

THOUGHT LEADERSHIP

News

## UNITED STATES ARMY HAS SUBROGATION RIGHTS AGAINST INSURED'S UIM COVERAGE

Newsbrief

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Last Wednesday, the El Paso Court of Appeals affirmed a trial court's ruling that the United States Army had subrogation rights against underinsured motorist coverage even when the insured's injuries and damages exceeded the combined limits of the other driver's insurance and the insured's underinsured motorist coverage. In *Warmbrod v. USAA County Mutual Insurance Company*, 2011 WL 1202203 (Tex.App.-El Paso, April 11, 2012), the insured was severely injured in a car accident and was treated free of charge in a U.S. Army Hospital by virtue of her husband's military status. The Army then sought to recover \$26,404.96 against Warmbrod's \$100,000 UIM policy with USAA, under 10 U.S.C. § 1095 and the Federal Medical Care Recovery Act (FMCRA). USAA paid its policy limits but on a separate check, protected the Army's subrogation rights by issuing a check co-payable to Warmbrod, her attorney and the Army for the amount of the Army's lien. Warmbrod sued USAA alleging breach of contract and other, extra-contractual allegations. The trial court granted summary judgment in favor of USAA and this appeal followed.

On appeal, the El Paso Court agreed with Warmbrod that the FMCRA only provides the Army with a right of recovery against responsible third-parties, but not against first party insurance proceeds. Considering 10 U.S.C. § 1095, however, the court recognized that the United States government has a right to collect reasonable expenses for care it provided from third-party payers, which is defined to include "an automobile liability insurance or no fault insurance carrier". Accordingly, the court concluded that because the United States Army has a right to recover against the UIM coverage, summary judgment in favor of USAA was proper and affirmed the trial court's ruling.