



**Fourth Court of Appeals**  
**San Antonio, Texas**

**OPINION**

No. 04-22-00113-CV

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,**  
Appellant

v.

**Ernest VALDEZ,**  
Appellee

From the 288th Judicial District Court, Bexar County, Texas  
Trial Court No. 2020-CI-12244  
Honorable Aaron Haas, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Rebeca C. Martinez, Chief Justice (concurring in the judgment only)  
Irene Rios, Justice  
Lori I. Valenzuela, Justice

Delivered and Filed: January 31, 2024

**AFFIRMED AS MODIFIED**

Following a vehicular accident with an underinsured motorist, appellee Ernest Valdez sued appellant State Farm Mutual Automobile Insurance Company (“State Farm”) seeking a declaration that he was entitled to recover damages resulting from the accident under his underinsured motorist coverage. The jury awarded an amount to be paid under the underinsured motorist policy that was less than State Farm’s pre-suit settlement offer. In its sole issue, State Farm argues the trial court abused its discretion when it awarded Valdez attorney’s fees after he prevailed on his declaratory judgment action. Specifically, State Farm contends it was not necessary for Valdez to incur

attorney's fees because the judgment did not exceed State Farm's pre-suit settlement offer. We affirm.

### **BACKGROUND**

Valdez was in a vehicular accident with Katherine Mack when she rear-ended him with her vehicle. Valdez settled with Mack for her \$100,001 policy limit. Valdez then sought compensation from his own insurance carrier, State Farm, pursuant to his personal injury protection ("PIP") benefits and underinsured motorist ("UIM") benefits. State Farm paid Valdez \$2,500 pursuant to his PIP benefits and offered to settle his UIM claim for \$5,135.

Valdez did not accept the offer to settle his UIM claim. Instead, Valdez sued State Farm seeking a declaration that his damages exceeded the sum of Mack's policy limit and his PIP benefit, and that he was entitled to recover additional damages under his UIM policy. Valdez also sought recovery of court costs and attorney's fees under the Uniform Declaratory Judgments Act ("UDJA").

The parties stipulated to coverage under Valdez's UIM claim. The stipulation stated:

Defendant [State Farm] intends to pay corresponding compensatory damages in a timely manner per Texas law up to the limits of liability for "each person" and "each accident" under the policy subject to the terms, limitations, and applicable provisions and exclusions of the policy if Plaintiff Ernest Valdez shows through a judicial determination that he is legally entitled to recover from the owner or operator of the vehicle that collided with his vehicle because of bodily injury or property damage he sustained that was caused by the auto accident if the owner or operator of that vehicle's insurance limit of liability is not enough to pay the full amount Plaintiff is entitled to recover as damages, subject to any offsets and/or credits that Defendant [State Farm] is entitled to as a matter of law.

The jury was charged with determining Valdez's damages. Under Valdez's UIM policy, Valdez would be legally entitled to recover from the UIM policy if the damages exceeded Valdez's compensation from the settlement with Mack and State Farm's PIP coverage.

The jury awarded Valdez \$103,324 in damages. That amount was offset by the \$100,001 settlement with Mack and the \$2,500 State Farm paid in PIP benefits. After reducing the judgment by these offsets, State Farm remained liable to Valdez for \$823 under the UIM policy. The trial court rendered judgment declaring Valdez is entitled to recover from State Farm \$824<sup>1</sup> pursuant to his UIM policy. The question on whether Valdez was entitled to recover attorney's fees and court costs was tried to the bench. The trial court awarded Valdez \$20,000 in attorney's fees and \$3,854.94 in court costs pursuant to the UDJA. State Farm appeals.

### DISCUSSION

The Texas Supreme Court has held an insured may sue its insurance carrier under the UDJA to determine the parties' status and responsibilities under a UIM policy prior to its breach. *Allstate Ins. Co. v. Irwin*, 627 S.W.3d 263, 270 (Tex. 2021). The UDJA "provides that 'the court may award costs and reasonable and necessary attorney's fees as are equitable and just.'" *Id.* (quoting TEX. CIV. PRAC. & REM. CODE ANN. § 37.009); *see also Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 484 (Tex. 2019) (holding, when a trial court is authorized by statute or contract to award attorney's fees, "the party seeking a fee award must prove the reasonableness and necessity of the requested attorney's fees"). "Such awards are committed to the trial court's sound discretion and reviewed for abuse." *Irwin*, 627 S.W.3d at 270.

In its sole issue, State Farm argues the trial court abused its discretion when it awarded Valdez attorney's fees. State Farm does not contend that the attorney's fees requested by Valdez were unreasonable, inequitable, or unjust; instead, it argues the attorney's fees incurred by Valdez were not necessary. State Farm points out that its \$5,135 pre-suit settlement offer exceeded

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<sup>1</sup> We reform the judgment to accurately reflect the jury's verdict. The jury found Valdez sustained \$103,324 in damages. State Farm was entitled to offsets from the \$100,001 settlement with Mack and the PIP benefits paid by State Farm. Therefore, Valdez was entitled to \$823 in UIM benefits: (\$103,324-\$100,001-\$2,500=\$823).

Valdez's \$823 entitlement under the UIM policy. Because the pre-suit settlement offer was greater than Valdez's damages, State Farm contends Valdez's entire suit was unnecessary. Therefore, State Farm argues, Valdez's attorney's fees prosecuting the UIM claim were not necessary.

Generally, each party must pay its own attorney's fees. *Rohrmoos*, 578 S.W.3d at 483. "But there are certain circumstances in which the prevailing party can recover fees from the opposing party." *Id.* at 484. "When a claimant wishes to obtain attorney's fees from the opposing party, the claimant must prove that the requested fees are both reasonable and necessary." *Id.* at 489. Both elements are questions of fact to be determined by the fact finder and act as limits on the amount of fees awarded. *Id.*

The lodestar method "is the standard for calculating the reasonableness and necessity of attorney's fees in a fee-shifting situation." *Id.* at 498. "[T]he base lodestar calculation should reflect hours reasonably expended for services necessary to the litigation." *Id.* When supported by sufficient evidence, there is a presumption that the base lodestar calculation reflects the reasonable and necessary attorney's fees that can be shifted to another party. *Id.* at 499. "Sufficient evidence includes, at a minimum, evidence of (1) particular services performed, (2) who performed those services, (3) approximately when the services were performed, (4) the reasonable amount of time required to perform the services, and (5) the reasonable hourly rate for each person performing such services." *Id.* at 498.

We recognize that State Farm's argument is narrow: whether the pre-suit settlement offer—that exceeded Valdez's UIM entitlement pursuant to the jury's verdict—rendered the suit for declarative relief and derivative attorney's fees unnecessary. Nevertheless, because there is a presumption that sufficient evidence supporting the base lodestar calculation reflects the requested attorney's fees are both reasonable and necessary, we begin by reviewing the sufficiency of the evidence supporting the lodestar calculation in this case.

Here, Valdez requested \$66,272 in attorney's fees for prosecuting his UIM claim against State Farm. The trial court admitted, without objection, documentation showing the particular services performed, who performed the services, and when the services were performed. Valdez's counsel testified that each of the services performed in the documentation were necessary to pursue the UIM claim, and the documentation detailed each of the tasks associated with the time spent on the case. The documentation shows and counsel testified that he spent 136.93 hours and his associate spent 42 hours prosecuting the claim from July 7, 2020 through December 4, 2021.<sup>2</sup> Counsel also testified that Valdez was requesting his associate's attorney's fees at a rate of \$275 an hour<sup>3</sup> and, although his customary rate is \$500 an hour, he was only requesting fees at a rate of \$400 per hour. The resumes of both attorneys were admitted into evidence and counsel testified to his and the associate's experience to justify the hourly rate requested. On this record, there is sufficient evidence to support the lodestar calculation for the attorney's fees requested by Valdez. Notably, the trial court made a significant downward adjustment and awarded Valdez \$20,000 in attorney's fees, an adjustment that Valdez did not contest and does not appeal.

Having determined there is sufficient evidence supporting the trial court's award of attorney's fees under the lodestar method, we now turn to State Farm's argument that the UDJA suit and derivative attorney's fees were not necessary because its pre-suit settlement offer exceeded Valdez's UIM recovery at trial.

Following a vehicular accident, an insurance carrier is under no legal obligation to pay UIM benefits until the insured obtains a judgment establishing the liability and underinsured status of the other motorist. *Irwin*, 627 S.W.3d at 267. As is the case here, "the insured is not required

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<sup>2</sup> Counsel did not seek attorney's fees for time spent preparing for the portion of the bifurcated trial regarding attorney's fees on December 17, 2021.

<sup>3</sup> Counsel testified that the associate's rate was "on the light side based on her capabilities and experience level."

to litigate these issues against the third-party tortfeasor, but may instead settle the tort claim and litigate UIM coverage with the insurer.” *Id.* Notwithstanding Valdez’s settlement with Mack, the supreme court has made clear that Valdez must first obtain a judgment establishing Mack’s liability and her status as an underinsured motorist before State Farm would be legally obligated to pay Valdez UIM benefits.

State Farm filed a stipulation with the court that stated it intends to pay the UIM benefits “if [Valdez] shows through a judicial determination that he is legally entitled to recover from [Mack] . . . if [Mack’s] insurance limit of liability is not enough to pay the full amount [Valdez] is entitled to recover as damages, subject to any offsets and/or credits that [State Farm] is entitled to as a matter of law.” Thus, State Farm stipulated it would pay the UIM benefits *only if* Valdez obtained a judgment establishing he is entitled to UIM benefits. It is axiomatic that Valdez was required to file suit before he could obtain a judgment establishing his entitlement to UIM benefits, which would, in turn, trigger State Farm’s obligation to pay UIM benefits. Accordingly, it was necessary for Valdez to incur attorney’s fees so that he could file the suit and obtain the judgment necessary to establish his entitlement to the UIM benefits.

The UDJA’s “stated purpose is ‘to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.’” *Irwin*, 627 S.W.3d at 271 (quoting TEX. CIV. PRAC. & REM. CODE ANN. § 37.002(b)). As approved by the supreme court, Valdez filed a cause of action under the UDJA to obtain the judgment necessary to establish his entitlement to the UIM benefits. *Id.* at 270. “Part of the remedy [the UDJA] affords is a discretionary award of reasonable [and necessary] attorney’s fees when equitable and just.” *Irwin*, 627 S.W.3d at 271 (quoting TEX. CIV. PRAC. & REM. CODE ANN. § 37.009). The UDJA “entrusts attorney’s fees awards to the trial court’s sound discretion.” *Irwin*, 627 S.W.3d at 271. Because it was necessary

for Valdez to seek a declaration establishing his entitlement to UIM benefits, the trial court did not abuse its discretion when it awarded Valdez attorney's fees.

To hold otherwise would effectively penalize Valdez for declining to accept the pre-suit settlement offer. "[A] judge is not allowed to penalize a party for refusal to enter into [a] settlement . . . ." *Nicholson v. Tashiro*, 140 S.W.3d 445, 448 (Tex. App.—Corpus Christi—Edinburg 2004, no pet.) (holding the trial court erred when it denied recovery of court costs because a party declined to accept a settlement amount that was greater than the jury award). Moreover, Valdez's pleadings stated he was seeking monetary relief in excess of \$250,000. While the jury returned a verdict that was less than State Farm's pre-suit settlement offer, it could have also returned a verdict that was much greater than the pre-suit settlement offer. If we were to agree with State Farm's position that attorney's fees were not necessary in Valdez's UIM case because the jury verdict resulted in a lower recovery than the pre-suit settlement offer, Valdez would be required to predict with mathematical certainty the jury's award of damages before filing suit or jeopardize his claim for attorney's fees even though he successfully prosecuted his UIM claim. Here, it was necessary for Valdez to pursue his UIM claim under the UDJA so that he could establish his entitlement to UIM benefits and State Farm does not challenge whether the attorney's fees were reasonable, equitable, or just.

Accordingly, we overrule State Farm's sole issue.

#### CONCLUSION

We reform the judgment to reflect that Valdez is entitled to \$823 in UIM benefits. We affirm the trial court's judgment as modified.

Irene Rios, Justice