

## **New Mexico Court of Appeals Clarifies the Circumstances Under Which an Insurer is Subrogated**

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The New Mexico Court of Appeals recently issued an opinion with implications for cases involving subrogation and joint liability, including cases involving vehicle accidents.

Factually, the case concerns a series of collisions involving nine vehicles. Gulf Insurance Company insured one of the vehicles involved in the first collision, a truck carrying liquid carbon dioxide. The driver of a vehicle involved in one of the subsequent collisions, Brenda Rapp, was severely injured. After she sued the trucking company, Gulf settled her claim. Gulf then filed suit against most of the other drivers involved in the series of collisions, seeking reimbursement for some or all of the amount it paid to Rapp.

The District Court granted summary judgment against Gulf and dismissed the case with prejudice. On appeal, the New Mexico Court of Appeals affirmed, resolving the two legal issues discussed below. No party sought further review by the New Mexico Supreme Court.

Gulf argued that it was subrogated to Rapp's claims against the other drivers; that is, it could step into Rapp's shoes and bring her claims against the other drivers because it paid a sum to Rapp as the insurer of the trucking company. The Court of Appeals determined that compensation paid to a victim by the insurer of an actor who caused the harm does not create a right of subrogation. There must be a duty which pre-existed the action causing harm in order for a party making a payment to an injured person to be subrogated to the injured's claim. Gulf's voluntary payment of a sum to Rapp, even in the context of a lawsuit, did not create a subrogation right.

Gulf also argued that the other drivers were jointly liable with Gulf for the injuries to Rapp, that is, each driver was liable for all of the injuries to Rapp. If true, then Gulf could sue the drivers to determine their portion of fault for Rapp's injuries and possibly be reimbursed a portion of the sum it paid to Rapp. To establish joint liability, Gulf argued that Rapp's injuries were caused by separate collisions which caused distinct injuries. The Court of Appeals determined the separate collisions, the lapse of time between collisions and the presence of multiple actors were not enough, as a matter of law, to create joint liability. Rather, this was a "run-of-the-mill, chain reaction automobile accident" which caused Rapp an indivisible injury from exposure to liquid carbon dioxide.

*Gulf Insurance* is important because it clarifies a recent New Mexico Supreme Court case, *Payne v. Hall*. Since the early 1980s, the law in New Mexico is that concurrent tortfeasors have several liability. That means that when two or more actors cause an injury, then each actor is liable to compensate the victim for only the portion of the injury it caused. An exception to that rule is when two actors cause separate injuries by separate acts; in that case the first actor is liable for both the injury it caused, and the injury caused by the second actor. The classic example of joint liability, as referenced by the Court of Appeals in *Gulf Insurance*, is when one actor causes an injury and then a medical provider causes a second injury while treating the first injury.

*Payne v. Hall* could have been read to expand the circumstances under which New Mexico Courts would impose joint liability, which would negatively impact defendants with financial resources. The Court of Appeal's decision in *Gulf Insurance*, however, indicates that the circumstances under which joint liability will be applied remain the exception rather than the rule.