less burdensome, or less expensive" and (2) the burden or expense of the deposition outweighs

its likely benefit. The Court noted that proportionality determinations are made on a case-by-case basis. In this case, the only evidence that USAA submitted with its motion to quash was the police report. While discovery from USAA would likely be cumulative to some extent for information that could be gleaned from other sources, the Court could not conclude that it is unreasonably so, and USAA's own position counseled against such a conclusion. In moving to quash the deposition notice, USAA could have disclosed documents, or referenced previously disclosed documents, providing the information in its possession regarding the liability and damages issues in the case. However, USAA did not do so. Therefore, the Court could not conclude that the proportionality concerns prohibited USAA's deposition.

The Court did hold, however, that some, but not all, of Wearden's noticed deposition topics exceeded the rules' permissible scope. The Court mentioned that some of the topics, which encompassed a general inquiry into the UIM policy, Wearden's compliance with the policy's "contractual provisions," and the occurrence of and compliance with "all conditions precedent to recovery," exceed the relevant subject matter of the suit and were improper. Finally, the Court agreed with USAA that inquiry into extracontractual matters such as the claims-handling process is improper before entitlement to benefits under the policy has been established. With such limits, the Court held that the deposition of USAA's corporate representative is permissible under the discovery rules, as it seeks relevant information and is not out of proportion to the needs and circumstances of the case.

Based on the above, the Court has opened the possibility for corporate representatives and possibly adjusters to be deposed in UM/UIM cases on issues to be decided, including facts known regarding liability and damages. Issues regarding the claims handling process and evaluation should still be precluded from discovery in UM/UIM cases where the liability of the underlying tortfeasor and entitlement to benefits has not yet been established.

[ABOUT THE AUTHOR:](#)

[Mitchell Robbins](#) is an attorney who wants to make a difference. This desire made him choose law as his career, a calling where he could have a positive impact on people's lives. As a former Assistant City Attorney at the City of Dallas, Mitchell has experience in complex litigation. His experience includes serving as lead attorney at bench trials and hearings as well as preparing clients for mediations and depositions.

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