

NEW MEXICO INJURY ATTORNEY BLOG

PUBLISHED BY
COLLINS & COLLINS, P.C.
ATTORNEYS AT LAW

May 25, 2011

Recovery Under Underinsured Motorist Coverage Not Constrained by Punitive Damage Exclusion of Underinsured Driver

It is well established in New Mexico that a party injured in an auto accident can make a claim against his or her underinsured motorist policy coverage for both compensatory damages and punitive damages. Typically, to get to underinsured coverage, the injured party must recover liability policy limits from the other driver's insurance.

In *Farmers v. Sandoval*, the New Mexico Court of Appeals addressed this general rule in the case of an injured party with nominal compensatory damage claims and much greater potential punitive damage claims in a DWI related auto accident.

The at fault driver's Mid-Century Insurance Company liability policy excluded coverage for its driver for punitive damage awards which would typically be recovered in a DWI auto accident. This exclusion of punitive damages coverage coupled with the injured party's small compensatory damage claim prevented recovery for the full liability policy limits under the Mid-Century policy.

The injured party then made an underinsured motorist claim against her own Farmer's policy. The injured party sought recovery for the full amount of her underinsured coverage less the actual recovery from Mid-Century. Farmers disputed the claim arguing instead that Farmers was entitled to an offset for the full amount of the Mid-Century liability limits and not lessor recovery due to the punitive damages exclusion. In essence, Farmers was attempting to piggyback the punitive damage exclusion under the Mid-Century policy.

The Court of Appeals disagreed with Farmers on a number of grounds. First, the Court cited the purpose of underinsured coverage which is to protect the New Mexico driving public from uninsured and underinsured drivers. The underlying objective of uninsured/underinsured motorist coverage (UM/UIM) is to make the injured party whole, at least to the degree made possible by the underinsured coverage.

DISCLAIMER

Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958

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

Clearly, injured parties have the right to make a punitive damages claim against their UM/UIM policy. This right should not be constrained by the contractual abrogation of duty on the part of the opposing insurance company. The Court of Appeals recognized that to allow Farmers argument would result in an injured party recovering less in an accident involving an underinsured driver than an accident with a driver that had no insurance at all. The Court stated that this clearly defeated the remedial purpose of UM/UIM coverage.

In short, the Court ruled that that "Farmers' offset is limited to the amount of liability proceeds actually received by Defendants under the Mid-Century policy" and not the full amount of the Mid-Century liability limits. This once again reaffirms New Mexico's commitment to protecting the public against uninsured and underinsured drivers as evidenced by a steady stream of appellate court cases over the last couple of years aggressively enforcing UM/UIM recovery rights.

DISCLAIMER

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

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