

NEW MEXICO INJURY ATTORNEY BLOG

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Uninsured/Underinsured Coverage Has Broad Scope in New Mexico

The 2005 New Mexico Court of Appeals case of *State Farm v. Leubbers* points out the extremely broad scope of coverage provided by uninsured/underinsured motorist coverage. The case involved numerous issues surrounding an uninsured/underinsured motorist claim for damages made on behalf of a minor whose father was shot and killed in a drive-by shooting. Each of the issues seemingly weighed against coverage. In fact, the district court dismissed the claims on State Farm's Motion for Summary Judgment. The Court of Appeals reversed suggesting expansive and liberal enforcement of uninsured/underinsured motorist coverage.

The facts get even more interesting than the implication of uninsured/underinsured motorist coverage for a victim of a drive-by shooting. Most would assume that there is no such coverage for such an act. The court almost glossed over this aspect of the case seemingly taking it for granted that the use of the vehicle in the act brought into play uninsured/underinsured motorist coverage. Next, the court had to address the minor child's loss of consortium claims for the loss of his father. *And, the child had yet to be born.* The mother was only four weeks pregnant with the plaintiff child.

The court found that the child, though unborn at the time, was entitled to make a claim for loss of consortium for the loss of his father. The court rejected State Farm's argument that the loss of consortium was subsumed within the wrongful death action. This ruling was particularly important for the child because there is strict 3 year statute of limitations for wrongful death actions and this period had already run by the time the claims were brought on behalf of the child.

The court further refused State Farm's arguments that the uninsured/underinsured coverage covered only bodily injury. The court stated that such restrictions on coverage would defeat the purposes of the act. The court stated, "The purpose of our uninsured motorist statute is to place insured persons in the same position they would be if the uninsured motorist had had insurance." Clearly, allowing exclusion of coverage in this case would put the child in a far worse position than if coverage was available from the other driver.

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The court also pointed out the public policy of protecting and providing for the welfare of New Mexico children. The court addressed the great vulnerability of children who lose a parent and the need to support them. Allowing State Farm to evade the uninsured/underinsured coverage would hoist the responsibility for caring for the injured child on to society. Quoting Professor Prosser from the Restatement of Torts, the court revealed its disdain for the attempted evasion of responsibility, "it is not easy to understand and appreciate this reluctance to compensate the child who has been deprived of the care, companionship and education of his mother, or for that matter his father, through the defendant's negligence."

The Court's ruling suggests a public policy of construing attempted exclusions of uninsured/underinsured coverage against the insurance carrier. Uninsured/underinsured coverage is critical in a state such as New Mexico which suffers the highest rate of uninsured motorist in the nation. The lengths to which the court went to afford coverage for the injured child in this case is quite remarkable illustrating the court's embrace of a public policy that dictates a liberal construction of uninsured/underinsured motorist coverage for the protection of New Mexico's public.

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