

Tenth Circuit Reverses UM/UIM Coverage Notification Class Certification

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The named plaintiff in *Soseeah v. Sentry Insurance* had a Sentry auto policy. She declined UM/UIM coverage when she initially purchased her policy, and renewed annually thereafter. In 2010, the New Mexico Supreme Court held, in *Progressive Northwestern Insurance Co. v. Weed Warrior Services*, that New Mexico's UM/UIM statute required UM/UIM policy limits must not be less than the policy's liability limits, unless the insured knowingly rejected UM/UIM coverage at that level. In a companion decision, *Jordan v. Allstate Insurance Co.*, the court provided guidance as to the process for such rejection:

[I]nsurers must provide the insured with the premium charges corresponding to each available option for UM/UIM coverage so that the insured can make a knowing and intelligent decision to receive or reject the full amount of coverage to which the insured is statutorily entitled. If an insurer fails to obtain a valid rejection [for any reason], the policy will be reformed to provide UM/UIM coverage equal to the limits of liability.

According to the *Soseeah* complaint, in early 2011, Sentry sent form letters to all policyholders that had rejected UM/UIM coverage, which stated that: "[i]n ... 2010, the New Mexico Supreme Court issued a ruling requiring new information to be provided with Uninsured Motorist ... coverage selection forms" and that they "had to sign a new waiver or 'Your Premium Will Go Up.'" The letters also notified policyholders that "they may have UM/UIM coverage." The plaintiff was thereafter injured in a car accident and, when her UIM claim was denied because she had rejected UM/UIM coverage, she brought a class action complaint, alleging that her rejection of UM/UIM coverage was "legally insufficient" under *Weed Warrior* and *Jordan*. The claim survived a motion to dismiss, and the trial court ultimately granted class certification. But the Tenth Circuit Court of Appeals reversed the class certification ruling, finding that the class as certified did not differentiate between those who had made claims, and those who simply sought reformation on the basis of an improper coverage rejection. The latter group, the court held, had no cognizable damages, and the trial court's ruling did

not indicate that the smaller group alone could satisfy the requirements of Rule 23 to warrant class certification. It therefore remanded with instructions to decertify, and, if necessary, analyze whether any possible sub-group could be certified in light of the court's ruling.

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