

February 5, 2011

No Wiggle Room for Late Insurance Premiums in New Mexico

Cancellation of insurance can be devastating to an insured. It seems that Murphy's Law is no more consistent than in the case of insurance cancellation whether it is health, auto, homeowners or any other kind of insurance.

As Murphy dictates, cancellation of a policy is sure to be followed soon by an insurable event such as an illness, auto accident, or in the case of *Molina v. Allstate*, theft of the insured vehicle.

The New Mexico Court of Appeals case of *Molina v. Allstate* case involved a longtime insured family, 12 years in fact. It is not clear why but it may be assumed that the Molinas were having some financial difficulty and were unable to pay their full insurance premiums on time.

Instead, the Molinas made a partial payment within the deadline which was communicated to them by Allstate through a renewal letter. The Molinas later paid the remainder after the deadline. The Allstate representative conditionally accepted the payment noting the delinquency. Allstate subsequently denied the late payment and refunded the entire premium to the Molinas noting the cancellation.

Murphy has never been more true to his calling than the Molina case. Allstate generated a refund check on September 13, 2001, and sent a cancellation letter on September 16 enclosing a full refund. Naturally, the Molina's car was stolen on September 16.

The Molina's made a number of arguments for enforcement of the policy primarily noting that Allstate had accepted the partial payment. Allstate responded that the payment was conditionally received subject to cancellation. The Court of Appeals agreed.

The Court cited several authorities for the proposition that "the failure of an insured to pay a renewal premium by the due date results in a lapse of coverage as of the last day of the policy period." There was no disputing that the Molinas payment was late. The Court held that partial payment was a breach of the terms of the insurance contract and was insufficient to prevent a lapse in coverage. The Court applied simple principles of contract law. The contract

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was unambiguous as to its terms. The Molinas breached the terms of the contract thereby justifying the cancellation of coverage.

The results are certainly harsh for the Molinas, and many others in a similar position. On the other hand, a contract is a contract. Insurance policy holders of every stripe should keep this mind. Insurers are not prone to acts of kindness and generosity in overlooking the terms of their contracts for the benefit of their policy holders. And the law is on their side in cases involving late premiums.

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