

NEW MEXICO INJURY ATTORNEY BLOG

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Uninsured/Underinsured Coverage: An Insurer's Duty to Passengers in New Mexico

The case of *Salaz v. Mountain States Mutual Casualty Company* was filed in the New Mexico Supreme Court in early 2009. As such, this is not exactly a timely post but it addresses a number of important issues regarding uninsured/underinsured motorist coverage in New Mexico. The case could prove very helpful to those injured in New Mexico as passengers in another driver's insured vehicle.

The case involved uninsured/underinsured motorist coverage for a class-two insured which is defined as a passenger in a covered vehicle. Ms. Salaz was injured while riding in a vehicle insured by defendant Mountain States Insurance and therefore came under the policy's uninsured/underinsured (UM/UIM) provisions.

Ms. Salaz believed that the car in which she was injured was uninsured due to that indication on the police report. Ms. Salaz had filed a claim against the other driver and his insurance company Farmer's . Mountain States learned of this lawsuit, made a subrogation demand to Farmer's but failed to notify Ms. Salaz of the coverage available to her as a class-two insured. Ms. Salaz had no reason to know of the uninsured/underinsured coverage available to her, and did not make any attempt to discover the available coverage.

Ms. Salaz subsequently settled for policy limits with Farmer's. The check issued by Farmer's named defendant Mountain States as a payee consistent with Mountain States subrogation claim. This was the first that Ms. Salaz learned of Mountain States coverage on the vehicle in which she was injured. Ms. Salaz subsequently made a underinsured claim (UIM claim) against Mountain States. Mountain States refused coverage on the basis that Ms. Salaz had breached the "consent to settle" provision in the subject policy.

The District Court granted summary judgment in favor of the defendant Mountain States basically asserting that it was up to Ms. Salaz to determine all available coverage and that Mountain States had no affirmative duty to disclose coverage to her as a class-two insured due to the lack of a contractual relationship between Ms. Salaz and Mountain States.

Both the New Mexico Court of Appeals and the New Mexico Supreme Court disagreed with the District Court. Both found that indeed there was a duty to disclose available coverage to Ms. Salaz as a class-two insured. As a

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passenger in the covered vehicle, Ms. Salaz was covered by the uninsured/underinsured (UM/UIM) provisions of the policy. As an insured, Mountain States owed certain duties one of which was to disclose available coverage to Ms. Salaz once it learned of her claims.

The case points out a number of important issues regarding uninsured/underinsured motorist coverage in New Mexico. These will be addressed in the next post.

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