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August 2, 2024

Mr. Blake A. Hawthorne, Clerk
Supreme Court of Texas
201 W. 14th Street
Austin, TX 78701

Re: No. 24-0156, *State Farm Mutual Automobile Insurance Co. v. Valdez*

Dear Mr. Hawthorne:

The Chamber of Commerce of the United States of America and the Texas Association of Business, as amici curiae, respectfully submit this letter brief in support of Petitioner State Farm Mutual Automobile Insurance Company in the above-styled case.[1]

To the Honorable Supreme Court of Texas:

INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the

[1] No counsel for a party authored this brief in whole or in part, and no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. *See* Tex. R. App. P. 11(c).

Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts.

Texas Association of Business ("TAB") is the Texas State Chamber, representing companies of every size and industry before the Texas and national government. TAB works vigorously to support business growth in Texas and to maximize employers' opportunities to grow jobs, increase wages, and give back to Texas communities. Both the Chamber and TAB regularly file amicus curiae briefs in cases, like this one, that raise issues of concern to the Texas and national business communities.

Amici write to explain the importance of construing the Uniform Declaratory Judgments Act according to its text to ensure predictability for insurers and insureds alike. By awarding $20,000 in attorney's fees (and nearly $4,000 in costs) to a party that "won" an award that amounted to only $823, the decision below distorts the UDJA and invites more litigation by parties who lack any significant injury. It further discourages insured parties from accepting reasonable settlement offers in connection with underinsured motorist ("UIM") claims. If allowed to stand, the decision below will increase litigation, for the primary purpose of generating attorney fees rather than benefits to the insured, and, in turn, drive up the cost of insurance. These serious consequences confirm that the Petition for Review should be granted.

ARGUMENT

The Court should review this case to decide whether a district court may award fees under the UDJA to an insured party who nominally prevails in a UIM dispute but is awarded less than he would have received had he accepted a pre-suit settlement offer. In concluding "yes," the decision below endorsed a troubling tactic likely to encourage more "vexatious, time-consuming, and unnecessary litigation." *Ventling v. Johnson*, 466 S.W.3d 143, 155 (Tex. 2015). The decision below is wrong; any fee award on the facts presented here is unreasonable, unnecessary, and unjust. And if awards like this are permitted to stand, the cost of unjustified legal fees will be paid by

the millions of Texans who will be saddled with more expensive insurance premiums. The Court should grant the Petition and reverse.

I. The Petition Presents a Critical Question This Court Should Resolve.

The Petition offers an optimal vehicle to provide clarity on the intersection of the UDJA with "the unique nature of the UIM contract, which conditions benefits 'upon the insured's legal entitlement to receive damages from a third party.'" *Allstate Ins. Co. v. Irwin*, 627 S.W.3d 263, 267 (Tex. 2021) (quoting *Brainard v. Trinity Universal Insurance Co.*, 216 S.W.3d 809, 818 (Tex. 2006)). Specifically, the Court should explain the circumstances under which a UIM plaintiff may recover attorney's fees in a UDJA action when the insurer's pre-suit settlement offer exceeds the policyholder's actual recovery.

A. This Court has long recognized that the UDJA exists "to provide an effective remedy for settling disputes before substantial damages accrue." *Irwin*, 627 S.W.3d at 269. The UDJA's "nature" is "preventative." *Id*. To that end, the UDJA allows a court to "determine[] any question of construction or validity arising under" a "written contract." Tex. Civ. Prac. & Rem. Code § 37.004(a). After making that determination, the trial court has discretion to award attorney's fees, subject to particular statutory constraints: "In any proceeding under this chapter, the court may award costs and reasonable and necessary attorney's fees as are equitable and just." Tex. Civ. Prac. & Rem. Code § 37.009.

This Court has declared repeatedly that fees in UDJA actions are discretionary, not mandatory. Just a few months ago, this Court reaffirmed that the UDJA's use of "may" "grants the trial court discretion in awarding attorney's fees." *Sealy Emergency Room, L.L.C. v. Free Standing Emergency Room Managers of Am., L.L.C.*, 685 S.W.3d 816, 826 (Tex. 2024) (citing *Bocquet v. Herring*, 972 S.W.2d 19, 20 (Tex. 1998)). That echoed its observation in *Irwin*: awards under section 37.009 "are committed to the trial court's sound discretion and reviewed for abuse." 627 S.W.3d at 270. The Court has

enforced that sound principle in countless contexts, repeatedly holding that "the word 'may' should be given its permissive meaning." *Iliff v. Iliff*, 339 S.W.3d 74, 81 (Tex. 2011) (citing cases); *see also Indus. Specialists, LLC v. Blanchard Ref. Co. LLC*, 652 S.W.3d 11, 15 (Tex. 2022), *reh'g denied* (Sept. 30, 2022) (describing the statutory term "may" as "unambiguously permissive language" that "'convey[s] a discretionary function'" (quoting *Sabre Travel Int'l, Ltd. v. Deutsche Lufthansa AG*, 567 S.W.3d 725, 730 (Tex. 2019)).

B. In *Irwin*, this Court considered whether a policyholder could bring a UDJA action against his insurer to establish the liability and underinsured status of the other motorist in a UIM dispute. In holding "yes," the Court observed "that an [UIM] carrier 'is under no contractual duty to pay benefits until the insured obtains a judgment establishing the liability and underinsured status of the other motorist.'" 627 S.W.3d at 265 (quoting *Brainard*, 216 S.W.3d at 818). That is, the UIM contract "conditions benefits 'upon the insured's legal entitlement to receive damages from a third party.'" *Id*. (quoting *Brainard*, 216 S.W.3d at 818). In seeking to resolve how an insured party must establish that "legal entitlement," the lower courts had diverged as to "what form this litigation should take." *Id*.

This Court concluded that the UDJA provided an appropriate mechanism for an insured party to establish the prerequisites necessary to demonstrate entitlement to UIM benefits. *Id*. at 270. The Court reasoned that a contractual dispute between a UIM policyholder and his insurer "can only be resolved by a judgment that determines the existence of" conditions precedent—namely, whether the third-party motorist was liable and underinsured. *Id*. In such circumstances, the UDJA "provide[s] an effective remedy . . . to determine the parties' status and responsibilities under the UM/UIM policy prior to its breach." *Id*. at 269-70. The *Irwin* Court thus issued a narrow holding: "A declaratory judgment in this instance is simply the remedy for resolving this contractual dispute." *Id*. at 270.

The *Irwin* Court then considered whether the UDJA's fee-shifting provision could apply in a UIM dispute. Echoing the statutory text, the Court stated simply that "fees *may* be available." *Id*. at 271 (emphasis added). That

is, when an insured party brings a UDJA action in connection with UIM benefits and prevails, he *might* be entitled to "a discretionary award of reasonable attorney's fees *when equitable and just*." *Id*. (emphasis added) (citing Tex. Civ. Prac. & Rem. Code § 37.009).

The Court emphasized, however, the narrowness of its holding. It clarified only that fees *may* be available; it did not opine on the proprietary of the *amount* of fees awarded in that case, because the insurer did not "claim it to be an abuse of discretion." *Id*. at 272. And it did not consider the scenario or arguments presented here, where the amount the policyholder actually recovered is one-sixth of what he would have received in a pre-suit settlement offer.

Irwin thus left open the issue the Petition now before the Court presents: whether and under what circumstances a UDJA plaintiff may recover fees in a UIM coverage claim.

C. The Petition provides this Court an excellent opportunity to resolve that question. And resolution is warranted now, before the troubling practice at issue in the Petition becomes more widespread.

Here, the insurer offered the policyholder $5,135 to resolve his UIM claim, in addition to $102,501 already recovered, for a total of $107,636. *See* Pet. 9. At that time, the policyholder had incurred no attorney's fees. *Id*. The policyholder rejected the insurer's offer and chose to litigate instead. He retained legal counsel and brought a claim under the UDJA. The matter went to trial, and the jury ultimately awarded the policyholder damages of $103,324—or just $823 more than he had already recovered. *Id*. at 10.[2] He therefore was entitled to only $823 in UIM benefits—barely 16% of what he would have received had he accepted the insurer's pre-suit settlement offer.

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[2] In an apparent scrivener's error, the trial court entered judgment in the amount of $824 rather than $823; the Court of Appeals reduced the judgment one dollar to match the jury's verdict. *See State Farm Mut. Auto. Ins. Co. v. Valdez*, 690 S.W.3d 712, 715 & n.1 (Tex. App.—San Antonio 2024, pet. filed).

Id. The trial court nevertheless concluded—and the court of appeals affirmed—that the policyholder was entitled to $20,000 in legal fees and nearly $4,000 in court costs. *Id*. at 10-11.

The Petition thus squarely tees up whether a fee award is warranted under these circumstances. As the Petition notes, this question has arisen multiple times. In fact, since *Irwin*, "almost every UIM case is brought as a declaratory judgment claim and almost every UIM insured seeks an award of attorney's fees." Pet. 14. There is no serious doubt that the availability of attorney's fees in UIM disputes under the UDJA is a frequently recurring issue—one that has come up often since *Irwin* and one that will continue to recur until this Court weighs in. And the facts of this case—in which a policyholder won a $20,000 fee award for nominally winning a judgment not meaningfully different than where the parties stood before litigation—illustrates the danger in permitting this practice to continue. The Court should grant review to provide guidance and set standards for the lower courts.

II. The Decision Below Is Wrong.

The Court should use this opportunity to hold that when a plaintiff in a UIM suit is awarded less than what his insurer offered before suit, the UDJA does not permit a trial court to award attorney's fees. Such fees are neither "reasonable" nor "necessary," and awarding them would be neither "equitable" nor "just." Tex. Civ. Prac. & Rem. Code § 37.009. That result flows from both the text of the statute and the policy considerations animating it. The contrary decision below should be reversed.

A. The statutory text demands that the judgment below be reversed. The UDJA provides that a trial court "may award costs and reasonable and necessary attorney's fees as are equitable and just." Tex. Civ. Prac. & Rem. Code § 37.009. The costs in the judgment below are neither reasonable nor necessary, and awarding fees in these circumstances is neither equitable nor just. Accordingly, fees may not be awarded.

"May." The Legislature built the fee-shifting provision around the permissive—not mandatory—verb "may." The Legislature has declared that the verb "'may' creates discretionary authority or grants permission or a power." Tex. Gov't Code § 311.016(1). As set out above (at 3), this Court has reaffirmed repeatedly that an award of legal fees and costs is not mandatory. *See Sealy Emergency*, 685 S.W.3d at 826; *Irwin*, 627 S.W.3d at 270. As far as the statutory text is concerned, the trial court always has discretion to decline to award fees. *See id*. To the extent the courts below believed they were required to award fees to a policyholder who "won" barely 16% of what he would have received in a pre-suit settlement, they erred as a matter of law. This Petition thus presents an opportunity to remind lower courts that they should not reflexively or instinctively award fees under the UDJA when such fees are plainly inappropriate.

"Reasonable and necessary." The fees awarded in this case are neither reasonable nor necessary. It is unreasonable to award plaintiff's attorneys $20,000 for a "win" that leaves their client over $4,000 worse off than he would have been had he simply accepted the insurer's pre-suit settlement offer, before any legal fees or court costs had been incurred. And no one could plausibly call this litigation "necessary"—had the policyholder simply accepted the insurer's pre-suit offer, everyone would have been better off (except the plaintiff's attorneys). The fees incurred in this case do not reflect "hours reasonably expended for services necessary to the litigation." *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 489 (Tex. 2019).

That conclusion flows from an unbroken line of cases stretching back decades that limit trial courts' discretion in awarding UDJA fees. *See generally Bocquet*, 972 S.W.2d at 21. This Court has long recognized that a plaintiff has the duty to prove that "the requested fees are both reasonable *and* necessary"—conjunctively, not disjunctively. *Rohrmoos Venture*, 578 S.W.3d at 489 (emphasis added). The plaintiff made no such showing here. *See* Pet. 17-20.

"Equitable and just." The Legislature imposed yet an additional constraint on the trial court's discretion to award fees: "reasonable and necessary" fees can be awarded only "as are equitable and just." That is to say that even if an attorney's work was necessary to the resolution of the dispute and reasonable in its amount, a fee award is proper only as equity and justice require. *See Bocquet*, 972 S.W.2d at 21. This Court has left "[m]atters of equity" and "the responsibility for just decisions" to the trial court's discretion. *See id*. But no principle of equity or justice supports rewarding a litigant who turned down a reasonable pre-suit settlement offer in order to pursue unnecessary and burdensome litigation, only to recover a small percentage of the pre-suit settlement amount.

Other statutory schemes confirm that the award in this case is neither equitable nor just. For example, Texas Rule of Civil Procedure 167 allows parties to avoid awards of legal fees by offering to settle a claim for money damages. If that settlement is rejected, "and the judgment to be awarded on the monetary claims covered by the offer is significantly less favorable to the offeree than was the offer, the court must award the offeror litigation costs against the offeree from the time the offer was rejected to the time of judgment." Tex. R. Civ. P. 167.4(a). And "[a] party against whom litigation costs are awarded may not recover attorney fees and costs under another law incurred after the date the party rejected the settlement offer made the basis of the award." Tex. R. Civ. P. 167.4(f). So too here: Texas courts should not reward unnecessary litigation that results in a far worse recovery than the pre-suit settlement proposal.

B. Since the statutory text is clear, there is no need to resort to policy considerations. But to the extent they matter, the Legislature's recent policy pronouncements counsel in favor of reversal.

This Court has long recognized that the public policy of Texas seeks to "discourage . . . vexatious, time-consuming and unnecessary litigation." *Ventling*, 466 S.W.3d at 155. Properly read, the UDJA is fully consistent with that policy objective: it provides a mechanism to resolve disputes efficiently before the parties incur substantial litigation expenses. *See Irwin*, 627 S.W.3d

at 269 ("The UDJA is intended to provide an effective remedy for settling disputes before substantial damages accrue."). In *Irwin*, the Court noted that the UDJA "is often preventative in nature." *Id*. (citing *Cobb v. Harrington*, 190 S.W.2d 709, 713 (1945)). And the Court expressly noted that the UDJA's application in UIM disputes "not only served a useful purpose but also terminated the controversy between the parties" by "determine[ing] the parties' status and responsibilities under the UM/UIM policy prior to its breach." *Id* at 270.

The decision below turns that on its head. Far from "preventative," *see id*., the UDJA action here supplanted the more efficient process of negotiation. It encouraged the plaintiff to run to court instead of work with the insurer to agree on a reasonable settlement, pushing previously routine matters into the court system and unnecessarily consuming judicial resources. And the application of the UDJA may have "terminated the controversy" over UIM liability, but it has spawned a new one over the egregious fee award. None of that is consistent with the purpose of the UDJA.

On top of that, the Legislature has demonstrated repeatedly in recent years its desire that parties to insurance disputes resolve their claims out of court. In particular, the Legislature has pared back the availability of awards of legal fees in insurance disputes. *See White v. Allstate Vehicle & Prop. Ins. Co.*, No. 6:19-CV-00066, 2021 WL 4311114, at *9 (S.D. Tex. Sept. 21, 2021); *Pearson v. Allstate Fire & Cas. Ins. Co.*, No. 19-CV-693-BK, 2020 WL 264107, at *4 n.3 (N.D. Tex. Jan. 17, 2020); *see also* House Research Org., Bill Analysis of H.B. 1774, 85th Leg., R.S., at 4 (2017), bit.ly/48loRpd; Elizabeth Von Kreisler & Suzette E. Selden, Annual Survey of Texas Insurance Law, 21 J. Consumer & Com. L. 54, 55 (2018). Once again, the decision below runs contrary to those goals by incentivizing litigation, not settlement, in routine coverage matters.

Finally, fee awards like the one endorsed below create enormous rate pressure on insurers. If insurers' actuarial analyses must factor in exorbitant legal fees in unnecessary litigation, consumers will inevitably pay higher

premiums. That, too, runs contrary to the Legislature's policy goals, which expressly promote consumer access to UIM coverage. *See* Tex. Insurance Code § 1952.101 (requiring insurers to offer UIM benefits in automobile liability policies).

PRAYER

The Petition for Review should be granted. The Court should reverse the judgment below and hold as a matter of law that Plaintiff-Respondent Valdez is not entitled to an award of attorney's fees.

Respectfully submitted.

Kyle D. Hawkins

Counsel to Amici Curiae

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