

Opinion No. 69-119

October 16, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General James C. Compton, Jr.,
Assistant Attorney General

TO: Mr. Lawrence H. Prentice, Commissioner, Department of Motor Vehicles, State
Capitol, Santa Fe, N.M. 87501

QUESTIONS

FACTS

A, a motorist properly insured under the Laws of the State of New Mexico, including uninsured motorist risk coverage, secured a judgment against B, an uninsured motorist, for damages and personal injuries -- the result of an automobile accident. B, the uninsured motorist, claims that under the provision of Section 64-24-76, N.M.S.A., 1953 Compilation, the Insurer under A's policy covering A for uninsured motorist risk, is liable for the damages awarded A against B in the above referred to judgment, and that since the liability is in A's insurer, B's driving privileges cannot be suspended under the provisions of the Financial Responsibility Laws.

QUESTIONS

Under these facts does Section 64-24-76, N.M.S.A., 1953 Compilation, preclude suspension of B's driving privileges?

CONCLUSION

No.

OPINION

{*192} ANALYSIS

By enacting the Financial Responsibility laws, Sections 64-24-42 to 64-24-107, N.M.S.A., 1953 Compilation, the legislature intended to eliminate the financially irresponsible driver from the highways and to provide for the giving of security and proof of financial responsibility by owners and operators of motor vehicles. Chapter 182, N.M. Laws 1955. The legislative intent must be given effect by adopting a construction which will not render the statute's application absurd or unreasonable. **State v. Nance**, 77 N.M. 39, 419 P.2d 242 (1966).

When the Department of Motor Vehicles receives notice that a motorist has been judged liable for damages in an automobile accident but has failed within thirty days to

satisfy that judgment, that motorist's driving privileges shall be suspended. Section 64-24-73, N.M.S.A., 1953 Compilation. This suspension shall continue unless and until such judgment be satisfied in full and until the motorist gives proof of "financial responsibility," Section 64-24-77, N.M.S.A., 1953 Compilation, as defined in Section 64-24-65, N.M.S.A., 1953 Compilation (1969 P.S.) Such suspension of driving privileges, however, does not result if an insurer is obligated to pay the judgment upon which the suspension would be based.

"No license, registration or nonresident's operating privilege of any person shall be suspended under the provisions of this act [64-24-42 to 64-24-104] if the division shall find that **an insurer** was obligated to pay the judgment upon which suspension is based, at least to the extent and for the amounts required in this act, but has not paid such judgment for any reason. A finding by the division that **an insurer** is obligated to pay a judgment shall not be binding upon such insurer and shall have no legal effect whatever except for the purpose of administering this section. Whenever in any judicial proceedings it shall be determined by any final judgment, decree or order that {**193*} **an insurer** is not obligated to pay any such judgment, the finding theretofore made by it, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, as provided in section 310 [64-24-73]." (Emphasis added.)

Section 64-24-76, N.M.S.A., 1953 Compilation.

A's insurer is not "obligated to pay the judgment" as that language is used in Section 64-24-76, supra. Rather, A's insurer is obligated by contract to pay for A's loss as measured by the judgment against B. B is still liable on the judgment to A's insurer after it becomes subrogated by payment to A for his losses. So B's obligation under the judgment is not extinguished.

When the legislature used the words "an insurer," the intention was that Section 64-24-76, supra, would apply to B's personal insurer, and not to A's insurer. This interpretation of the legislative intent is consistent with the legislative purpose to eliminate B, the financially irresponsible driver, from the highways. If B has an insurer to cover whatever judgment might be awarded, then he is not financially irresponsible (Section 64-24-65 (1969 P.S.)) and his driving privileges may not be suspended. Section 64-24-76, supra. The ability to satisfy the judgment is the essence of the financial responsibility laws and if the judgment may be satisfied by B's own insurer, the driving privileges may not be suspended.

B's argument that his driving privileges should not be suspended if A's insurer is liable for the damages, if accepted, would enable a financially irresponsible driver to continue to plague the highways. The legislative scheme would be frustrated if the financially irresponsible driver were permitted to escape the statutory provisions by the simple expediency of claiming immunity from suspension under the umbrella of A's insurer's liability. The penalty imposed in suspension is not merely to protect A, but to enforce a

public policy that financially irresponsible motorists shall not be allowed to injure their fellows with impunity.

Where B is judged liable for damages in an automobile accident and has failed to satisfy the judgment, therefore, his driving privileges may be suspended, regardless of A's circumstances, until B offers proof of financial responsibility pursuant to the above statutory provisions.