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
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

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Third-Party Claims
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
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
• **Jankowiak**
  - No-fault passenger
  - Disputed liability
INSURANCE ISSUES FOR LAWYERS: Everything You Wanted to Know But Were Afraid to Ask

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