

## **Underinsured Motorists Insurance Coverage: Consent to Settle Requirement**

By Collins & Collins

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Uninsured or Underinsured motorist coverage (UIM) is an important optional coverage offered by insurance companies. UIM provides coverage for an insured when the insured is in an automobile accident that is another party's fault and either the at-fault party has no insurance or does not have sufficient insurance coverage to compensate the insured fairly for his injuries and damages.

Because the insurance policy is a contract, there are terms and conditions that the insured must follow so that the insurer is obligated to meet the terms of the insurance coverage. One term or condition in most every automobile insurance policy is the requirement that the insured obtain approval from his insurer to settle a personal injury claim for damages against an at-fault party IF the insured intends to bring a claim under his own insurance policy, or under a policy that he has coverage, for underinsured motorist coverage benefits.

The reason for this requirement is that when an insured settles a claim against a liable party and signs a release agreement that releases that person from any further liability or claims that arise from the accident, the insured's insurance company cannot bring a claim in the future against the liable party in subrogation of payments the insurance company may pay for its insured. In subrogation claims, the insurer "stands in the shoes" of its insured so that any claims the insured may have, the insurer also has. When the insured releases a negligent party for damages, neither he nor his insurer may bring any further claim for damages or reimbursement, in the case of the insurer.

The 2007 New Mexico Court of Appeals case of *Salas v. Mountain States Mutual Cas. Co.*, reaffirmed past cases that established the insured's duty to obtain permission from its insurer to settle a liability claim when the insured intended to bring an UIM claim. The Court concluded that the insured's settlement of the claim and release of the tortfeasor extinguished the insurer's subrogation rights and triggered a rebuttable presumption of prejudice. "Rebuttable presumption" meaning, that if the insured could demonstrate that the insurer was not prejudiced, the insured's failure to obtain permission would not be a bar to bringing the UIM claim. One situation that would rebut the presumption of prejudice is the situation wherein the tortfeasor is judgment proof and the insurer would not be able to recover any money paid in subrogation even if the insured had not released the at-fault party.

An interesting twist in the *Salas v. Mountain States* case is that, ultimately, Ms. Salas, a passenger in the insured vehicle and therefore Class 2 insured, was able to bring her UIM claim because she was not aware that there were UIM benefits available. Ms. Salas had made a claim under the Mountain States policy for medical payments coverage, but was not aware that there was also uninsured/underinsured motorist coverage. Because Mountain States had failed to advise her of the availability of UIM benefits, the Supreme Court ruled that under the circumstances of the case, the insurer could not deny Ms. Salas' ability to make the UIM claim.

Auto accidents can raise some confusing and significant insurance issues. There have been numerous developments in the courts over the last few years regarding the obligations of insurers in UIM cases. If you have been involved in a car accident where UIM issues are raised, you should seek the guidance of an experienced personal injury attorney.

### **DISCLAIMER**

Main Office:  
500 4<sup>th</sup> St. NW, Suite 405  
Albuquerque, NM 87102  
Phone: (505) 242-5958/Fax: (505) 242-5968

<http://www.newmexicoinjuryattorneyblog.com/>