NEW MEXICO LAW REVIEW

Volume 24
Issue 3 *Summer 1994*

Summer 1994

Insurance Law - The Court Rules on Underinsured Motorist Coverage; Keep It in the Family: Mountain States Mutual Casualty Co. v. Martinez

Frederick Kennon

INSURANCE LAW—The Court Rules on Underinsured Motorist Coverage; Keep It in the Family: *Mountain States Mutual Casualty Co. v. Martinez*

I. INTRODUCTION

In *Mountain States Mutual Casualty Co. v. Martinez*,[1] the New Mexico Supreme Court enforced an insurance policy provision which offset underinsured motorist (UM) benefits by the amount of all payments made under the liability portion of the policy.[2] In so doing, the court looked to the law of contract as well as to any overriding public policy considerations which might render the contract provision unenforceable.[3] The case involved the claim of a passenger injured in an auto accident caused by the host driver.[4] Noting that a similar provision is unenforceable when the claimant is a relative living in the household of the car's owner, the court declined to rule similarly when the claimant was merely a friend.[5] The court's justification for the disparate treatment of essentially similar insurance claimants fades under the light of closer scrutiny. This Note examines the jurisprudence of UM insurance and analyzes the court's decision in *Martinez*, which represents a departure from the direction the court took in a case decided just three years earlier.[6]

II. STATEMENT OF THE CASE

On April 15, 1988, Jacqueline Martinez rode as a passenger in a car driven by her friend, Jennifer Roybal, over a stretch of Interstate 25 in San Miguel County, New Mexico.[7] Roybal rear-ended a commercial truck, causing severe injuries to Martinez. Martinez' short-term medical expenses exceeded $17,000, and future medical expenses brought her total damages to over $135,000.

Mountain States Mutual Casualty Company insured Roybal under a policy issued to her father. The policy covered any Roybal family member against liability for up to $60,000 per accident. The policy also provided uninsured motorist (UM) coverage for up to $60,000.[8] The annual prem-

---

1. 115 N.M. 141, 848 P.2d 527 (1993), *reh'g denied.*
2. *Id.*
3. *Id.* at 142, 848 P.2d at 528.
4. *Id.* at 141, 848 P.2d at 527.
5. *Id.* at 143, 848 P.2d at 529.
6. *See* Padilla v. Dairyland Ins. Co., 109 N.M. 555, 787 P.2d 835 (1990).
7. *Martinez*, 115 N.M. at 141, 848 P.2d at 27; *see also* Appellant's Brief-in-Chief at 6, *Martinez*, 115 N.M. 141, 848 P.2d 527 (CV-91 04391) (providing details omitted from court's opinion).
8. The policy defined an uninsured motor vehicle as a vehicle:
   (a) For which no liability bond or policy at the time of an accident provides at least the amounts required by the applicable law where a covered auto is principally garaged, or
   (b) For which the sum of all liability bonds or policies at the time of an accident provides at least the amounts required by the applicable law where a covered auto

iums for those coverages on the automobile involved in the accident were $98.00 and $16.00, respectively.[9] The large difference in cost reflects the difference in the insurer's calculated risks associated with liability coverage and UM coverage.

After settlement negotiations, Mountain States paid Martinez $58,712.94 and paid the truck owner $1,287.06, thus reaching the policy's liability limit for a single accident. Martinez claimed her damages exceeded what she received under Roybal's liability coverage and that she was entitled to additional compensation from Roybal's UM coverage. Martinez calculated that Mountain States still owed her $33,333.33, using a pro rata formula that accounted for other UM coverage available to Martinez under other policies to which she was a named insured or covered as a family member.

Mountain States filed a complaint in the District Court of Bernalillo County seeking declaratory judgment to enforce exclusionary language in the UM portion of the policy which read:

> 2. Any amount payable under this insurance shall be reduced by . . .
> (b) All sums paid by or for anyone who is legally responsible, including all sums paid under the policy's LIABILITY INSURANCE.

The trial court granted summary judgment for the insurer and the New Mexico Supreme Court affirmed.[10]

III. HISTORY OF THE ISSUE

The resolution of cases involving insurance claims normally stems from the application of contract law and interpretation of the provisions within the relevant insurance policies.[11] However, in some instances, the court may find that public policy considerations override certain contract provisions and render them unenforceable.[12]

As Justice Frost stated in his opinion, the court faced the issue of first impression of "whether a guest passenger should be allowed to recover for public policy reasons under both the liability and underinsured motorist provisions of a negligent host driver's insurance policy, even though a provision in the policy would prevent the double recovery."[13] Chief Justice Ransom, in his special concurrence on the denied motion

---

is principally garaged but their limits are less than the limit of this insurance. . . . Plaintiff's Complaint, Exhibit A at 4, *Martinez*, 115 N.M. 141, 848 P.2d 527. This definition incorporates what is commonly understood as uninsured motorist coverage as well as underinsured motorist coverage. The distinctions between the two are not significant to this discussion because the law treats them in a similar fashion as far as victims of auto accidents are concerned.

9. Plaintiff's Complaint, Exhibit A at 1, *Martinez*, 115 N.M. 141, 848 P.2d 527.

10. *Martinez*, 115 N.M. at 141, 848 P.2d at 527.

11. *Id.* at 143, 848 P.2d at 529.

12. *See* Schmick v. State Farm Mut. Auto. Ins. Co., 103 N.M. 216, 218, 704 P.2d 1092, 1094 (1985) (holding invalid policy provisions that limit recovery of UM benefits to only the coverage purchased under the accident vehicle).

13. *Martinez*, 115 N.M. at 141, 848 P.2d at 527.

for a rehearing explained why the case presented more than the occasion to consider "policy language" that effects a rule articulated in an earlier case,[14] but the majority opinion did precisely that.[15] Coming on the heels of a recent decision, *Padilla v. Dairyland Insurance Co.*,[16] the court in *Martinez* used the occasion for another examination of the public policy underlying the statute.

UM coverage usually compensates victims injured by a driver of a second automobile who either does not have liability coverage as required by law or whose coverage is not enough to fully compensate the victim for the loss.[17] However, *Martinez* involved two victims whose injuries were caused by the driver of the vehicle in which she rode and whose damages exceeded the liability limits of the vehicle owner's insurance policy. In such a situation, the injured party recovers under the liability portion of the vehicle owner's policy, but because the liability coverage of that policy is insufficient to cover the total damages, the victim seeks to recover additional compensation under the UM portion of the same policy.

A. Contract Principles

Because insurance cases normally use the contract between the parties as the starting point, the customary provisions found in common automobile policies provide a backdrop for discussion. Automobile insurance policies cover two classes of persons. Class I insureds include the person in whose name the policy was issued as well as any relative living in the household of the named insured.[18] Class II insureds are those persons covered by virtue of their occupancy of a vehicle covered under the policy.[19]

The policy issued to Jennifer Roybal's father, Rumaldo Roybal, used typical language to identify who is covered:

---

14. Schmick v. State Farm Mut. Auto. Ins. Company, 103 N.M. 216, 223, 704 P.2d 1092, 1099 (1985) (upholding exclusionary language in an insurance policy which reduced the amount payable under the UM portion of coverage by any payment made by the tortfeasor). While the New Mexico UM statute "does not specifically provide that the insured's underinsured motorist liability insurance is to be offset by the tortfeasor's liability coverage . . ., such an offset is inherent in [New Mexico's] statutory definition of underinsured motorist." *Id.*

15. As Chief Justice Ransom noted, the case presented the issue of whether the liability payment to Jacqueline Martinez under the Mountain States policy would have reduced any UM benefits she might have received under her own policies. *Martinez*, 115 N.M. at 144, 848 P.2d at 530 (Ransom, C.J., concurring). This issue was not raised by the parties and therefore not decided, *id.*, but it could have drastically affected the total amount she might have ultimately recovered, regardless of whether she could have recovered UM benefits under the Mountain States policy.

16. 109 N.M. 555, 560, 787 P.2d 835, 840 (1990) (holding that the uninsured/underinsured motorist coverage on a vehicle owned by the named insured entitles an insured family member to recover for an accident involving the insured vehicle, even though the insurance policy attempts to exclude UM coverage for any vehicle owned by the named insured). *Accord* Tissell v. Liberty Mut. Ins. Co., 795 P.2d 126, 129 (Wash. 1990); *but see* Preferred Risk Mut. Ins. Co. v. Tank, 703 P.2d 580, 582 (Ariz. Ct. App. 1985).

17. Breaux v. Government Employees Ins. Co., 369 So. 2d 1335, 1338 (La. 1979) (interpreting uninsured motorist statute essentially the same as New Mexico's).

18. Konnick v. Farmers Ins. Co., 103 N.M. 112, 115, 703 P.2d 889, 892 (1985).

19. *Id.*

WHO IS INSURED

1. *You* or any *family member.*

2. Anyone else *occupying* a *covered auto* or a temporary substitute for *a covered auto.*[20]

This standard language made Jacqueline Martinez a Class II insured under the Roybal policy.

The distinction between Class I and Class II insureds is crucial in the determination of their respective rights, particularly regarding UM coverage.[21] Using the principles of contract law, the New Mexico Supreme Court has used this distinction in analyzing automobile insurance claims while simultaneously interpreting the public policy expressed in the state's UM statute.[22]

The parties to an insurance contract bargain for their rights and obligations, and any ambiguities are normally resolved in favor of coverage.[23] Since named insureds are parties to the contract, their reasonable expectations of precisely what coverage they bargained for can be determined by examining the breakdown of the overall premium which they paid.[24] Referring to the Roybal policy, Class I insureds are covered without the condition that they be occupying a covered auto at the time of the accident; their coverage follows them regardless of the circumstances of the accident.[25] But automobile insurance policies typically charge a separate premium for each type of coverage on each vehicle insured under that policy. Therefore, with each additional vehicle covered under the policy and for which a separate premium has been paid for UM coverage, a named insured has essentially purchased additional coverage for each Class I insured.[26] The result is that Class I insureds have the right to stack the individual UM coverages listed under the various covered vehicles in the policy.[27]

On the other hand, Class II insureds are not parties to the contract and are insured only because they happen to occupy a covered vehicle at the time of the accident; they may not stack UM coverages because the purchaser "would not expect the occupant to recover under any additional policies that the purchaser obtained."[28] The partial premium

---

20. Plaintiff's Complaint, Exhibit A at 5.

21. *Konnick*, 108 N.M. at 115, 703 P.2d at 892.

22. *Id.* Insurance carriers are required, absent the insured's written waiver, to supplement any liability coverage with UM coverage with minimum limits equal to that of the statutory minimum for liability coverage and maximum limits equal to the liability coverage actually purchased in the same policy. N.M. STAT. ANN. §§ 66-5-215 to -301 (Repl. Pamp. 1989). An underinsured motorist is "an operator of a motor vehicle with respect to the ownership, maintenance or use of which the sum of the limits of liability under all bodily injury liability insurance applicable at the time of the accident is less than the limits of liability under the insured's uninsured motorist coverage." *Id.*

23. *See* Horne v. United States Fidelity & Guar. Co., 109 N.M. 786, 787, 791 P.2d 61, 62 (1990).

24. *See Konnick*, 103 N.M. at 116, 703 P.2d at 893.

25. *Martinez*, 115 N.M. at 143, 848 P.2d 529.

26. Morro v. Farmers Ins. Group, 106 N.M. 669, 671, 748 P.2d 512, 514 (1988).

27. *Id.*

28. *Konnick*, 108 N.M. at 115, 703 P.2d at 892.

paid specifically for coverage of the accident vehicle is the only payment which provides an avenue for recovery for a Class II insured; therefore, the parties to the contract—both the insurer and the named insured—would not reasonably expect coverages listed under vehicles other than the accident vehicle to apply to Class II insureds.[29]

B. Public Policy

In addition to the principles of contract, a court must also examine insurance policies in light of the public policy behind the UM statute. In passing the UM statute, the New Mexico Legislature intended for insurers to offer additional coverage to persons purchasing liability insurance in order to compensate those injured through no fault of their own.[30] An injured insured should be put "in the same position he would have been in had the tortfeasor had liability coverage in an amount equal to the uninsured/underinsured motorist protection purchased for the insured's benefit."[31]

C. Calculation of Benefits

Generally, UM benefits are calculated with reference either to total damages or to the aggregate of uninsured motorist coverage purchased for the insured's benefit. If the tortfeasor's liability payment insufficiently compensates the victim, the maximum benefits under both liability and UM coverage are figured either by adding the UM coverage policy limits to the total liability benefits (total damages), or by adding up only the UM coverage policy limits available to the victim (aggregate UM coverage approach). The following table illustrates the two approaches to computing benefits involving UM coverage:

Method	Total Dmgs.	UM Limit	Liability Pmt.	UM Benefit
Total Damages	$100,000	$80,000	$60,000	$40,000
Aggregate of UM Coverage	$100,000	$80,000	$60,000	$20,000

The aggregate UM coverage approach effectively caps the total recovery at the sum of the UM coverages in all policies under which the claimant is insured. The language used in the New Mexico UM statute provides for the aggregate approach.[32] If the tortfeasor makes no compensation whatsoever, the two approaches reach the same result.

---

29. *Id.*
30. *See generally* Schmick v. State Farm Mut. Auto. Ins. Co., 103 N.M. 216, 219, 704 P.2d 1092, 1095 (1985).
31. *Id.*
32. *Schmick*, 103 N.M. at 218, 704 P.2d at 1094.

Sometimes the victim may have UM coverage from more than one policy and from more than one insurer. Additionally, those coverages may be a mixture of Class I and Class II coverages. In such cases, the Class II insurer must pay up to the policy limits before the Class I insurer is required to pay.[33] Within each class of coverages, the liability payment is credited to each policy on a pro-rata basis to determine how much each insurer shall pay.[34]

IV. ANALYSIS

In *Martinez*, the New Mexico Supreme Court held that public policy does not prohibit an insurance policy provision which prevents double recovery by a Class II insured by offsetting UM benefits with liability benefits.[35] The court adopted the rationale of the Arizona and Hawaii Supreme Courts which reached the same conclusion in similar cases.[36] Those courts considered such double recovery a form of stacking which has the effect of "increas[ing] the liability coverage purchased by the named insured."[37]

The *Martinez* court also found support for its conclusion in an oft-quoted Washington case:

> The owner of a vehicle purchases liability insurance to, among other things, protect passengers in the vehicle from his, or another driver's, negligent driving. He purchases underinsured motorist coverage to protect himself and others from damages caused by another vehicle which is underinsured. An insured wishing to avoid personal liability, and protect his passengers, may simply increase the liability insurance.

---

33. "The policy covering the vehicle involved in the accident is closer to the risk than the policy insuring the non-owner driver or passenger." Tarango v. Farmers Ins. Co. of Ariz., 115 N.M. 225, 226, 849 P.2d 368, 369 (1993) (quoting Branchal v. Safeco Ins. Co., 106 N.M. 70, 738 P.2d 1315 (1987)). The *Tarango* court also reasoned that a pro-ration between the Class I and Class II insurers would require the Class I insurer to pay an amount according to the relative policy limits even though its insured vehicle was not involved in the collision. *Tarango*, 115 N.M. at 227, 879 P.2d at 370. The court based the foregoing on the distinction between the insured vehicle and the insured person, but it did not explain why that should make a difference in how the financial responsibility should be distributed.

34. Morro v. Farmers Ins. Group, 106 N.M. 669, 672, 748 P.2d 512, 515 (1988). However, when UM coverages are prorated, the division should be based on the number of insurers rather than the number of policies. Each insurer has contracted to assume the risk and any difference between the policy limits with respect to each insurer should have no bearing on their contractual obligations. Furthermore, it is irrelevant that the accident occurs in the victim's own vehicle or while the victim rode as a passenger in someone else's. The familiar Class I and Class II distinctions merge in such cases since the expectations of the parties to the contracts are identical once the stacking calculation has been completed.

35. *Martinez*, 115 N.M. at 141, 848 P.2d at 527.

36. *See* Duran v. Hartford Ins. Co., 772 P.2d 577, 578 (Ariz. 1989); Kang v. State Farm Mut. Auto. Ins. Co., 815 P.2d 1020, 1022 (Haw. 1991). The *Martinez* court considered the Arizona and Hawaii statutory provisions "substantially identical" to those of New Mexico. *Martinez*, 115 N.M. at 142, 848 P.2d at 528. The Arizona and Hawaii statutes differ slightly in that they use the "total damages" approach in determining the underinsured status of a tortfeasor. *Duran*, 772 P.2d at 577; *Kang*, 815 P.2d at 1022, while the New Mexico statute uses the "aggregate UM benefits" approach. *Schmick*, 103 N.M. at 218, 704 P.2d at 1094.

37. *Duran*, 772 P.2d at 578 (quoting ALAN I. WIDISS, UNINSURED AND UNDERINSURED MOTORIST INSURANCE § 40.2, at 79 (2d ed. 1987)); *see Kang*, 815 P.2d at 1022.

> The result of dual recovery in the instant case would transform underinsured motorist coverage into liability insurance. This result would cause insurance companies to charge substantially more for underinsured motorist coverage in order to match the cost of that coverage with the presently more expensive liability coverage. This increase in cost would discourage consumers from purchasing underinsured coverage, an important protection presently available for a minimal cost. Further, passengers can obtain underinsured coverage from their own insurers.[38]

Thus, the *Martinez* court concluded that "when there are no overriding public policy consideration to the contrary, the obligations of an insurer on an underinsured motorist policy are determined by applying principles of contract law."[39] The court determined that the Mountain States policy provisions effectively barred a Class II claimant from recovery of both liability and UM benefits.

In *Padilla v. Dairyland Insurance Co.*,[40] however, the court struck a provision that would have barred a Class I insured from a similar double recovery on the grounds that the contract as written would violate the public policy behind the statute: compensation of victims injured through no fault of their own. Implicitly, such a policy endeavors to more evenly distribute the burdens of motor vehicle accidents, instead of having innocent victims absorbing an unjust share of the cost.

The *Martinez* court distinguished the policy behind *Padilla* from the policy behind *Briggs* on the grounds that it involved a Class I claimant while the plaintiff in *Briggs* was a Class II claimant.[41] This distinction between insureds, however, was developed to treat their differences in cases involving the stacking of UM benefits.[42] In those earlier cases, the court in *Martinez* recognized that, unlike Class II insureds, Class I insureds had a viable expectation of multiple recovery based on additional premiums paid for UM coverage on different vehicles.

However, the same principles of contract prevent such a distinction in the context of a passenger injured by a negligent host driver. In *Martinez*, the court focused on the plaintiff's contractual relationship with the insurance company,[43] but it should have also addressed the named insured's relationship with the insurer. The court reasoned:

> Martinez did not pay a premium to Roybal's insurer; thus, she had no contractual expectation of underinsured coverage on the policy. Accordingly, Mountain States and Roybal limited Martinez' under-

---

38. *Martinez*, 115 N.M. at 143, 848 P.2d at 529 (quoting Millers Casualty Ins. Co. of Texas v. Briggs, 665 P.2d 891, 895 (Wash. 1983)). *Accord* Poehls v. Guaranty Nat'l Ins. Co., 436 N.W.2d 62, 64 (Iowa 1989); Wolgemuth v. Harleysville Mut. Ins. Co., 535 A.2d 1145, 1150 (Pa. Sup. Ct. 1988), *cert. denied*, 551 A.2d 216 (Pa. 1988).

39. *Martinez*, 115 N.M. at 143, 848 P.2d at 529.

40. 109 N.M. 555, 557, 787 P.2d 835, 837 (1990).

41. *Martinez*, 115 N.M. at 143, 848 P.2d at 529; *see also* Tissell v. Liberty Mut. Ins. Co., 795 P.2d 126 (Wash. 1990).

42. *See generally* Konnick v. Farmers Ins. Co. of Ariz., 103 N.M. 112, 703 P.2d 889 (1985).

43. *Martinez*, 115 N.M. at 143, 848 P.2d at 529.

> insured benefits by contract without interfering in any way with Martinez' reasonable expectations . . . . She received compensation in the form of liability benefits, and she will recover underinsured motorist benefits on policies on which she is a Class I insured.[44]

The court did not explore Rumaldo Roybal's contractual expectations. Presumably, he purchased UM coverage with the purpose of protecting anyone riding in his car from injuries caused by uninsured or underinsured tortfeasors. With a reasonable reading of his policy, he could hardly have understood the UM coverage portion to treat family members and friends any differently when they are injured in an accident caused by the host driver (negligent host accident). To the contrary, a reasonable reading would lead him to confidently assure his friends (or his daughter's friends) that they were protected the same as his own family. In the absence of clear language to the contrary, when the insurer grants benefits to one class of passengers and denies them to another, the insurer fails to meet the legitimate expectations of the insured. While Jacqueline Martinez did not have any contractual relationship with Mountain States, Rumaldo Roybal did; the inquiry failed to properly consider his contractual interest.

Because the insured's contractual expectations did not make any distinction between Class I and Class II insureds in this context, the *Martinez* decision represents an unjustified departure from the established law. The court had already ruled in *Padilla* that an exclusion preventing double recovery of liability and UM benefits violated public policy if a family member brought the claim.

Tissell v. Liberty Mutual Insurance Co. offers a lengthy discussion of the two types of cases which the New Mexico court has now faced (negligent host driver/injured family member and negligent host/injured friend).[45] The Washington court, like the New Mexico court, allowed for the double recovery in the case of the injured family member and distinguished it from the case of the injured friend.[46] Basing its decision on the public policy of full compensation for victims, the *Tissell* court said "it is not reasonable to expect that any motorist will buy more than one UIM policy," and since "such a victim's only source of UIM coverage is cut off by the liability coverage exclusion in his policy, the exclusion frustrates the legislature's intent to provide UIM coverage to all potential victims."[47]

In *Martinez*, the court's language echoed that of *Tissell*.[48] But both courts assume that any non-related passengers will naturally have their own automobile insurance from which they may recover UM benefits. That is not necessarily true; if it is unreasonable to expect a family member to buy more than one policy in order to guard against an

---

44. *Id.*
45. 795 P.2d 126 (Wash. 1990).
46. *Id.* at 127.
47. *Id.*
48. *See Martinez*, 115 N.M. at 143, 848 P.2d at 529.

underinsured negligent host, it is no more reasonable to expect certain elderly or disabled persons, or simply any person who does not drive, to purchase such a separate policy.

The court in *Tissell* also explained that UM insurance acts "as a layer of excess coverage that 'floats' on the top of recovery from other sources."[49] Since the public policy behind the statute is to provide compensation to those injured through no fault of their own, this second layer of coverage is necessary to achieve the legislature's intent. Contract provisions purporting to exclude the second layer of coverage frustrate that purpose regardless of whether or not the victim is a family member.

Finally, both the Washington and New Mexico courts too hastily adopted the notion that the sort of double recovery which Jacqueline Martinez sought would "transform underinsurance coverage into liability insurance" and thereby "cause insurance companies to charge substantially more for underinsured motorist coverage in order to match the cost of that coverage with the presently more expensive liability coverage."[50] In *Padilla*, the court's judgment might have had that effect, but the court allowed the double recovery anyway. Realistically, allowing the double recovery would only slightly increase UM premiums since the additional exposure to the insurance company arises from those special cases involving injuries to passengers caused by a negligent host driver.

Moreover, the double recovery does not transform UM insurance into liability insurance; the benefits simply come from the same payor as a matter of consequence. The principle behind the payment is the same no matter who cuts the check: the liability benefits available to the innocent victim do not sufficiently compensate, so the supplemental UM insurance kicks in.

V. CONCLUSION

Martinez, heard so soon after *Padilla*, involves the court's adherence to distinctions between classes of insureds covered by automobile policies. While disparate treatment of those classes of insureds is justified in certain contexts where their reasonable expectations are dissimilar, this adherence has caused the court to treat those classes differently in situations where their interests and expectations actually coincide.

The court enforced a policy provision effectively excluding recovery of both liability and UM benefits under the same policy, based on the court's notion of how the parties did or did not contract. Instead, the court should have more fully considered the contractual expectations of the named insured in its analysis; had it done so, it may have decided differently.

Finally, the court determined that public policy considerations do not override the policy exclusion since the claimant had UM benefits from

---

49. *Tissell*, 795 P.2d at 132 (Callow, C.J., concurring).
50. *Martinez*, 115 N.M. at 143, 848 P.2d at 529.

other sources. Because this situation may not hold true in numerous other cases, such a pronouncement is more a rationalization than a rule of law.

FREDERICK KENNON