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Case Notes

Greetings again from **Evans & Co.**, with another installment of **Case Notes**, discussing the details of important developments in the states where we practice. We write this month with updates on **insurance, construction defect, and commercial auto law** in the states of **Arizona** and **New Mexico**, which we last briefed about six months ago.

Please recall that our past **Case Notes** are archived at evanslawfirm.com and we would be pleased to bring current the decisions on which we've reported previously, at your request.

Today's **Case Notes** provides updates on the law of **Arizona** and **New Mexico**. You may access our entire brief by pressing [here](#), or **Arizona** only [here](#), and **New Mexico** only [here](#).

ARIZONA CASES

Arizona appellate courts have provides quite a few cases in this period, clarifying that the **economic loss rule** applies to contracting parties only; holding that a homeowner may only sue in contract, the counter-party builder or general contractor; defining the scope of **what is insurable in regard public policy arguments**; interpreting **whether there was one or more "occurrences"**; and opining on **aspects of UM/UIM coverage** and rejection of same. And we digest a case where a plaintiff sued in small claims court, got a judgment in the jurisdictional amount, and was then precluded from another suit for greater damages in a court of general jurisdiction. Lesson: check the claim history and docket.

NEW MEXICO CASES

The appellate courts of **New Mexico** have issued two opinions very useful to insurers. In one, there is a careful analysis of what triggers a **duty to defend**, resulting in a determination that there was no such duty despite some extrinsic evidence of a potentially covered claim. In a property loss case, the court considered whether a loss of use claim can be added to total loss tort claim, and following the majority of jurisdictions, held that it could not. We also digest **three UM/UIM** coverage cases, which are testament to the complexity of this area of law, and to the number of underinsured drivers whose acts trigger these claims.

BAD FAITH CLAIMS TRENDS

We have **noted a trend in Colorado**, which we think is active as well in other jurisdictions, that **plaintiff's attorneys are increasingly educated in third-party insurance bad faith law**, and in the case of UM/UIM claims, that becomes first-party bad faith law. The theme is that "policy limits are never enough", and the development and documentation of what their experts will call bad faith, is the ticket to a claim payout beyond policy limits. We urge you to oil your claims machine, and to document the reasonability and timeliness of your adjustments, particularly in UM/UIM claims. But if you don't, or if plaintiff's counsel says you don't, you know who to call.

Click [here](#) for our **Case Notes** for **both states**.

Click [here](#) for **Arizona** only.

Click [here](#) for **New Mexico** only.

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