

# NEW MEXICO INJURY ATTORNEY BLOG

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## **Work Related Auto Accident Injuries and Employer Uninsured/Underinsured Motorist Coverage**

Work related injuries in New Mexico, as in most states, typically leave the injured workers grossly under-compensated in cases of serious or permanent injuries or wrongful death. With on the job injuries, the worker is typically limited to recovery under the Workers Compensation Act.

There are exceptions. An injured worker can recover damages beyond the limits of the workers compensation statutes when a third party has caused the injuries by suing that third party. In addition, in the case of on the job auto accidents in work vehicles, the injured worker may obtain additional relief under the employer's uninsured/underinsured motorist coverage.

The recent case of *Marckstadt v. Lockheed Martin* (consolidated with *Federated Service Insurance v. Martinez*) forcefully reiterates the right to recovery under an employer's uninsured/underinsured motorist coverage. In these consolidated cases, employees had been injured in auto accidents while driving their work vehicles. In both cases, the other driver was underinsured. Likewise, in both cases, the injured worker made claims against the employer's uninsured/underinsured coverage on the vehicles.

Naturally, the insurance companies in both cases denied coverage. In both cases, the insurance companies argued that it was the intent of the insured employers to reject uninsured/underinsured coverage. However, there was no written rejection of uninsured/underinsured motorist coverage (UM/UIM). In the case of Lockheed Martin, there was an X on a form indicating that UM/UIM had been rejected. However, it was not clear who put the X on the form and only after the accident did Lockheed Martin actually sign a written rejection. Neither was there a signed written rejection in the Federated case though it was clear that the insured employer intended to reject coverage.

The Court ruled that though an actual signature was not required to reject coverage, and the rejection did not have to be attached to the policy, the rejection did have to be in writing no matter what the intentions of the parties. The Court recognized that the requirement of a writing was set forth in NMAC §13.12.3.9. The Court also recognized the

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problems with interpreting unwritten intentions, the possibility of fraud on the injured worker in these cases to avoid underinsured/uninsured coverage, and the litigation that would ensue if the writing requirement were not in place.

If you are injured on the job in a work vehicle as a result of negligence other than your own negligence, you may be entitled to recovery of damages beyond those limitations set forth in the workers compensation act. If the other party lacks insurance or is underinsured, and you have suffered serious or permanent injuries, then you should determine the availability of uninsured/underinsured coverage on your employer's vehicle(s). Due to the severe limitations of workers compensation, and the lack of insurance with the other driver, this may be the only way to recover fully on your injuries and other damages.

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